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Monday
February 2, 1998

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Contents

Federal Register

Vol. 63, No. 21

Monday, February 2, 1998

Agricultural Marketing Service
PROPOSED RULES
Federal Seed Act:
National organic program; establishment; meeting, 5285

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
RULES
Import quotas:
Tariff-rate import quota licensing ; cheeses from Hungary, 5223
NOTICES
Meetings:
National Agricultural Research, Extension, Education and Economics Advisory Board, 5350

Army Department
NOTICES
Privacy Act:
Systems of records, 5365–5367

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control special emphasis panels, 5385
Injury Research Grant Review Committee, 5385
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 5385–5386

Commerce Department
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Organization, functions, and authority delegations:
Enforcement Division Director; authority to conduct investigations in assistance of foreign futures authorities; correction, 5232–5233

Copyright Office, Library of Congress
NOTICES
Broadcasting compulsory license noncommercial educational; arbitration initiation, 5405–5406

Customs Service
PROPOSED RULES
Seizures, penalties, and liquidated damages; relief petitions, 5329–5338

Defense Department
See Army Department
See Defense Intelligence Agency
RULES
Defense environmental restoration activities; technical assistance for public participation (TAPP):
Restoration Advisory Boards and Technical Review Committees local community members, 5255–5268

Defense Intelligence Agency
NOTICES
Meetings:
Science and Technology Advisory Board, 5367

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
See Western Area Power Administration
RULES
Acquisition regulations:
Management and operating contracts—
Cost reimbursement clarification and remedy coordination official establishment, 5272–5276

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
National spherical torus experiment research program, 5367–5368

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Iowa, 5268–5269
Washington, 5269–5272
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Iowa, 5339
NOTICES
Meetings:
Gulf of Mexico Program Management Committee, 5378

Export Administration Bureau
NOTICES
Meetings:
Regulations and Procedures Technical Advisory Committee, 5353

Farm Credit Administration
RULES
Farm credit system:
Loan policies and operations—
Farm credit securities; book-entry procedures, 5223

Farm Service Agency
PROPOSED RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Tobacco, 5285–5287

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 5224–5225

Boeing, 5226–5228
Dornier, 5225–5226
Class D and E airspace, 5228, 5229–5230
Class E airspace, 5228–5229, 5230–5232
VOR Federal airways, 5232
PROPOSED RULES
Airworthiness directives:
AERMACCI S.p.A., 5318–5320, 5324–5325
Alexander Schleicher GmbH, 5322–5324
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., 5320–5322, 5325–5327
Raytheon, 5327–5328
NOTICES
Meetings:
Aircraft Noise Federal Interagency Committee, 5410–5411
Aviation Rulemaking Advisory Committee, 5411
Commercial space transportation; forecast conference and special public session, 5411
Passenger facility charges; applications, etc.:
Cincinnati/Northern Kentucky International Airport, KY, 5411–5412
Juneau International Airport, AK, 5413
Jefferson County Airport, TX, 5412–5413
Springfield-Branson Regional Airport, MO, 5413–5414

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 5378
Privacy Act:
Systems of records, 5378–5380

Federal Election Commission
NOTICES
Special elections; filing dates:
California, 5380–5381

Federal Emergency Management Agency
NOTICES
Meetings:
Technical Mapping Advisory Council, 5381

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Montana Power Co. et al., 5371–5375
Hydroelectric applications, 5375–5376
Applications, hearings, determinations, etc.:
Arkansas Western Pipeline Co., 5368
Equitrans, L.P., 5369
Florida Gas Transmission Co., 5369–5370
Southern Natural Gas Co., 5370
South Georgia Natural Gas Co., 5370
Texas Gas Transmission Corp., 5370–5371
Viking Gas Transmission Co., 5371

Federal Housing Finance Board
PROPOSED RULES
Federal home loan bank system:
Financial disclosure statements, 5315–5318
NOTICES
Federal Home loan bank system:
Combined annual and quarterly financial reports disclosure; policy statement, 5381–5384

Federal Maritime Commission
NOTICES
Agreements filed, etc., 5384

Financial Management Service
See Fiscal Service

Fiscal Service
PROPOSED RULES
Financial managment services:
Automated clearing house, Federal Government participation, 5426–5445

Fish and Wildlife Service
PROPOSED RULES
Marine mammals:
Polar bear trophies; importation from Canada, 5340–5349

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Hygromycin B Type A medicated article, etc.; withdrawal of approval, 5254–5255
Clinical investigators financial disclosure, 5233–5254
PROPOSED RULES
Biological products:
In vivo radiopharmaceuticals for diagnosis and monitoring, 5338–5339
NOTICES
Animal drugs, feeds, and related products:
New drug applications—
Mountaire Vitamins, Inc., et al. approval withdrawn, 5386
Color additive petitions:
Ethicon, Inc., 5387
Medical devices:
Class I devices; exemptions from premarket approval and reserved devices, 5387–5393
Meetings:
Gastroenterology and Urology Devices Panel, 5393
Medical Devices Advisory Committee, 5393–5394

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 5405

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Oklahoma
ARCO Pipe Line Co.; crude oil transshipment terminal, 5353
Texas
Seaway Pipeline Co.; crude oil transshipment terminal, 5354

Forest Service
NOTICES
Appealable decisions; legal notice:
Intermountain region, 5350
Environmental statements; availability, etc.:
TransColorado Gas Transmission Co. pipeline project, CO and NM, 5400–5401
Environmental statements; notice of intent:
Umpqua National Forest, OR, 5350–5352

General Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5384–5385

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Arkansas, 5352
Indiana, 5352–5353

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Housing and Urban Development Department
RULES
HUD building products standards and certification program; use of materials bulletin, 5422–5424
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5396
Grant and cooperative agreement awards:
Public and Indian housing—
Economic development and supportive services program, 5396–5398

Immigration and Naturalization Service
PROPOSED RULES
Immigration:
Employment eligibility verification process; number of acceptable documents reduced and other changes, 5287–5314

Indian Affairs Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Contract support funds; distribution and use method; guidance availability, 5398–5400

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Fresh cut flowers from—
Colombia, 5354–5360
Mushrooms (preserved) from—
Chile, etc., 5360–5363
Applications, hearings, determinations, etc.:
University of—
Nebraska-Lincoln et al., 5363–5364

Justice Department
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service
See Justice Programs Office

Justice Programs Office
NOTICES
Grants and cooperative agreements; availability, etc.:
State criminal alien assistance program, 5405

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
TransColorado Gas Transmission Co. pipeline project, CO and NM, 5400–5401

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5401
Outer Continental Shelf; oil, gas, and sulphur operations:
Civil monetary penalties paid September 1, 1997 through December 31, 1997; list, 5401–5403

National Aeronautics and Space Administration
NOTICES
Meetings:
Procurement policies and practices; open forum, 5406

National Highway Traffic Safety Administration
NOTICES
Meetings:
Safety performance standards—
Research and development programs, 5414–5415
Motor vehicle safety standards; exemption petitions, etc.:
Mercedes-Benz U.S. International, Inc., 5415–5416
Red River Manufacturing, Inc., 5416

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
Incidental taking—
On-ice seismic activities; ringed seals, 5277–5284
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5364–5365

National Park Service
NOTICES
Environmental statements; notice of intent:
Mesa Southwest Museum, AZ, 5403
National Register of Historic Places:
Pending nominations, 5403–5404
Native American human remains and associated funerary objects:
Museum of Indian Arts and Culture, NM; inventory, 5404

National Science Foundation
NOTICES
Meetings:
Computer and Communications Research Special Emphasis Panel, 5406

Nuclear Regulatory Commission
PROPOSED RULES
Practice rules:
Domestic licensing proceedings—
High-level radioactive waste disposal at geologic repository, 5315
NOTICES
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
Union Electric Co.; Callaway Plant Unit 1, Callaway County Public Library, MO; relocation, 5407

Applications, hearings, determinations, etc.:
Omaha Public Power District, 5407

Public Debt Bureau
See Fiscal Service

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Natural gas transportation, etc.—
Plastic pipeline safety standards; meeting, 5339–5340
NOTICES
Hazardous materials:
Exemption applications delayed; list, 5417–5418

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5407–5408
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc. et al., 5408–5410

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 5394–5396

Surface Transportation Board
NOTICES
Railroad services abandonment:
Central Railroad Co. of Indiana, 5418–5419

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Columbia Federal Savings Bank, 5419

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
PROPOSED RULES
Aircraft dissinsection:
Insecticide use—
Notification of ticket purchasers by U.S. and foreign airlines and their agents at time of booking; withdrawn, 5329

Treasury Department
See Customs Service
See Fiscal Service
See Thrift Supervision Office

United States Information Agency
NOTICES
Meetings:
Cuba Broadcasting Advisory Board, 5419

Veterans Affairs Department
NOTICES
Meetings:
Veterans Readjustment Advisory Committee, 5419

Western Area Power Administration
NOTICES
Electric power marketing:
Open access transmission service tariff; correction, 5376–5378

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 5422–5424

Part III
Department of the Treasury, Fiscal Service, 5426–5445

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
6 5223
Proposed Rules:
205 5285
723 5285
8 CFR
Proposed Rules:
274a 5287
299 5287
10 CFR
Proposed Rules:
2 5315
12 CFR
615 5223
Proposed Rules:
937 5315
14 CFR
39 (3 documents) 5224, 5225, 5226
71 (8 documents) 5228, 5229, 5230, 5231, 5232
Proposed Rules:
39 (6 documents) 5318, 5320, 5322, 5324, 5325, 5327
259 5329
17 CFR
11 5232
19 CFR
Proposed Rules:
10 5329
12 5329
18 5329
24 5329
111 5329
113 5329
114 5329
125 5329
134 5329
145 5329
162 5329
171 5329
172 5329
21 CFR
54 5233
312 5233
314 5233
320 5233
330 5233
510 5254
520 5254
524 5254
558 5254
601 5233
807 5233
812 5233
814 5233
860 5233
Proposed Rules:
601 5338
24 CFR
200 5422
31 CFR
Proposed Rules:
210 5426
32 CFR
203 5255
40 CFR
52 (2 documents) 5268, 5269
Proposed Rules:
52 5339
48 CFR
932 5272
970 5272
49 CFR
Proposed Rules:
192 5339
195 5339
50 CFR
216 5277
Proposed Rules:
18 5340

Rules and Regulations

Federal Register
Vol. 63, No. 21
Monday, February 2, 1998

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Modification of the Tariff-Rate Import Quota Licensing for Certain Cheeses From Hungary

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Import Regulation 1, Revision 8, to increase the tariff-rate quota (TRQ) allocation to Hungary for Swiss or Emmenthaler cheese to 800,000 kilograms, and to delete the TRQ allocation to Hungary for Italian-type cheese. The administrative action is taken pursuant to a modification of the Harmonized Tariff Schedule of the United States (HTS).

EFFECTIVE DATE: This amendment is effective February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, STOP 1029, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1029, or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION: Import Regulation 1, Revision 8 (7 CFR 6.20–6.36 and the Appendices thereto) prescribes a system for licensing importation of certain articles of dairy products which are subject to TRQs under the HTS. Importers who hold licenses issued pursuant to Import Regulation 1 may enter these articles at the TRQ tariff rates. The Appendices to Import Regulation 1 identify the dairy articles that are subject to licensing. Import Regulation 1 also sets forth the TRQ quantities for each dairy article that may be entered under Appendix 1 (historical licenses), Appendix 2 (nonhistorical licenses), and Appendix 3 (designated importer licenses).

Under Appendix 3, the quantity for designated licenses for Italian-type cheese allocated to Hungary is 400,000 kilograms and the quantity for designated licenses for Swiss or Emmenthaler cheese allocated to Hungary is 400,000 kilograms. A **Federal Register** Notice issued by the Office of the United States Trade Representative (62 FR 66171–66172) modified additional U.S. notes 21 and 25 to chapter 4 of the HTS to delete the tariff-rate quota allocation of 400,000 kilograms to Hungary for Italian-type cheese and to increase the TRQ allocation to Hungary for Swiss or Emmenthaler cheese from 400,000 kilograms to 800,000 kilograms. Accordingly, Appendix 3 to Import Regulation 1 is being amended in accordance with these modifications to the HTS.

This regulation is being issued as a final rule since its only purpose is to amend Appendix 3 to make it conform to the modifications to the HTS.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Final Rule

Accordingly, 7 CFR part 6 is amended as follows:

PART 6—[AMENDED]

1. The authority citation for Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. notes 6, 7, 8, 12, 14, 16–24 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 313 and 3610).

Appendix 3 [Amended]

2. Appendix 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing is amended as follows:

a. Under the article description for ''Italian-type cheeses * * * (Note 21),'' ''Hungary'' is removed from the list of countries and the quantity ''400,000'' is removed on the same line.

b. Under the article description for ''Swiss or Emmenthaler cheese with eye formation (Note 25)'' on the line for Hungary, the quantity ''400,000'' is removed and the quantity ''800,000'' is added in its place.

Signed at Washington, DC, on January 16, 1998.

Timothy J. Galvin,

Acting Administrator.

[FR Doc. 98–2119 Filed 1–30–98; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB73

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Book-Entry Procedures for Farm Credit Securities; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 615 on October 14, 1997 (62 FR 53227). This final rule was adopted with minor technical changes to a previously adopted interim rule that revised procedures governing the issuance, maintenance, and transfer of Farm Credit securities on the book-entry system of the Federal Reserve Banks (Book-entry System). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 27, 1998.

EFFECTIVE DATE: The technical amendments to 12 CFR part 615 published on October 14, 1997 (62 FR 53227) are effective January 27, 1998.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: January 27, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–2484 Filed 1–30–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–178–AD; Amendment 39–10298; AD 98–03–06]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that requires inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Effective March 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1998.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes was published in the **Federal Register** on November 25, 1997 (62 FR 62723). That action proposed to require inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary.

Comments

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

Both commenters support the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 67 Model A300 and A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 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 $24,120, or $360 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:

98–03–06 Airbus Industrie: Amendment 39–10298. Docket 97–NM–178–AD.

Applicability: Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57A6087, dated August 5, 1997; and Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57A0234, dated August 5, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For Model A300 series airplanes that have accumulated more than 27,000 flight cycles as of the effective date of this AD: Except as provided by paragraph (b) of this AD, within 40 flight cycles after the effective date of this AD, perform a detailed visual inspection to detect cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57A0234, dated August 5, 1997. Thereafter, repeat the inspection at intervals not to exceed 40 flight cycles, until the actions required by paragraph (b) are accomplished.

(b) For all airplanes: Perform a detailed visual and a high frequency eddy current

inspection to detect cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57A6087 (for Model A300–600 series airplanes) or A300–57A0234 (for Model A300 series airplanes), both dated August 5, 1997; as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of the inspection required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

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

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

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

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–57A6087, dated August 5, 1997; or Airbus Service Bulletin A300–57A0234, dated August 5, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 97–274–230(B), dated September 24, 1997.

(g) This amendment becomes effective on March 9, 1998.

Issued in Renton, Washington, on January 23, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2285 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–114–AD; Amendment 39–10299; AD 98–03–07]

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 removal and replacement of the center screw of the crew seat belt buckle. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the center screw of the crew seat belt buckle, which could result in injury to the flightcrew during an emergency landing.

DATES: Effective March 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on December 1, 1997 (62 FR 63475). That action proposed to require removal and replacement of the center screw of the crew seat belt buckle.

Comments

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have 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:

98–03–07 Dornier Luftfahrt GmbH: Amendment 39–10299. Docket 97–NM–114–AD.

Applicability: Model 328–100 series airplanes equipped with Aerospace Restraint Company (ARC) restraints having part number (P/N) 1180002–403–100, part serial number 0101 up to and including 0315 inclusive, 0328, and 0329; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the screw of the crew seat belt buckle, which could result in injury to the flightcrew during an emergency landing, accomplish the following:

(a) Within 90 days after the effective date of this AD, remove and replace the center screw of the crew seat belt buckle in accordance with Dornier Service Bulletin SB–328–25–196, dated November 12, 1996.

Note 2: The Dornier service bulletin references Aerospace Restraint Company (ARC) Service Bulletin 1180002–25–01, dated October 11, 1996, as an additional source of service information for accomplishment of the removal and replacement.

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

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

(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 removal and replacement shall be done in accordance with Dornier Service Bulletin SB–328–25–196, dated November 12, 1996. 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 Fairchild Dornier, 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.

Note 4: The subject of this AD is addressed in German airworthiness directive 97–001, dated January 16, 1997.

(e) This amendment becomes effective on March 9, 1998.

Issued in Renton, Washington, on January 23, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2284 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–09–AD; Amendment 39–10301; AD 98–03–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires a one-time inspection to determine if certain ailerons are installed on the airplane. That amendment also requires removing any defective aileron, and replacing it with a new or serviceable aileron. This amendment continues to require those actions and limits the applicability of the rule. This amendment is prompted by additional information that specifies the identification of certain part numbers. The actions specified in this AD are intended to detect and correct defective ailerons, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane.

DATES: Effective February 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–09–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Schneider or Nenita Odesa, Aerospace Engineers, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028 or (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On December 9, 1997, the FAA issued AD 97–26–04, amendment 39–10247 (62 FR 65600, December 15, 1997), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. That AD requires a one-time inspection to determine if certain ailerons are installed on the airplane. That AD also requires removing any defective aileron, replacing it with a new or serviceable aileron, and submitting an inspection report to the FAA, if necessary. That action was prompted by reports of failure of the aileron due to an inappropriate repair procedure. The actions specified in that AD are intended to detect and correct defective ailerons, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received additional information that identifies correlating part numbers for the aileron serial numbers cited in AD 97–26–04. Specification of those correlating part numbers with the aileron serial numbers will enable operators to readily identify certain defective ailerons. Such defective ailerons could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 97–26–04 to continue to require a one-time visual inspection to determine if certain ailerons are installed on the airplane. This AD also continues to require removing any defective aileron, replacing it with a new or serviceable aileron, and submitting an inspection report to the FAA, if necessary.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–09–AD.'' The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 39–10247 (62 FR 65600, December 15, 1997), and by adding a new airworthiness directive (AD), amendment 39–10301, to read as follows:

98–03–09 Boeing: Amendment 39–10301. Docket 98–NM–09–AD. Supersedes AD 97–26–04, Amendment 39–10247.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct defective ailerons installed on the airplane, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane, accomplish the following:

Note 2: The requirements of this AD specify and clarify the identification of certain defective ailerons and restate the requirements of AD 97–26–04, amendment 39–10247. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 97–26–04 have already been accomplished, this AD does not require that those actions be repeated.

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection to determine if any aileron having any of the following serial numbers and correlating part numbers is installed on the airplane:

Affected serial Nos.	Correlating part Nos.
BN23	65–46454–22
BN49	65–46454–23
BN56	65–46454–24
BN59	65–46454–24A
BN167	65–46454–24
BN180	65–46454–23
BN206	65–46454–2
BN236	65–46454–24
162	65–46454–24
237	65–46454–24

(b) If any aileron is found with an affected serial number and correlating part number identified in paragraph (a) of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to further flight, remove the defective aileron, and replace it with a new or serviceable aileron. And

(2) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of any findings of ailerons specified in paragraph (a) of this AD to the Manager, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) As of the effective date of this AD, no person shall install on any airplane an aileron having any serial number and correlating part number identified in paragraph (a) of this AD.

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

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

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

(f) This amendment becomes effective on February 17, 1998.

Issued in Renton, Washington, on January 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2528 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–22]

Revision of Class D and E Airspace; McKinney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D and E airspace at McKinney, TX.

EFFECTIVE DATE: The direct final rule published at 62 FR 62516 is effective 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 24, 1997 (62 FR 62516). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on January 21, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–2403 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–21]

Revision of Class E Airspace; New Braunfels Municipal, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at New Braunfels Municipal Airport, New Braunfels, TX.

EFFECTIVE DATE: The direct final rule published at 62 FR 64269 is effective 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 5, 1997 (62 FR 64269). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on January 21, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–2404 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–20]

Revision of Class E Airspace; Camden, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Camden, AR.

EFFECTIVE DATE: The direct final rule published at 62 FR 64271 is effective 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air

Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 5, 1997 (62 FR 64271). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on January 21, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–2402 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–16]

Establishment of Class E Airspace; Encino, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Encino, TX.

EFFECTIVE DATE: The direct final rule published at 62 FR 64272 is effective 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 5, 1997 (62 FR 64272). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on January 21, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–2401 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–42]

Modification of Class D and Class E Airspace, and Removal of Class E Airspace; Belleville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D and Class E airspace and removes Class E airspace at Belleville, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 14R, a GPS SIAP to Runway 14L, a GPS SIAP to Runway 32R, a GPS SIAP to Runway 32L, an Instrument Landing System (ILS) SIAP to Runway 14R, a HI–ILS SIAP to Runway 14R, a HI–ILS SIAP to Runway 32L, an ILS SIAP to Runway 32L, an ILS SIAP to Runway 32R, a Nondirectional Radio Beacon (NDB) SIAP to Runway 32R, an NDB SIAP to Runway 32L, a Tactical Air Navigation (TACAN) SIAP to Runway 32L, a TACAN SIAP to Runway 14R, a HI–TACAN SIAP to Runway 14R, a HI–TACAN SIAP to Runway 32L, and a TACAN–A SIAP have been developed for Scott AFB/MidAmerica Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D airspace, decreases the radius of the exiting Class E airspace, and adds an extension to the northwest of the existing Class E airspace. This action also removes the existing Class E airspace designated as an extension to the existing Class D airspace. Finally, this action changes the name of the airport from MidAmerica Airport to Scott AFB/MidAmerica Airport.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, September 19, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class D and Class E airspace, and remove Class E airspace at Belleville, IL (62 FR 49180). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. The proposal was also to remove existing controlled airspace no longer required.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated an extension to a Class D or Class E surface area are published in paragraph 6004, and Class E airspace designations extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order, and the Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D and Class E airspace and removes Class E airspace at Belleville, IL. This action provides adequate Class D and Class E airspace for aircraft executing the GPS SIAP to Runway 14R, the GPS SIAP to Runway 14L, the GPS SIAP to Runway 32R, the GPS SIAP to Runway 32L, the ILS SIAP to Runway 14R, the HI–ILS SIAP to Runway 14R, the HI–ILS SIAP to Runway 32L, the ILS SIAP to Runway 32L, the ILS SIAP to Runway 32R, the NDB SIAP to Runway 32R, the NDB

SIAP to Runway 32L, the TACAN SIAP to Runway 32L, the TACAN SIAP to Runway 14R, the HI–TACAN SIAP to Runway 32L, and the TACAN–A SIAP for Scott AFB/MidAmerica Airport, by increasing the radius of the existing Class D airspace, and decreasing the radius of the existing Class E airspace. This action also removes the existing Class E airspace designated as an extension to the existing Class D airspace. Finally, this action changes the name of the airport from MidAmerica Airport to Scott AFB/MidAmerica Airport.

Controlled airspace extending upward from the surface is needed to contain aircraft executing the approaches. The areas will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AGL IL D Belleville, IL [Revised]

Scott AFB/MidAmerica Airport, IL
(Lat. 38°32′41″ N, long. 89°32′01″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.8-mile radius of the Scott AFB/MidAmerica Airport.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AGL IL E4 Belleville, IL [Removed]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AGL IL E5 Belleville, IL [Revised]

Scott AFB/MidAmerica Airport, IL
(Lat. 38°32′41″ N, long. 89°50′01″ W)
Scott TACAN
(Lat. 38°32′41″ N, long. 89°50′58″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Scott AFB/MidAmerica Airport and within 4 miles each side of the Scott TACAN 311° radial extending from the 7.3-mile radius to 10.6 miles northwest of the airport, excluding the airspace within the St. Jacob, IL, and Cahokia, IL, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois, on December 2, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–2450 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–43]

Establishment of Class E Airspace; Bottineau, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bottineau, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has been developed for Bottineau Municipal Airport. As a result, controlled airspace extending upward from 700 to 1200 feet above ground level (AGL), and upward from 1200 feet AGL, is needed to contain aircraft executing the SIAP and for Instrument Flight Rules (IFR) operations enroute to and at Bottineau Municipal Airport.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, October 17, 1997, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Bottineau, ND (62 FR 53992). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL, and upward from 1200 feet AGL, to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Bottineau, ND. This action provides adequate Class E airspace extending upward from 700 to 1200 feet AGL, and upward from 1200 feet AGL, for aircraft executing the GPS SIAP to RWY 31 and for IFR operations enroute to and at Bottineau Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL ND E5 Bottineau, ND [New]

Bottineau Municipal Airport, ND
(Lat. 48°49′48″ N, long. 100°25′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Bottineau Municipal Airport, and that airspace extending upward from 1200 feet above the surface within an area bounded on the north by latitude 49°00′00″ N, on the east by longitude 99°49′00″ W, on the south by the 10.5-mile radius of the Rugby, ND, Class E airspace, and on the west by the 47.0-mile radius of the Minot, ND, Class E airspace.

* * * * *

Issued in Des Plaines, Illinois on December 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–2449 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–45]

Modification of Class E Airspace; Mankato, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Mankato, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 22 and a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or GPS SIAP to RWY 33 have been developed for Mankato Municipal Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing these SIAPs. This action increases the radius of the surface area and adds an extension to the northeast for the existing controlled airspace.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

History

On Friday, October 17, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Mankato, MN (62 FR 53993). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for a surface area for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Mankato, MN. This action provides adequate Class E airspace extending upward from the surface for aircraft executing the GPS RWY 22 SIAP, the VOR/DME or GPS RWY 33 SIAP, and for IFR operations at Mankato Municipal Airport by increasing the radius of the surface area and adding an extension to the northeast for the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 Mankato, MN [Revised]

Mankato Municipal Airport, MN
(Lat. 44°13′18″ N, long. 93°55′08″ W)
Mankato VOR/DME
(Lat. 44°13′12″ N, long. 93°54′44″ W)

Within a 4.1-mile radius of Mankato Municipal Airport and within 1.8 miles each side of the Mankato VOR/DME 167° radial, extending from the 4.1-mile radius to 7.0 miles south of the VOR/DME, and within 2.7 miles each side of the Mankato VOR/DME 326° radial, extending from the 4.1–mile radius to 7.0 miles northwest of the VOR/DME. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen.The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL MN E5 Mankato, MN [Revised]

Mankato Municipal Airport, MN
(Lat. 44°13′18″ N, long. 93°55′08″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Mankato Municipal Airport and within 2.0 miles each side of the 047° bearing from the airport, extending from the 7.0-mile radius to 8.0 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on December 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–2448 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–9]

Modifications of the Legal Descriptions of Federal Airways in the Vicinity of Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the modifications to the legal descriptions of Federal Airways V–19, V–81, V–83, and V–108 until April 23, 1998. The FAA is taking this action due to a requirement for additional coordination with internal offices of the FAA.

DATES: The effective date of 0901 UTC, February 26, 1998, is delayed until 0901 UTC, April 23, 1998.

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

SUPPLEMENTARY INFORMATION: Airspace Docket No. 97–ANM–9, published in the **Federal Register** on December 12, 1997 (62 FR 65358), modified the legal descriptions of Federal Airways V–19, V–81, V–83, and V–108 by replacing the name ''Colorado Springs'' VORTAC with ''Black Forest'' VORTAC. The effective date of this change is delayed until April 23, 1998.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date of the final rule, Airspace Docket No. 97–ANM–9, as published in the **Federal Register** on December 12, 1997 (62 FR 65358), is hereby delayed until 0901 UTC, April 23, 1998.

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

Issued in Washington, DC, on January 22, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–2447 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 11

Delegation of Authority to Conduct Investigations in Assistance of Foreign Futures Authorities; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: On April 11, 1997, the Commission published in the **Federal Register** (62 FR 17702) final rules amending certain provisions of the Commission's Rules to formalize the authority of the Director of the Division of Enforcement to conduct investigations in assistance of foreign futures authorities. The purpose of the amendments was to add language to the existing rules in the interest of setting forth agency procedure with respect to conducting such investigations. However, text from the existing rules was inadvertently omitted in the publication of the amendments. This correction serves as a clarification of the inadvertent omissions.

DATES: *Effective:* February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ethiopis Tafara, Senior International Counsel, Division of Enforcement, US Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5362.

SUPPLEMENTARY INFORMATION: The Commission is correcting inadvertent omissions in the publication of the final rules amending §§ 11.1 and 11.2(a) of the Commission's Rules. The amendments expanded the scope of 17 CFR Part 11 and authorized formally the Director of the Division of Enforcement to conduct investigations in assistance of foreign futures authorities. As the Supplementary Information accompanying the amendments made clear, no other change in §§ 11.1 and 11.2(a) of the Commission's Rules was being made.[1] However, certain existing language in §§ 11.1 and 11.2(a) of the Commission's Rules relating to agency practice was not republished at that time. The omitted language serves as an elaboration of the scope of 17 CFR Part 11 as set forth in the first sentence of §11.1 and of the authority delegated to the Director of the Division of Enforcement as recited in the first sentence of §11.2(a). Part of the omitted language also describes agency practice with respect to certain investigatory activities conducted by the Director of

[1] *See* 62 FR 17702.

the Division of Trading and Markets and the Chief Economist and Director of the Division of Economic Analysis. So as to avoid any confusion of the public, and to ensure its inclusion in this year's edition of the Code of Federal Regulations, this correction sets out the language relating to agency procedure that was not included with the original amendments. Consequently, the Commission is not seeking public comment. Similarly, the Commission finds good cause to make this correction clarifying the omissions effective immediately.

In final rule, FR Doc. 97–9399, published on April 11, 1997 (62 FR 17702) make the following corrections:

PART 11—[CORRECTED]

1. On page 17702, in the second column, § 11.1 is corrected to read as follows:

§ 11.1 Scope and applicability of rules.

The rules of this part apply to investigatory proceedings conducted by the Commission or its staff pursuant to Sections 6(c) and 8 and 12(f) of the Commodity Exchange Act, as amended, 7 U.S.C. 9 and 15 and 12 and 16(f) (Supp. IV, 1974), to determine whether there have been violations of that Act, or the rules, regulations or orders adopted thereunder, or, in accordance with the provisions of Section 12(f) of the Act, whether there have been violations of the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an application for designation or registration under the Act should be denied. Except as otherwise specified herein, the rules will apply to the conduct of investigation whether or not the Commission has authorized the use of subpoenas in the particular matter to compel the production of evidence.

2. On page 17702, in the third column, § 11.2, paragraph (a) is corrected to read as follows:

§ 11.2 Authority to conduct investigations.

* * * * *

(a) The Director of the Division of Enforcement and members of the Commission staff acting pursuant to his authority and under his direction may conduct such investigations as he deems appropriate to determine whether any persons have violated, are violating, or are about to violate the provisions of the Commodity Exchange Act, as amended, or the rules, regulations or orders adopted by the Commission pursuant to that Act, or, in accordance with the provisions of Section 12(f) of the Act, whether any persons have violated, are violating or are about to violate the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an applicant for registration or designation meets the requisite statutory criteria. For this purpose, the Director may obtain evidence through voluntary statements and submissions, through exercise of inspection powers over boards of trade, reporting traders, and persons required by law to register with the Commission, or when authorized by order of the Commission, through the issuance of subpoenas. The Director shall report to the Commission the results of his investigations and recommend to the Commission such enforcement action as he deems appropriate. In particular matters the Director of the Division of Trading and Markets and the Chief Economist and Director of the Division of Economic Analysis, and members of their staffs acting within the scope of their respective responsibilities, are also authorized to investigate, report and recommend to the Commission in accordance with these rules.

* * * * *

Issued in Washington, DC on January 27, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2470 Filed 1–30–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 54, 312, 314, 320, 330, 601, 807, 812, 814, and 860

[Docket No. 93N–0445]

Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations requiring the sponsor of any drug, including a biological product, or device marketing application (applicant), to submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting certain clinical studies. This requirement will apply to any covered clinical study of a drug or device submitted in a marketing application that the applicant or FDA relies on to establish that the product is effective, including studies that show equivalence to an effective product, or that make a significant contribution to the demonstration of safety. This final rule requires applicants to certify to the absence of certain financial interests of clinical investigators and/or disclose those financial interests, as required, when covered clinical studies are submitted to FDA in support of product marketing. This regulation is intended to ensure that financial interests and arrangements of clinical investigators that could affect reliability of data submitted to FDA in support of product marketing are identified and disclosed by the sponsor of any drug, biological product, or device marketing application. If the applicant does not include certification or disclosure, or both, if required, or does not certify that it was not possible to obtain the information, the agency may refuse to file the application. FDA intends to propose to extend these requirements to submissions for marketing approval related to human foods, animal foods, and animal drugs in a subsequent issue of the **Federal Register**.

DATES: This regulation becomes effective on February 2, 1999. Submit written comments on the information collection requirements by April 3, 1998.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of External Affairs, Food and Drug Administration (HF–60), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3440, FAX 301–594–0113.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 22, 1994 (59 FR 48708), FDA published a proposed regulation to help ensure that financial interests and arrangements of clinical investigators that could affect reliability of data submitted to FDA in support of product marketing are identified and disclosed by the sponsor of any drug, biological product or device marketing application (applicant). In this document, FDA proposed to require disclosure by applicants of the following types of financial interests and arrangements: Compensation made to the clinical investigator in which the value of the compensation could be affected by the

study outcome; a proprietary interest by the investigator in the tested product, such as a patent; a significant equity interest in the sponsor of the covered study; or significant payments by the sponsor of the covered study of other sorts, such as a grant to fund ongoing research, compensation in the form of equipment, or retainers for ongoing consultation or honoraria. If, to the best of the applicant's knowledge, a clinical investigator did not have any of these financial interests or arrangements, FDA proposed that an applicant might provide a statement of certification to FDA.

In the course of developing this rule, FDA met with many outside groups with an interest in the issues involved, including regulated industry, consumer groups, health professionals and clinical investigators. These issues were also discussed at a meeting with FDA's Science Board in September 1993, and, at that meeting, there was general support for the concept of disclosure of potentially biasing financial interests and arrangements of clinical investigators to FDA, not only from Science Board members but also from the pharmaceutical, device and biotechnology industries.

FDA received 58 written comments on the proposed rule. Many of these comments supported the proposed rule, some raised substantive concerns and challenges to the rule, and one comment, from the Pharmaceutical Research and Manufacturer's Association urged FDA to hold a public hearing on the provisions of the proposed rule. In response, FDA convened a public meeting on July 20, 1995, to provide interested parties with an opportunity to present further public comment to FDA on the proposed rule. Representatives of seven organizations presented testimony to FDA during the public meeting; copies of the testimony and related comments have been filed with the Dockets Management Branch (address above) and are available for public review. FDA also convened a second meeting on March 29, 1996, with the agency's Science Board. At this meeting, issues relating to the proposed rule were discussed by a panel that included representatives from the: Pharmaceutical Research and Manufacturers Association, Health Industry Manufacturer's Association, Public Citizen Health Research Group, American Medical Association, Association of American Medical Colleges, and the Biotechnology Industry Organization. According to representatives of drug and device manufacturers, the financial arrangements in the proposed rule required to be disclosed are uncommon, and the proposed rule as written would not impose an extreme burden on industry. The groups represented and the Science Board members agreed unanimously that applicants should disclose to FDA any financial arrangement with a clinical investigator and any clinical investigator interest, whereby the compensation to the clinical investigator or interest could be affected by study outcome (e.g., payments in the form of stock options or royalties, possession of a patent, etc.), and Science Board members recommended that FDA finalize the proposed rule with only slight modifications. Transcripts, meeting minutes, and executive summaries from these open meetings may be examined at FDA's Dockets Management Branch (address above).

II. Summary of Comments

1. Several comments stated that section 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374) (the act) expressly prohibits FDA from inspecting financial data of companies and that FDA cannot obtain access to this information by having the request come from a reviewing division at headquarters rather than a field investigator. One comment said that there is nothing in section 505(d) of the act (21 U.S.C. 355(d)) that might be construed as authorizing FDA to require submission of financial data in order to evaluate the approvability of a new drug application (NDA). The same comment said that section 505(b) of the act specifically lists the information that must be submitted with an NDA, and it does not include submission of financial data.

In the preamble to the proposal (59 FR 48708 at 48712 to 48713), FDA discussed in detail the legal authority for this regulation. The agency cited sections 505, 510(k), 513, 515, 519, 520(g), 522, and 701(a) of the act (21 U.S.C. 360(k), 360c, 360e, 360i, 360j(g), 360l, 371(a) and section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262)) as authority for the regulation and noted that the Supreme Court has upheld FDA's authority to issue regulations to ensure the reliability of clinical study results, including requirements to minimize bias. (See *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 606 (1973).) After reviewing the comments, FDA continues to believe, for the reasons stated in the preamble to the proposal that it has authority to require applicants to submit information concerning certain financial interests of clinical investigators conducting clinical studies. To conclude otherwise would unduly restrict FDA's ability to perform the role assigned to it by Congress to assess data submitted in product marketing applications and to determine whether the products meet the criteria for approval set for in the act.

Although the authority provided in section 704 of the act does not extend to financial data, other provisions of the act provide the agency with the authority to obtain the information it needs to adequately assess the safety and effectiveness of drugs and devices. For example, section 505(d) of the act includes the requirement that efficacy of drugs be demonstrated by adequate and well controlled investigations. The language in section 505(d) of the act is intended to help ensure that consumers are not exposed to products for which efficacy has not been demonstrated. A critical factor in determining whether a study is well controlled is the extent to which potential bias on the part of the investigator has been minimized (see 21 CFR 314.126(b)(5)). FDA believes that a clinical investigator's financial interests could introduce bias into a study and affect the reliability of data submitted to FDA in support of a marketing application. Information about such interests is critical to the agency's role of determining efficacy of products based on valid, reliable, and unbiased data.

Section 505(k) of the act also provides authority for the issuance of these regulations. Under section 505(k) of the act, the agency may issue regulations requiring the applicant to make and keep records and reports of data relating to clinical study experience and other data and information that are necessary to determine whether grounds exist to withdraw approval of an NDA or an abbreviated new drug application (ANDA). Section 505(k) of the act also provides the agency with the authority to access such records and to copy and verify them. The additional authorities relied on by FDA to issue these regulations are discussed in the preamble to the proposal.

FDA believes this rule is consistent with the agency's general rulemaking authority set forth in section 701(a) of the act, which authorizes the agency to issue regulations for the efficient enforcement of the act. The agency continues to rely on the statutory authorities discussed here and in the preamble to the proposal as authority for this regulation.

2. Some comments said that FDA has not demonstrated an adequate need for the rule, that there is no factual justification for the rule and that FDA

has never shown that if FDA does not receive financial disclosure information, public health or safety would be threatened. One comment said that there is no evidence to demonstrate that studies by clinical investigators with particular financial interests are more likely to be biased than studies performed by other clinical investigators, and that there are many other potential sources of bias that FDA does not take into account.

FDA disagrees with these comments and believes there is factual justification to require collection of this information. Over the past several years, FDA has received information on potentially problematic payment schemes through numerous sources, including: Published newspaper articles, congressional reports, a Government Accounting Office report, congressional inquiries and public testimony and comments. Although FDA learned through these sources that problematic financial interests and arrangements do exist, FDA has had no formal mechanism to collect this information from applicants. FDA acknowledges that other sources of potential bias exist and could influence a clinical investigator's judgment or behavior, such as a quest for prestige within the scientific community, a preference for confirming a personal hypothesis or the desire for future contracts with the sponsor of a study. Such potential biases are difficult to assess and minimize, but the reliability to assess and minimize all bias does not argue against addressing some potential sources of bias. Certain kinds of payment arrangements for clinical trials would result in a higher payment or financial gain from a particular outcome (that is, from a ''successful'' study rather than one that did not show the therapy's effectiveness) and gives the investigator a potential ''stake'' in that outcome. Payments that are greater for one outcome than another or that are in the form of stock options or royalties are examples of such payment arrangements and clearly have the potential to bias the outcome of clinical trials, adversely affecting the integrity of the data submitted to FDA.

In June 1991, the Inspector General of the Department of Health and Human Services submitted a management advisory report to FDA asserting that FDA's failure to have a mechanism for collecting information on ''financial conflicts of interest'' among clinical investigators who study products undergoing FDA review could constitute a ''material weakness'' under the Federal Managers' Financial Integrity Act. Although FDA determined that a material weakness did not exist, FDA has concluded there is a need to address this issue through rulemaking. In the preamble to the proposed rule, the agency explained that the existence of unbiased clinical research and reliable data are essential to FDA's assessment of the safety and effectiveness of new human drugs, biological products, and medical devices. Although payment arrangements required to be disclosed in this final rule have been described by industry sponsors as uncommon, small businesses in certain medical device and biologic industries appear to enter into certain arrangements more frequently, because of a lack of readily available capital or as a natural byproduct of the ''inventor/investigator'' relationship (see comment 3 of section I of this document). For these reasons, FDA believes the rule is needed and justified.

3. One comment, although not opposed to the concept of disclosure, said the requirement as proposed was not an effective way to ferret out the corruption of studies by financial arrangements. Another comment said that disclosure is warranted, but that disclosure alone is not enough, that clinical investigators should be banned from owning an equity interest that exceeds $25,000 in the sponsor of a covered study and should be banned from receiving significant payments of other sorts from the sponsor of a covered study that exceed $5,000 per year.

FDA's intention, by finalizing the rule, is to make the agency aware of payments and financial arrangements by sponsors of covered studies that could lead to the introduction of bias into the clinical trial process, so that this can be taken into account in the review process and to discourage such practices, not to ''ferret out corruption of studies.'' FDA is encouraging applicants to work with FDA and clinical investigators to minimize the occurrence of such financial arrangements or to ensure that covered clinical studies are sufficiently well designed and managed to eliminate the possibility that bias due to potentially problematic financial arrangements will influence the outcome of the study.

FDA does not agree that it should ban certain financial arrangements. FDA recognizes that therapeutically beneficial products have been developed through clinical investigations that were conducted by the product-patent holder, or for which clinical investigators were compensated with equity in the sponsor's firm, and is therefore not prohibiting any arrangement, nor ruling out the possibility of relying on studies conducted under these circumstances as a basis for product approval. Rather FDA intends to give such studies particularly close scrutiny and evaluation.

4. Several comments said the rule will affect acceptance of data from studies conducted outside the United States by investigators who are foreign nationals. One comment suggested that an exemption for foreign investigators may be necessary. Some comments stated that the disclosure requirements may be in conflict with foreign privacy regulations, and that different cultural standards may prevent compliance with the rule by foreign investigators. A few comments also said the final rule should be applied prospectively to avoid penalizing applicants and clinical investigators whose clinical investigations are already in progress.

In response to these comments, FDA notes that the comments relating to acceptance of data from studies conducted outside the United States did not specifically identify information pertinent to this rule that could not be supplied by a foreign investigator. Most of the information sought, even for studies conducted outside the United States, is known to the applicant and needs no clinical investigator disclosure. Only the question of ownership of equity in the sponsor of the covered study requires disclosure by the clinical investigator. With regard to comments about applying the rule retrospectively, FDA believes it is important to know about the financial arrangements and payments considered in this rule that are problematic in a timely manner and does not believe implementation should be long deferred. In order to give applicants time to comply with the final rule and to avoid delayed submissions, however, FDA will require applicants to comply with the rule 1 year after the publication date of the final rule. FDA recognizes that there may be times where, despite the applicant's diligent efforts to obtain the needed information to make appropriate certification or disclosure, the applicant may be unable to obtain the information. Thus, FDA is amending the final rule to permit an applicant, who can show conclusively why this information cannot be obtained, to certify that the applicant acted diligently to obtain the information but was unable to do so and to include the reason why such information could not be obtained.

5. Several comments said the proposed rule is unnecessary because adequate controls exist to ensure data integrity. For example, the comments

said that FDA has adequate mechanisms in place in its review and inspection processes to detect and deal with investigator bias. Another comment said that FDA already has substantial oversight to assess whether clinical studies are well controlled and designed with scientific rigor. Others said that the primary methods for managing potential bias based on financial interests are quality study design (e.g. multiple investigators, multiple investigational sites, segregation or pooling of data for comparative analyses and objective tests to evaluate key safety and effectiveness parameters), study monitoring, and statistical analysis. One comment said that for double-blinded studies, it was theoretically impossible for any type of bias to affect the conduct of the study, irrespective of any separate financial relationship.

FDA agrees that excellence in study designs, careful monitoring and analysis of trials by sponsors, the ability of FDA to inspect study sites, and FDA's detailed review of studies are critical elements in assessing data integrity. No single component is entirely adequate to ensure study integrity, however, and as explained in the proposed rule, the independence and lack of bias of clinical investigators is also critical. FDA believes that in addition to other steps, a mechanism is needed for collecting information concerning specific financial interests of clinical investigators that could affect data integrity.

6. Some comments objected to the lack of objective criteria for use by FDA reviewers to evaluate financial interest disclosure statements. These comments said that FDA reviewers should not be given unfettered discretion in making this determination, but that FDA should develop specific criteria based on factual need. One comment said that lack of resources would prevent FDA from carrying out this function adequately and that specific criteria should be developed to help alleviate this concern. This comment also suggested that certain interests should be prohibited to provide a more clear-cut and less labor intensive evaluative approach. Other comments supported FDA's plan to evaluate the information on a case-by-case basis, stating that FDA should exercise flexibility and not state specific criteria for this purpose.

As noted in the preamble to the proposed rule, FDA believes that the specific financial arrangements and the steps taken to minimize bias (e.g., through study design) must be considered on a case-by-case basis. Many factors could affect the believability of data derived from clinical studies, such as the endpoint used, number of investigators, the methods of blinding and the method of evaluation. For example, if a covered study had randomized assignment of patients to treatment, an easily determined endpoint or an endpoint assessed by a blinded observer other than the investigator, and multiple study sites, FDA could determine that an otherwise problematic financial interest of a clinical investigator would not have affected the covered study. In other cases, there might be sufficient replication of critical results to render the questionable data less important, or it might be possible to carry out further analyses or observations that would provide assurance as to the reliability of the data. If FDA were to determine that the financial interests of any clinical investigator raised a serious question about the integrity of the data, FDA could choose from a range of remedial actions. Depending on the seriousness of the questions raised, the agency could initiate agency audits of the data derived from the clinical investigator in question; request that the applicant submit further analyses of the data (e.g., to evaluate the effect of investigator's data on study results); or request that the applicant conduct additional independent studies to confirm the results of the covered study; or refuse to treat the covered clinical study as pivotal or primary data upon which an agency action can be taken. Any attempt to write rigid evaluation criteria would inhibit the flexibility needed to interpret submissions in a fair and reasonable way.

7. Three comments suggested that applicants should know in advance what FDA considers to be problematic arrangements so as not to delay product review. One comment stated that FDA should include in the regulation a timeframe for the agency to inform an applicant of a remedial action that FDA might deem appropriate to take under new § 54.5(c). The comment added that, once FDA has received all required financial disclosure information, the agency should be required to inform the applicant within a reasonable period of time, not to exceed 60 days, if the financial interests of a clinical investigator raised a sufficiently serious question about the integrity of the study data to warrant any of the steps included in new § 54.5 (c), i.e., initiate agency audits of data derived from the clinical investigator in question; request that the applicant submit further analyses of data to evaluate the effect of the investigator's data; request that the applicant conduct additional independent studies to confirm the results of the covered study; or refuse to treat the covered clinical study as pivotal or primary data upon which an agency action could be based.

FDA disagrees with the comments requesting that FDA be required to inform the applicant about potentially problematic financial arrangements within a specified time period because the determination of such remedies is inseparable from the review of the application and depends on such factors as the study design, and availability of other data, etc. Concerns arising from financial disclosure will be treated like any other concerns arising from the review of a marketing application and will be communicated along similar timeframes. As was stated in the proposed rule, however, FDA strongly encourages early consultation with the agency in cases where the sponsor of the clinical study is concerned that he may be entering into problematic financial arrangements with a clinical investigator.

8. In the proposed rule, FDA asked for comment on its proposed definition of a significant equity interest as ''any ownership interest, stock option, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity.'' The responses covered a wide range. One comment requested that FDA clarify whether 5 percent of total equity refers to 5 percent of the investigator's equity or 5 percent of the equity of the corporation and said that holding 5 percent of equity of publicly traded companies is only relevant if it represents a significant portion of the investigator's net worth. A second comment said that a ''significant interest'' (determined by reference to a dollar amount) in the equity or other securities of the sponsor should be of relevance regardless of whether that interest exceeds 5 percent and that the reference point of 5 percent is not sufficient in and of itself in light of the wide range of capitalization of corporations in the industry. Another comment said that FDA's rule should be made consistent as far as setting dollar or equity thresholds with the Public Health Service (PHS) final rule and the National Science Foundation (NSF) statement of policy on objectivity in research published on July 11, 1995. One comment recommended the threshold for disclosure of an equity interest be $10,000 or 2.5 percent ownership interest in the sponsor.

FDA has carefully considered whether equity interests should be disclosed to

FDA and what threshold level should trigger disclosure. There are varied thresholds applied within academia, such as threshold levels at some institutions for disclosure of $5,000 cash and $20,000 equity interest in a publicly traded company. In addition, the PHS final rule and the NSF statement of policy have defined a significant financial interest to be ''anything of monetary value, including but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents copyrights and royalties from such rights). The term does not include * * * :

any equity interest that, when aggregated for the Investigator and the Investigator's spouse and children, meets both the following tests: does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a 5 percent ownership interest in any single entity; or salary, royalties or other payments that when aggregated for the Investigator and the Investigator's spouse and dependent children over the next 12 months are not expected to exceed $10,000.

In response to the comments submitted to the proposed rule, as well as the comments and recommendations made by FDA's Science Board at the meeting held on March 29, 1996, FDA has eliminated the 5 percent equity holding provision from the final rule. The agency recognizes that for many corporations, this would represent an unrealistically large threshold interest. Instead, in this final rule, FDA defines ''significant equity interest in the sponsor of the covered study'' to mean any ownership interest, stock option, or other financial interest whose value cannot be readily determined through reference to public prices or any equity interest in a publicly traded company that exceeds $50,000 that is held by the clinical investigator during the time the clinical investigator is carrying out the study and for 1 year following the completion of the study. FDA, thus, agrees with the comments stating that a 5 percent equity interest in a publicly held company could vary enormously and believes that a $50,000 disclosure threshold strikes the appropriate balance between the agency's need to be aware of and help minimize the potential for bias in clinical data and the need to avoid unreasonably burdening clinical investigators and applicants.

9. A few comments said that the definition of significant payments of other sorts in new § 54.2(f) should apply only to research grants, retainers and honoraria that are related to the study. A few comments said that the $5,000 threshold limit for such payments was too low and that the applicable timeframe should be clarified. Some comments suggested that FDA only require disclosure of payments made directly to the clinical investigator and not to an institution, such as a university that employs the investigator. Some comments suggested that FDA delete the requirement for disclosure of significant payments of other sorts entirely.

Retention of this provision, as proposed, was discussed at the FDA Science Board meeting on March 29, 1996. Most Science Board members and many panelists agreed that information on ''significant payments of other sorts'' made by the sponsor of the covered study (such as a grant to fund ongoing research, compensation in the form of equipment, a retainer for ongoing consultation, or honoraria), even if not directly related to the conduct of the study, should be disclosed because these types of financial arrangements exist and have the potential to give the clinical investigator an ''interest'' in the company. In response to the comments that described the $5,000 disclosure threshold for these payments as too low and taking into account the discussion with Science Board members, FDA has raised the threshold dollar amount that would trigger disclosure to FDA from $5,000 to any amount exceeding $25,000 made by the sponsor of the covered study directly to the clinical investigator or to the institution for support of activities of the investigator, exclusive of costs associated with the conduct of the trial or of any other clinical trial. FDA believes this approach strikes a reasonable balance between the agency's need to be aware of and help minimize the potential for bias in clinical data and the need to avoid unreasonably burdening applicants. FDA is also clarifying that the period for which this disclosure must be made includes the period during the conduct of the study and for 1 year following completion of the study.

10. One comment said that applicants should not be responsible for veracity of the investigators' disclosure statements to the companies.

FDA recognizes that clinical investigators could provide incorrect financial information to applicants. FDA does not expect to prosecute any applicant who takes appropriate steps to obtain accurate information and through no fault of its own unknowingly submits to FDA erroneous financial information that was provided to the applicant by the clinical investigator.

11. In the proposed rule, FDA requested comment on whether certification and disclosure statements should be generally disclosable to the public. FDA received many comments on this issue, the majority opposing the public release of this information. Those who argued in favor of releasing this information said that public disclosure of financial information in some useful form is critical because shrinking Government resources make it impossible for FDA to monitor these arrangements properly, and the public should be able to play some effective oversight role in this area. These comments said that public disclosure of this information is necessary in order to discourage the occurrence of substantive financial abuses at the outset of the clinical trial process. Comments opposing this view argued that the public would not be in a position to interpret this information properly, that public release of this information is an unwarranted intrusion into the private affairs of clinical investigators, and that disclosure of this information could discourage highly qualified investigators from participating in research. One comment said that there may be some instances where public disclosure should be required, and that disclosure to an advisory committee should be kept confidential and limited to the circumstances where the investigator's interests surpass a specific threshold.

FDA agrees with those comments that stated that certain types of financial information requested under the rule, notably equity interests, should be surrounded by a reasonable expectation of privacy. Therefore, such information would be protected from public disclosure unless circumstances clearly outweigh the identified privacy interest.

FDA does believe, however, that there may be legitimate public interest in the information that warrants its disclosure. Certain requested information such as a patent ownership, already may be public information and would, therefore, be releasable. In other cases, a financial arrangement may so affect the reliability of the study that it may become necessary for the information to be disclosed publicly during the evaluation of the study (e.g., during an advisory committee meeting).

Because the full range and impact of such arrangements cannot be predicted, and because of the variability of both clinical trials and their financing mechanisms, it is impossible to establish a comprehensive rule regarding public disclosure of reported information. FDA, intends, therefore, to proceed on a case-by-case basis in determining whether the circumstances

outweigh the privacy interest of the clinical investigator(s). FDA will determine for each instance of disclosure when to make the information public and by what means.

In any consideration of disclosure issues, it is useful to keep in mind FDA's expectation that these issues will not affect the great majority of clinical investigators who participate in studies of FDA-regulated products. FDA expects that only a small minority of clinical investigators will have financial interests of any kind that are disclosable to FDA; and of that number, FDA expects that only a small subset would be involved in situations in which the investigator's privacy interest would be outweighed by the public interest. FDA strongly encourages any firm that is required to disclose interests and arrangements of one or more clinical investigators to meet with FDA early on for guidance on management of the affected clinical study to help ensure that the potential impact of the disclosed financial situation on the integrity of the study does not rise to this level of concern.

12. Some comments said that compliance with PHS disclosure requirements should be deemed sufficient to satisfy FDA's requirements. One comment said that an investigator who receives PHS funds should be required only to provide the company with a copy of his PHS disclosure statement. A third comment said that FDA should reexamine timing of the disclosure to be consistent with the PHS rule. Another comment said that FDA should not rely on PHS disclosure because the two agencies are separate and that research institutions should not have to rely on disclosures submitted directly to institutions as substitutes for compliance procedures imposed on companies.

This issue was raised for comment in the September 1994 proposed rule. After considering the comments, FDA concludes PHS and FDA disclosures should not be interchangeable. Although the PHS rule and the comparable NSF policy have some objectives similar to those of FDA's rule, the PHS rule and the NSF policy have a different focus. They deal with policies of Federal grant making agencies and the credibility of the scientific enterprise, including such issues as: Potential personal profit from federally funded research, undue secrecy or refusal to share scientific data from publicly funded research, and the potential detrimental effect upon academic programs by inappropriate use of graduate students or ''conflicts of commitment.'' Although FDA acknowledges the validity of such concerns, FDA's responsibilities are directed at helping to ensure data integrity for the purposes of product review. Thus, this rule is focused on payment arrangements and other financial interests of clinical investigators that have the potential for introducing bias into studies intended to support marketing applications. It is important that FDA be aware of such interests and arrangements as part of its evaluation of marketing applications. Because much of the information reported under the PHS rule is not related to the product review process, but is more relevant to issues of basic research, FDA has determined that it is appropriate for FDA to have different reporting requirements.

13. Several comments argued that FDA underestimated the paperwork burden on applicants and clinical investigators of the procedures for financial disclosure specified in the proposed rule. One comment from a pharmaceutical firm maintained that, while not overly onerous for investigators, the accumulated paperwork would probably cost pharmaceutical companies in excess of $1 to 1.5 million annually. Another firm said that the rule would increase study costs by 5 percent. A trade association described the disclosure procedures as amounting to a ''severe paperwork burden,'' and another comment alleged that FDA conducted a cursory examination of the additional number of hours required to comply with these procedures.

The agency took a careful and thorough approach in assessing the number of hours that would be spent by applicants because of a continuing concern that the rulemaking should not impose undue burdens on industry. FDA believes that the comments have overestimated the costs and difficulties of complying with this regulation. In an effort to provide a clearer understanding of the paperwork burden involved, FDA has reassessed the potential paperwork costs for applicants, using current data and more conservative assumptions than those used at the time the proposed rule was drafted. To facilitate reporting, the agency has developed forms for certification and disclosure and has added language to the final rule to allow an applicant to attach to one certification statement a list of all investigators for whom the applicant is certifying. In this way, preparation and submission of multiple statements is avoided, and the process is streamlined for applicants.

FDA believes that the collection of information required by this regulation and the preparation and submission of a certification statement would not be onerous. Firms who contracted for covered studies would already have on hand all information pertaining to financial arrangements with clinical investigators and significant payments of other sorts; proprietary interests (e.g., patents) of clinical investigators; and equity interests of investigators in nonpublicly traded enterprises. Applicants who were the sponsors of covered studies would need only to obtain from investigators information on the clinical investigators' equity interests in the applicant, a step that would be necessary only if the applicant is publicly traded. Applicants who did not contract for covered studies must obtain the required information from the sponsor of the covered studies and the investigators or demonstrate conclusively that it was not possible to do so. In either case, a large amount of time would not be required. Clinical investigators, for their part, can reasonably be expected to have easily accessible records on their personal equity interests for tax purposes. They should not have difficulty providing this information to sponsors of the covered studies.

As noted, FDA believes that preparation and submission of the certification statement and the list of investigators to whom the statement applies represents a modest effort. In the estimate presented in section V of this document, the agency has used the figure of 1 hour of preparation time for these materials, which it believes to be more than adequate to cover the actual work involved. FDA believes that preparation of a disclosure statement and the accompanying explanation of steps taken to minimize the potential for bias of the covered study is appreciably more time-consuming and has assigned 4 hours to this activity.

The agency assumes that every applicant will submit a certification statement for at least one clinical investigator. The agency further assumes, based on current data, that 1,000 sponsors will submit marketing applications for drugs, biologics, or devices each year, with this number broken down for different types of applications as follows:

TABLE 1.—ANNUAL ESTIMATED NUMBER OF MARKETING APPLICATIONS FOR DRUGS, BIOLOGICS, AND DEVICES

Type of Application	No. of Sponsors
Drugs	
New drug application (NDA)	135
NDA supplement	100
Abbreviated new drug application (ANDA)	240
ANDA supplement	120
Rx to over-the-counter switch	10
Biologics	
Product license application (PLA)	25
PLA supplement	10
Devices	
Premarket approval (PMA)	50
PMA supplement	10
Reclassification petitions	4
510(k)	300

There is no firm basis for estimating the frequency of disclosure by applicants. FDA assumes that from 1 to 10 percent of applicants would need to submit disclosure for one or more clinical investigators. In estimating the total burden hours for this activity, FDA has assumed a 10 percent rate, which is the maximum number of applicants that might be estimated to disclose annually. The agency believes this figure will in all likelihood be smaller, perhaps markedly so.

The conforming amendments to drug, biologics, and medical device regulations that accompany this rule provide for sponsors of the covered studies to obtain the necessary financial information (e.g., equity interests) from investigators at the time the investigator is retained by the sponsor of the covered study, along with other required information. FDA concludes that it is reasonable to assume that a sponsor could incorporate financial disclosure information into the sponsor's existing system for maintaining investigator information, and the addition of this information would represent a negligible expenditure of time. It is estimated that 15 minutes will be required to add this information to an application record.

The agency estimates that to comply with information collection activities under this final rule, applicants will spend a total of 1,000 hours annually for certification activities (1,000 applicants multiplied by 1 hour) and 400 hours for disclosure (100 applicants multiplied by 4 hours). The total time estimated to be spent by clinical investigators is 4,600 hours (46,000 clinical investigators multiplied by 6 minutes). The total estimated annual burden is 6,000 hours for the drug, biologics, and device industries and all clinical investigators. Once again, FDA has reached this total after carefully analyzing the activities involved, and using high-end assumptions for both the amount of time that would be required for each activity and the number of applicants who would disclose. As noted in section V of this document, FDA invites comments on these estimates.

14. Several comments alleged that FDA has failed to comply with the requirements of the Regulatory Flexibility Act. These comments stated that FDA should conduct a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, because ''the impact of the rule will fall disproportionately on small firms, since they may not be able to pay clinical investigators on a fee-for-service basis.'' These comments said the rule would significantly affect small firms because of such factors as ''the thousands of investigators who would need to provide information to sponsors,'' the composition of the medical device industry, 98 percent of which is made of small businesses, and the ''severe paperwork burden.''

Included in this final rule is a Regulatory Flexibility Analysis to assess the impact of the regulation on the industries subject to this rule. In this analysis, which is included in section IV of this document, the agency concludes that this final rule does not have a significant impact on a substantial number of small businesses.

15. Several comments recommended that FDA limit the scope of the rule with respect to covered studies. One comment said that Phase 1 safety studies should be exempted because they are ''preliminary in nature and not as pivotal as state 2 or 3 trials.'' Another comment said that the rule should cover only those studies that the applicant considers to be ''adequate and well controlled investigations intended to provide substantial evidence of effectiveness for new drugs.'' A third comment urged that the rule exempt bioavailability/pharmacokinetic studies, which, the comment said, generally result in objective, quantitative results based on tangible data. This comment recommended limiting the studies covered by the regulation to studies of a non-pharmacokinetic nature, studies with subjective endpoints, and single-investigator studies. A comment from a pharmaceutical firm said that the regulation should target specific types of investigations, such as unblinded device studies. Another comment stated that, based on the definition in new § 54.2(e), the rule would appear to encompass large-scale open-label studies, such as studies involving some cardiovascular therapies, compassionate use studies, and parallel track studies, all of which might be submitted in support of an NDA. The comment noted that investigators in such studies could number in the thousands and said that it would be an unwarranted administrative burden to require an applicant to obtain financial information from each clinical investigator.

The definition of covered clinical study in the rule refers to studies on which the sponsor relies to support efficacy and studies where a single investigator makes a significant contribution to safety. That generally would not include Phase 1 tolerance studies or pharmacokinetic studies (except for bioequivalence studies) and would include clinical pharmacology studies only when they are critical to an efficacy determination. In general, large open studies, treatment protocols and other studies with large numbers of investigators would not be covered. In these studies, the large number of investigators generally means that no single investigator has a major responsibility for the data. In addition, important adverse events will generally be apparent because they lead to cessation of therapy and submission of the case report form. Although it is not impossible that a financial interest could be important in these studies, it is relatively unlikely and the agency has concluded that the effort needed to obtain financial information for the investigators in these studies should not be undertaken.

16. Some comments maintained that the regulation would deter investigators from participating in clinical research and would be a hindrance to clinical research. One comment stated, ''while investigators will initially see no issue, as soon as FDA takes the first action to set a precedent, some investigators will become reluctant to participate in clinical studies.''

FDA does not agree. The agency estimates that the majority of clinical investigators will have no financial arrangements or interests subject to disclosure under the terms of the regulation. For those investigators who have such interests, FDA is not prohibiting or requiring divestiture of any financial interests, nor does FDA believe an investigator should be penalized in any way for holding such

interests. It is, therefore, difficult to see why investigators would be deterred by this regulation from participating in clinical research. As for those comments suggesting that the regulation would hinder clinical research, FDA does not believe the final regulation will impose a significant burden and certainly not a burden sufficient to hinder clinical research.

17. In the preamble to the proposed rule, FDA requested comment on whether the agency should require disclosure of interests held by a clinical investigator in a firm considered to be a competitor of the sponsor of the covered study. Comment received was almost equally divided with respect to such disclosure. One comment in support of disclosure of competing interests stated that competing interests are just as likely to result in bias; others said that if the purpose of financial disclosure is to detect bias, it shouldn't matter whether the bias is positive or negative. Comments opposed to disclosure of such interests said that such a requirement might not be realistic inasmuch as it is often not possible to identify every company that is in competition with the sponsor of the covered study. A comment from one trade association stated that such interests should not concern FDA, and a comment from another trade association said that, in this regard, it should be sufficient to FDA for a sponsor of a covered study to be willing to use an investigator.

FDA agrees with the arguments presented by the comments opposing a requirement for disclosure of competing interests, and such a requirement is not included in this final rule.

18. In the preamble to the proposed rule, FDA asked for comment on whether the definition of a clinical investigator should include business partners of the investigator, who might share in profits from the investigator's arrangements or financial interests. The majority of comments on this issue opposed the inclusion of business partners, but these and other comments addressed other aspects of the definition. One comment concurred with the definition. Several comments found the definition to be too broad and stated that, as proposed, the definition would involve all study personnel and, thus, pose an enormous administrative burden. Two comments recommended limiting the scope of the definition to the principal investigator only, and one comment recommended that the definition include the principal investigator and the principal investigator's immediate family. Other comments argued that the definition should not include the investigator's immediate family. Some comments suggested that the definition of clinical investigator for the purposes of this rule should be consistent with the definitions of clinical investigator in various agency regulations, including regulations governing investigational drugs and devices, as well as 21 CFR part 50, Protection of Human Subjects, and 21 CFR part 56, Institutional Review Boards, or consistent with the definition in the PHS rule.

FDA agrees with the comments opposing the inclusion of business partners as unnecessary and potentially burdensome. With regard to making the definition of clinical investigator consistent with the PHS regulation on objectivity in research and various other agency regulations, FDA believes that those definitions are broader than needed to achieve the goals of this regulation. For example, the definition of investigator in the PHS final rule on objectivity in research means the principal investigator and any other persons responsible for the design, conduct, or reporting of research funded by PHS, or proposed for such funding. FDA agrees with those comments supporting a more narrow definition of clinical investigator and defines clinical investigator for the purpose of this rulemaking to be any listed or identified investigator or subinvestigator who is directly involved in the evaluation of research subjects. As in the PHS rule, FDA's definition of clinical investigator, in new § 54.2(d), also includes the investigator's spouse and dependent children.

19. FDA did not propose to require disclosure of financial interests in, and arrangements with, the sponsor of the covered study by full-time employees of the sponsor of the covered study, explaining that the agency gives an appropriate level of scrutiny to the submitted data in such instances on the assumption that such employees have a clear financial as well as other interests in the outcome of the research. The majority of comments agreed that the rule should not cover such full-time employees. Some comments, however, did not support a blanket exemption for such employees. One comment argued that employee incentives such as promotion or termination could depend on product approval. Another comment said that full-time employees should be subject to disclosure requirements if they meet the equity threshold. A third comment stated that if all employees are treated with maximum scrutiny, further disclosure ''may not be necessary.'' One comment said that employees who are part-time employees of the applicant should also be exempt.

The agency treats data from clinical investigators who are the employees of sponsors with maximum scrutiny and will continue to do so because such employees can be assumed to have significant financial interests in the outcome of studies, often including stock options and significant equity interest in their employers. Because part-time employees also may receive such incentives, FDA would apply similar scrutiny to them. Thus, FDA has changed the language in new § 54.4 with respect to identifying clinical investigators who are full-time employees of the sponsor to read ''full- or part-time employees of the sponsor of a covered study,''clarifying that the agency will not require certification or disclosure for part-time employees.

20. Several comments argued that refusal to file a marketing application is an overly harsh response to an investigator's financial interests. One comment noted that applications may contain reports of studies not conducted by the sponsor and asked whether such studies would be excluded from the refusal-to-file provision. Another questioned whether the agency would refuse to file an application if one disclosure statement should be missing in the face of hundreds being provided.

In new § 54.2(e) FDA has defined a covered clinical study as one the applicant or FDA relies on to establish that the product is effective or that make a significant contribution to the demonstration of safety. This generally would not include studies reported only briefly or in the form of a publication, unless the latter were intended to be the critical supportive study. The rule emphasizes that an applicant may consult with FDA as to which clinical studies constitute ''covered clinical studies.'' Although most marketing studies that meet this definition will have been conducted by the applicant, some critical studies may have been conducted by an academic or governmental organization (e.g., by the National Institutes of Health or Veteran's Administration) or by another firm. In these cases, the relevant financial interests are those that are sponsor-independent (patent ownership) or that relate to the sponsor of the study (e.g., payment in options or significant payments of other sorts). The applicant should be aware of all interests that investigators might have (e.g., patent rights) but the applicant may not be aware of prior arrangements with the study sponsor such as an expectation of a royalty payment, significant payments of other sorts, or of

an ownership interest in a nonpublicly traded study sponsor. It is possible that some of this information cannot be obtained.

The conforming amendments to parts 312 and 812 (21 CFR parts 312 and 812) require clinical investigators to provide sponsors the information needed to allow an applicant to submit certification and disclosure statements. FDA has given further consideration to the application of the refusal-to-file provision, however, and concludes that where circumstances make it impossible for an applicant of an application to obtain the information needed for certification or disclosure for one or more clinical investigators, and the applicant explains these circumstances adequately, the agency will not refuse to file an application. The refusal to file provision is not based on the investigator's financial interest but on failure of the applicant to disclose them.

21. Two comments suggested that, before the final rule becomes effective, FDA conduct a series of educational fora on these new requirements to ensure that they are understood by the industry that must comply with them.

FDA welcomes the suggestion. Just as the agency has opened the development of the regulation to public participation in a number of ways, it will now seek opportunities to describe the provisions of the final rule to all segments of the public. FDA will take these steps in addition to working with applicants, as the agency has indicated consistently it will do, to help ensure that their clinical research is carefully managed with respect to protection from potential bias.

III. Conforming Amendments

At the time the regulations in new part 54 were proposed, FDA proposed conforming amendments to certain regulations for drugs, biologics, and devices. The final amendments to these regulations have been modified as necessary to ensure continuing conformity with the final regulations and will take effect at the time those regulations become effective. The amendments are described in detail in the following sections.

A. Amendments to Regulations for Human Drug Products

In its regulations governing investigational new drug applications, FDA is amending § 312.53(c), which applies to the selection of investigators, to require sponsors to obtain financial information from clinical investigators. As noted in the preamble to the proposed rule, this amendment provides for sponsors to acquire financial information from clinical investigators before starting clinical investigations. This will enable the sponsor, and any future potential applicant, to discover potential bias on the part of the clinical investigator before the investigation begins and permit the sponsor to consult with FDA on management of the situation. As noted previously, the sponsor of a clinical study and the applicant for a marketing application would be the same entity in the majority of cases. However, in some cases, an applicant would have obtained the product and related studies from the study sponsor, including the relevant information as to financial interests of clinical investigators.

Section 312.57 is amended to require sponsors to maintain records on financial interests and arrangements of investigators and investigators' immediate families as required in new part 54.

The agency is amending §§ 314.50 and 314.60 (21 CFR 314.50 and 314.60) to require that all NDA's, amendments to applications, and supplements that contain new data from a previously unreported study include certification and disclosure statements as required in new part 54. FDA is amending § 314.94 (21 CFR 314.94) to require certification or disclosure statements in ANDA's. The agency originally proposed that the certification and disclosure statements be included on the application form. The agency has determined that this would be impractical, and is therefore amending §§ 314.60 and 314.94 to require that the financial certification or disclosure statement be part of the application submission, but not be included on the application form.

Under 21 CFR 314.101(d), the agency may refuse to file or receive an application that is incomplete. Failure to include a financial certification or disclosure statement, as required by amended §§ 314.50(l) and 314.94(a)(13), would give the agency grounds to refuse to file or receive the application. Similarly, amended § 314.60(a) gives the agency authority to refuse to accept any amendment to an unapproved application when that amendment contains new clinical data from an unreported study and does not include a financial certification or disclosure statement. These provisions incorporate the requirement for a financial certification or disclosure statement found in new part 54. In some situations, a certification or disclosure statement is not required under new part 54, and thus the agency would not refuse to file or receive the application, or refuse to accept the amendment for failure to include the statement. For example, new § 54.4(c) in this final rule. FDA recognizes that it would not refuse to file an application that contains a certification from the applicant stating that it was not possible to obtain the information required for certification and disclosure and the reason, e.g., if a covered study were concluded prior to the requirement for a study sponsor to obtain this information from investigators and the investigators could not be reached or were unwilling to provide the information voluntarily.

FDA is amending 21 CFR 314.200 and 314.300 to require any person who submits clinical data as part of the hearing process for refusals to approve and for withdrawals of approvals for NDA's, abbreviated antibiotic drug applications, or ANDA's, or the hearing process for issuing, amending, and withdrawing antibiotic regulations, to submit a certification or disclosure statement.

Amendments to 21 CFR 320.36 require similar reporting and recordkeeping for certification and disclosure statements accompanying bioequivalence studies as would be required under part 312.

Amendments to 21 CFR 330.10 require certification or disclosure statements to accompany clinical data submitted as part of the over-the-counter drug monograph process.

B. Amendments to Regulations for Biologicals

FDA is amending the regulations at 21 CFR 601.2(a) governing the filing of applications for product licenses to require the inclusion of certification or disclosure statements, or both, as required in new part 54.

C. Amendments to Regulations for Medical Devices

FDA is adding a new paragraph to 21 CFR 807.87 to require the inclusion of certification or disclosure statements, or both, in a premarket notification submission. A paragraph is added to § 807.100 to allow FDA to withhold a decision on a premarket notification submission until certification or disclosure statements are submitted to FDA as required under new part 54.

FDA is amending 21 CFR 807.31 to require that certification and disclosure statements be retained at the establishment maintaining the historical file. Section 812.110 is amended to require clinical investigators to provide sponsors with sufficient accurate financial information (see 812.110) for the preparation of certification or disclosure statements.

FDA is amending § 812.43(c), which applies to the selection of monitors and investigators, to require sponsors to

obtain financial information from clinical investigators. Although not identified in the proposed rule as a conforming amendment to the device regulations, this revision is consistent with the requirement in § 812.110(d) that investigators provide financial information to sponsors to obtain the information. This amendment provides for sponsors to acquire financial information from clinical investigators before starting clinical investigations. This will enable the sponsor (and any future applicant) to discover potential bias on the part of the investigator before the investigation begins and permit the sponsor to consult with FDA on management of the situation. This conforming amendment parallels the drug conforming amendment in § 312.53(c).

FDA is amending § 812.140(b)(3) to require sponsors to maintain records on financial interests and arrangements of investigators and investigators' immediate families as required in new part 54. This conforming amendment is consistent with the recordkeeping requirements in new part 54.

FDA is amending 21 CFR 814.20 to require the inclusion of certification or disclosure statements in premarket approval applications. The agency is also amending 21 CFR 814.42 to provide that the agency may refuse to file an application or amendments that contain clinical data unless certifications or disclosure statements are included as required by new part 54.

FDA is amending 21 CFR 814.112 to require applicants of humanitarian device exemption (HDE) applications to submit certification or disclosure statements. The regulation on HDE's was issued after publication of the financial disclosure proposal. This amendment is consistent with the other conforming amendments requiring financial disclosure information for premarket approval applications.

Because supporting data are needed in a reclassification petition to satisfy the requirements of a determination of safety and effectiveness of a device, FDA is amending 21 CFR 860.123 to require any sponsor who submits clinical data as part of a reclassification petition to include certification or disclosure statements, or both, as required by new part 54.

IV. Summary of Changes

FDA has made the following changes in the final rule in response to comments received on the proposed rule as discussed previously in this preamble and to clarify the intent of the regulation:

1. Recognizing that the firm submitting a marketing application might not have sponsored the covered studies, FDA has changed the term defined in new § 54.2(b) from ''Significant equity interest in the applicant'' to ''Significant equity interest in the sponsor of a covered study'' and has revised new § 54.2(f) (''Significant payments of other sorts'') to contain similar clarifying language. FDA has defined ''applicant'' and sponsor of the covered study at new § 54.2(g) and (h) and has added language to the purpose statement in 21 CFR 51.1 to distinguish a sponsor of a covered study from a sponsor of a marketing application (i.e., applicant). The agency has also added language to the scope of the regulation in new § 54.3, to make it clear that the requirements of the regulation apply to applicants whether or not the applicant was the sponsor of the studies submitted. The applicant is responsible for obtaining the information required by the regulation or for demonstrating conclusively why it is not possible to do so. The agency has added similar clarifying language to appropriate sections of the disclosure requirements in new § 54.4 and requirements for recordkeeping and record retention in new § 54.6.

2. FDA has made one further change in the definition of a significant equity interest in new § 54.2(b). In the proposed rule, a disclosable equity interest in a publicly traded corporation was defined as ''any equity interest in a publicly traded corporation that exceeds 5 percent of total equity, and no applicable time period was stated. In the final rule, FDA has defined an equity interest in a publicly traded corporation as one that exceeds $50,000 during the time the clinical investigator is carrying out the study and for 1 year following completion of the study.'' FDA has eliminated the 5 percent equity holding provision and has replaced it with the $50,000 threshold because FDA recognizes that for many corporations, a 5 percent equity interest represents an unrealistically large threshold interest. FDA has clarified the time period whereby applicants are required to disclose information to FDA for 1 year following completion of the study (i.e., after enrollment of all the subjects and followup subjects in accordance with the clinical protocol) to further reduce the possibility that clinical investigators could exert undue influence during final data analysis.

3. In response to comments that the definition of ''clinical investigator'' in new § 54.2 (d) of FDA's proposed rule was too broad, FDA has revised this definition to clarify that it includes only principal and subinvestigators who are directly involved in the treatment and evaluation of research subjects and their spouses and dependent children.

4. In the final rule, FDA has shortened and clarified the definition of covered clinical study in new § 54.2(e).

5. In new § 54.2(f) of the proposed rule, FDA defined ''significant payments of other sorts'' as ''payments that exceed $5,000 (e.g., grants to fund ongoing research compensation in the form of equipment or retainers for ongoing consultation or honoraria) or that exceed 5 percent of the total equity in a publicly held and widely traded company.'' In the final rule, FDA has set the threshold for disclosure of such payments at a value of more than $25,000 and has further revised and clarified this definition so that it reads as follows:

> Significant payments of other sorts means payments made by the sponsor of a covered study to the investigator or the institution to support activities of the investigator that have a monetary value of more than $25,000, exclusive of the costs of conducting the clinical study or other clinical studies (e.g., a grant to fund ongoing research, compensation in the form of equipment or retainers for ongoing consultation or honoraria), during the time the clinical investigator is carrying out the study and for 1 year following completion of the study.

6. The opening paragraph of proposed § 54.4 required the applicant to ''completely and accurately disclose or certify information concerning the financial interests of a clinical investigator who is not a full-time employee of the sponsor * * *''. In response to a comment, FDA is changing this phrase to read ''not a full-time or part-time employee of the sponsor for each covered clinical study.''

7. Section 54.4(a) of the proposed rule stated that an applicant shall submit for each covered clinical study either a certification or disclosure statement. FDA has revised this statement to make it clear that the applicant must submit a certification or disclosure statement for each investigator who participated in a covered clinical study, as opposed to each covered clinical study. FDA recognizes that, in some instances, an applicant might need to submit both certification and disclosure statements to cover the interests of all clinical investigators who participated in one covered study. The agency has also changed this statement to make it clear that the applicant may submit one certification statement to cover all investigators for whom certification is made.

8. FDA has also made provision in new § 54.4 of the final rule for an

applicant who can demonstrate that it was not possible to obtain the information required for certification and disclosure to certify that the applicant, acted with due diligence, to obtain the information needed to certify or disclose but was unable to do so. For example, if the laws of a foreign country preclude the applicant from obtaining the financial information, a statement submitted to FDA referencing such laws would be appropriate.

9. FDA has deleted the statement in new § 54.6 of the proposed rule that if the application is not approved, a sponsor shall retain covered records ''for 2 years after the product, for which the application was submitted, was shipped and delivered to clinical investigators for testing.'' FDA has deleted this statement because it is inconsistent with other recordkeeping requirements.

10. Also in new § 54.6(a)(1) and (a)(2), FDA has deleted the requirement from the proposed rule that sponsors must show all compensation paid to clinical investigators and has replaced it with a statement requiring applicants to complete records showing any financial arrangement as described in new § 54.4(a)(3)(i) and (a)(3)(ii). FDA has made the change in order to ease recordkeeping requirements and require applicants to maintain records that may raise potential problematic financial arrangements. Similarly, FDA has revised the conforming amendments in § 312.57 to ease recordkeeping requirements and has added § 812.43(c)(5) to identify the device sponsors' requirements.

V. Analysis of Impacts

FDA has examined the impacts of the final 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; and distributive impacts and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The agency concludes that the rule is a significant regulatory action as defined by the Executive Order. The following discussion summarizes the agency's economic assessment, and where possible, presents quantitative estimates of the impact of the regulation on the industries subject to this rule.

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to prepare a Regulatory Flexibility Analysis for each rule unless the agency certifies that the rule would not have a significant economic impact on a substantial number of entities. As explained in section IV.B of this document, the agency believes that this final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the rule may impose significant costs on a few small businesses. Because FDA cannot adequately quantify all of this impact, it has prepared a Regulatory Flexibility Analysis as part of its economic assessment. This analysis, which is summarized in section IV.B of this document, is available for review at the Dockets Management Branch (address above).

FDA finds that it is important to the public health to ensure, as much as possible, that the safety and efficacy data submitted to the agency in support of marketing applications are free of the effects of any bias that may result from the financial interests of investigators. The information received through the reporting requirements in the final rule will help the agency to determine the reliability of data submitted in marketing applications. In addition, the reporting requirements will help to ensure that sponsors of covered studies consider potentially problematic financial arrangements and interests in the early stages of product development and, if necessary, consider how best to minimize such potential sources of bias in their clinical studies.

The final rule will affect firms that sponsor marketing applications containing clinical data in the human drug, biologic, and medical device industries. Although FDA receives about 1,000 marketing applications and supplements per year that will be subject to this rule, the agency believes that only a few of these applications will be more than minimally affected. Public comments in response to the proposed rule indicate that potentially problematic financial arrangements occur only occasionally, although perhaps more often within the small biotechnology and medical device firms that choose to utilize, for example, the inventor of a product as a clinical investigator, or to make payments to the clinical investigator in the form of equity interests such as stock options. While FDA cannot determine the precise number of such arrangements, representatives from the drug and device industries (Science Board Meeting, March 29, 1996) report that sponsors only rarely reimbursed clinical investigators by those means described as problematic in the final rule.

The rule will create costs in three areas: Reporting, recordkeeping, and research. Reporting and recordkeeping are discussed in section V of this document. The agency estimates that total reporting costs of sponsors and investigators will be less that $450,000 annually and estimates no additional costs for recordkeeping. However, these costs are offset by the significant public health benefits of FDA's being able to adequately assess the reliability of clinical trial data and thus ensure the safety and efficacy of regulated products. As described previously, financial interests especially if combined with unblinded study designs, studies with subjective endpoints, and single investigator studies may increase the risk that purposeful or inadvertent bias could influence the outcome of the study.

Research costs can be incurred either before the product application has been submitted to the agency or after the agency begins its review. Costs may be incurred before an application is submitted when a clinical investigator has a disclosable interest and the sponsor modifies a trial protocol or alters procedures to minimize the potential for investigator bias. However, even where the investigator has a disclosable interest or arrangement, many clinical protocols will not need to be modified because they already are designed to minimize potential for investigator bias. (Sponsors are encouraged to meet with FDA to discuss protocol design and this is common practice with sponsors of covered clinical studies of human drugs and biologics). Although a few protocols may require some adjustment to the design, such as having a blinded observer carry out critical observations, most changes would be minor and not costly. In some cases, sponsors might choose a different investigator. Where a protocol is altered, however, sponsors would incur costs for modifying the protocol, preparing additional analyses, or hiring additional investigators. This would occur, however, only where there was a potentially important problem to resolve.

Costs could also occur after a marketing application is submitted if FDA determined that the financial interests of an investigator raise serious questions about the integrity of the data. In such a case, the agency may audit the data derived from the investigator, request that the applicant submit further analyses of the data, request that the

applicant conduct additional independent studies to confirm the results of the questioned study, or refuse to accept the result of the covered clinical study. The likelihood that this rule would require additional research will decline rapidly, however, as applicants adjust to the new requirements by designing studies that minimize the potential bias.

Because relevant clinical trials for most new drug and biological products are blinded and involve multiple sites and multiple investigators, the agency does not anticipate significant modifications to protocols for most of these products. Clinical trials for medical devices, however, tend to be smaller, involving fewer sites and fewer investigators. In addition, there is a higher possibility of ''inventor/investigator'' relationships in this industry and, therefore, the sponsors of medical device marketing applications may be more likely than sponsors of applications in other industries to require protocol modifications that could lead to higher costs.

Unfortunately, until the agency collects the financial disclosure information that could be used to determine the frequency and type of future research protocol adjustments, it cannot project the likely magnitude of these research costs. That is, because FDA does not know which clinical protocols may have unacceptable potential biases, the agency has no means of quantifying the number of the research protocols that might be modified or the associated costs of such modifications. FDA notes, however, that such costs would occur only in the presence of potentially biased clinical trial data that would otherwise be used to support new product approval decisions and would therefore be worthwhile. Because such occurrences would be quite uncommon, FDA concludes that, in aggregate, these costs would be small.

B. Small Business Impact

The Small Business Administration (SBA) uses employment size criteria to identify small businesses in the industries affected by this rule. SBA defines a drug company (Standard Industrial Code (SIC) 2834) as small if there are fewer than 750 employees; whereas biologic (SIC's 2835 and 2836) and medical device companies (SIC's 3841, 3842, 3843, 3844, 3845, and 3851) are considered small if employment is less than 500. Table 2 displays the distribution of companies by employment size. Even if the employment size category of 500+, which is the largest category reported by SBA, were considered as the small business threshold, approximately 87 percent of drug companies, 85 percent of biologic companies and 94 percent of device companies would be considered small. On this basis, most of the firms affected by this rule are small businesses.

TABLE 2.—NUMBER OF FIRMS BY EMPLOYMENT SIZE FOR 1993[1]

Industry	Employment Size				
	<20	20 to 99	100 to 499	1	Total
Drug	332	155	80	85	652
Biologic	208	92	50	65	415
Medical device	2,936	835	381	273	4,425

[1] Source: Special Census Tabulation prepared by U.S. Bureau of Census for U.S. Small Business Administration, Tab 3 - United States.

One industry comment expressed concern that the ''impact of the rule will fall disproportionately on small firms, since they may not be able to pay clinical investigators on a fee-for-service basis.'' The writer was particularly concerned about the adverse effect this rule will have on the medical device industry and the ''thousands of investigators who would need to provide information to sponsors.''

FDA agrees that the smallest firms will exhibit the highest incidence of potentially problematic financial arrangements. Medical device and biotechnology sponsors that have few resources, especially new start-up companies, are more likely to engage in unconventional compensation arrangements than other companies. These smaller firms would also be more likely than the larger firms to have ''inventor/investigator'' relationships.

Even among the smallest firms, however, very few will incur significant costs. In fact, the majority of companies counted in Table 2 will not be affected by this rule. For example, only about 5 percent of the approximately 6,000 medical device companies will produce any devices affected by the rule. For those relatively few firms that sponsor or conduct clinical trials, FDA has been told by industry representatives that only a small subset will have disclosable arrangements.

And even a smaller subset of firms may incur increased research costs, because only in rare cases would sponsors of the covered study need to modify original protocols, particularly because sponsors of the covered studies are encouraged to consult with the agency whenever a questionable financial arrangement or interest emerges. These consultations are particularly important, because the cost to modify a clinical trial design before a clinical trial is conducted is far lower than the cost to address a problem after the trial is completed. For these few instances where a sponsor of a covered study may need to take additional steps to minimize the potential for bias, FDA believes that the benefits of correcting potentially biased results will more than offset the costs of any needed research modifications.

C. Analysis of Alternatives

FDA has considered various alternatives to publishing this final rule including not requiring submission of this information to the agency. After meeting with numerous groups including regulated industry and others, it was decided that it was necessary for FDA to require submission of this information in order for FDA to be adequately aware of influences that could affect data reliability. FDA also considered the need to prohibit certain financial interests where the original investigator was compensated in ways that have the potential to influence the outcome of the study. FDA decided against that option, however, because FDA recognizes that therapeutic products that benefit the public health have been developed by these means. Instead, FDA intends to give these types of financial arrangements close scrutiny.

Changes to the September 1994 proposed rule have been made to clarify the intent of the regulation and as a result of public comment, including meetings with industry, consumer groups, health professionals, and clinical investigators. Table 3 lists

changes made in the final rule that will reduce the economic impact on small businesses:

TABLE 3.—COMPARISON OF THE IMPACT OF THE PROPOSED RULE AND FINAL RULE ON FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATIONS IN REDUCING THE ECONOMIC IMPACT ON SMALL BUSINESSES

Proposed Rule	Final Rule
(a) Definition of significant equity interest ''any ownership interest stock option, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity''.	(a) Significant equity defined as exceeding $50,000 during the time the trial is carried out for 1 year following completion of the study.
(b) $5,000 disclosure threshold for significant payments of other sorts from the sponsor.	(b) Increased disclosure threshold to amounts exceeding $25,000.
(c) Broader definition of clinical investigator and asked for comment on the inclusion of business partners.	(c) Narrowed definition to principal and subinvestigators and their immediate families.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection requirements 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). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Financial Disclosure by Clinical Investigators

Description: This final rule requires the sponsor of any drug (including a biological product), or device marketing application to certify to the absence of certain financial interests of clinical investigators and/or disclose those financial interests as required, when covered clinical studies are submitted to FDA in support of product marketing.

Description of Respondents: Respondents are sponsors of marketing applications containing clinical data from studies covered by the regulation. These sponsors represents pharmaceutical, biologic and medical device firms. Many of these firms are small entities especially in the areas of medical devices and biologics/biotechnology. Respondents are also clinical investigators who provide financial information to sponsors of marketing applications.

FDA received a number of comments on the information collection estimates in the proposed rule (see comment no. 13 of section II of this document for a summary and response to these comments). The agency has added language to the final rule to allow one certification statement to cover all investigators for which the applicant is certifying in an application. FDA has also recalculated its estimate of the total number of hours that will be necessary to complete the information collection requirements associated with this final rule.

The applicant will incur reporting costs in order to comply with the final rule. Applicants will be required to submit, for example, a complete list of clinical investigators for each covered study, a list that is already required in a marketing application. For investigators not employed by the applicant and/or the sponsor of the covered study, the applicant must either certify to the absence of certain financial arrangements with clinical investigators or disclose those arrangements to FDA.

The clinical investigator will have to supply information pertaining to significant stock ownership in that company (e.g., whether the clinical investigator, his spouse or dependent child owns $50,000 or more stock in that company).

Because the sponsor would be aware of any payments to investigators, patents or licenses held by investigators, and any other significant financial arrangements with investigators, most of the information that is necessary to certify or disclose is already available to the sponsor of the study. Similarly, sponsors that are nonpublicly traded corporations can easily identify their stockholders. The only information that the sponsor will need to obtain from the investigator would be the investigator's stock holdings in the sponsor, if the sponsor is publicly traded.

FDA expects that almost all applicants will submit a certification statement in § 54.4(a)(1) and (a)(2). Preparation of the statement using the following Form FDA 3454 will represent little effort and should require no more than 1 hour per study (80 percent clerical time, 20 percent managerial).

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Food and Drug Administration

Form Approved: OMB No. xxxx-xxxx
Expiration Date: xx/xx/xx

CERTIFICATION: FINANCIAL INTERESTS AND ARRANGEMENTS OF CLINICAL INVESTIGATORS

TO BE COMPLETED BY APPLICANT

With respect to all covered clinical studies (or specific clinical studies listed below (if appropriate)) submitted in support of this application, I certify to one of the statements below as appropriate. I understand that this certification is made in compliance with 21 CFR part 54 and that for the purposes of this statement, a clinical investigator includes the spouse and each dependent child of the investigator as defined in 21 CFR 54.2(d).

Please mark the applicable checkbox.

☐ (1) As the sponsor of the submitted studies, I certify that I have not entered into any financial arrangement with the listed clinical investigators (enter names of clinical investigators below or attach list of names to this form) whereby the value of compensation to the investigator could be affected by the outcome of the study as defined in 21 CFR 54.2(a). I also certify that each listed clinical investigator required to disclose to the sponsor whether the investigator had a proprietary interest in this product or a significant equity in the sponsor as defined in 21 CFR 54.2(b) did not disclose any such interests. I further certify that no listed investigator was the recipient of significant payments of other sorts as defined in 21 CFR 54.2(f).

Clinical Investigators		

☐ (2) As the applicant who is submitting a study or studies sponsored by a firm or party other than the applicant, I certify that based on information obtained from the sponsor or from participating clinical investigators, the listed clinical investigators (attach list of names to this form) did not participate in any financial arrangement with the sponsor of a covered study whereby the value of compensation to the investigator for conducting the study could be affected by the outcome of the study (as defined in 21 CFR 54.2(a)); had no proprietary interest in this product or significant equity interest in the sponsor of the covered study (as defined in 21 CFR 54.2(b)); and was not the recipient of significant payments of other sorts (as defined in 21 CFR 54.2(f)).

☐ (3) As the applicant who is submitting a study or studies sponsored by a firm or party other than the applicant, I certify that I have acted with due diligence to obtain from the listed clinical investigators (attach list of names) or from the sponsor the information required under 54.4 and it was not possible to do so. The reason why this information could not be obtained is attached.

NAME	TITLE
FIRM / ORGANIZATION	
SIGNATURE	DATE

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

DHHS Reports Clearance Officer
Paperwork Reduction Project (0910-xxxx)
Humphrey Building, Room 531-H
200 Independence Ave., SW
Washington, DC 20201

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please DO NOT RETURN this application to this address.

FORM FDA 3454 (7/97)

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TABLE 4.—ESTIMATED NUMBER OF APPLICATIONS, CLINICAL TRIALS, AND INVESTIGATORS SUBJECT TO THE PROPOSED RULE BY TYPE OF APPLICATION[1]

Application Type	Total Number Applications	Number of Applications Affected	Number of Trials	Number of Investigators
Drugs				
New drug application (NDA), new molecular entity (NME)	35	35	3 to 10	3 to 100
NDA nonNME	100	100	1 to 3	10 to 30
NDA efficacy supplement	100	100	1 to 3	10 to 30
Abbreviated new drug application (ANDA)	400	240	1.1	2
ANDA supplement	2,500	120	1	2
Rx switch	20	10	2	4
Biologics				
Product license application (PLA)	25	25	3 to 10	3 to 100
PLA efficacy supplement	10	10	1 to 3	3 to 100
Medical Devices				
Premarket approval (PMA)	50	50	1	10 to 20
PMA supplement	400	10	1	3 to 10
Reclassification petitions	8	4	1	3 to 10
510(k)	6,000	300	1	20

[1] Source: Agency estimates.

When certification is not possible and disclosure is made using the following Form FDA 3455, the applicant must describe the financial arrangements or interests and the steps that were taken to minimize the potential for bias in the affected study. As the applicant will be fully aware of those arrangements and steps taken, describing them will be straightforward. The agency estimates that it will take about 4 hours to prepare this narrative, 90 percent management time and 10 percent clerical.

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Food and Drug Administration

Form Approved: OMB No. xxxx-xxxx
Expiration Date: xx/xx/xx

DISCLOSURE: FINANCIAL INTERESTS AND ARRANGEMENTS OF CLINICAL INVESTIGATORS

TO BE COMPLETED BY APPLICANT

The following information concerning _____ (*Name of clinical investigator*), who participated as a clinical investigator in the submitted study _____ (*Name of clinical study*), is submitted in accordance with 21 CFR part 54. The named individual has participated in financial arrangements or holds financial interests that are required to be disclosed as follows:

Please mark the applicable checkboxes.

☐ any financial arrangement entered into between the sponsor of the covered study and the clinical investigator involved in the conduct of the covered study, whereby the value of the compensation to the clinical investigator for conducting the study could be influenced by the outcome of the study;

☐ any significant payments of other sorts from the sponsor of the covered study such as a grant to fund ongoing research, compensation in the form of equipment, retainer for ongoing consultation, or honoraria;

☐ any proprietary interest in the product tested in the covered study held by the clinical investigator;

☐ any significant equity interest in the sponsor of the covered study held by the clinical investigator as defined in 21 CFR 54.2(b).

Details of the individual's disclosable financial arrangements and interests are attached, along with a description of steps taken to minimize the potential bias of clinical study results by any of the disclosed arrangements or interests.

NAME	TITLE
FIRM / ORGANIZATION	
SIGNATURE	DATE

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

DHHS Reports Clearance Officer
Paperwork Reduction Project (0910-xxxx)
Humphrey Building, Room 531-H
200 Independence Ave., SW
Washington, DC 20201

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please DO NOT RETURN this application to this address.

FORM FDA 3455 (7/97)

EF
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Until the agency begins to collect information on the financial arrangements between investigators and applicants, it cannot know the actual number of disclosable arrangements. Therefore, it is not possible to predict the total cost to industry of preparing these explanatory statements with any certainty, although the agency was told by industry representatives that few would be needed because the financial arrangements described in this rule are uncommon. FDA estimates that from 1 percent to 10 percent of the applications would need disclosure statements, and has used the extremely conservative estimate of 10 percent in Table 5 below.

Investigators must provide sponsors of the covered studies with sufficient accurate information to make the required disclosure or certification. Because much of the information required can be obtained from the applicant's own records, the costs incurred by the clinical investigator will be minimal. Clinical investigators are required to do one of two things: (1) Provide a statement that they, their spouse, and their dependent children did not have a significant equity interest (greater than $50,000) in the sponsor of the covered study during the time of the clinical study and for 1 year after, or (2) disclose such interest. Most people know the financial holdings of their immediate family and records of such interests are generally accessible because they are needed for preparing tax records. The time required for this task may range from 5 to 15 minutes. Assuming a physician's hourly cost of $87.69,[1] a $336,695 estimated cost to investigators was calculated. Clinical investigators are accustomed to supplying such information in even greater detail when applying for research grants.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
54.4(a)(1) and (a)(2)	1,000	1	1	1	1,000
54.4(a)(3)	100	1	1	4	400
54.4 (Clinical investigators)	46,000	1	1	.10	4,600
Total					6,000

The sponsors of covered studies will be required to maintain complete records of compensation agreements with any compensation paid to nonemployee clinical investigators, including information showing any financial interests held by the clinical investigator, for a time period of 2 years after the date of approval of the application. This time is consistent with the current recordkeeping requirements for other information related to marketing applications for human drugs, biologics, and medical devices. FDA judged the incremental costs associated with this new activity to be negligible because firms already maintain records of compensation as standard business practice and the required records pertaining to the financial interests of the investigators will typically consist of only one additional piece of paper per investigator. Currently, sponsors of covered studies must maintain many records with regard to clinical investigators, including protocol agreements and investigator resumes or curriculum vitae and the inclusion of information required by this rulemaking would add little to this recordkeeping burden. FDA estimates that an average 15 minutes will be required for each recordkeeper to add this record to clinical investigators' files.

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
54.6	1,000	1	1,000	.25	250

There are no operating and maintenance costs or capital costs associated with this information collection of information.

Although the September 22, 1994 (59 FR 48708), proposed rule provided a 90-day comment period under the Paperwork Reduction Act of 1980, and this final rule responds to the comments received, FDA is providing an additional opportunity for public comment under the Paperwork Reduction Act of 1995 that became effective after the expiration of the comment period and applies to this final rule. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Individuals and organizations may submit comments on the information collection provisions of this final rule by April 3, 1998.. Comments should be directed to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document.

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's

[1] Physician mean net income (after expenses, before taxes) for all specialties is $182,395.20. Source: American Medical Association. Wage rate assumes 2,080 hours worked per year.

decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

21 CFR Part 54

Biologics, Drugs, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

1. Part 54 is added to read as follows:

PART 54—FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATORS

Sec.

54.1 Purpose.
54.2 Definitions.
54.3 Scope.
54.4 Certification and disclosure requirements.
54.5 Agency evaluation of financial interests.
54.6 Recordkeeping and record retention.

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379; 42 U.S.C. 262.

§ 54.1 Purpose.

(a) The Food and Drug Administration (FDA) evaluates clinical studies submitted in marketing applications, required by law, for new human drugs and biological products and marketing applications and reclassification petitions for medical devices.

(b) The agency reviews data generated in these clinical studies to determine whether the applications are approvable under the statutory requirements. FDA may consider clinical studies inadequate and the data inadequate if, among other things, appropriate steps have not been taken in the design, conduct, reporting, and analysis of the studies to minimize bias. One potential source of bias in clinical studies is a financial interest of the clinical investigator in the outcome of the study because of the way payment is arranged (e.g., a royalty) or because the investigator has a proprietary interest in the product (e.g., a patent) or because the investigator has an equity interest in the sponsor of the covered study. This section and conforming regulations require an applicant whose submission relies in part on clinical data to disclose certain financial arrangements between sponsor(s) of the covered studies and the clinical investigators and certain interests of the clinical investigators in the product under study or in the sponsor of the covered studies. FDA will use this information, in conjunction with information about the design and purpose of the study, as well as information obtained through on-site inspections, in the agency's assessment of the reliability of the data.

§ 54.2 Definitions.

For the purposes of this part:

(a) *Compensation affected by the outcome of clinical studies* means compensation that could be higher for a favorable outcome than for an unfavorable outcome, such as compensation that is explicitly greater for a favorable result or compensation to the investigator in the form of an equity interest in the sponsor of a covered study or in the form of compensation tied to sales of the product, such as a royalty interest.

(b) *Significant equity interest in the sponsor of a covered study* means any ownership interest, stock options, or other financial interest whose value cannot be readily determined through reference to public prices (generally, interests in a nonpublicly traded corporation), or any equity interest in a publicly traded corporation that exceeds $50,000 during the time the clinical investigator is carrying out the study and for 1 year following completion of the study.

(c) *Proprietary interest in the tested product* means property or other financial interest in the product including, but not limited to, a patent, trademark, copyright or licensing agreement.

(d) *Clinical investigator* means any listed or identified investigator or subinvestigator who is directly involved in the treatment or evaluation of research subjects. The term also includes the spouse and each dependent child of the investigator.

(e) *Covered clinical study* means any study of a drug or device in humans submitted in a marketing application or reclassification petition subject to this part that the applicant or FDA relies on to establish that the product is effective (including studies that show equivalence to an effective product) or that make a significant contribution to the demonstration of safety. An applicant may consult with FDA as to which clinical studies constitute ''covered clinical studies'' for purposes of complying with financial disclosure requirements.

(f) *Significant payments of other sorts* means payments made by the sponsor of a covered study to the investigator or the institution to support activities of the investigator that have a monetary value of more than $25,000, exclusive of the costs of conducting the clinical study or other clinical studies, (e.g., a grant to fund ongoing research, compensation in the form of equipment or retainers for ongoing consultation or honoraria) during the time the clinical investigator is carrying out the study and for 1 year following the completion of the study.

(g) *Applicant* means the party who submits a marketing application to FDA for approval of a drug, device, or biologic product. The applicant is responsible for submitting the appropriate certification and disclosure statements required in this part.

(h) *Sponsor of the covered clinical study* means the party supporting a

particular study at the time it was carried out.

§ 54.3 Scope.

The requirements in this part apply to any applicant who submits a marketing application for a human drug, biological product, or device and who submits covered clinical studies. The applicant is responsible for making the appropriate certification or disclosure statement where the applicant either contracted with one or more clinical investigators to conduct the studies or submitted studies conducted by others not under contract to the applicant.

§ 54.4 Certification and disclosure requirements.

For purposes of this part, an applicant must submit a list of all clinical investigators who conducted covered clinical studies to determine whether the applicant's product meets FDA's marketing requirements, identifying those clinical investigators who are full-time or part-time employees of the sponsor of each covered study. The applicant must also completely and accurately disclose or certify information concerning the financial interests of a clinical investigator who is not a full-time or part-time employee of the sponsor for each covered clinical study. Clinical investigators subject to investigational new drug or investigational device exemption regulations must provide the sponsor of the study with sufficient accurate information needed to allow subsequent disclosure or certification. The applicant is required to submit for each clinical investigator who participates in a covered study, either a certification that none of the financial arrangements described in § 54.2 exist, or disclose the nature of those arrangements to the agency. Where the applicant acts with due diligence to obtain the information required in this section but is unable to do so, the applicant shall certify that despite the applicant's due diligence in attempting to obtain the information, the applicant was unable to obtain the information and shall include the reason.

(a) The applicant (of an application submitted under sections 505, 506, 507, 519(k), 513, or 515 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act) that relies in whole or in part on clinical studies shall submit, for each clinical investigator who participated in a covered clinical study, either a certification described in paragraph (a)(1) of this section or a disclosure statement described in paragraph (a)(3) of this section.

(1) Certification: The applicant covered by this section shall submit for all clinical investigators (as defined in § 54.2(d)), to whom the certification applies, a completed Form FDA 3454 attesting to the absence of financial interests and arrangements described in paragraph (a)(3) of this section. The form shall be dated and signed by the chief financial officer or other responsible corporate official or representative.

(2) If the certification covers less than all covered clinical data in the application, the applicant shall include in the certification a list of the studies covered by this certification.

(3) Disclosure Statement: For any clinical investigator defined in § 54.2(d) for whom the applicant does not submit the certification described in paragraph (a)(1) of this section, the applicant shall submit a completed Form FDA 3455 disclosing completely and accurately the following:

(i) Any financial arrangement entered into between the sponsor of the covered study and the clinical investigator involved in the conduct of a covered clinical trial, whereby the value of the compensation to the clinical investigator for conducting the study could be influenced by the outcome of the study;

(ii) Any significant payments of other sorts from the sponsor of the covered study, such as a grant to fund ongoing research, compensation in the form of equipment, retainer for ongoing consultation, or honoraria;

(iii) Any proprietary interest in the tested product held by any clinical investigator involved in a study;

(iv) Any significant equity interest in the sponsor of the covered study held by any clinical investigator involved in any clinical study; and

(v) Any steps taken to minimize the potential for bias resulting from any of the disclosed arrangements, interests, or payments.

(b) The clinical investigator shall provide to the sponsor of the covered study sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements as required in paragraph (a) of this section. The investigator shall promptly update this information if any relevant changes occur in the course of the investigation or for 1 year following completion of the study.

(c) Refusal to file application. FDA may refuse to file any marketing application described in paragraph (a) of this section that does not contain the information required by this section or a certification by the applicant that the applicant has acted with due diligence to obtain the information but was unable to do so and stating the reason.

§ 54.5 Agency evaluation of financial interests.

(a) *Evaluation of disclosure statement.* FDA will evaluate the information disclosed under § 54.4(a)(2) about each covered clinical study in an application to determine the impact of any disclosed financial interests on the reliability of the study. FDA may consider both the size and nature of a disclosed financial interest (including the potential increase in the value of the interest if the product is approved) and steps that have been taken to minimize the potential for bias.

(b) *Effect of study design.* In assessing the potential of an investigator's financial interests to bias a study, FDA will take into account the design and purpose of the study. Study designs that utilize such approaches as multiple investigators (most of whom do not have a disclosable interest), blinding, objective endpoints, or measurement of endpoints by someone other than the investigator may adequately protect against any bias created by a disclosable financial interest.

(c) *Agency actions to ensure reliability of data.* If FDA determines that the financial interests of any clinical investigator raise a serious question about the integrity of the data, FDA will take any action it deems necessary to ensure the reliability of the data including:

(1) Initiating agency audits of the data derived from the clinical investigator in question;

(2) Requesting that the applicant submit further analyses of data, e.g., to evaluate the effect of the clinical investigator's data on overall study outcome;

(3) Requesting that the applicant conduct additional independent studies to confirm the results of the questioned study; and

(4) Refusing to treat the covered clinical study as providing data that can be the basis for an agency action.

§ 54.6 Recordkeeping and record retention.

(a) *Financial records of clinical investigators to be retained.* An applicant who has submitted a marketing application containing covered clinical studies shall keep on file certain information pertaining to the financial interests of clinical investigators who conducted studies on which the application relies and who are not full or part-time employees of the applicant, as follows:

(1) Complete records showing any financial interest or arrangement as described in § 54.4(a)(3)(i) paid to such clinical investigators by the sponsor of the covered study.

(2) Complete records showing significant payments of other sorts, as described in § 54.4(a)(3)(ii), made by the sponsor of the covered clinical study to the clinical investigator.

(3) Complete records showing any financial interests held by clinical investigators as set forth in § 54.4(a)(3)(iii) and (a)(3)(iv).

(b) *Requirements for maintenance of clinical investigators' financial records.*

(1) For any application submitted for a covered product, an applicant shall retain records as described in paragraph (a) of this section for 2 years after the date of approval of the application.

(2) The person maintaining these records shall, upon request from any properly authorized officer or employee of FDA, at reasonable times, permit such officer or employee to have access to and copy and verify these records.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

2. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371; 42 U.S.C. 262.

3. Section 312.53 is amended by adding new paragraph (c)(4) to read as follows:

§ 312.53 Selecting investigators and monitors.

* * * * *

(c) * * *

(4) *Financial disclosure information.* Sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements required under part 54 of this chapter. The sponsor shall obtain a commitment from the clinical investigator to promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following the completion of the study.

* * * * *

4. Section 312.57 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and by adding new paragraph (b) to read as follows:

§ 312.57 Recordkeeping and record retention.

* * * * *

(b) A sponsor shall maintain complete and accurate records showing any financial interest in § 54.4(a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(3)(iv) of this chapter paid to clinical investigators by the sponsor of the covered study. A sponsor shall also maintain complete and accurate records concerning all other financial interests of investigators subject to part 54 of this chapter.

* * * * *

5. Section 312.64 is amended by adding new paragraph (d) to read as follows:

§ 312.64 Investigator reports.

* * * * *

(d) *Financial disclosure reports.* The clinical investigator shall provide the sponsor with sufficient accurate financial information to allow an applicant to submit complete and accurate certification or disclosure statements as required under part 54 of this chapter. The clinical investigator shall promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following the completion of the study.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

6. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e.

7. Section 314.50 is amended by redesignating paragraph (k) as paragraph (l) and by adding new paragraph (k) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(k) *Financial certification or disclosure statement.* The application shall contain a financial certification or disclosure statement or both as required by part 54 of this chapter.

* * * * *

8. Section 314.60 is amended in paragraph (a) by adding a new sentence at the end of the paragraph to read as follows:

§ 314.60 Amendments to an unapproved application.

(a) * * * An amendment that contains new clinical data from a previously unreported study shall contain a financial certification or disclosure statement or both as required by part 54 of this chapter, or FDA may refuse to accept any such amendment.

* * * * *

9. Section 314.94 is amended by adding new paragraph (a)(13) to read as follows:

§ 314.94 Content and format of an abbreviated application.

* * * * *

(a) * * *

(13) *Financial certification or disclosure statement.* An abbreviated application shall contain a financial certification or disclosure statement as required by part 54 of this chapter.

* * * * *

10. Section 314.200 is amended in paragraph (d)(3) by adding a new sentence after the first sentence to read as follows:

§ 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

* * * * *

(d) * * *

(3) * * * A financial certification or disclosure statement or both as required by part 54 of this chapter must accompany all clinical data submitted. * * *

* * * * *

11. Section 314.300 is amended in the introductory text of paragraph (b)(6) by adding a new sentence after the first sentence to read as follows:

§ 314.300 Procedure for the issuance, amendment, or repeal of regulations.

* * * * *

(b) * * *

(6) * * * A financial certification or disclosure statement or both as required by part 54 of this chapter must accompany all clinical data submitted with the request for hearing. * * *

* * * * *

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

12. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 371.

13. Section 320.36 is amended by designating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 320.36 Requirements for maintenance of records of bioequivalence testing.

* * * * *

(b) Any person who contracts with another party to conduct a bioequivalence study from which the data are intended to be submitted to FDA as part of an application submitted under part 314 of this chapter shall obtain from the person conducting the study sufficient accurate financial information to allow the submission of complete and accurate financial certifications or disclosure statements

required under part 54 of this chapter and shall maintain that information and all records relating to the compensation given for that study and all other financial interest information required under part 54 of this chapter for 2 years after the date of approval of the application. The person maintaining these records shall, upon request for any properly authorized officer or employee of the Food and Drug Administration, at reasonable time, permit such officer or employee to have access to and copy and verify these records.

PART 330—OVER–THE–COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

14. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

15. Section 330.10 is amended by adding new paragraph (f) to read as follows:

§ 330.10 Procedures for classifying OTC drugs generally recognized as safe and effective and not misbranded, and for establishing monographs.

* * * * *

(f) *Financial certification or disclosure statement.* Any clinical data submitted under this section must be accompanied by financial certifications or disclosure statements or both as required by part 54 of this chapter.

PART 601—LICENSING

16. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; 15 U.S.C. 1451–1461.

17. The introductory test of section 601.2 is amended in the introductory text of paragraph (a) by adding a sentence after the first sentence to read as follows:

§ 601.2 Applications for establishment and product licenses; procedures for filing.

(a) * * * The applicant shall also include a financial certification or disclosure statement(s) or both for clinical investigators as required by part 54 of this chapter. * * *

* * * * *

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

18. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

19. Section 807.31 is amended by adding new paragraph (d)(3) to read as follows:

§ 807.31 Additional listing information.

* * * * *

(d) * * *

(3) A copy of the certification and disclosure statements as required by part 54 of this chapter shall be retained and physically located at the establishment maintaining the historical file.

* * * * *

20. Section 807.87 is amended by redesignating paragraphs (i) through (k) as paragraphs (j) through (l), respectively, and by adding a new paragraph (i) to read as follows:

§ 807.87 Information required in a premarket notification submission.

* * * * *

(i) A financial certification or disclosure statement or both, as required by part 54 of this chapter.

* * * * *

21. Section 807.100 is amended by redesignating paragraph (a)(4) as paragraph (a)(5) and by adding new paragraph (a)(4) to read as follows:

§ 807.100 FDA action on a premarket notification.

(a) * * *

(4) Withhold the decision until a certification or disclosure statement is submitted to FDA under part 54 of this chapter.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

22. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

23. Section 812.43 is amended by adding new paragraph (c)(5) to read as follows:

§ 812.43 Selecting investigators and monitors.

* * * * *

(c) * * *

(5) Sufficient accurate financial disclosure information to allow the sponsor to submit a complete and accurate certification or disclosure statement as required under part 54 of this chapter. The sponsor shall obtain a commitment from the clinical investigator to promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following completion of the study. This information shall not be submitted in an investigational device exemption application, but shall be submitted in any marketing application involving the device.

* * * * *

24. Section 812.110 is amended by redesignating paragraph (d) as paragraph (e) and adding new paragraph (d) to read as follows:

§ 812.110 Specific responsibilities of investigators.

* * * * *

(d) *Financial disclosure.* A clinical investigator shall disclose to the sponsor sufficient accurate financial information to allow the applicant to submit complete and accurate certification or disclosure statements required under part 54 of this chapter. The investigator shall promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following completion of the study.

* * * * *

25. Section 812.140 is amended by revising paragraph (b)(3) to read as follows:

§ 812.140 Records.

* * * * *

(b) * * *

(3) Signed investigator agreements including the financial disclosure information required to be collected under § 812.43(c)(5) in accordance with part 54 of this chapter.

* * * * *

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

26. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

27. Section 814.20 is amended by redesignating paragraph (b)(12) as paragraph (b)(13) and adding new paragraph (b)(12) to read as follows:

§ 814.20 Application.

* * * * *

(b) * * *

(12) A financial certification or disclosure statement or both as required by part 54 of this chapter.

* * * * *

28. Section 814.42 is amended by adding new paragraph (e)(5) to read as follows:

§ 814.42 Filing a PMA.

* * * * *

(e) * * *

(5) The PMA is not accompanied by a statement of either certification or disclosure as required by part 54 of this chapter.

29. Section 814.112 is amended by adding new paragraph (a)(4) to read as follows:

§ 814.112 Filing an HDE.

(a) * * *

(4) The HDE is not accompanied by a statement of either certification or disclosure, or both, as required by part 54 of this chapter.

* * * * *

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

30. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

31. Section 860.123 is amended by adding new paragraph (a)(10) to read as follows:

§ 860.123 Reclassification petition: Content and form.

(a) * * *

(10) A financial certification or disclosure statement or both as required by part 54 of this chapter.

* * * * *

Dated: October 15, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–2407 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 524, and 558

[Docket No. 97N–0508]

Animal Drugs, Feeds, and Related Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of eight new animal drug applications (NADA's) for which the sponsors have requested withdrawal of approval. The NADA's provide for use of products which are no longer made or marketed. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA has withdrawn approval of the following NADA's:

NADA No.	Drug name	Sponsor name and address
38–247	Hygromycin B Type A medicated article	Mountaire Feeds, Inc., 124 East Fifth, P.O. Box 5391, North Little Rock, AR 72119, formerly Mountaire Vitamins, Inc., 400 North Poplar St., P.O. Box 9210, North Little Rock, AR 72119
44–013	Tylosin Type A medicated article	do.
65–273	Chloramphenicol capsules, USP	Zenith Goldline Pharmaceuticals, Inc., 140 Legrand Ave., Northvale, NJ 07647, formerly Zenith Laboratories, Inc., 50 Williams Dr., Ramsey, NJ 07446
65–456	Tetracycline HCl capsules, USP	do.
95–736	Hygromycin B Type A medicated article	Mountaire Feeds, Inc.
98–895	Starbar GX–118 Topical (phosmet)(prolate)	Wellmark International, 1000 Tower Lane, Bensenville, IL 60106, formerly Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018
137–138	Pyrantel tartrate Type A medicated article	Mountaire Feeds, Inc.
139–239	Banminth (pyrantel tartrate) Type A medicated article	Growmark, Inc., 950 North Meridian St., Indianapolis, IN 46204–3909, formerly at 1701 Towanda Ave., Bloomington, IL 61701

The sponsors requested withdrawal of approval of the NADA's under 21 CFR 514.115(d) because the products are no longer made or marketed.

The regulations are amended in 21 CFR 520.390b(b)(1), 520.2345a(b)(4), 524.1742(b), 558.274(a)(6) and (c)(1)(i), 558.485(a)(21) and (a)(25), and 558.625(b)(84) to remove those portions which reflect approval of these NADA's.

Also, with withdrawal of approval of these NADA's, these firms are no longer sponsors of approved NADA's. Therefore, 21 CFR 510.600(c)(1) and (c)(2) are amended to remove entries for the firms.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by

removing the entries for ''Growmark, Inc.,'' ''Mountaire Vitamins, Inc.,'' ''Sandoz Agro, Inc.,'' and ''Zenith Laboratories, Inc.,'' and in the table in paragraph (c)(2) by removing the entries for ''000172'', ''011536'', ''020275'', and ''043734''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.390b [Amended]

4. Section 520.390b *Chloramphenicol capsules* is amended in paragraph (b)(1) by removing ''000172''.

§ 520.2345a [Amended]

5. Section 520.2345a *Tetracycline hydrochloride capsules* is amended by removing paragraph (b)(4).

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

6. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.1742 [Amended]

7. Section 524.1742 *N-(Mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) emulsifiable liquid* is amended in paragraph (b) by removing the phrase ''and 011536''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.274 [Amended]

9. Section 558.274 *Hygromycin B* is amended by removing and reserving paragraph (a)(6) and in the table in paragraph (c)(1)(i), under the ''sponsor'' column, by removing ''043734''.

§ 558.485 [Amended]

10. Section 558.485 *Pyrantel tartrate* is amended by removing and reserving paragraphs (a)(21) and (a)(25).

§ 558.625 [Amended]

11. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(84).

Dated: January 8, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–2410 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 203

RIN 0790–AG14

Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities

AGENCY: Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), DOD.

ACTION: Final rule.

SUMMARY: Pursuant to the National Defense Authorization Act (NDAA) of 1996, the Department of Defense (DoD) is finalizing a rule to provide technical assistance to local community members of Restoration Advisory Boards (RABs) and Technical Review Committee (TRCs). RABs and TRCs are established to review and comment on DoD environmental restoration activities at military installations and formerly used defense sites within the United States and its territories.

EFFECTIVE DATE: This rule is effective February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Ferrebee or Marcia Read, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C., 20301–3400, telephone (703) 697–5372 or (703) 697–7475.

SUPPLEMENTARY INFORMATION: The official record for this rulemaking is kept in a paper format. Accordingly, DoD has transferred all electronic or digital comments received into paper form and placed them into the official record, with all of the comments received in writing.

The Department of Defense's responses to comments have been incorporated in a response to comments document, which has been placed into the official record for this rulemaking. The major comments and responses are discussed in the Response to Comments section of this preamble.

Any person wishing to review the official record, or be provided copies of documents in the official record, for this rulemaking should contact Patricia Ferrebee at Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301–3400, in writing, or by telephone at (703) 697–5372.

Preamble Outline

I. Legal Authority
II. Background
III. Summary of Significant Changes from Proposed Rule
IV. Description of the Final Rule and Responses to Major Comments
A. TAPP Process
B. Eligible Applicants
C. Eligible Activities
D. Technical Assistance for Public Participation Provider Qualifications
E. Submission of Application
F. Appeals Process
V. Administrative Requirements/Compliance with Executive Order
A. Regulatory Impact Analysis Under Executive Order 12866
B. Regulatory Flexibility Analysis
C. Paperwork Reduction Act
D. Unfunded Mandates

I. Legal Authority

This rule is issued under the authority of Section 2705 of Title 10, United States Code. Subsections (c) and (d) of Section 2705 encourage the Department of Defense to establish either a Technical Review Committee (TRC) or Restoration Advisory Board (RAB) to review and comment on DoD actions at military installations undertaking environmental restoration activities. Section 2705(e) permits the Department of Defense to obtain, from private sector sources, technical assistance to help TRCs and RABs better understand the scientific and engineering issues underlying an installation's environmental restoration activities. TRCs and RABs may request this assistance only if:

(1) The TRC or RAB demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation and DoD personnel do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(2) The technical assistance—

(a) Is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(b) Is likely to contribute to community acceptance of environmental restoration activities at the installation.

Funding for this technical assistance program will come from the Environmental Restoration Accounts established for Army, Navy, and Air Force for operating installations, and from the DoD Component's base closure account for transferring or closing installations. For Defense Agencies the Defense-Wide environmental restoration account will be the source of funds for assistance at operating installations. The Environmental Restoration Account for Formerly Used Defense sites will fund technical assistance at formerly used defense sites.

II. Background

Over the past several years, the Department of Defense has participated as a member of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). This committee, comprised of a wide range of stakeholders, was chartered by the Environmental Protection Agency (EPA) to develop consensus policy recommendations for improving environmental restoration at Federal facilities. In February 1993, the FFERDC issued the ''Interim Report of the FFERDC: Recommendations for Improving the Federal Facilities Environmental Restoration Decision-Making and Priority-Setting Processes.'' This report recommended that Federal agencies become more proactive in providing information about restoration activities to stakeholders and that citizen advisory boards be established to provide advice to government agencies that conduct restoration at Federal facilities. This report also suggested the initiation of technical assistance funding.

The Department of Defense has issued policy for establishing RABs at its installations and formerly used defense sites. On September 9, 1993, the Department of Defense issued policy for establishing RABs at installations designated for closure or realignment under the BRAC Acts of 1988 and 1990 where property will be available for transfer to the community. On April 14, 1994, the Department of Defense issued RAB policy for non-closing installations as part of Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program (DERP). The policy called for the establishment of RABs at DoD installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are: (1) a government agency request that a RAB be formed; (2) fifty local residents sign a petition requesting that a RAB be formed; (3) an installation determines that a RAB is needed; or (4) the closure or realignment of an installation involves the transfer of property to the community. On September 27, 1994, the Department of Defense and EPA issued joint RAB guidelines on how to develop and implement a RAB. Finally, on August 6, 1996, the Department of Defense proposed regulations governing the characteristics, composition, and establishment of RABs pursuant to the National Defense Authorization Act (NDAA) for 1995 (61 FR 40764–40772).

The proposed of a RAB is to bring together people who reflect the diverse interests within the local community, enabling an early and continual flow of information among the affected community, the Department of Defense, and environmental oversight agencies. Recognizing the importance of citizen participation in the environmental restoration process, Congress authorized the provision of technical assistance to aid public participation in Section 326 of NDAA–95. In response to this authority, the Department of Defense published a Notice of Request for Comments (May 24, 1995, 60 FR 27460–27463) on alternative methods for funding technical assistance. In 1996, Congress revised this authority in Section 324 of NDAA–96. This final rule establishes regulations for DOD Components to provide technical assistance to RABs and TRCs, and details the specific requirements for obtaining this assistance consistent with this new authority. Proposed regulations regarding the characteristics, composition, and establishment of RABs were previously published on August 6, 1996 (61 FR 40764–40772).

The Department of Defense published a proposed rule, Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities, on December 27, 1996 (61 FR, 68174–68197). Public comments on this proposed rule were considered and, where appropriate, incorporated into this final rule.

III. Summary of Significant Changes From Proposed Rule

The substance of this final rule does not differ significantly from the proposed rule published on December 27, 1996. Principal among the changes is the addition of an appeals process, described more fully in Section IV of this preamble and located in Section 203.19 of the final rule. Because of devolvement of the Defense Environmental Restoration Account, the authority to grant waivers, in section 203.4, has been delegated to the DoD Component Secretary, or equivalent, for the installation in question. In addition, the Department of Defense has, in section 203.10, clarified the types of projects that will be eligible for TAPP funding.

IV. Description of the Final Rule and Responses to Major Comments

This rule finalizes the proposed rule ''Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities'' (61 FR, 68174–68197). This section explains the DoD's final action, based on the rationale presented in the proposed rule and the DoD's review of the public comments.

To facilitate the reader's review of this final rule and to streamline the overall structure, this section also contains the DoD's responses to the most significant comments after each of the topics discussed. If a particular section does not contain a response to comment section, then either no comments were received on that topic, or the Department of Defense has chosen to place its response in the background document entitled ''Technical Assistance for Public Participation Response to Comments Background Document.'' This background document contains a complete discussion of the DoD's responses to comments and can be found in the docket for this rulemaking. This document provides a complete record of the public comments followed by the DoD's responses.

A. TAPP Process

An overview of the process by which community members of RABs and TRCs can obtain technical assistance is provided in Sections 203.4 and 203.5 of the final rule. The process begins with an evaluation by the community members of RABs and TRCs of their technical assistance needs and whether these needs can be met by existing avenues of support. These other available sources of assistance can include the installation's restoration contractors, installation or other DoD personnel, RAB or TRC members, volunteer sources from within the community, or state, local, or federal personnel responsible for the oversight of restoration activities at the installation. If these sources cannot provide the needed assistance, or if the selection of an alternate provider will contribute to environmental restoration activities and the community acceptance of such activities, the community members of RABs and TRCs may submit to the installation a request for technical assistance. This request should specify in as much detail as possible the type of assistance requested, the timeframe for which the assistance is required, and, if known, one or more potential providers.

Based upon the details provided in the request, the installation commander or other designated authority will determine whether the project meets the eligibility requirements outlined in this final rule. If the project is not approved, the RAB/TRC will receive a written explanation for that decision. If the project is approved, the installation commander will forward the application to the appropriate contracting authority. The contracting authority will issue

purchase orders to obtain the desired technical assistance subject to certain funding limitations. If multiple purchase orders are needed to assist community members of a particular RAB or TRC, the combined sum of these purchase orders cannot exceed $100,000 or, during any one year, the lesser of $25,000 or 1 percent of the installation's projected environmental restoration cost-to-complete. Note that these limitations refer to the maximum allowable technical assistance funding per RAB/TRC. Resources available within a given year may vary. In addition, the funds to support RABs and TRCs and now TAPP derive from the same budget that funds installation environmental investigations and cleanup.

The government is required to follow the rules and regulations for purchase orders as outlines in the Federal Acquisition Regulations (FAR) (48 CFR Part 13). As a result, the government cannot direct awards to a specified supplier unless the procurement is under $2,500, and then only if the cost is comparable to other suppliers. For procurements over $2,500 but under $100,000, the acquisition is reserved for small businesses, unless there is a reasonable expection that small businesses could not provide the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules. Furthermore, the award must be on a competitive basis. The Department of Defense will solicit bids from those providers meeting the criteria and will select a provider offering the best value to the government. Should the procurement process identify a qualified respondent other than the proposed provider(s) identified by the RAB/TRC, or fail to identify any qualified respondents, the RAB/TRC will be consulted prior to the award of a purchase order. If the Department of Defense determines that the TAPP request represents an eligible project for which no funds are available, it will ask the RAB or TRC to specify whether the project should be reconsidered upon the availability of additional funds.

Community members of RABs and/or TRCs must comply with the reporting requirements established in Section 203.14 of this rule.

Response to Comments

One commenter indicated that the language in the proposed rule seems to indicate that support is only to be provided for projects that will assist in improving public support of DoD cleanup projects. The commenter noted that the public may have alternate viewpoints on such issues as: the need for cleanup, risk levels, technology to be used, etc.

The commenter believes that support should be provided to explore these issues as well, not just projects which validate DoD decisions.

In response, the Department of Defense intends that support be provided to allow the RAB/TRC members to better understand and provide input into DoD's decision process, and does not agree with the commenter that the rule implies that support will be provided only for projects that validate DoD's position.

Some commenters expressed concern that approval for TAPP projects goes through the installation commander.

In response, the installation commander has ultimate authority for the installation restoration program at his/her installation, and the Department of Defense feels it is the responsibility of that commander (or other service-designated authority) to make the decisions affecting the installation's cleanup budget and its ability to meet cleanup goals and requirements. Each installation commander or designated authority will receive guidance to help determine approval processes for potential TAPP projects. In the event the RAB does not agree with the decision of the installation commander, it can appeal the decision through the appeals process outlined in section 203.19 of this final rule.

Several commenters questioned the funding process to be used. For instance, one commenter inquired whether RABs would have access to a full year's allowance (presumably meaning the full annual funding amount of $25,000 or 1% of the installation's total projected environmental restoration cost-to-complete), even if the first project is less than that amount. Other commenters wanted to clarify whether approval would be subject to available funding, or if there was instead a ''guarantee'' of support. Finally, several commenters stated that TAPP support should be readily available, or projects could suffer while waiting.

When RABs/TRCs identify a need for technical assistance, the Department of Defense will program funds for TAPP support. The sources of TAPP funding are the Environmental Restoration Accounts established for the DoD Components. Therefore, it competes with study, cleanup, and even RAB funding. The installations, with input from their RAB/TRCs, will have to determine how tradeoffs will be made between these important activities. It is DoD's intention that once a project is identified and approved, the procurement of a provider will occur as quickly as possible to avoid potential impacts on installation schedules. However, procurement of the assistance provider is subject to availability of funds.

Each DoD Component will establish procedures for TAPP funding. They will not automatically set aside $25,000 or 1% of the installation's total projected environmental restoration cost-to-complete for each RAB/TRC for TAPP each year, because some RABs/TRCs may not need TAPP support. There are no restrictions to having more than one TAPP project a year as long as the annual limit of $25,000 or 1% of the installation's total projected environmental cost-to-complete is not exceeded.

Commenters questioned whether the criteria established for obtaining technical support can ever be met. For example, the first criteria states that TRCs and RABs may request assistance only if they demonstrate that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation do not have the technical expertise necessary for achieving the objective. The commenter believes this argument will be difficult to make. Additionally, the commenter wants to know what is required to show that support isn't available through these sources? The commenter continued in his argument that the criteria for obtaining assistance were unlikely to be met. He stated that the criteria regarding enhancing the timeliness of restoration activities at the installation is certainly not helped by the involvement of a new contractor. Finally, the commenter stated that the final criterion that the technical assistance will contribute to community acceptance of the installation's restoration activities, is likely not to be met by bringing in outside opinion.

In response, the criterion cited by the commenter was imposed by the NDAA of 1996 and are intended to conserve limited resources for TAPP funding and to encourage the use of all available resources. The Department of Defense anticipates that much of the technical expertise required by RABs will be available through existing installation environmental restoration contractors or through the regulatory and/or installation or other DoD personnel working on the program. The Department of Defense encourages the use of these resources to the maximum extent possible, and notes that commenters from some RABs were quite

vocal in their support for these avenues of support. Other sources of support, such as volunteer services from local universities or other experts or assistance from states and local health and environmental organizations, should also be considered to preserve limited TAPP resources. However, there may be circumstances, such as specific knowledge of local environmental conditions or knowledge of an alternative technology, which require expertise not available through Federal, State, or local oversight agencies. In these instances, the only requirement is that the RAB provide a statement in their request for technical assistance that states why their requirements cannot be met by those agencies. The Department of Defense also points out that the criterion noted above is one of two criteria for obtaining assistance, either one of which is sufficient. The full text of the second criterion cited by the commenter refers to enhancing the efficiency, effectiveness, or timeliness of environmental restoration activities. To that end, the Department of Defense believes that an informed RAB membership is better able to contribute to the restoration program than one unfamiliar with technical details.

Finally the Department of Defense believes that community acceptance may be enhanced through the contributions of outside sources of expertise, particularly when that source can verify to the community that the proposed restoration activities advocated by the Department of Defense are appropriate. Community acceptance is greatly influenced by community understanding. Technical assistance is intended to increase the RAB's understanding of the DoD environmental restoration program so that they may make meaningful contributions to the process. As RAB input is incorporated into the restoration program, environmental restoration becomes a cooperative effort involving all stakeholders. Carefully defining the type of assistance needed will limit the possibility that the introduction of a new contractor will hinder rather than enhance community understanding.

B. Eligible Applicants

Eligible applicants for TAPP are community members of RABs or TRCs established in accordance with 32 CFR part 202 (61 FR 40764–40772). Furthermore, the RABs or TRCs must have at least three community members to ensure community interests are broadly represented. The applicant must certify that the request represents the wishes of a simple majority of the community members of the RAB or TRC. Certification includes, but is not limited to, the results of a roll call vote of community members of the RAB or TRC documented in the meeting minutes.

Response to Comments

Commenters requested clarification on the definition of community members of RABs or TRCs, specifically whether state and local government officials could be considered community members for purposes of this final rule.

The Department of Defense considers state and local government employees on the RAB or TRC to have full membership in that body. However, for purposes of determining TAPP projects, the Department of Defense intends that RAB/TRB community members be limited to residents of the community affected by or potentially affected by the installation. In situations where community residents are also members of the Federal, state or local government, their participation in the TAPP process would not be excluded, provided they were not expressing opinions clearly derived from their status as government employees. As with the proposed RAB rule, however, the Department of Defense intends that the actual operations of individual RABs and TRCs be determined largely by the participants, and encourages each organization to develop its own guidelines for determining both membership at large and the subset of community members eligible to assist in the development of TAPP projects.

C. Eligible Activities

TAPP procurements should be pursued by the RAB or TRC only to the extent that Federal, State, or local agencies responsible for overseeing environmental restoration at the facility do not have the necessary technical expertise for the proposed project, or the proposed technical assistance will contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation and is likely to contribute to community acceptance of those activities.

The list of eligible activities, section 203.10, of this final rule has been expanded to clarify eligible projects and provide examples. The final rule now provides that eligible projects include those projects designed to:

(1) Interpret technical documents, such as installation restoration program site investigation, engineering, and decision documents; risk assessments, including baseline and ecological risk assessments conducted by the installation; and health assessments, such as those conducted by Agency for Toxic Substances and Disease Registry (ATSDR).

(2) Assess technologies.

(3) Participate in relative risk evaluations.

(4) Understand health implications.

(5) Provide technical training, where appropriate.

Response to Comments

Several commenters wanted the list of eligible projects expanded to include some form of community outreach and the ability to generate new or primary data. In response, DoD believes community outreach should not be a part of the TAPP program. Community outreach is a fundamental part of an installation's community relations program, and should be conducted within the context of that program. One mechanism used successfully by many installations is the development and publication of fact sheets or newsletters, providing important information to the general public about the installation's restoration program. This activity is funded by the installation's environmental restoration and Base Realignment and Closure (BRAC) funding, which covers administrative costs incurred by the RABs. The Department of Defense believes that the goal of the TAPP program is to enhance participation through increased understanding of the technical issues of the cleanup program, and maintains that the limited funding available for that purpose should be directed at that goal.

The generation of new data is the responsibility of the lead agency—in this case the Department of Defense. Furthermore, the Department of Defense works closely with the regulatory agencies to develop investigation strategies to ensure potential hazards are adequately characterized. This consultation and coordination is an important part of the partnership the Department of Defense maintains with regulatory agencies as cleanup proceeds. If the RAB identifies a circumstance where additional data collection may be necessary, these concerns should be communicated to the Department of Defense, where the final decisions on the restoration program reside, or to the appropriate regulatory agencies if the Department of Defense is not responsive.

D. Technical Assistance for Public Participation Provider Qualifications

The Department of Defense has determined that the technical assistance

providers must possess certain minimum credentials. These include:

(1) Demonstrated knowledge of hazardous or toxic waste issues and/or laws.

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering).

(3) Ability to translate technical information into terms understandable by lay persons.

In addition, technical assistance providers should posses the following credentials to ensure they will be qualified to assist the community members of RABs and TRCs in understanding the environmental restoration program:

(1) Experience working on hazardous or toxic waste problems.

(2) Experience in making technical presentations.

(3) Demonstrated writing skills.

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

The technical assistance provider's qualifications will vary according to the type of assistance to be provided. Community members of the RAB/TRC may suggest additional provider qualifications as part of the application for technical assistance. These additional qualifications may be used by the Department of Defense to target the most appropriate providers during the procurement process. Examples of such criteria could include prior work in the area, knowledge of local environmental conditions or laws, specific technical capabilities, or other relevant expertise.

Response to Comments

One commenter noted that non-profits and universities should be eligible TAPP contractors.

In response, it was not the Department of Defense's intent to exclude qualified TAPP providers from eligibility, in either the proposed TAPP rule or this final rule. However, the use of purchase orders to obtain support does require the Department of Defense to follow procurement policies outlined in the FAR (48 CFR Part 13). Purchase orders are generally reserved for small businesses unless one of several situations apply. In circumstances where small businesses cannot be identified that meet the criteria for procurement, a contract can be awarded to a qualified bidder that is not a small business. Examples of such circumstances include situations where conflict of interest precludes otherwise acceptable small businesses from participation, where knowledge of specific technical capabilities or of specific proprietary technologies is required. The Department of Defense recognizes that in many instances, RAB requirements for support will specify criteria for the potential provider that may be met only by non-profits or universities, and envisions no difficulties in awarding procurements to these types of institutions. As part of the guidance under development for this program, the Department of Defense will provide information to assist RABs and the DoD contracting officers in determining appropriate circumstances for contracting with technical assistance providers that are not small businesses.

E. Submission of Application

The applicant must submit a TAPP application to begin the TAPP procurement process. The application form is included as Appendix A of this part and can be obtained from the DoD installation, the military department headquarters, or directly from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301–3400, telephone (703) 697–5372 or (703) 697–7475.

The applications will not be considered complete until the following data elements have been entered into the form:

(a) Installation.

(b) Source of TAPP request (name of RAB or TRC).

(c) Certification of majority request.

(d) RAB/TRC contact point for TAPP project.

(e) Project title.

(f) Project type (e.g., data interpretation, training, etc.).

(g) Project purpose and description (descriptions, time and locations of products or services desired).

(h) Statement of eligibility of project.

(i) Proposed provider, if known.

(j) Specific qualifications or criteria for provider.

Response to Comments

A few commenters argued that the application process is to complex. They noted that support might be required just to prepare the project description and/or the application.

The principal requirement for the RABs in applying for technical assistance is too develop a project that meets their needs in understanding some aspect of the installation's restoration program. Once this need has been communicated to the Department of Defense, the government assumes the responsibilities for obtaining and monitoring the performance of the technical assistance provider. The application form merely formalizes the process the RABs should go through to develop their project requirements. Additional details, such as information about a potential technical assistance provider, are optional and are only intended to help speed up the procurement process.

Other commenters stated that RABs and TRCs should have access to additional support, either through an additional purchase order or through access to third party expertise, such as could be provided by Technical Outreach Services to Communities (TOSC) providers, in order to determine the requirements for their TAPP project. (TOSC is a program of the Environmental Protection Agency's Hazardous Substance Research Centers to provide information, technical and educational training, workshops, and site assistance for communities and RABs dealing with hazardous substance issues.)

In response, the Department of Defense believes the RABs, in concert with other members of the public, if necessary, are best positioned to determine their needs for technical support. The Department of Defense, State, and local government members of the RAB will be available for support in developing and preparing a TAPP request, should the RAB community members desire their input. Furthermore, guidance to assist communities and DoD installations with this program is currently under development by the Department of Defense and will be available to RAB members.

One commenter stated that preparation of the TAPP request imposes too much burden on the RAB with no reimbursement for time and effort. The commenter believed that this effort should be an eligible expense.

The Department of Defense reiterates that the TAPP request merely puts in writing the desires of the community members of the RAB to procure technical assistance. As such, the principal required information is a description of the proposed project. The Department of Defense has minimized the burden to community members of RABs/TRCs by developing a short application form and performing the contract administration.

F. Appeals Process

Although not specifically raised as an issue by commenters, the Department of Defense recognizes that disputes can arise at several junctures in the TAPP process. Three situations in which disagreements could occur are:

(a) The RAB/TRC may dispute the findings of the installation commander that the proposed TAPP project is ineligible, either because of the failure of the RAB to adequately consider alternate sources of assistance or because the project does not meet the eligibility criteria established in the final rule.

(b) The RAB may dispute the findings of the contracting officer that (1) the preferred provider is inadequate, (2) the preferred provider is not cost effective, or (3) other providers identified in the acquisition process more clearly meet the requirements of the task.

(c) After the selection of a provider, a dispute can arise because the government contracting officer and the RAB/TRC do no agree that the provider has met the terms of the procurement. In this situation, the process outlined in the FAR (48 CFR Part 46) would apply.

There is a sincere desire by the Department of Defense to avoid disputes and to foster an atmosphere of cooperation between the RAB or TRC and the installation. Each DoD Component has a hierarchical organizational structure with clearly defined chains-of-command. In the event that disputes do occur, appeals will be considered within the chain-of-command, and, in general, will be resolved at the lowest possible level. The highest level of appeal will be at the DoD Component Deputy Assistant Secretary level with authority over the environmental restoration and BRAC environmental programs. In all cases, inherently governmental functions, such as records of decision, are not subject to appeal, and issues regarding contracting must be governed by the FAR (48 CFR Part 37).

V. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order 12866 (October 4, 1993, 58 FR 51735), the Department of Defense must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under Section 3(f), the order defines a ''significant regulation action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, the OMB has determined this rule is a ''significant regulatory action'' because it may raise novel legal or policy issues. As such, this action was submitted to the OMB for review, and any comments or changes made in response to the OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that agencies evaluate the effects of rules for three types of small entities:

(1) Small Businesses (as defined in the Small Business Administration regulations);

(2) Small organizations (independently owned, non-dominant in their field, non-profit); and

(3) Small government jurisdictions (serving communities of less than 50,000 people).

The Department of Defense has considered the interests of small businesses and small organizations by means of the use of purchase orders to obtain technical assistance. As stated in the FAR (48 CFR Part 13), those purchase orders under $100,000 are reserved for small businesses, unless it can be demonstrated that small businesses are unable to provide the necessary service or product. Only a limited number of small non-profit organizations are expected to be affected by this program as it is likely that only those non-profit organizations located near Department of Defense installations with ongoing environmental restoration programs will, in most cases, provide the requested technical assistance. The Department of Defense was careful not to impose additional reporting requirements on the public and to stay within the reporting requirements quota for procurements. In keeping with the Simplified Acquisition Procedures (SAP), the Department of Defense has sought to increase the dollar amount of small purchase orders to simplify the procurement process. The Department of Defense has deliberately written the regulations to encourage small entities to apply. Given the limited funding available to this program and the process outlined of Section 203.4 of this final rule, it is not expected that this rulemaking will have a significant economic impact on a substantial number of small entities and, therefore, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting and record keeping provisions of this final rule were submitted to the OMB for review under Section 3507(d) of the Act.

The collection of information is necessary to identify products or services requested by community members of RABs/TRCs to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will help communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of RABs/TRCs receiving the products and services.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of the regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, the Department of Defense generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed, section 205 of the UMRA generally requires the Department of Defense to identify and consider a reasonable number of regulatory alternatives that achieve the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the Department of Defense to adopt an

alternative other than the least costly, most cost-effective, or least burdensome alternative if the Secretary publishes with the final rule an explanation why that alternative was not adopted. Before the Department of Defense establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input into the development of the Department of Defense's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Department of Defense has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 32 CFR Part 203

Administrative practice and procedure, Technical assistance, Public assistance programs, Environmental protection, Federal buildings and facilities, Organization and functions (Government agencies).

Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, is amended to add part 203 to read as follows:

PART 203—TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) IN DEFENSE ENVIRONMENTAL RESTORATION ACTIVITIES

Sec.

203.1 Authority.
203.2 Purpose and availability of referenced material.
203.3 Definitions.
203.4 Major components of the TAPP process.
203.5 TAPP process.
203.6 Cost principles.
203.7 Eligible applicants.
203.8 Evaluation criteria.
203.9 Submission of application.
203.10 Eligible activities.
203.11 Ineligible activities.
203.12 Technical assistance for public participation provider qualifications.
203.13 Procurement.
203.14 RAB/TRC reporting requirements.
203.15 Method of payment.
203.16 Record retention and audits.
203.17 Technical assistance provider reporting requirements.
203.18 Conflict of interest and disclosure requirements.
203.19 Appeals process.
Appendix A to Part 203—Technical Assistance for Public Participation Application Request Form

Authority: 10 U.S.C. 2705.

§ 203.1 Authority.

Part 203 is issued under the authority of section 2705 of Title 10, United States Code. In 1994, Congress authorized the Department of Defense (DoD) to develop a program to facilitate public participation by providing technical assistance to local community members of Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs) (section 326 of the National Defense Authorization Act for Fiscal Year 1995, Pub.L. 103–337). In 1996, Congress revised this authority (section 324 of the National Defense Authorization Act for Fiscal Year 1996, Pub.L. 104–112). It is pursuant to this revised authority, which is codified as new subsection (3) of section 2705, that the Department of Defense issues this part.

§ 203.2 Purpose and availability of referenced material.

(a) This part establishes the Technical Assistance for Public Participation (TAPP) program for the Department of Defense. It sets forth policies and procedures for providing technical assistance to community members of TRCs and RABs established at DoD installations in the United States and its territories. This part sets forth the procedures for the Department of Defense to accept and evaluate TAPP applications, to procure the assistance desired by community members of RABs and TRCs, and to manage the TAPP program. These provisions are applicable to all applicants/recipients of technical assistance as discussed in § 203.4 of this part.

(b) Any reference to documents made in this part necessary to apply for TAPP (e.g., the Office of Management and Budget (OMB) Circulars or DoD forms) are available through the DoD installations, the military department headquarters, or from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), 3400 Defense Pentagon, Washington, DC 20301–3400.

§ 203.3 Definitions.

As used in this part, the following terms shall have the meaning set forth:

Affected. Subject to an actual or potential health or environmental threat arising from a release or a threatened release at an installation where the Secretary of Defense is planning or implementing environmental restoration activities including a response action under the Comprehensive Environmental Response Compensation and Liability Act as amended (CERCLA), corrective action under the Resource Conservation and Recovery Act (RCRA), or other such actions under applicable Federal or State environmental restoration laws. This would include actions at active, closing, realigning, and formerly used defense installations. Examples of affected parties include individuals living in areas adjacent to installations whose health is or may be endangered by the release of hazardous substances at the facility.

Applicant. Any group of individuals that files an application for TAPP, limited by this part to community members of the RAB or TRC.

Application. A completed formal written request for TAPP that is submitted to the installation commander or to the identified decision authority designated for the installation. A completed application will include a TAPP project description.

Assistance provider. An individual, group of individuals, or company contracted by the Department of Defense to provide technical assistance under the Technical Assistance for Public Participation program announced in this part.

Assistance provider's project manager. The person legally authorized to obligate the organization executing a TAPP purchase order to the terms and conditions of the DoD's regulations and the contract, and designated by the provider to serve as the principal contact with the Department of Defense.

Community Co-chair. The individual selected by the community members of the RAB/TRC to represent them.

Community member. A member of the RAB or TRC who is also a member of the affected community. For the purpose of this part, community members do not include local, State, or Federal government officials acting in any official capacity.

Community point of contact. The community member of the RAB or TRC designated in the TAPP application as the focal point for communications with the Department of Defense regarding the TAPP procurement process. The community point of contact is responsible for completing the reporting requirements specified in § 203.14 of this part.

Contact. A written agreement between the installation or other instrumentality of the Department of Defense and another party for services or supplies necessary to complete the TAPP project.

Contracts include written agreements and subagreements for professional services or supplies necessary to complete the TAPP projects, agreements with consultants, and purchase orders.

Contracting officer. The Federal official designated to manage the contract used to fulfill the TAPP request by the RAB or TRC.

Contractor. Any party (e.g., Technical Assistance Provider) to whom the installation or other instrumentality of the Department of Defense awards a contract. In the context of this part, it is synonymous with assistance provider.

Cost estimate. An estimate of the total funding required for the assistance provider to complete the TAPP project.

DoD Component. The military services including the Army, Navy, Marine Corps, and Air Force and those defense agencies with an environmental restoration program.

DoD Component Deputy Assistant Secretary. The individual in the office of the Secretary of the Army, Navy, Air Force responsible for making environmental decisions for their component or the director of the Defense Agencies.

DoD Installation. A facility that is controlled or operated or otherwise possessed by a department, or agency of the United States Department of Defense within the United States and its territories. In the context of this part, formerly used defense sites (FUDS) are included within the definition of a DoD Installation.

DoD RAB Co-chair. The individual selected by the installation commander, or equivalent, to serve as the installation co-chair of the RAB, represent DoD's interests, serve as liaison with community RAB members, and advocate RAB concerns within the installation staff.

EPA. The United States Environmental Protection Agency.

Firm fixed price contract. A contract wherein funding is fixed, prior to the initiation of a contract, for an agreed upon service or product.

Formerly Used Defense Site (FUDS). A site that has been owned by, leased to, possessed by, or otherwise under the jurisdiction of the Department of Defense. The FUDS program does not apply to those sites outside U.S. jurisdiction.

Purchase order. An offer by the Government to buy supplies or services from a commercial source, upon specified terms and conditions, the total cost of which cannot exceed the small purchase limit of $100,000. Purchase orders are governed by Federal Acquisition Regulations (FAR) (48 CFR part 13), and the Simplified Acquisition Procedures (SAP).

Restoration Advisory Board (RAB). The RAB is a forum for representatives of the Department of Defense, local community, and EPA and/or State, local, and tribal officials to discuss and exchange information about the installation's environmental restoration program. The RAB provides stakeholders an opportunity make their views known, review progress and participate in dialogue with the decision makers.

Statement of Work. That portion of a contract which describes the actual work to be done by means of specifications or minimum requirements, quantities, performance dates, time and place of performance, and quality requirements. It is key to any procurement because it is the basis for the contractor's response and development of proposed costs.

TAPP approval. Signifies that the Department of Defense has approved the eligibility of the proposed TAPP project and will, subject to the availability of funds, undertake an acquisition to obtain the services specified in the TAPP application submitted by the RAB or TRC. The government will conduct the acquisition in accordance with all of the applicable rules and requirements of the FAR and the SAP. Approval does not constitute an agreement to direct an award to a specific source if such an action would be contrary to the FAR.

TAPP project description. A discussion of the assistance requested that includes the elements listed in Section 203.10 of this part. The project description should contain sufficient detail to enable the Department of Defense to determine the nature and eligibility of the project, identify potential providers and estimate costs, and prepare a statement of work to begin the procurement process.

Technical assistance. Those activities specified in § 203.10 of this part that will contribute to the public's ability to provide input to the decision-making process by improving the public's understanding of overall conditions and activities. Technical assistance may include interpreting technical documents; assessing technologies; participating in relative risk evaluations, understanding health implications; and, training.

Technical assistance does not include those activities prohibited under Section 203.11 of this part, such as litigation or underwriting legal actions; political activity; generation of new primary data such as well drilling and testing, including split sampling; reopening final DoD decisions or conducting disputes with the Department of Defense; or epidemiological or health studies, such as blood or urine testing.

Technical Review Committee (TRC). A group comprised of the Department of Defense, EPA, State, and local authorities and a public representative of the community formed to meet the requirements of 10 U.S.C. 2705(c), the Department of Defense Environmental Restoration Program. Primarily functioning to review installation restoration documents, these committees are being expanded and modified at installations where interest or need necessitates the creation of a RAB.

§ 203.4 Major components of the TAPP process.

(a) The Department of Defense will issue purchase orders to technical assistance, facilitation, training, and other public participation assistance providers subject to the purchase limit per order as resources continue to be available. If multiple purchase orders are needed to assist community members of a particular RAB or TRC, the combined sum of these purchase orders cannot exceed $100,000 or, during any one year, the lesser of $25,000 or 1 percent of the installation's total projected environmental restoration cost-to-complete. Note that these limitations refer to the maximum allowable technical assistance funding per RAB/TRC. Resources available within a given year may vary. These limitations apply unless a waiver is granted by the DoD Component Secretary or equivalent for the installation in question. The $100,000 total and $25,000 annual limitations may be waived, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the installation, the level of activity at the installation, projected total needs as identified by the TAPP recipient, the size and diversity of the affected population, and the ability of the TAPP recipient to identify and raise funds from other sources.

(b) Community members of the RAB/TRC will provide a description of the services requested (TAPP Project Description) and, if desired, the names of one or more proposed technical assistance providers to the DoD RAB Co-Chair, who will ensure the application is submitted to the installation commander or other designated authority and to the appropriate DoD contracting office. Technical assistance providers proposed by the community members of a RAB or TRC at each DoD installation that meets the minimum set

of organizational qualifications guidelines provided by the Department of Defense in § 203.12 of this part will be added to the governments list of bidders for the proposed procurement.

§ 203.5 TAPP process.

This section provides an overview of the TAPP process. Specific details referred to in this section can be found in subsequent sections of this part.

(a) *TAPP funding.* Funding for this TAPP program will come from the Environmental Restoration Accounts established for Army, Navy, and Air Force for operational installations. The funding for Defense Agencies' operating installations will be from the Defense-Wide Environmental Restoration Account. Funding will be from the component's base closure account for transferring or closing installations. Funding for Formerly Used Defense Sites will come from the Environmental Restoration Account established for Formerly Used Defense Sites. After justification of the TAPP proposal, each DoD Component will make funds available from their individual installation's environmental restoration or BRAC accounts, considering a number of factors related to the restoration program at the installation and its impact upon the community. These factors include, but are not limited to:

(1) Closure status.

(2) Budget.

(3) Installation restoration program status.

(4) Presence (or absence) of alternate funding.

(5) Relative risk posed by sites at the installation.

(6) Type of task to be funded.

(7) Community concern.

(8) Available funding.

(b) *Identification of proposed TAPP project.* Eligible applicants of RABs and TRCs, established in § 203.7 of this part, should determine whether a TAPP project is required to assist the community members of the RAB or TRC to interpret information regarding the nature and extent of contamination or the proposed remedial actions. Eligibility requirements for TAPP projects are described in §§ 203.10 and 203.11 of this part. In keeping with the requirements of 10 U.S.C. 2705(e), the RAB or TRC must be able to demonstrate that the technical expertise necessary for the proposed TAPP project is not available through the Federal, State, or local agencies responsible for overseeing environmental restoration at the installation, or that the selection of an independent provider will contribute to environmental restoration activities and the community acceptance of such activities. In addition, the Department of Defense encourages the RAB or TRC to seek other available sources of assistance prior to submitting a request for TAPP in order to preserve limited resources. These sources include DoD's installation restoration contractor, or other DoD contractors or personnel, EPA or state regulatory personnel, volunteer services from local universities or other experts, or assistance from state and local health and environmental organizations.

(c) *TAPP project request.* The RAB or TRC should notify the installation of its intent to pursue TAPP upon the determination that other sources of assistance are unavailable or unlikely to contribute to the community acceptance of environmental restoration activities at the installation and should prepare a formal request specifying the type of assistance required and, if desired, one or more sources for this assistance. Details concerning this request are stated in § 203.9 of this part. The RAB or TRC must certify to the Department of Defense that the TAPP request represents a request by a majority of the community members of the RAB or TRC. The RAB or TRC should ensure that the request meets the eligibility requirements specified in §§ 203.10 and 203.11 of this part. Furthermore, the RAB or TRC may outline additional criteria for the Department of Defense to consider in the selection of a provider (such as knowledge of local environmental conditions or specific technical issues, a prior work history within the study area which has relevant specific circumstances or unique challenges, or other relevant expertise or capabilities), keeping in mind that providers must meet the minimum technical qualifications outlined in § 203.12 of this part. The formal request should be submitted to the installation commander or designated decision authority, either directly, or through the DoD RAB Co-chair. The installation commander, or other designated decision authority, will review the proposed project to determine whether the proposed project conforms to the eligibility requirements. If the installation commander, or other designated authority, fails to approve the project request, the rationale for that decision will be provided to the RAB/TRC in writing.

(d) *Purchase orders.* Upon receipt of a completed TAPP request, the installation will begin the procurement process necessary to obtain the desired services by means of a purchase order or will forward the request to the contracting authority designated by the DoD Component to act for that installation. The government is required to follow the rules and regulations for purchase orders as outlined in the FAR (48 CFR part 13). As a result, the government cannot direct awards to a specified supplier unless the procurement is under $2,500, and then only if the cost is comparable to other suppliers. For procurements over $2,500 but under $100,000, the acquisition is reserved for small businesses, unless there is a reasonable expectation that small businesses could not provide the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules. Furthermore, the award must be on a competitive basis. In addition to proposing potential providers, the application for technical assistance may indicate specific criteria or qualifications that are deemed necessary by the RAB/TRC for the completion of the project to their satisfaction. This information will be used to assist the Department of Defense in preparing a bidders list. The Department of Defense will solicit bids from those providers meeting the criteria and will select a provider offering the best value to the government. Should the procurement process identify a qualified respondent other than the proposed provider(s) identified by the RAB/TRC or fail to identify any qualified respondents, the RAB/TRC will be consulted prior to the award of a purchase order. If the Department of Defense determines that the TAPP request represents an eligible project for which no funds are available, it will ask the RAB or TRC to specify whether the project should be reconsidered upon the availability of additional funds.

(e) *Reporting requirements.* The applicant must assure that copies of delivered reports are made available to the Department of Defense and must comply with the reporting requirements established in § 203.14 of this part.

§ 203.6 Cost principles.

(a) Non-profit contractors must comply with the cost principles in OMB Circular A–122. Copies of the circular may be obtained from EOP Publications, 725 17th NW, NEOB, Washington, DC 20503.

(b) For-profit contractors and subcontractors must comply with the cost principles in the FAR (48 CFR part 31).

§ 203.7 Eligible applicants.

Eligible applicants are community members of RABs or TRCs. Furthermore, the RABs or TRCs must be

comprised of at least three community members to ensure community interests are broadly represented. The applicant must certify that the request represents the wishes of a simple majority of the community members of the RAB or TRC. Certification includes, but is not limited to, the results of a roll call vote of community members of the RAB or TRC documented in the meeting minutes. Other requirements of the application are detailed in § 203.9 of this part.

§ 203.8 Evaluation criteria.

The Department of Defense will begin the TAPP procurement process only after it has determined that all eligibility and responsibility requirements listed in §§ 203.6, 203.7, and 203.9 of this part are met, and after review of the specific provider qualifications as submitted in the narrative section of the application. In addition, the proposed TAPP project must meet the eligibility criteria as specified in §§ 203.10 and 203.11 of this part. Projects that fail to meet those requirements relating to the relevance of the proposed project to the restoration activities at the installation will not be approved.

§ 203.9 Submission of application.

The applicant must submit a TAPP application to begin the TAPP procurement process. The application form is included as appendix A of this part and can be obtained from the DoD installation, the DoD Component headquarters, or directly from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301–3400. The applications will not be considered complete until the following data elements have been entered into the form:

(a) Installation.

(b) Source of TAPP request (names of RAB or TRC).

(c) Certification of majority request.

(d) RAB/TRC contact point for TAPP project.

(e) Project title.

(f) Project type (e.g. data interpretation, training, etc.).

(g) Project purpose and description (descriptions, time and locations of products or services desired).

(h) Statement of eligibility of project.

(i) Proposed provider, if known.

(j) Specific qualifications or criteria for provider.

§ 203.10 Eligible activities.

(a) TAPP procurements should be pursued by the RAB or TRC only to the extent that Federal, State, or local agencies responsible for overseeing environmental restoration at the facility do not have the necessary technical expertise for the proposed project, or the proposed technical assistance will contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation and is likely to contribute to community acceptance of those activities.

(b) TAPP procurements may be used to fund activities that will contribute to the public's ability to provide advice to decision-makers by improving the public's understanding of overall conditions and activities. Categories of eligible activities include the following:

(1) *Interpret technical documents.* The installation restoration program documents each stage of investigation and decision-making with technical reports that summarize data and support cleanup decisions. Technical assistance may be provided to review plans and interpret technical reports for community members of RABs and TRCs. These reports include, but are not limited to:

(i) Installation restoration program site studies, engineering documents, such as site inspections, remedial investigations, feasibility studies, engineering evaluation and cost analyses, and decision documents (including records of decision);

(ii) Risk assessments, including baseline and ecological risk assessments conducted by the installation; and

(iii) Health assessments, such as those conducted by the Agency for Toxic Substances and Disease Registry (ATSDR).

(2) *Assess technologies.* Technical assistance may be provided to help RAB/TRC community members understand the function and implications of those technologies selected to investigate or clean up sites at the installation.

(3) *Participate in relative risk site evaluations.* Technical assistance may be provided to help RAB/TRC community members contribute to the relative risk evaluation process for specific sites.

(4) *Understand health implications.* Technical assistance may be provided to help RAB/TRC community members interpret the potential health implications of cleanup levels or remedial technologies, or to explain the health implications of site contaminants and exposure scenarios.

(5) *Training, where appropriate.* Technical trainers on specific restoration issues may be appropriate in circumstances where RAB/TRC members need supplemental information on installation restoration projects.

§ 203.11 Ineligible activities.

The following activities are ineligible for assistance under the TAPP program:

(a) Litigation or underwriting legal actions, such as paying for attorney fees or paying for a technical assistance provider to assist an attorney in preparing legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site.

(b) Political activity and lobbying as defined by OMB Circular A–122.

(c) Other activities inconsistent with the cost principles stated in OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(d) Generation of new primary data, such as well drilling and testing, including split sampling.

(e) Reopening final DoD decisions, such as the Records of Decision (see limitations on judicial review of remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 113(h)) or conducting disputes with the Department of Defense).

(f) Epidemiological or health studies, such as blood or urine testing.

(g) Community outreach efforts, such as renting a facility and conducting public meetings, or producing and distributing newsletters.

§ 203.12 Technical assistance for public participation provider qualifications.

(a) A technical assistance provider must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues and/or laws.

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering).

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A technical assistance provider should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems.

(2) Experience in making technical presentations.

(3) Demonstrated writing skills.

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

(c) The technical assistance provider's qualifications will vary according to the type of assistance to be provided. Community members of the RAB/TRC may suggest additional provider

qualifications as part of the application for technical assistance. These additional qualifications may be used by the Department of Defense to target the most appropriate providers during the procurement process. Examples of such criteria could include prior work in the area, knowledge of local environmental conditions or laws, specific technical capabilities, or other relevant expertise.

§ 203.13 Procurement.

Procurements will be conducted as purchase orders in accordance with the FAR (48 CFR part 13). Under these procedures, procurements not exceeding $100,000 are reserved exclusively for small businesses, and will be conducted as competitive procurements. Procurements below a value of $2,500 are considered ''micro-purchases.'' These procurements do not require the solicitation of bids and may be conducted at the discretion of the contracting officer.

§ 203.14 RAB/TRC reporting requirements.

The community point of contact of the RAB or TRC must submit a report, to be provided to the installation and to DUSD(ES), to enable the Department of Defense to meet DoD reporting requirements to Congress. This report should include a description of the TAPP project, a summary of services and products obtained, and a statement regarding the overall satisfaction of the community member of the RAB or TRC with the quality of service and/or products received.

§ 203.15 Method of payment.

The SAP set forth in FAR (48 CFR part 13) require purchase orders to be conducted on a firm-fixed-price basis, unless otherwise authorized by agency procedures. The Department of Defense anticipates all TAPP awards to be firm-fixed-price procurements.

§ 203.16 Record retention and audits.

The recipient technical assistance providers shall keep and preserve detailed records in connection with the contract reflecting acquisitions, work progress, reports, expenditures and commitments, and indicate the relationship to established costs and schedules.

§ 203.17 Technical assistance provider reporting requirements.

Each technical assistance provider shall submit progress reports, financial status reports, materials prepared for the RAB/TRC, and a final report to the DoD installation for the TAPP project as specified by the specific purchase order agreement. The final report shall document TAPP project activities over the entire period of support and shall describe the achievements with respect to stated TAPP project purposes and objectives.

§ 203.18 Conflict of interest and disclosure requirements.

The Department of Defense shall require each prospective assistance provider on any contract to provide, with its bid or proposal:

(a) Information on its financial and business relationship with the installation, RAB/TRC members, or any/all potentially responsible parties (PRPs) at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties.

(b) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists.

(c) A statement that it shall disclose immediately any such information discovered after submission of its bid or after award. The contracting officer shall evaluate such information and shall exclude any prospective contractor if the contracting officer determines the prospective contractor has a potential conflict of interest that is both significant and cannot be avoided or otherwise resolved. If, after award, the contracting officer determines that a conflict of interest exists that is both significant and cannot be avoided or resolved, the contract will be terminated for cause.

(d) Contractors and subcontractors may not be technical assistance providers to community members of RABs/TRCs at an installation where they are performing cleanup activities for the Federal or State government or any other entity.

§ 203.19 Appeals process.

DoD Components will establish an appeals process to settle potential disputes between the Department of Defense and the public regarding certain decisions arising out of the TAPP process. The Department of Defense recognizes that the RAB/TRC may disagree with the findings of the installation commander that a proposed TAPP project is ineligible, either because of the availability of alternate sources of assistance or because the project does not meet the eligibility criteria established in this part. It is in the best interests of the Department of Defense and the community members of RABs and TRCs to anticipate and avoid disputes and to work cooperatively to resolve potential differences of opinion. However, in certain circumstances, the RAB/TRC community members may feel that their needs were not adequately served by the decisions of the Department of Defense. In this instance, the hierarchical structure and chain-of-command within each DoD Component will serve as the avenue for appeal. Appeals will be considered within the chain-of-command, and, in general, will be resolved at the lowest level possible. The highest level of appeal will be at the DoD Component Deputy Assistant Secretary level with authority over the DERP and BRAC environmental programs. Inherently governmental functions, such as the procurement process governed by the FAR, are not subject to appeal.

BILLING CODE 5000–04–M

APPENDIX A TO PART 203 - Technical Assistance for Public Participartion Request Form

TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) APPLICATION

Form Approved
OMB No. 0704-0392
Expires Dec 31, 1999

The public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0392), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO INSTALLATION LISTED IN SECTION I, BLOCK 1.

SECTION I - TAPP REQUEST SOURCE IDENTIFICATION DATA

1. INSTALLATION

2. SOURCE OF TAPP REQUEST *(Name of Restoration Advisory Board (RAB) or Technical Review Committee (TRC)*

3. CERTIFICATION OF MAJORITY REQUEST

4. DATE OF REQUEST *(YYYYMMDD)*

5. RAB POINT OF CONTACT

a. NAME *(Last, First, Middle Initial)*

b. ADDRESS *(Street, Apt. or Suite Number, City, State, ZIP Code)*

c. TELEPHONE NUMBER *(Include Area Code)*

SECTION II - TAPP PROJECT DESCRIPTION

6. PROJECT TITLE

7. PROJECT TYPE *(Data Interpretation, Training, etc.)*

8. PROJECT PURPOSE AND DESCRIPTION *(State anticipated goals of project and relate to increased understanding/participation in restoration process at the installation. Include descriptions, locations, and timetables of products or services requested.)*

9. STATEMENT OF ELIGIBILITY *(Refer to eligibility criteria in S203.10 and S203.11 of TAPP rule. Note other sources that were considered for this support and state reasons why these sources are inadequate.)*

10. ADDITIONAL QUALIFICATIONS OR CRITERIA TO BE CONSIDERED *(Additional qualifications (beyond those specified in S203.12) a provider should demonstrate to perform the project to the satisfaction of the RAB/TRC. Attach separate statement, if necessary.)*

SECTION III - INSTALLATION COMMANDER/DESIGNATED DECISION AUTHORITY APPROVAL

☐ APPROVED ☐ NOT APPROVED	**11. SIGNATURE**	**12. TITLE**	**13. DATE** *(YYYYMMDD)*

DD FORM 2749, DEC 1997 (EG) PREVIOUS EDITION IS OBSOLETE. Designed using Perform Pro, WHS/DIOR, Dec 97

APPENDIX A TO PART 203 - Technical Assistance for Public Participation Request Form

SECTION IV - PROPOSED PROVIDER DATA

14. PROPOSED PROVIDER

a. NAME	**b. ADDRESS** *(Street, Apt. or Suite Number, City, State, ZIP Code)*
c. TELEPHONE NUMBER *(Include Area Code)*	

15. PROVIDER QUALIFICATIONS *(Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)*

16. ALTERNATE PROPOSED PROVIDER *(If known. Attach additional pages as required.)*

a. NAME	**b. ADDRESS** *(Street, Apt. or Suite Number, City, State, ZIP Code)*
c. TELEPHONE NUMBER *(Include Area Code)*	

17. ALTERNATE PROVIDER QUALIFICATIONS *(Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)*

SECTION V - CONTRACTING OFFICE APPROVAL

	APPROVED	**18. SIGNATURE**	**19. TITLE**	**20. DATE** *(YYYYMMDD)*
	NOT APPROVED			

DD FORM 2749 (BACK), DEC 1997

BILLING CODE 5000–04–C

Dated: January 27, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2394 Filed 1–30–98; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 037–1037a; FRL–5955–4]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves revisions of the Iowa State Implementation Plan regarding two local air pollution control agencies. The scope of this action includes updated regulations for the Polk County Public Works Department (PCPWD) and Linn County Health Department (LCHD). These revisions include provisions such as definitions, permit exemptions, visible opacity and open burning.

DATES: This action is effective April 3, 1998, unless by March 4, 1998, adverse or critical comments are received. If the effective date is delayed timely notice will be publised in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: The two local air pollution control agencies in Iowa were created in December 1972. Throughout the past 25 years, these agencies periodically update their regulations to reflect revisions adopted by the Iowa Department of Natural Resources (IDNR) in the Iowa Administrative Code (IAC). This provides consistency for sources throughout the state.

Both the PCPWD and LCHD provided drafts of rule revisions to the EPA beginning in 1994. Since that time, the EPA and IDNR have worked closely with the local agencies to ensure consistency with state and Federal regulations.

These actions led to a request to revise the SIP for both local programs under the signature of Larry Wilson, Director, IDNR, in a letter dated April 2, 1997. Following an assurance that the request met all administrative requirements contained in 40 CFR part 51, the EPA provided a letter of completeness on June 5, 1997.

In general terms, the regulations contained in the ''Polk County Board of Health Rules and Regulations: Chapter V, Air Pollution'' (effective December 18, 1996) and the ''Linn County Air Pollution Control Code of Ordinances'' (effective March 7, 1997) are consistent with applicable portions of federally approved rules contained in the IAC. In a technical support document entitled ''Revision of Iowa Local's State Implementation Plans'' dated September 26, 1997, the EPA has determined that the regulations adopted by both agencies are fully approvable. The rationale for approval is straightforward, and is not repeated here. The reader is encouraged to request and consult this document for specific descriptions of the changes made in the local regulations that are intended to provide consistency with the state's rules and various Federal regulations.

Certain portions of the local rules are not part of the SIP (e.g., new source performance standards). While these updated regulations are an important component of the local air pollution programs, they are excluded from this action because they are not intended to meet the SIP requirements of section 110 of the Act. Therefore, the EPA is not taking action on those portions.

This exclusion regards regulations (which are administered in Iowa by IDNR under various EPA approval and delegations) pertaining to Title V (regulated under part 70), New Source Performance Standards (delegated to the state under section 111), National Emissions Standards for Hazardous Air Pollutants (delegated to the state under section 112), Hazardous Air Pollutants (delegated to the state under section 112), and Sulfur Compounds (portions of which reflect the state's regulation of certain sulfuric acid mist emissions, and approved by the EPA under section 111). In addition, the EPA is not taking action on those portions regarding variances or odors. Finally, as explained in the TSD for this rule, the EPA is not acting on the Linn County definition of ''federally enforceable'' in section 10.2, since it is duplicative of another definition included in the portion of the local rules which specifically use the defined term.

I. Action

The EPA is taking final action to approve revisions that pertain to the SIP submitted on April 2, 1997, for the two local air pollution control agencies in the state of Iowa. These revisions reflect rules adopted by the PCPWD which became effective December 18, 1996, and those adopted by the LCHD which became effective March 7, 1997.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective April 3, 1998, unless, by March 4, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective April 3, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the

Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

B. Executive Order 12866

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

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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 private sector, of $100 million or more. Under section 205, the 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 the 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 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 preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the 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 this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 30, 1997.

Diane Callier,

Acting Regional Administrator, Region VII.

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

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(66) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(66) On April 2, 1997, the Director of the Iowa Department of Natural Resources submitted revisions to the State Implementation Plan (SIP) for the State's two local agencies: the Polk County Public Works Department and Linn County Health Department.

(i) Incorporation by reference.

(A) Revised rules, ''Polk County Board of Health Rules and Regulations: Chapter V, Air Pollution,'' effective December 18, 1996. This revision approves all articles insofar as they pertain to the SIP. Article XIII is specifically excluded from this approval. No action is taken on Sections 5–16(n), 5–16(p), 5–20, and 5–27(3) and (4).

(B) Revised rules, ''Linn County Air Pollution Control Code of Ordinances,'' effective March 7, 1997. This revision approves all sections insofar as they pertain to the SIP. Sections 10.4(1.), 10.11, and 10.15 are specifically excluded from this approval. No action is taken on Sections 10.9(2.), 10.9(3.), 10.9(4.), and the definition of ''federally enforceable'' in Section 10.2.

(ii) Additional material.

(A) Letter from Allan E. Stokes, Iowa Department of Natural Resources, to William A. Spratlin, Environmental Protection Agency, dated May 15, 1997. This letter provides additional information regarding various administrative requirements outlined in 40 CFR part 51.

[FR Doc. 98–2493 Filed 1–30–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA9–1–5540, WA28–1–6613, WA34–1–6937; FRL–5951–2]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Washington State Implementation Plan (SIP) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) for the Yakima, Washington nonattainment area. On March 24, 1989, the Washington Department of Ecology (WDOE) submitted a plan for attaining and maintaining the National Ambient Air Quality Standard (NAAQS) for PM10 in the Yakima PM10 moderate nonattainment area and the plan was amended with additional submittals between 1992 and 1995. EPA proposed to approve and disapprove portions of the SIP submitted by the state of Washington on November 7, 1995. Subsequent to the November, 1995 proposal, EPA received two additional revisions from WDOE, dated November 3, and December 27, 1995 that resolved EPA's concerns in the proposed disapproval of portions of the Yakima PM10 nonattainment plan. Although EPA promulgated a new PM NAAQS, which became effective on September 16, 1997, the requirements which are

the subject of this document arise under the pre-existing PM NAAQS.

EFFECTIVE DATE: This action is effective on March 4, 1998.

ADDRESSES: Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Washington State Department of Ecology, 300 Desmond Drive, Lacey, WA 98503. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW., Washington, DC 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: Regina C. Thompson, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–1498.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1995, EPA published a document in the **Federal Register** proposing a limited approval and limited disapproval of the SIP submitted by the State of Washington for the purpose of bringing about attainment of the NAAQS for PM10 in Yakima, WA (60 FR 56129–56133).

In the Yakima nonattainment area, the Yakima Regional Clean Air Authority (YRCAA), formerly the Yakima County Clean Air Authority, is authorized under State law, as approved by EPA, to implement the CAA. EPA is clarifying that the approved SIP does not extend to lands which are within the boundaries of the Yakama Indian Nation.

The November 7, 1995 proposal provided information on requirements for PM10 nonattainment area SIPs and the history of this rulemaking action. The portions of the plan which did not meet EPA requirements and for which EPA proposed disapproval included: the attainment demonstration; the maintenance demonstration; provisions to assure that reasonably available control measures (RACM) are implemented; the quantitative milestones to be achieved every three years which demonstrate reasonable further progress towards attainment; and, the enforceability of the local authority regulations.

Subsequent to publishing the **Federal Register** proposal, EPA received two submittals from WDOE on November 3, 1995 and December 27, 1995. These submittals addressed the concerns that EPA had with the package as proposed. A Technical Support Document on file at the EPA Region 10 office contains additional analysis of the submittals.

II. Review of State Submittals

A. Attainment Demonstration

The State's November 3, 1995 submittal revised an analysis of emissions from a facility. Previously, the facility's actual emissions were used to estimate its impacts. This was revised so that the facility's allowable emissions were used. This analysis completed the demonstration of attainment and is, therefore, now approved by EPA.

B. Maintenance Demonstration and Quantitative Milestone

The State's November 3, 1995 submittal included a maintenance demonstration and quantitative milestone report. These included the revised emissions prepared for the attainment demonstration above. This completed the maintenance demonstration and quantitative milestone report and is, therefore, now approved by EPA.

C. Implementation of RACM

In the evaluation conducted by EPA to prepare the proposed rule, a number of the YRCAA regulations were found to be less stringent than the Washington Administrative Code (WAC). The December 27, 1995 submittal from the State provided an amended set of YRCAA regulations, which included an acceptable woodsmoke control program. The regulations less stringent than the WAC were revised to make them at least as stringent as the state regulations. The regulations are, therefore, now approved by EPA.

D. Enforceability

The State requires that local agency rules be at least as stringent as the State's regulations. When the YRCAA rules were less stringent than the State rules, it was questionable whether such rules could be enforced, as the rules did not meet State requirements. As the YRCAA rules have been revised with the December 27, 1995 submittal, and are now as stringent as the State rules, the question of enforceability is resolved. The revision addresses EPA's earlier concerns and is, therefore, now approved by EPA.

E. Indian Country

By this approval in today's document, EPA is limiting its approval as not including any reference to authority of YRCAA over activities or air resources that are located within the exterior boundaries of the Yakama Indian Reservation. The WDOE submittal and the YRCAA rules do not specifically assert jurisdiction over air resources within the Yakama Reservation, and do not provide any information to demonstrate authority over such air resources. EPA is guided by Federal law and EPA's Indian Policy in making decisions affecting Tribes. In an earlier decision, EPA declined to approve WDOE programs within the State of Washington within Indian country under the Resource Conservation and Recovery Act, and EPA's decision was upheld in *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985). The court's conclusion was informed by ''well-settled principles of Indian law'' including the principle that ''States are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it.'' *Washington Department of Ecology* v. *EPA*, 752 F.2d at 1469. In 1988, EPA concluded that the application of the State of Washington to operate the Underground Injection Control (UIC) program under the Safe Drinking Water Act was insufficient for EPA to authorize the State of Washington to regulate UIC activities within Indian reservations. See 53 FR 43080, October 25, 1988. More recently, EPA concluded that WDOE did not adequately demonstrate authority to regulate Title V sources located within reservation boundaries. See 59 FR 55813, November 29, 1994. Based on the approach articulated in these prior decisions, EPA concludes that WDOE has not adequately demonstrated authority over air resources located within the Yakama Indian Reservation. Therefore, EPA is by this document clarifying that its approval today does not include any portion of the YRCAA rules that would apply to areas within the exterior boundaries of the Yakama Indian Reservation.

III. Response To Comments

EPA received no comments on the proposed rulemaking of November 7, 1995. (60 FR 56129–56133)

IV. Final Action

EPA approves Washington State's PM10 attainment plan for the Yakima moderate PM10 nonattainment area. This plan is contained in documents submitted to EPA by the State on: March 24, 1989, the original Yakima plan (docket #WA9–1–5540); May 1, 1992, a supplement to the original plan with changes required by the 1990 Clean Air Act Amendments; August 19, 1992, a modeling and inventory supplement to the original plan; February 3, 1994, an addendum with contingency measures;

March 10, 1995, supplemental information primarily on emissions and modeling; June 27, 1995, a supplemental letter on monitoring, public notice and emissions; August 17, 1995, a supplemental emissions analysis; November 3, 1995, more emissions analysis and the maintenance demonstration; and December 27, 1995, revised regulations of the Yakima County Clean Air Authority.

The portions of the December 27, 1995 submittal which EPA approves as part of the SIP for Washington include: Article I on policy, a short title and definitions; Article II on general provisions, except Section 2.01; Article III on violations; Article IV on registration and notice of construction; Article V on emission standards and preventative measures, except Section 5.09; Article VIII on penalties and severability; Article IX on woodstoves and fireplaces; Article XI on the rules' effective date; Article XII on adoption of State regulations, except Section 12.02 on Federal regulations; and Article XIII on fee schedules and other charges, except Sections 13.04 and 13.05.

The portions of the December 27, 1995 submittal on which EPA is taking no action include: Article VI, which covers operating permits, as these were approved in a separate rulemaking process under Title V of the Clean Air Act; Section 5.09 of Article V, Article X, Section 12.02 of Article XII, and Sections 13.04 and 13.05 of Article XIII, as these provisions relate to pollutants other than the criteria pollutants, and cannot be addressed through the State Implementation plan process; and Section 2.01 of Article II and Article VII, as these relate to variances, and variance procedures cannot be approved as part of the state implementation plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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.

EPA has determined that the approval action promulgated 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added 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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 6, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

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

PART 52—[AMENDED]

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

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

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (76) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(76) On March 24, 1989, the Washington Department of Ecology submitted a plan for attaining and maintaining the NAAQS for PM10 in the Yakima PM10 moderate nonattainment area requesting EPA's review and approval. The plan was amended with additional submittals between 1992 and 1995.

(i) Incorporation by reference.

(A) The attainment plan is contained in the following documents: a submittal of March 24, 1989, adopted that same date, from Washington State Department of Ecology, titled, *State Implementation Plan for Particulate Matter—Yakima Area A Plan for Attaining and Maintaining the National Ambient Air Quality Standard for PM10*; a supplement to the plan adopted August 19, 1992, titled, *Supplement State Implementation Plan for Particulate Matter (PM10) in Yakima, WA* and an addendum adopted February 3, 1994 on contingency measures.

(B) Portions of Restated Regulation I of the Yakima County Clean Air Authority, effective December 15, 1995, including Article I; Article II except Section 2.01; Article III; Article IV; Article V except Section 5.09; Article VIII; Article IX; Article XI; Article XII except Section 12.02; and, Article XIII except Sections 13.04 and 13.05.

(ii) Additional material:

(A) August 19, 1992: A modeling and inventory supplement to the original plan.

(B) March 10, 1995: A supplemental information package primarily on emissions and modeling.

(C) June 27, 1995: A supplemental letter on monitoring, public notice and emissions.

(D) August 17, 1995: A supplemental emissions analysis.

(E) November 3, 1995: More emissions analysis and the maintenance demonstration.

[FR Doc. 98–2492 Filed 1–30–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF ENERGY

48 CFR Parts 932 and 970

RIN 1991–AB29

Acquisition Regulation: Contract Financing; Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Acquisition Regulation to incorporate coverage required by the Federal Acquisition Streamlining Act of 1994. These amendments will clarify the allowability of costs reimbursed under Department of Energy contracts and establish the responsibilities of the remedy coordination official within the Department.

DATES: This final rule is effective March 4, 1998.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard, Office of Policy (HR–51), Office of Procurement and Assistance Policy, Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 586–8193 (Phone), (202) 586–0545 (Facsimile), terry.sheppard@hq.doe.gov (Internet).

SUPPLEMENTARY INFORMATION:

I. Background
II. Resolution of Comments
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 12612
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

On June 4, 1997 the Department of Energy published in the **Federal Register** (62 FR 30558) a notice of proposed rulemaking to amend the Department's acquisition regulations based on selected provisions in Sections 2051, 2151, and 2192 of the Federal Acquisition Streamlining Act of 1994 (the Act). These amendments establish certification of cost submissions and assessment of penalties on unallowable costs; a remedy coordination official for payment requests suspected to be based on substantial evidence of fraud; parameters for resolution of questioned costs; guidance for application of cost principles; general prohibitions on severance payments to foreign nationals and compensation costs associated with a change in management control or ownership; clarification of employee morale, recreation, entertainment, executive branch lobbying, company furnished automobiles, and insurance costs which protect the contractor against defects in material or workmanship.

The public comment period closed August 4, 1997. The Department received comments from three entities. Today's final rulemaking adopts the amendments in the notice of proposed rulemaking with certain changes discussed under the Resolution of Comments section.

II. Resolution of Comments

Three entities responded with 20 total comments. A comment resolution package has been prepared and is part of the file. The Department has considered and evaluated all the comments received during the comment period. Comments that resulted in changes to the proposed rulemaking are summarized below.

Comment: It was stated that, as written, the proposed language under Political Activity Costs addressing unallowable costs associated with attempting to influence executive or legislative actions could be construed to make unallowable the costs of negotiations.

Response: Concur. DOE has modified its coverage by deleting a portion of the last sentence of the proposed coverage. The final rule makes the following changes to the June 4, 1997, proposed rulemaking: 970.3102–7(b), 970.5204–13(e)(31)(ii), 970.5204–14(e)(29)(ii), and 970.5204–17(a)(6) were revised by deleting language which addressed costs associated with proposals.

Comment: Proposed changes to the Payments and Advances clause, 970.5204–16, would complicate other DOE efforts at streamlining.

Response: Concur. The proposed change has been deleted from the final rulemaking.

Comment: As written, DOE appears to disallow the cost of local travel at 970.3102–17.

Response: It was not our intent to disallow the costs of local business travel and we do not believe we have done so. However, the coverage could be clearer. Accordingly, DOE has modified its proposed coverage to ensure a distinction between company-furnished automobiles used for company business, which can be allowable if approved by the contracting officer and personal use of company

furnished automobiles. It does prohibit, as does FAR 31.205–46(f), that portion of the costs that relate to personal use. DEAR 970.3102–17(b)(3) was revised by clarifying the distinction between costs of company-furnished automobiles that can be allowable if approved by the contracting officer and the cost of company-furnished automobiles.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation: and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftmenship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the proposed amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule, when finalized, will revise certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more.

This rulemaking only affects private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Parts 932 and 970

Government procurement.

Issued in Washington, D.C. on January 5, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Part 932 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c)

PART 932—CONTRACT FINANCING

2. Section 932.006–4 is added before Subpart 932.1 to read as follows:

932.006–4 Procedures.

(a) The remedy coordination official shall follow the procedures identified in FAR 32.006–4.

(b) [Reserved]

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

4. Subpart 970.25 is added to read as follows:

970.25 Foreign acquisition.

970.2501 Severance payments for foreign nationals.

970.2501 Severance payments for foreign nationals.

(a) The Head of the Contracting Activity may waive the application of the provisions of 48 CFR 970.3102–2(i)(2)(iv) and (v) in accordance with 41 U.S.C. 256(e)(2) if:

(1) The application of the provisions would adversely affect the continuation of a program, project, or activity that provides significant support services for Department of Energy employees posted outside the United States;

(2) The contractor has taken, or plans to take, appropriate actions within its control to minimize the amount and number of incidents of payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay under the contract is necessary to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services or is necessary to comply with a collective bargaining agreement.

(b) Solicitation provision and contract clause. The solicitation provision at 970.5204–84, Waiver of Limitations on Severance Payments to Foreign Nationals, shall be included in solicitations and resulting contracts involving support services for Department of Energy operations outside of the United States expected to exceed $500,000, when, prior to the solicitation, the limitations on severance to foreign nationals has been waived. Use the Alternate 1 contract clause in solicitations and resulting contracts, when the Head of the Contracting Activity may waive the limitations on severance to foreign nationals after contract award.

5. Section 970.3101–3 is amended by adding paragraphs (b), (c), and (d) to read as follows:

970.3101–3 General basis for reimbursement of costs.

* * * * *

(b) A contracting officer shall not resolve any questioned costs until the contracting officer has obtained:

(1) Adequate documentation with respect to such costs; and

(2) The opinion of the Department of Energy's auditor on the allowability of such costs.

(c) The contracting officer shall ensure that the documentation supporting the final settlement addresses the amount of the questioned costs and the subsequent disposition of such questioned costs.

(d) The contracting officer shall ensure, to the maximum extent practicable, that the Department of Energy's auditor is afforded an opportunity to attend any negotiation or meeting with the contractor regarding a determination of allowability.

6. Section 970.3101–7 is added to read as follows:

970.3101–7 Cost submission, certification, penalties, and waivers.

(a) The contracting officer shall require that management and operating contractors provide a submission for settlement of costs incurred during the period stipulated on the submission and a certification that the costs included in the submission are allowable. The contracting officer shall assess a penalty if unallowable costs are included in the submission. Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that contractor

(i) Was subject to a contracting officer's final decision and not appealed;

(ii) The Department's Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(b) If, during the review of the submission, the contracting officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the contracting officer shall assess a penalty.

(c) If the contracting officer determines that a cost submitted by the contractor in its submission for settlement is

(1) Expressly unallowable, then the contracting officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to 50 U.S.C. 1215.

(2) Determined unallowable, then the contracting officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(d) The contracting officer may waive the penalty provisions when

(1) The contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) The amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) The contractor demonstrates to the contracting officer's satisfaction that:

(i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the contractor's submission for settlement of costs; and

(ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

(e) The Head of the Contracting Activity may waive the certification when—

(1) It is determined that it would be in the best interest to waive such certification; and

(2) The Head of the contracting Activity states in writing the reasons for that determination and makes such determination available to the public.

7. Section 970.3102 is amended by removing the last sentence of the existing paragraph, designating the existing paragraph as (a) and adding a new paragraph (b) to read as follows.

970.3102 Application of cost principles.

* * * * *

(b) This section does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related items. When more than one paragraph in this section is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. As an example, the cost of meals while in a travel status would normally be allowable if reasonable. However, the cost of alcoholic beverages associated with a meal would be unallowable. In no case shall costs made specifically unallowable under one cost principle be made allowable under another cost principle.

8. Section 970.3102–2 is amended by adding a sentence at the end of paragraph (i)(2) introductory text and adding new paragraphs (i)(2)(iv), (v), (vi), and (p) to read as follows:

970.3102–2 Compensation for personal services.

* * * * *

(i) * * *

(2) * * * In addition, paragraphs (i)(2)(iv) and (v) of this section apply if the severance cost is for foreign nationals employed outside the United States.

* * * * *

(iv) Notwithstanding the provision of paragraph (c) of this section, which references geographic area, under 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States.

(v) Further, under 41 U.S.C. 256(e)(1)(N), the costs of severance payments referred to in paragraph (i)(2)(iv) of this section are unallowable if the termination of employment is the result of the closing of, or curtailment of, activities at a United States facility in that country at the request of the government of that country.

(vi) The Head of the Contracting Activity may waive the application of the provisions of paragraphs (i)(2)(iv) and (v) of this section under the conditions specified in subpart 970.25.

* * * * *

(p) *Special compensation*. The following costs are unallowable:

(1) Special compensation to employees pursuant to agreements which permit payments in excess of the contractor's normal severance pay practices, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Special compensation to employees pursuant to agreements which permit payments resulting from a change, whether actual or prospective, in the management control over, or ownership of, the contractor or a portion of its assets which is contingent upon the employee remaining with the contractor for a stated period of time.

9. Section 970.3102–5 is revised to read as follows:

970.3102–5 Employee morale, health, welfare, food service, and dormitory costs.

(a) Employee morale, health, and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. These activities include such items as house or employee publications, health or first-aid clinics, wellness/fitness centers, employee counseling services, awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy, and, for the purpose of this section, food service and dormitory costs. However, these activities do not include, and should be differentiated from compensation for personal services as defined in 970.3102–2. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities or site of the contract work.

(b) Costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events are unallowable, except for the costs of employees' participation in company sponsored intramural sports teams or employee' organizations designed to improve company loyalty, team work, or physical fitness.

(c) Except as limited by paragraph (d) of this section, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) of this section, less income generated by all such activities, is allowable to the extent that the net aggregate cost of all such activities, as well as the net cost of each individual activity, is reasonable and allocable to the contract work. Additionally, advance understandings with respect to the costs mentioned in paragraph (a) of this section are to be reached prior to the incurrence of these costs as required in 48 CFR 970.3101–6.

(d) Losses from the operation of food or dormitory services may be included as costs incurred under paragraph (c) of this section only if the contractor's objective is to operate such services at least on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to operation on a break-even basis are not allowable, except in those instances where the contractor can demonstrate that unusual circumstances exist, such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Typical examples of such unusual circumstances are:

(1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or

(2) Where it is necessary to operate a facility at a lower volume than the facility could economically support. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service, except as provided in paragraph (f) of this section.

(f) Contributions by the contractor to an employee organization, including funds set over from vending machines receipts or similar sources, may be included as cost incurred under paragraph (c) of this section, only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable, if incurred by the contractor directly.

10. Section 970.3102–7 is revised to read as follows:

970.3102–7 Political activity costs.

The following costs are unallowable, except for costs associated with providing information pursuant to 970.5204–17, unless approved by the contracting officer: Contractor costs incurred to influence either directly or indirectly—

(a) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(b) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters.

11. Section 970.3102–17 Travel costs, is amended by revising the paragraph heading for (b) and by adding paragraph (b)(3) to read as follows:

970.3102–17 Travel costs.

* * * * *

(b) *Government-owned, commercial rental, and company-furnished vehicles.* * * *

(3) The costs of contractor-owned or -leased vehicles include the costs of lease, operation, maintenance, depreciation, insurance, and other similar costs. These costs are unallowable except as approved by the contracting officer. That portion of the

cost of company-furnished automobiles that relates to personal use by employees, including transportation to and from work is unallowable.

* * * * *

12. Section 970.3103 is amended by revising paragraph (b) to read as follows:

970.3103 Contract clauses.

* * * * *

(b) The political activity cost prohibition clause at 48 CFR 970.5204–17 shall be included in all M&O contracts.

* * * * *

13. Section 970.3272 is added to read as follows:

Subpart 970.32—Contract Financing

970.3272 Reduction or suspension of advance, partial, or progress payments.

(a) The procedures prescribed at FAR 32.006 shall be followed.

(b) The agency head has delegated their responsibilities under this section to the Senior Procurement Executive.

(c) The remedy coordination official is responsible for receiving, assessing, and making recommendations to the Senior Procurement Executive.

(d) The contracting officer shall insert the clause at 48 CFR 970.5204–85, Reduction or suspension of contract payments, in management and operating contracts.

14. Section 970.5204–13, Allowable costs and fixed-fee (management and operating contracts), is amended by revising clause paragraphs (d)(8)(iv), (e)(11), (e)(31); and adding new paragraphs (e)(37) and (38) to read as follows:

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

(d) * * *

(8) * * *

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications; and wellness/fitness centers;

* * * * *

(e) * * *

(11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.

* * * * *

(31) Contractor costs incurred to influence either directly or indirectly—

(i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(ii) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters as described in the ''Political Activity Cost Prohibition'' clause of this contract.

* * * * *

(37) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.

(38) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

15. Section 970.5204–14 is amended by revising clause paragraphs (d)(8)(iv), (e)(9), (e)(29); and adding new paragraphs (e)(35) and (e)(36) to read as follows:

970.5204–14 Allowable costs and fixed-fee (support contracts).

* * * * *

(d) * * *

(8) * * *

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; and house or employee publications; and wellness/fitness centers;

* * * * *

(e) * * *

(9) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.

* * * * *

(29) Contractor costs incurred to influence either directly or indirectly—

(i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(ii) Federal, State, or local executive branch action on regulatory and contract matters as described in the ''Political Activity Cost Prohibition'' clause of this contract.

* * * * *

(35) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.

(36) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

16. Section 970.5204–17 is amended by revising the section heading and clause heading and adding clause paragraph (a)(6) to read as follows:

970.5204–17 Political activity cost prohibition.

* * * * *

Political Activity Cost Prohibition (Dec. 1997)

(a) * * *

(6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and contract matters.

* * * * *

17. Section 970.5204–84 is added to read as follows:

970.5204–84 Waiver of limitations on severance payments to foreign nationals.

As prescribed in subpart 970.25, insert the following solicitation provision, or its alternate 1, clause:

Waiver of Limitations on Severance Payments to Foreign Nationals (Dec. 1997).

Pursuant to Department of Energy Acquisition Regulation (DEAR) subpart 970.25, the cost allowability limitations in (DEAR) subpart 970.3102–2(i)(iv) and (v) are waived for this contract.

Alternate 1 (Dec. 1997). Substitute the following paragraph for the foregoing solicitation provision when the waiver of limitations to severance payments for foreign nationals has not been predetermined by the Department.

Pursuant to Department of Energy Acquisition Regulation (DEAR) subpart 970.25, the Department will consider waiving the cost allowability limitations in (DEAR) 48 CFR 970.3102–2(i)(iv) and (v) for this contract.

18. Section 970.5204–85 is added to read as follows:

970.5204–85 Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud.

As prescribed in 48 CFR 970.3272, insert the following clause:

Reduction or Suspension of Advance, Partial, or Progress Payments (Dec. 1997)

(a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Secretary that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The contractor shall be afforded a reasonable opportunity to respond in writing.

[End of Clause]

[FR Doc. 98–2049 Filed 1–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 970725179–8017–03; I.D. 071497A]

RIN 0648–AK33

Taking and Importing Marine Mammals; Taking of Ringed Seals Incidental to On-Ice Seismic Activities

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from BP Exploration (Alaska) (BPXA) on behalf of itself and several other oil exploration companies, issues regulations to govern the unintentional take of a small number of seals incidental to winter seismic operations in the Beaufort Sea, AK. Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the industry's proposed activity, such authorization is under the jurisdiction of the U.S. Department of the Interior and is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective February 2, 1998 until December 31, 2002.

ADDRESSES: A copy of the application and Environmental Assessment (EA) may be obtained by writing to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, or by telephoning one of the persons below (see **FOR FURTHER INFORMATION CONTACT**).

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055 or Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of these species for subsistence uses and that regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. Specific regulations governing the taking of ringed seals incidental to on-ice seismic activity, which were published on January 13, 1993 (58 FR 4091), expired on December 31, 1997.

Summary of Request

On July 11, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from BPXA, on behalf of itself, ARCO Alaska, Inc., Northern Geophysical of America, Inc., and Western Geophysical Co. to renew the incidental take regulations found in 50 CFR part 216, subpart J (previously 50 CFR part 228 subpart B), to govern the taking of ringed seals (*Phoca hispida*) and bearded seals (*Erignathus barbatus*) incidental to seismic activities on the ice, offshore Alaska, for a period of 5 years. The applicants state that these activities are not likely to result in physical injuries to, and/or death of, any individual seals. Because seals are expected to avoid the immediate area around seismic operations, they are not expected to be subject to potential hearing damage from exposure to underwater or in-air sounds from the operations. Any takings of ringed seals are anticipated to result from short-term disturbance by noise and physical activity associated with the seismic operations.

The scope of the petition is limited to pre-lease and post-lease seismic exploration activities in state waters and in the Outer Continental Shelf in the Beaufort Sea, offshore Alaska, during the ice-covered seasons. Because a minimum of 3 to 4 ft (.9–1.2 m) of ice is required to safely support the weight of equipment, on-ice seismic operations are usually confined to the 5-month period between January through May. These seismic surveys will be conducted using two types of energy sources: (1) Vibroseis, which uses large trucks with vibrators mounted on them, that systematically put variable frequency energy into the earth and (2) waterguns or airguns carried by a sleigh or other vehicle. The vibroseis method is much more common. Over the next 5-year period, the applicants expect that on-ice seismic activity will cover approximately 22,500 line miles (mi)(3,610 kilometers (km)) or 4,500 line mi/yr (7,242 km/yr). This compares to 13,247 line mi (21,319 km) in the aggregate or 1,305 to 4,903 line mi/yr (2,100 to 7,891 km/yr) during the past 5-year period.

These regulations apply only to the incidental taking of ringed and bearded seals by U.S. citizens engaged in seismic activities on the ice and associated activities in the Beaufort Sea from the shore outward to 45 mi (72 km) and from Point Barrow east to Demarcation Point during January 1 through May 31 of any calendar year through December 31, 2002. However, because bearded seals are normally found in broken ice that is unsuitable for on-ice seismic operations, few, if any, bearded seals will be impacted, and mainly ringed seals are expected to be taken incidental to the seismic surveys.

The incidental, but not intentional, taking of ringed and bearded seals by U.S. citizens holding a Letter of Authorization (LOA) will be permitted during the following: (1) On-ice geophysical seismic activities using two types of energy sources (i.e., vibroseis or waterguns or airguns), and (2) operation of transportation and camp facilities associated with seismic activities. Oil drilling activities will not be covered under this regulation; such activities will need a separate authorization under either section 101(a)(5)(A) or 101(a)(5)(D) of the MMPA.

Comments and Responses

On October 27, 1997 (62 FR 55564), NMFS published a notice of proposed rulemaking on the application and invited interested persons to submit comments, information, and suggestions concerning the application and the structure and content of regulations.

During the 30-day comment period, NMFS received letters from the Marine Mammal Commission (MMC), Greenpeace (on behalf of itself, the Alaska Wilderness League and the Northern Alaska Environmental Center), the Sierra Club (Georgia Chapter) and 1 individual commenting on the proposed rule. Comments contained in these letters are addressed below. Comments regarding issues other than the issuance of regulations and authorizations for the incidental harassment of ringed and bearded seals by on-ice seismic work are beyond the scope of discussion here and are not addressed further. Information on the activity, the environmental impacts, and the authorization request that are not subject to reviewer comments can be found in the proposed rule notice and is not repeated here.

MMPA Concerns

Comment 1: Greenpeace believes that the applicants failed to address a Plan of Cooperation (POC).

Response: NMFS has stated previously that a formal POC may not be necessary for all activities that might result in the incidental harassment of marine mammal species that are also sought for subsistence purposes. In order for NMFS to determine that there will not be an unmitigable adverse impact on the availability of marine mammals for taking for subsistence purposes, the information items specified in 50 CFR 216.104(a)(12) will need to be provided. If neither a POC has been submitted, nor meetings with subsistence communities have been scheduled and if during the comment period evidence is provided indicating that an adverse impact to subsistence needs will result from the activity, an authorization may be delayed to resolve this disagreement. NMFS notes that the applicant responded to this information request in its application. Neither Greenpeace nor other commenters have provided information that an unmitigable adverse impact on subsistence harvests will occur. Greenpeace misinterprets the statute in stating that no proof exists that the activity will not have an impact on subsistence needs; the statute requires only that the activity will not have an unmitigable impact on subsistence needs. Copies of the application and notice of proposed authorization were forwarded to appropriate North Slope (AK) government agencies. These agencies have not indicated that there would be an unmitigable adverse impact on subsistence seal harvests. Finally, NMFS notes that POCs are not mandated by statute, but are required by regulations when necessary to facilitate the Agency's determination that an activity not have an unmitigable adverse impact on subsistence needs.

Comment 2: Greenpeace requests that the regulations not be issued until Traditional Knowledge for the 1992–1997 period be gathered, analyzed, and shown to support the claim that there will be no effect to subsistence hunting in the 5-year period beginning in 1998.

Response: NMFS would like to clarify that the statutory requirement is that the activity not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses. ''Unmitigable adverse impact,'' as defined in 50 CFR 216.103, means an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As the applicant noted, ringed seals are today hunted principally on water with rifles, not at breathing holes in winter, and the numbers in recent years have been small (Barrow–394 ringed seals, 174 bearded seals; Kaktovik–70 ringed seals, 30 bearded seals; Nuiqsut–0 seals). Therefore, since no information was provided by commenters to the contrary (tables provided by the commenter were undated and unquantified), there is no need to delay the authorization process to collect this information. However, NMFS has added as a condition to obtaining a Letter of Authorization (LOA) a requirement for participants or their representatives to communicate each year with the native communities, prior to conducting on-ice activities, to ensure the availability of marine mammals for subsistence uses. NMFS will ensure that this communication has taken place and that any recommendations made by the villages of Barrow, Kaktovik or Nuiqsut have been addressed by a potential LOA holder, prior to issuance of an LOA.

Marine Mammal Concerns

Comment 3: Greenpeace believes that greater numbers of bearded seals will be taken than estimated because bearded seals inhabit the shore-fast ice.

Response: NMFS notes Greenpeace's statements from the quoted source (Lentfer (ed) 1988). However, using this same reference, NMFS notes that, as stated in the application, bearded seals avoid regions of continuous, thick, shorefast ice * * *and are not common in regions of unbroken, heavy, drifting ice (Burns 1981). Burns (1981) suggests that a requirement for leads, polynas, and other openings was an important determinant of distribution. Kelly (1988) notes that the proportion of bearded seals in shorefast ice though unknown, is probably small, and that most bearded seals apparently leave the Beaufort/Chukchi Seas in winter. As a result, NMFS believes that relatively few bearded seals are expected to be harassed by on-ice seismic activities. Because there is a potential for small numbers of bearded seals to be harassed incidental to on-ice seismic activities, a small take authorization is appropriate.

Comment 4: Because no reliable population size estimates are available, it is impossible for NMFS to determine that the take of bearded seals would pose a negligible impact.

Response: NMFS disagrees. A negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). Based on the information provided in Comment 3 above, and because there is no information to indicate that the take would be more than by incidental harassment, a negligible impact determination can be made. Since the short-term displacement of a relatively few animals will not affect the recruitment or survival of a stock numbering approximately 300,000, a negligible impact determination appears warranted.

Comment 5: One commenter questioned NMFS' statement that ''no significant overall difference was found in the rate of breathing hole abandonment along seismic and control lines.'' He noted that the study referenced in the earlier notice omitted that the supposed control lines were polluted by the construction of an artificial drill island (Seal Island) at the same location during the study (Burns and Kelly 1982). Thus, the intended control lines were also subjected to significant industrial activity. As noted, however, displacement was indicated by the higher incidence of abandonment within 150 m (492 ft) of seismic survey lines.

Response: While NMFS is puzzled why the researchers chose to establish the experiment in close proximity to an artificial island under construction in 1982, one must presume that any displacement due to construction had

taken place prior to the seismic experiment. However Kelly *et al.* (1988) noted this construction resulted in a radius of disturbance smaller than that caused by seismic noise.

While the data in Burns and Kelly (1982), Kelly *et al.* (1986) and Kelly *et al.* (1988) found no statistically significant difference between abandoned and altered structures within 150 m (492 ft) of seismic lines as compared with structures outside 150 m (492 ft), NMFS notes that, because of the small sample size, such distances should be used with caution when analyzing disturbance zones. For example, Kelly *et al.* (1986) noted that seals departed lairs in response to vibroseis and associated equipment at a distance up to 644 m (2,113 ft).

Comment 6: One commenter questioned how the applicant and NMFS determined that ringed seal displacement was 0.6 seals/nm^2, and how the estimated 4,500 linear miles of shot line was converted into 3,913 nm^2. Greenpeace questioned the accuracy of the estimate that 2,350 seals might be temporarily displaced and if so, whether that displacement included displacement of seals under water, or only on-ice.

Response: The statement on ringed seal displacement due to seismic work is from Burns *et al.* (1981). Based upon aerial surveys conducted in June 1975 through June 1977, comparisons were made of ringed seal densities between areas of seismic exploration and areas where no human on-ice activities occurred. Burns *et al.* (1981) found densities in the years 1975–1977 to be 1.21 seals/nm^2 in control area and 0.61 seals/nm^2 in seismic areas, yielding a displacement of 0.59 seals/nm^2 or, rounding, of 0.60 seals/nm^2. Because no new estimates of displacement have been made on data collected since that time, NMFS believes that estimate to continue to be the best scientific information available.

However, the applicant made an estimate for displacement independent of Burns *et al.* (1981). Using the highest recorded density of ringed seals between 1975 and 1987 (3.57 seals/nmi^2) and an assumed displacement of all ringed seals within 300 m (0.16 nmi) in a 1.0 nmi track, the applicant and NMFS believe that a worst case estimate of 0.57 seals/linear nmi of survey track can be made. If the observations in Kelly *et al.*'s (1986) that ringed seals leave lairs in response to vibroseis and associated equipment at a distance up to 644 m (2,113 ft) is valid, then one can expect approximately 2.5 seals/linear nmi of survey track could be displaced.

NMFS notes that 4,500 linear miles of shot line converts to 3,910.4 linear nmi, not 3,913 nmi^2. Multiplying 0.57 seals/linear nmi by 3,910 linear nmi equals 2,228, or close to the estimate of 2,346 seals made using 0.6 seals/nmi^2 from Burns *et al.* (1981). If seals are displaced up to 644 m (2,113 ft) from the seismic track, then 9,775 seals may be displaced annually (2.5 seals/ linear nmi by 3,910 linear nmi/year).

NMFS presumes that this displacement includes all ringed seals, whether in lairs or in the water. To the extent that presence in lairs reduces the tendency to flee, due to higher attenuation of noise in lairs (Bliz and Lentfer 1992), the number of seals harassed would be lower. However, since ringed seals spend a significant portion of their time in the water, NMFS presumes the number not fleeing would be minimal.

Comment 7: One commenter noted that surveys indicated that seal distribution, as noted by breathing holes and lairs, indicated a highly clumped distribution, rather than random distribution as stated in the notice.

Response: Although NMFS made the assumption of random distribution of ringed seals in order to make an assessment of takes by incidental harassment, NMFS used the highest observed density of ringed seals (3.57 seals/nmi^2) in order to compensate for clumped distribution. NMFS notes that overall average density during 1975 and 1987 has varied between 0.97 and 3.57 seals/nmi^2.

Comment 8: This same commenter noted that the distribution of seismic lines tends to be highly clumped, and the potential exists that an intensive grid of seismic lines would overlap with important pupping areas.

Response: While there may be some potential for seismic surveys to overlap with important pupping areas, surveys to date have not indicated an overlap. The majority of seismic exploration tends to be in shallow regions, inshore of the barrier islands, areas where birthing lairs are uncommon. Burns and Kelly (1982), for example, found birthing lairs represented only 7–9 percent of those ringed seal lairs located by trained dogs. Scientists hypothesize that ringed seal territoriality apparently plays a role in the location of birthing lairs. Therefore, NMFS believes that, to the extent that pre-survey monitoring could locate these regions, fewer pups would be displaced by on-ice seismic surveys.

Comment 9: Greenpeace interpreted the information provided in the application and cited from Burns and Kelly (1982) as noting that there was a higher rate of lair abandonment when there were human activities in combination with seismic activities near the lairs (32.7 percent), than when only seismic activities occurred (13.5 percent).

Response: While NMFS would agree with the statement's conclusion, NMFS notes that the increased lair abandonment from 13.5 percent due to seismic and a nearby oil exploration project to 32.7 percent occurred when activities were followed up by a monitoring program using dogs to relocate seals and lairs to determine rates of abandonment (see Kelly *et al.* 1988). Based upon this research, the rate of abandonment increased from 4.0 percent on shore-fast ice with no anthropogenic disturbance to 13.5 percent due to seismic and a nearby oil exploration project.

Comment 10: One commenter noted that, when seismic activities cause a ringed seal to abandon its lair, the abandonment is permanent, not temporary.

Response: NMFS has reviewed the scientific information and has determined that the abandonment can be either permanent or temporary. Kelly *et al.* (1988), based upon a study of radio-tagged ringed seals, noted that ''in all instances in which seals departed lairs in response to disturbance, they subsequently reoccupied the lair.'' However, as mentioned in the comment above, when researchers investigated breathing or access holes after seismic surveys, 13.5 percent of the holes were frozen, indicating permanent abandonment, an increase of 9.5 percent from normal abandonment (those with no significant anthropogenic disturbances).

Comment 11: Greenpeace expressed concern that the fate of ringed seal lairs and of the mothers and pups within them, when they are run over by seismic vehicles, has not been assessed by a scientifically credible monitoring/ research program since these incidental take regulations were first issued.

Response: Greenpeace is correct; this type of survey has not been undertaken. However, NMFS has concerns over the value of such an undertaking when compared to other research. First, as discussed above, seals inside lairs are expected to vacate the lair prior to the vehicles reaching them. Burns and Kelly (1982) suggest that heavy equipment and human activity are the major source of disturbance, not the vibroseis noise itself. Therefore, impact of vibroseis equipment may, in effect, be no different than that of bulldozers or other heavy equipment constructing ice roads. As seals departed lairs in response to vibroseis and associated equipment at a distance up to 644 m (2,113 ft)(Kelly *et*

al. 1986), seals are not expected to remain in lairs that are within the direct track of vehicles.

In rare cases when seal lairs are damaged, seals unable to occupy them after the seismic vehicles have left, may leave. Based upon an estimated 3,910 linear nmi of shot line/year, an estimated road width of 10 ft (3 m), an estimated 2 lairs/seal and seal densities of 3.57 seals/nmi^2, an estimated 46 seal lairs might be damaged annually.

Comment 12: One commenter noted that (1), if a female abandons a pupping lair during the 6–8 week nursing period, it likely results in death of the pup and (2) displacing a yearling seal from its primary breathing hole means the seal will have to use holes maintained by older seals at which it will be especially vulnerable to attack. By increasing the time yearlings must spend defending themselves (as a consequence of displacement), the animal's chances of survival will likely further decrease.

Response: There are two identified means wherein disturbance could cause a loss of pups: (1) Abandonment of a lair by a female, leaving a dependent (unweaned) pup and not returning and (2) pup debilitation due to entering the water.

The best scientific information available at this time does not indicate that females will abandon a living pup. Instinct apparently affords some protection to young. For example, females have been observed moving newborn pups from one lair to another (Smith 1987), and it is reported that Inuit and polar bears utilize this maternal instinct in order to kill females returning to protect a pup (Smith 1986, Smith *et al.* 1991). Therefore, there is no scientific evidence to indicate that females will abandon pups, especially due to intermittent noise from seismic.

However, dependence on lairs is especially great for pups. Kelly *et al.* (1986) state that, if a pup in lanugo is forced to flee into the water, it may not survive the resultant heat loss. It should be noted that flight can be caused by anthropogenic disturbance, or by either polar bears or Arctic foxes (Smith *et al.* 1991). Pups that do survive swimming through the water to an alternate lair will have to expend significant amounts of energy reserves in order to maintain core temperature while drying (Taugbol 1982, Smith *et al.* 1991), especially if the pup has not formed a blubber layer. Taugbol (1982) found the birth lair to be a necessity for pup survival when, on occasion, pups must enter the water because of Arctic foxes and polar bears. In addition, wet pups may be easier prey for polar bears and Arctic foxes and less able to withstand other stresses (Smith *et al.* 1991). This could, therefore, result in an increase in pup mortality over natural mortality. On the other hand, Lydersen and Hammill's (1993) study in Svalbard of the movement and growth of dependent (unweaned) ringed seal pups that were 25 to 57 days old found that pups of those ages spent an average of 50.3 percent of their time in the water and 49.7 percent of their time hauled out on the ice. These pups used a mean of 8.7 different holes that were spaced a maximum of 900 m (2,953 ft) apart. This indicates that young ringed seals are quite mobile and readily able to move substantial distances.

While yearling seals may incur increased interactions with other seals if their primary breathing holes are lost, it is not apparent that this is a normal occurrence. Ringed seals show fairly discrete age-class segregation (Smith 1987); and yearling seals are known to share breathing holes; and subadults may share lairs (Smith 1987). Since the birth lair area is also the breeding area (Smith, 1987), yearling and subadult seals are actively excluded by adult breeding males from the fast-ice area (Smith 1987). As a result, few yearling seals are expected to be found in the breeding fast-ice region. It is more likely that adolescent males, those approaching maturity, not yearlings, would be subject to agonistic encounters with adult males. As a result, NMFS believes that few, if any, yearlings are expected to be indirectly killed as a result of seismic noise increasing agonistic encounters with adult male seals.

Monitoring Concerns-Population Assessments

Comment 13: Greenpeace notes (as does the applicant) that there are no recent reliable estimate of the number of ringed seals in Alaska or in the ice-covered areas of the Beaufort Sea where seismic activities will be conducted. Without baseline information (including annual recruitment rates), Greenpeace believes that it will be impossible for NMFS to make a negligible impact determination.

Response: NMFS notes that aerial surveys for ringed seals in the Beaufort Sea have been conducted in 1970, 1975–1977, 1981–1982, 1985–1987 and 1996–1997. Except for estimates from the latest surveys, density estimates have been made as illustrated in Figure 2 of the application. Extrapolating the results of the 1985–1987 surveys indicated a Beaufort/Chukchi Sea population estimate of 44,360 +9,310 (95 percent CI); however this number represents only a portion of the geographic range of the stock as many seals occur in the pack ice and along the Russian coast (Small and DeMaster 1995). Frost *et al.* (1997), for example, found only 15 percent of observed seals on the fast ice, whereas 69 percent were on the pack ice (another 15 percent was unclassified).

Based on the information provided in the above responses and because there is no information to indicate that the take would be more than by incidental harassment and that the short-term displacement of a relatively few animals will not affect the recruitment or survival of a stock numbering around 1 to 1.5 million animals in the Bering/Beaufort/Chukchi Seas (Small and DeMaster 1995), a negligible impact determination appears warranted. Therefore, while NMFS believes that it can make a negligible impact determination based upon present information, it believes that long-term monitoring will be necessary to validate its determination.

Comment 14: Greenpeace also notes that NMFS did not acknowledge concerns raised by the MMC in 1992 that there was no means to verify that the activities, by themselves and in combination with other activities, do not have adverse effects.

Response: NMFS acknowledged the MMC comment in the final rule (58 FR 4091, January 13, 1993). At that time, NMFS noted that the low level of on-ice seismic activity that had occurred in the past and was predicted for the next 5 years (400 miles/yr; 644 km/yr) did not warrant a more extensive monitoring program than was being required. NMFS noted, however, that, at the 1993 Peer-Review Workshop, NMFS would consult with appropriate groups to determine whether a different or more extensive monitoring plan, as recommended, was appropriate. That workshop did not result in recommended modifications to the monitoring plan.

NMFS notes that, in the above referenced letter, the MMC stated that it would be difficult, time-consuming, and prohibitively expensive to test the various hypotheses that could be made on how ringed seals could be disadvantaged by oil and gas exploration seismic activities. As an alternative, they suggested the design and carrying out of a long-term population monitoring program to ensure that any adverse changes in population size or distribution could be detected and stopped before the population could be disadvantaged.

Comment 15: NMFS must develop a plan to carry out future population monitoring in order that a basis will be

established for determining whether takes associated with winter seismic activities will have a negligible impact regionally and for the Beaufort Sea population.

Response: NMFS agrees, noting however that, under Federal and State funding, researchers are presently monitoring the distribution and abundance of ringed seals in northern Alaska. This research includes (1) estimating the relative abundance and density of molting ringed seals on fast ice in the Beaufort Sea during 1996–1998 and comparing this data with data collected during 1985–1987; (2) correlating ringed seal densities on fast ice with environmental parameters; (3) determining the abundance and density of molting ringed seals at and near industrial operations and comparing this data with otherwise comparable non-industrial area; and (4) reviewing the adequacy of ringed seal data collected by past industry site-specific monitoring programs and making recommendations for protocols to be used in future industry studies. While a final report is not due until March 1999, preliminary research results should be available earlier.

NMFS intends to discuss research and monitoring needs for determining impacts from on-ice seismic activities as part of its annually planned Arctic Peer-Review Workshop in 1998. If monitoring measures are recommended by the Workshop participants, these measures will be incorporated into LOAs for the winter of 1998/99.

Monitoring Concerns-Methodology

Comment 16: Commenters noted that the monitoring program during the past 5 years and the one proposed for the next 5 years will not provide information on the impacts on ringed seals by seismic activities.

Response: While NMFS notes that little monitoring for this activity has been carried out in the past, the level of monitoring prescribed for 1993–1997 was commensurate with the expected impact on ringed seals (480 harassments/yr). The basic purpose for monitoring small take authorizations in the Arctic is to verify the predicted effects, to detect any unforeseen effects of oil and gas exploration activities (Swartz and Hofman 1991), and to verify that the assumption made regarding negligible impact is supportable. The purpose therefore for a site-specific monitoring program is to (1) determine when, where, how, and how many marine mammals, by species, age/size, and sex are taken, and (2) document for retrospective analysis, the nature, location, duration, and scale of pre- and post-leasing oil and gas exploration activities that might affect marine mammals (Swartz and Hofman 1991). While there is no information that takings are having a more than negligible impact on ringed seals, monitoring during vibroseis surveys is warranted provided monitoring is practical, cost effective and does not result in increasing substantially marine mammal takes. If a monitoring program cannot be designed to meet these criteria, a research program might be warranted as a practical alternative to support a negligible impact finding.

Comment 17: Noting the lack of an effective monitoring program, the commenter noted that there are three possible means for monitoring ringed seal effects by on-ice seismic operations: (1) aerial surveys, (2) remote sensing, and (3) surveys using trained dogs.

Response: As discussed above, aerial surveys have been and are presently being conducted in May and June, when ringed seals are spending more of their time on the surface of the ice basking. Unfortunately, these surveys do not necessarily indicate the magnitude of impacts (displacement) from seismic activities conducted earlier in the year. To provide estimates of impact, research initiatives were begun in 1981 and 1982, including on-ice surveys using trained retrievers and radio telemetry (see Kelly *et al.* 1988).

As the commenter noted in his letter, the use of remote sensing is still limited in its utility for locating breathing holes. NMFS notes, however, that infra-red remote censusing is currently being used for locating polar bear dens and may provide useful information in locating ringed seal lairs.

The use of trained dogs and/or telemetry to locate ringed seal lairs is currently the only practical method identified to directly assess impacts on ringed seals from on-ice seismic activities. The feasibility of using this technology, or other methodology such as measurements of ringed seal vocalizations in response to seismic noise, will be assessed at the Arctic Peer-Review Workshop, and a determination made at that time regarding feasibility, practicality, and its applicability to respond to monitoring needs noted in comment 16 above. Those showing promise of success will either be implemented as a monitoring requirement for future year LOAs or be recommended for additional research.

Comment 18: The MMC notes that NMFS has requirements for having survey groups designate a qualified individual to observe and record the presence of ringed seals along seismic lines and around camps. They note however that the training (or monitoring requirements-see above) may not be enough to locate ringed seal lairs.

Response: NMFS notes that having seismic crews knowledgeable about ringed seal lair locations and keeping an observation for them is insufficient by itself to mitigate, to the greatest extent practicable, the take of ringed seals. As a result, NMFS has modified the regulations to authorize NMFS to require, when necessary, under a LOA, either a marine mammal biologist trained in ice-seal behavior, or an Inuit native from the Arctic who is familiar with ice seal behavior.

Monitoring Concerns—Peer Review

Comment 19: Greenpeace notes that the proposed rules lack a requirement for a peer-review overall monitoring program that could measure both site-specific take and effects on the rates of recruitment or survival of the Beaufort Sea population.

Response: NMFS notes that peer-review is not a statutory requirement for small take authorizations issued under section 101(a)(5)(A) of the MMPA. As a result, paragraph 216.105 (b)(3) of this part does not mandate peer review of monitoring plans; it only notes that, under activity-specific regulations, a peer-review process may be established if warranted (see 61 FR 15884, April 6, 1996). The need for peer-review is determined through notice and comment on the proposed rule for the applicant's activity. At the 1998 Arctic Peer-Review Workshop, reviews will be conducted by NMFS scientists and others, and the results will be available prior to issuance of the following year's authorizations.

Mitigation Concerns

Comment 20: The MMC recommends that NMFS promulgate regulations subject to the following mitigation requirements: (1) Surveys sufficient to detect the locations of ringed seals and ringed seal lairs that could be affected by the seismic operations be conducted prior to finalizing the tracklines and initiating such operations; (2) the tracklines for the seismic operations that reflect the results of those surveys so as to avoid active ringed seal lairs to the maximum extent practicable, and thereby minimizing the possible effects on ringed seals; and (3) a monitoring program sufficient to provide accurate estimates of the number of seals and lairs affected and the biological significance of the effects.

Response: Present technology requires the use of trained dogs to locate ringed seal lairs. While these dogs can locate ringed seal lairs up to 150 m (492 ft)

away when tracking perpendicular to the wind (Burns and Kelly 1986), because vibroseis equipment has a displacement effect to 150 m (492 ft), at least two tracks would be needed prior to initiating seismic surveys. However, such surveys are not without impact themselves, as dogs have been documented to cause ringed seal lair abandonment at 6 m (18 ft) and snowmobiles (used by the dog's handlers and scientists) at 2.8 km (1.7 mi). Therefore, a research design would be needed to minimize displacement takes by researchers/monitors prior to making this a requirement of the LOA. As noted in previous authorization (January 13, 1993, 58 FR 4091), as a result of a comment from the MMC, NMFS raised the relevancy of using dogs to locate ringed seals and ringed seal lairs at the 1993 Peer Review Workshop in Seattle. The consensus of those in attendance that the use of dogs to locate ringed seal lairs and breathing holes resulted in an increased harassment of ringed seals and in a potential increase in interactions between humans and polar bears (which apparently are attracted by the dogs). Finally, NMFS notes that trained Labrador retrievers are more effective than native dogs in locating seal lairs, but they are expensive to rear and train.

Research Concerns

Comment 21: Commenters noted the lack of research initiatives to assess impacts for on-ice seismic activities.

Response: NMFS disagrees. NMFS notes that several studies were conducted in the past, most around the time of the first application for a small take authorization in 1982 (see 47 FR 21248, May 18, 1982). The results from this research, which was summarized in the application and proposed rule, indicated to NMFS that on-ice seismic activities would not have more than a negligible impact on ringed seals. Most of the documented disturbances resulted in displacement of the animal.

As mentioned in the application, the Alaska Department of Fish and Game in cooperation with Minerals Management Service (MMS) will make estimates of the relative abundance and density of molting ringed seals on fast ice in the Beaufort Sea during 1996–1998 and compare these results with data collected during 1985–1987. They will also correlate ringed seal densities on fast ice with environmental parameters and determine the abundance and density of molting ringed seals at and near industrial operations, and compare that data with data from an otherwise comparable non-industrial area.

National Environmental Policy Act (NEPA) Concerns

Comment 22: Greenpeace believes that the impacts from winter seismic activities cannot be assessed separately from cumulative impacts from expanding offshore exploratory drilling, development and transportation activities that may follow or are already occurring.

Response: NMFS agrees, noting, however, that cumulative impacts from offshore exploratory drilling activities (which include both open water and on-ice seismic activities) were addressed in the respective environmental impact statements (EISs) for the Arctic leases. These documents were prepared by MMS. Additionally, MMS prepares NEPA documentation that, in part, discusses the cumulative impacts of all lease sales contemplated over individual 5-year periods. Because NMFS does not authorize the lease sales and does not permit the activity (seismic exploration), only the taking of marine mammals incidental to that activity, it is not required to consider cumulative impacts from all oil and gas activities. However, NMFS is responsible for making a determination that the total taking by the activity (on-ice seismic) is having no more than a negligible impact on marine mammal stocks and that the taking is not having an unmitigable adverse impact on subsistence needs. *Comment 23*: Greenpeace believes that, because bearded seals have not been discussed in previous small take authorizations, NEPA documentation is warranted.

Response: While NMFS disagrees that the potential for the incidental harassment of a very small number of bearded seals (see above discussion) requires NEPA analysis, NMFS has prepared a new EA to better define and analyze the impacts on marine mammals from the proposed action and identified alternatives.

Other Concerns

Comment 24: Greenpeace believes that NMFS and the U.S. Fish and Wildlife Service are each evaluating the impacts of oil and gas exploration small take authorizations on their respective species and not considering the impacts each authorization has on the other's species.

Response: As a result of this comment, NMFS has incorporated by reference into the EA a discussion on polar bears and the potential impact of harassing ringed seals on those polar bears that feed upon them. The finding of that analysis was that the short-distance displacement of ringed seals in the vicinity of on-ice seismic operations would have a significant impact on neither ringed seals nor the polar bears that prey on them. Because seismic operations are limited to the shorefast ice and because polar bears prefer pack ice, seismic effects are considered minimal on polar bear prey.

Comment 25: The MMC believes NMFS should expand the discussion of impacts on ringed seals from on-ice seismic by discussing the impacts to ringed seal prey, particularly Arctic cod.

Response: Airguns, waterguns and vibroseis devices were specifically designed to eliminate the fish kills that were caused during the 1950s by underwater explosions used during geophysical exploration. Explosives caused a rapid rise to peak pressure, measured in microseconds, whereas seismic device rise time is measured in milliseconds. The difference is that the rapid rise time involves very high pressures at high frequencies, which kills fish at substantial range. The main sonic injury to fish involves a damaging resonance of their air-filled swim bladders by high frequency pressure waves. In contrast, for example, large fish need to be within about 3 m (9 ft) of an airgun array to be injured or killed, and at distances between 3 m and 100 m (9 ft and 328 ft), large fish exhibit only a change in behavior. The low frequency sound of the vibroseis and airguns therefore, should have little effect on those species of fish that are the prey of ringed seals.

Comment 26: Greenpeace believes that NMFS has ignored the potential harm that could occur from chronic fuel spills and major oil spills. Winter oil or hazardous material spills under the ice may preferentially flow to the under-ice breathing holes, refrozen cracks or birthing lair entrances of ringed seals.

Response: A survey crew carries fuel oil intended for motor vehicles and for heating living quarters on sleighs, as described in the application. Should one of these fuel cells leak or break due to an accident, a spill contingency plan would be put into operation immediately. Such spills would be expected to be small and localized. No hazardous materials are used in vibroseis or watergun seismic surveys.

Changes From the Proposed Rule

1. The effective dates of the regulations have been corrected to show that the expiration date is December 31, 2002.

2. The final rule has been amended to allow NMFS to require additional monitoring and research under a LOA based upon a peer review process.

3. The final rule has been amended to add requirements for obtaining an LOA and ensuring coordination with Alaskan Native communities.

NEPA

In conjunction with a notice of proposed rulemaking on this issue on September 15, 1992 (57 FR 42538), NMFS released an EA that addressed the impacts on the human environment from regulations and the issuance of LOAs and the alternatives to that proposed action. As a result of the information provided in the EA, NOAA concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding, on July 30, 1992, NMFS signed a Finding of No Significant Impact (FONSI) statement and thereby determined that an EIS was not warranted and, therefore, none was prepared. As NMFS explained in the proposed rule (62 FR 55564, October 27, 1997), because the proposed action discussed in this document is not substantially different from the 1992 action, and because a reference search has indicated that no new scientific information or analyses have been developed in the past 5 years significant enough to warrant new NEPA documentation, NMFS did not intend to prepare a new EA. However, based on comments received, NMFS has updated the 1992 EA with information provided in BPXA's application and a review of recent science. This new EA indicates that, as in the 1992 EA, implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding NMFS has signed a Finding of No Significant Impact (FONSI) statement and thereby determined that an EIS was not warranted. Therefore, none has been prepared. A copy of the 1997 EA and FONSI is available upon request (see **ADDRESSES**).

Classification

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

Section 553(d) of Title 5 of the U.S.C. requires that the publication of a substantive rule shall be made not less than 30 days before its effective date unless the rule grants or recognizes an exemption or relieves a restriction. Until these regulations are effective, seismic operators can not be issued LOAs authorizing takings incidental to their operations. This places the seismic operators in a position of potentially violat-ing the MMPA should their activities result in a take of a marine mammal. Therefore, the Assistant Administrator for Fisheries, NOAA finds that the waiver of the 30-day delayed effectiveness date relieves a restriction pursuant to 5 U.S.C. 553(d)(1).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration at the proposed rule stage that, if this rule is adopted, it would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act because members of the industry requesting the authorizations are major energy exploration companies and their contractors, neither of which by definition is a small business. Therefore, a regulatory flexibility analysis is not required.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). This collection, which has an OMB control number of 0648–0151, has been submitted to OMB for review under section 3504(b) of the PRA.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for this collection is estimated to be approximately 3 hours per response for requesting an authorization (as described in 50 CFR 216.104) and 30 hours per response for submitting reports, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send any comments to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: January 23, 1998

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart J is revised to read as follows:

Subpart J—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

Sec.
216.111 Specified activity and specified geographical region.
216.112 Effective dates.
216.113 Permissible methods.
216.114 Mitigation.
216.115 Requirements for monitoring and reporting.
216.116 Applications for Letters of Authorization.
216.117 Renewal of Letters of Authorization.
216.118 Modifications to Letters of Authorization.
216.119 [Reserved].

Subpart J—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

§ 216.111 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of ringed seals (*Phoca hispida*) and bearded seals (*Erignathus barbatus*) by U.S. citizens engaged in on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from the shore outward to 45 mi (72 km) and from Point Barrow east to Demarcation Point, from January 1 through May 31 of any calendar year.

§ 216.112 Effective dates.

Regulations in this subpart are effective from February 2, 1998 through December 31, 2002.

§ 216.113 Permissible methods.

The incidental, but not intentional, taking of ringed and bearded seals from January 1 through May 31 by U.S. citizens holding a Letter of Authorization, issued under § 216.106, is permitted during the course of the following activities:

(a) On-ice geophysical seismic activities involving vibrator-type, airgun, or other energy source equipment shown to have similar or lesser effects.

(b) Operation of transportation and camp facilities associated with seismic activities.

§ 216.114 Mitigation.

(a) All activities identified in § 216.113 must be conducted in a manner that minimizes to the greatest extent practicable adverse effects on ringed and bearded seals and their habitat.

(b) All activities identified in § 216.113 must be conducted as far as practicable from any observed ringed or bearded seal or ringed seal lair. No energy source must be placed over an observed ringed seal lair, whether or not any seal is present.

§ 216.115 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and any other Federal, state, or local agency monitoring the impacts on ringed or bearded seals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to observe and record the presence of ringed or bearded seals and ringed seal lairs along shot lines and around camps, and the information required in paragraph (d) of this section.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) An annual report must be submitted to the Assistant Administrator for Fisheries within 90 days after completing each year's activities and must include the following information:

(1) Location(s) of survey activities.

(2) Level of effort (e.g., duration, area surveyed, number of surveys), methods used, and a description of habitat (e.g., ice thickness, surface topography) for each location.

(3) Numbers of ringed seals, bearded seals, or other marine mammals observed, proximity to seismic or associated activities, and any seal reactions observed for each location.

(4) Numbers of ringed seal lairs observed and proximity to seismic or associated activities for each location.

(5) Other information as required in a Letter of Authorization.

§ 216.116 Applications for Letters of Authorization.

(a) To incidentally take ringed and bearded seals pursuant to these regulations, each company conducting seismic operations between January 1 and May 31 in the geographical area described in § 216.111, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 90 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of company requesting the authorization;

(2) A description of the activity including method to be used (vibroseis, airgun, watergun), the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity;

(3) Any plans to monitor the behavior and effects of the activity on marine mammals;

(4) A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence sealing; and

(5) What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of ringed and bearded seals.

§ 216.117 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 for the activity identified in § 216.111 will be renewed annually upon:

(1) Timely receipt of the reports required under § 216.115(d), which have been reviewed by the Assistant Administrator and determined to be acceptable; and

(2) A determination that the mitigation measures required under § 216.114(b) and the Letter of Authorization have been undertaken.

(b) A notice of issuance of a Letter of Authorization or of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of issuance.

§ 216.118 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 216.117, without modification, is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.111, the Letter of Authorization issued pursuant to § 216.106, or renewed pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

§ 216.119 [Reserved]

[FR Doc. 98–2248 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 21
Monday, February 2, 1998

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[TM–98–00–1]

Information Meetings for the National Organic Program Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The U.S. Department of Agriculture (USDA) is announcing four public information meetings to discuss the proposed rule for the National Organic Program which was published in the **Federal Register** on December 16, 1997. The meetings are intended to provide an opportunity for USDA to present an overview of the proposed rule, respond to questions, and obtain public comments.

DATES: February 12, 1998, February 18, 1998, February 26, 1998, March 5, 1998.

ADDRESSES: The sessions will be held at the following locations:

February 12, 1998: The Meeting Place Conference Center, 2100 Northland Drive, Austin, Texas 78756, (512) 323–9500

February 18, 1998: Iowa State University, Iowa State Center, Scheman Building, Benton Auditorium, Suite 4, Ames, Iowa 50011, (515) 294–3218

February 26, 1998: Seattle Center, 305 Harrison Street, Seattle, Washington 98109, (206) 684–7202

March 5, 1998: Rutgers University, Rutgers Student Center, 126 College Avenue, New Brunswick, New Jersey 08901, (732) 932–8821

Each of the meetings will be held during the hours of 9 a.m. to 4 p.m. in each of the respective locations.

FOR FURTHER INFORMATION CONTACT: Michael Hankin, National Organic Program, Room 2945 South Building, USDA, Agricultural Marketing Service, Transportation and Marketing, P.O. Box 96456, Washington, D.C. 20090–6456. Telephone (202) 720–3252. Fax (202) 690–3924.

SUPPLEMENTARY INFORMATION: On December 16, 1997, USDA published in the **Federal Register** (62 FR 65849) a proposed rule, issued under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et. seq.*), which addresses the methods, practices, and substances used in producing and handling organic crops and livestock and their processed products. Included in the proposed rule are provisions for: producing and handling organic agricultural products; labeling organic products; certification of organic operations; accreditation of State and private certifying agents; compliance testing; equivalency of foreign organic certification programs; approval of State organic programs; and fees. The proposed rule also includes an assessment of the economic impact of the rule, an analysis of its effects on small businesses, and an estimate of the paperwork burden required under the proposed rule. The purpose of the public meetings is to provide an opportunity for the public to ask USDA questions about the proposed rule and to submit public comments that will be included in the public record, together with comments submitted by letter, fax, or through the Internet, as provided for in the December 16, 1997, proposed rule.

Who Can Comment

Any member of the public may submit a comment; however, we request that those persons who wish to comment register with USDA as soon as possible prior to the meeting date. A person may register by calling Karen Thomas at (202) 720–3252, at which time each person will be requested to submit their name, the topic of the comment, and the meeting location where the comment will be submitted. Registration will help ensure that a person will be able to present his or her comment during the meeting. Persons wishing to comment may also register by sending an e-mail message to the NOP Webmaster at http://www.ams.usda.gov/nop. Any person wishing to comment, but who is unable to register prior to the meetings, will be able to sign up at each meeting location on the day of the meeting between 9:00 a.m. and 2:00 p.m. These presenters may submit comments on a first-come, first-served basis and these comments will be limited based on the time available and the number of presenters.

Meeting Agenda

Each meeting will begin with a brief opening statement followed by a 30-minute question and answer period. The remainder of the meeting will be a listening session at which time interested parties may submit public comment on the proposed rule. Oral comments will be limited to 5 minutes to enable the greatest number of presenters an opportunity to speak. The question and answer period and the public comments will be recorded and included in the public record of comments for the proposed rule. We request that a printed copy of each person's comments be provided to USDA at the time the comment is submitted orally to ensure an accurate transcription.

Written Comments

As described in the **Federal Register** on December 16, 1997 (62 FR 65849), written comments may be mailed to Eileen S. Stommes, Deputy Administrator, Agricultural Marketing Service, USDA, Room 4007–S, Ag Stop 0275, P.O. Box 96456, Washington, D.C. 20090–6456, or faxed to (202) 690–4632 by March 16, 1998, or submitted via the Internet through the National Organic Program's homepage at http://www.ams.usda.gov/nop.

Dated: January 28, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–2552 Filed 1–29–98; 9:56 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560–AF20

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Maryland (Type 32), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar Filler (Type 41), Cigar-Filler and Binder (Types 42–44 and 53–55), and Cigar-Binder (Types 51–52) Tobaccos

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture (the Secretary) is required by the Agricultural Adjustment Act of 1938, as amended, (the Act) to proclaim by March 1, 1998, for referenda purposes, national marketing quotas for Maryland (type 32), Virginia sun-cured (type 37), cigar filler (type 41), and cigar-binder (types 51–52) tobacco for the 1998–99, 1999–2000 and 2000–2001 marketing years (MYs) and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), Maryland (type 32), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler (type 41), cigar-filler and binder (types 42–44 and 53–55), and cigar-binder (types 51–52) kinds of tobacco for the 1998–99 MY. The public is invited to submit written comments, views, and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, and other related matters which are discussed in this proposed rule.

DATES: Comments must be received on or before February 13, 1998, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, except holidays in Room 5750-South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Tobacco and Peanuts Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, telephone 202–720–5346. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loan and Purchases—10.051.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12998. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither FSA nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Unfunded Federal Mandates

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

Discussion

The proposed rule would amend 7 CFR part 723 to set forth the 1998-crop marketing quotas for these eight kinds of tobacco.

Section 312(b) of the Act, provides that the Secretary shall determine and announce, not later than March 1, 1998, with respect to the kinds of tobacco specified in this proposed rule, the amount of the national marketing quota which will be in effect for MY 1998 in terms of the total quantity of tobacco which may be marketed that will allow a supply of each kind of tobacco equal to the reserve supply level.

Also, Section 312(c) of the Act requires for this year that, within 30 days after proclamation of national marketing quotas for Maryland (type 32), Virginia sun-cured (type 37), Pennsylvania filler (type 41), and cigar binder (types 51–52) the Secretary must conduct referenda of farmers engaged in the 1997 production of each kind of tobacco to determine whether they favor or oppose marketing quotas for MYs 1998, 1999 and 2000. These referenda are required because by kind, MY 1997 is the last year of the three consecutive MYs for which marketing quotas previously proclaimed will be in effect or because marketing quotas previously proclaimed were disapproved by producers in referenda held in 1995.

The Secretary will proclaim the results of the referenda. As provided in the Act, if more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quota, the national marketing quota previously proclaimed will not become effective.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion, through county FSA committees, the national acreage allotment to tobacco producing farms, less a reserve not to exceed 1 percent thereof for new farms, to make corrections and adjust inequities in old farm allotments, through the national factor. The national factor is determined by dividing the preliminary quota (the sum of quotas for old farms) into the quota determined for the MY in question (less the reserve). Procedures will continue unchanged for (1) converting marketing quotas into acreage allotments; (2) apportioning allotments among old farms; (3) apportioning reserves for use in (a) establishing allotments for new farms, and (b) making corrections and adjusting inequities in old farm allotments; and (4) holding referenda.

Producers of three kinds of tobacco—Maryland (type 32), cigar filler (type 41), and cigar binder (types 51–52) are expected to reject marketing quotas. Accordingly, for these kinds this announcement will likely not be codified.

For the other five kinds—Virginia fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar filler and binder (types 42–44; 53–55) tobaccos supply and demand are in balance. Thus, changes in 1998 marketing quotas, if any, will likely be small.

Request for Comments

This rule proposes to amend 7 CFR part 723, subpart A to include 1998-crop national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), Maryland (type 32), dark-air cured (types 35–36), Virginia sun-cured (type 37), cigar-filler (type 41), cigar-filler and binder (types 42–44 and 53–55) and cigar binder (types 51–52) tobaccos. These eight kinds of tobacco account for about 5 percent of total U.S. tobacco production.

Comments are requested concerning the proposed establishment of the national marketing quotas for the subject tobaccos at the following levels:

(1) *Fire-Cured (Type 21) Tobacco.* The 1998-crop national marketing quota for fire-cured (type 21) tobacco will range from 2.4 to 3.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.2.

(2) *Fire-Cured (Types 22–23) Tobacco.* The 1998-crop national marketing quota for fire-cured (types 22–23) tobacco will range from 43.0 to 47.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(3) *Dark Air-Cured (Types 35–36) Tobacco.* The 1998-crop national marketing quota for dark air-cured (types 35–36) tobacco will range from 10.0 to 11.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(4) *Virginia Sun-Cured (Type 37) Tobacco.* The 1998-crop national marketing quota for Virginia sun-cured (type 37) tobacco will range from 150,000 to 165,000 pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(5) *Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco.* The 1998-crop national marketing quota for cigar-filler and binder (types 42–44 and 53–55) tobaccos will range from 8.0 to 8.8 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(6) *Maryland (Type 32) Tobacco.* The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 6.0 million pounds.

(7) *Pennsylvania Filler (Type 41) Tobacco.* The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 1.4 million pounds.

(8) *Cigar-Binder (Types 51–52) Tobacco.* The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 700,000 pounds.

Accordingly, comments are requested with respect to the foregoing issues.

List of Subjects in 7 CFR part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

Accordingly, it is proposed that 7 CFR part 723 be amended as folllows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.113 is amended by adding paragraph (f) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 2.4 million pounds to 3.0 million pounds.

3. Section 723.114 is amended by adding paragraph (f) to read as follows:

§ 723.114 Fire-cured (types 22–23) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 43.0 million pounds to 47.0 million pounds.

4. Section 723.115 is amended by adding paragraph (f) to read as follows:

§ 723.115 Dark air-cured (types 35–36) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 10.0 million pounds to 11.0 million pounds.

5. Section 723.116 is amended by adding paragraph (f) to read as follows:

* * * * *

§ 723.116 Sun-cured (type 37) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 150,000 to 165,000 pounds.

6. Section 723.117 is amended by adding paragraph (f) to read as follows:

§ 723.117 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 8.0 million pounds to 8.8 million pounds.

7. Section 723.119 is added (a) to read as follows:

§ 723.119 Maryland (type 32) tobacco.

(a) The 1998-crop national marketing quota will range between 5.0 million pounds to 7.0 million pounds.

(b) [Reserved]

8. Section 723.120 is added (a) to read as follows:

§ 723.120 Pennsylvania filler (type 41) tobacco.

(a) The 1998-crop national marketing quota will range between 1.3 million pounds to 1.5 million pounds.

(b) [Reserved]

9. Section 723.121 is added (a) to read as follows:

§ 723.121 Cigar binder (type 51–52) tobacco.

(a) The 1998-crop national marketing quota will range from 600,000 pounds to 1.0 million pounds.

(b) [Reserved]

Signed at Washington, DC on January 28, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–2578 Filed 1–29–98; 11:52 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 274a and 299

[INS No. 1890–97]

RIN 1115–AE94

Reduction in the Number of Acceptable Documents and Other Changes to Employment Verification Requirements

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended existing law by eliminating certain documents currently used in the employment eligibility verification (Form I–9) process. This rule proposes to shorten the list of documents acceptable for verification. Currently, newly hired individuals may choose from among 29 documents to establish their identity and eligibility to work in the United States. The proposed rule cuts that number approximately in half. In addition, the proposed rule clarifies and expands the receipt rule, under which individuals may present a receipt instead of a required document in certain circumstances. It also explains that employers may complete the Form I–9 before the time of hire or at the time of hire, so long as they have made a commitment to hire and provided that the employer completes the Form I–9 at the same point in the employment process for all employees. The proposed rule also details reverification requirements and includes a proposal for a new employment eligibility reverification form (Form I–9A), adds the Federal Government to the definition of ''entity,'' and clarifies the Immigration and Naturalization Service's (Service or INS) subpoena authority. In addition to making those changes, the Service proposes to restructure the rule to make it easier to

understand, use, and cite. A copy of the draft Form I–9, which includes the proposed Form I–9A and an expanded instruction sheet, is being published as an attachment to this rule. This rule is intended to simplify and clarify the verification requirements.

DATES: Written comments must be submitted on or before April 3, 1998. Comments received after this date will be considered if it is practical to do so, but the Service is able to ensure consideration only for comments received on or before this date.

ADDRESSES: *Written comments:* Please submit written comments, one original and two copies, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1890–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

To assist reviewers, where possible, comments should reference the specific section or paragraph which the comment addresses. Although this is not required, it would assist reviewers if, in addition to the requested copies, a copy of the comments is provided on a floppy disk in plain text or WordPerfect 5.1 format. Written comments should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change.

Electronic comments: With this proposed rule, the Service is testing for the first time the possibility of accepting comments electronically. Comments may be sent using electronic mail (email) to: I9INFO@usdoj.gov. The need to submit copies of the comments is waived for comments submitted by email. Electronically filed comments that conform to the guidelines of this paragraph will be considered part of the record and accorded the same treatment as comments submitted on paper. Comments should reference INS No. 1890–97 in the subject line and the body of the message. The comments should appear either in the body of the message or in a WordPerfect 5.1 attachment. The Service cannot guarantee consideration of attachments submitted in other formats. Comments submitted electronically must also contain the sender's name, address, and telephone number for possible verification.

FOR FURTHER INFORMATION CONTACT: Marion Metcalf, Policy Analyst, HQIRT, 425 I Street NW., Washington, DC, 20536; (202) 514–2764; or email at metcalfm@justice.usdoj.gov. Please note that the email address is for further information only and may not be used for the submission of comments.

SUPPLEMENTARY INFORMATION:

Why is the Service Proposing These Changes?

The Service is proposing these changes in response to recent legislation, IIRIRA, and as a result of an ongoing review which was triggered by the rule's having been in effect for 10 years. Many of the proposed changes represent the culmination of a long-term effort to reduce the number of documents acceptable for employment verification.

Which IIRIRA Provisions Does This Rule Implement?

IIRIRA, enacted on September 30, 1996, makes several amendments to the employer sanctions provisions of section 274A of the Act. This rule proposes to implement the amendments in:

(1) Section 412(a) of IIRIRA, which requires a reduction in the number of documents that may be accepted in the employment verification process;

(2) Section 412(d) of IIRIRA, which clarifies the applicability of section 274A of the Act to the Federal Government; and

(3) Section 416 of IIRIRA, which clarifies the Service's authority to compel by subpoena the appearance of witnesses and the production of evidence prior to the filing of a complaint.

What About the Other Employment-Related IIRIRA Amendments?

This is one of four rules the Service is proposing to implement IIRIRA amendments to section 274A of the Act. In addition to this rule, the Service is developing and will publish proposed rules to:

(1) Implement changes to the application process for obtaining employment authorization from the Service. The proposed rule will include a revision to the Application for Employment Authorization, Form I–765, revisions to Subpart B of Part 274a, and employment verification requirements for F–1 students authorized to work on campus;

(2) Implement section 411(a) of IIRIRA, which allows employers who have made a good faith attempt to comply with a particular employment verification requirement to correct technical or procedural failures before such failures are deemed to be violations of the Act;

(3) Implement section 412(b) of IIRIRA, which applies to employers that are members of an association of two or more employers. For an individual who is a member of a collective bargaining unit and is employed under a collective bargaining agreement between one or more employee organizations and the multi-employer association, the employer can use a Form I–9 completed by a prior employer that is a member of the same association, within 3 years (or, if less, the period of time that the individual is authorized to work in the United States).

What is the Ten-Year Review the Service Is Conducting?

Section 610 of the Regulatory Flexibility Act (RFA) requires agencies to review rules which have a significant economic impact on a substantial number of small entities every 10 years. Service regulations at 8 CFR 274a, Subpart A—Employer Requirements, fall under this review requirement.

Section 610 of the RCA requires a review of regulations ''to minimize any significant economic impact of the rule on a substantial number of small entities in a matter consistent with the stated objectives of applicable statutes.'' The RFA requires consideration of five factors: (1) Continued need for the rule; (2) nature of complaints or comments received from the public; (3) complexity of the rule; (4) extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules; and (5) length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The Service concluded that it would be in the public interest to conduct the required review in conjunction with implementing the IIRIRA amendments. By coordinating the publication of this notice with the publication of a proposed rule, the Service can give the public a clearer indication of the kinds of changes under consideration and provide an opportunity to submit a single set of comments. The Service began by conducting an internal review of the regulations at 8 CFR part 274a. The Service reviewed past public comment, questions asked of the Service's Office of Business Liaison, issues surfaced by field offices, and similar sources. Through this process, the Service identified areas in the regulations for reconsideration. The results of that internal review are reflected in the proposed rule. This proposed rule, therefore, reflects a

comprehensive reinvention effort, including a restructuring and other changes intended to address concerns raised by the public during the 10 years that these requirements have been in effect.

How Does This Rule Relate to the Service's Earlier Document Reduction Proposals?

The Immigration Reform and Control Act (IRCA), enacted in 1986, amended the Act to require persons or entities to hire only persons who are eligible to work in the United States. The Act, as amended, requires persons or entities to verify the work-eligibility and identity of all new hires. The Employment Eligibility Verification form, Form I–9, was designated for that purpose. Newly hired individuals must attest to the status that makes them eligible to work and present documents that establish their identity and eligibility to work. Employers, and recruiters or referrers for a fee (as defined in section 274A(a)(1)(B)(ii) of the Act and 8 CFR 274a.2(a)), must examine the documents and attest that they appear to be genuine and to relate to the individual. They may not specify a document or combination of documents that the individual must present. To do so may violate section 274B of the Act.

The statutory framework, currently implemented by regulation at 8 CFR 274a.2, provides for three lists of documents: documents that establish both identity and employment eligibility (List A documents), documents that establish identity only (List B documents), and documents that establish work eligibility only (List C documents).

When the law was new, a consensus emerged that a long, inclusive list of documents would ensure that all persons who are eligible to work could easily meet the requirements. When the Service first published implementing regulations in 1987, the Supplementary Information noted that List B, in particular, had been expanded in response to public comment. As early as 1990, however, there was evidence that some employers found the list confusing. In its third review of the implementation of employer sanctions, the General Accounting Office (GAO) reported that employer confusion over the ''multiplicity'' of acceptable documents contributed to discrimination against authorized workers. *See* Immigration Reform: Employer Sanctions and the Question of Discrimination, March 29, 1990, General Accounting Office (GAO/GGD–90–62.

The first step the Service took to correct this problem was to ensure that the complete list of documents appeared on the Form I–9 when the form was revised in 1991. In 1993, the Service published a proposed rule to reduce the number of documents acceptable for verification. That proposed rule eliminated numerous identity documents from List B and two employment eligibility documents from List C. Response to the proposed rule among the approximately 35 comments was mixed. Some commenters expressed support for the changes. Others questioned the need to reduce the lists, suggesting that confusion over the lists had been addressed by listing all the documents on the Form I–9.

In 1995, the Service published a supplement to the proposed rule. The supplement proposed a few additional changes to the lists of documents and responded to public comments concerning updating and reverification procedures for the Form I–9. The supplement received only five public comments.

The legislative history for IIRIRA indicates that Congress believed that the changes proposed in the proposed rule and supplement did not go far enough, stating:

> The number of permissible documents has long been subject to criticism. The INS published a proposed regulation in 1993 (with a supplement published on June 22, 1995) to reduce the number of documents from 29 to 16. This proposal, however, does not reflect the consensus of opinion that documents should be reduced even further, and that documents that are easily counterfeited should be eliminated entirely. (*See* H.R. Rep. No. 104–469, at 404–05 (1996).)

Congress recognized that the Service's ability to reduce the list of documents further was constrained by the number of documents listed in the law. In IIRIRA, Congress eliminated several documents while giving the Attorney General discretion to amend the list by regulation. These changes are discussed in more detail in the sections pertaining to the proposed lists of acceptable documents.

On September 4, 1996, the Service published a partial final rule at 61 FR 46534 which added the Employment Authorization Document, Form I–766 (the I–766 EAD), a new, counterfeit-resistant card, to List A. The Service began to issue the I–766 EAD in February 1997. The final rule did not provide sunset dates for any existing List A documents. It did, however, reinstate a provision at 8 CFR 274a.14, which had been stayed and suspended, and that terminated miscellaneous employment authorization documentation issued by the Service prior to June 1, 1987. The latter step was necessary because in the years prior to IRCA, some of the temporary, non-standard employment authorization documents issued by the Service did not bear an expiration date. Although the Service believes that few, if any, individuals were still in 1996 relying upon pre-1987 temporary documents, this action ensures that such documents are no longer valid.

Comments in response to both the 1993 and 1995 proposals asked the Service to delay publication of a final rule, citing the potential for congressional action. This proposed rule implements section 412(a) of IIRIRA and is separate from the 1993 proposed rule and 1995 supplement. The 1993 proposed rule and 1995 supplement will not be finalized.

On September 30, an interim rule was published in the Federal Register at 62 FR 5100. The interim rule was a stopgap measure, required by the effective date provision for section 412(a) of IIRIRA. The amendments to the list of documents were to take effect ''with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of enactment of [IIRIRA] as the Attorney General shall designate.'' Because 12 months after the date of enactment of IIRIRA was September 30, 1997, the interim rule designated September 30, 1997, as the effective date for the amendments. The goal of the interim rule was to maintain the status quo to the extent possible under the IIRIRA document provision. On October 6, 1997, President Clinton signed legislation) Pub. L. 105–54) extending the deadline for the designation of the effective date from 12 months to 18 months. Congress and the administration took this action in the interest of minimizing disruption and confusion in the business community. The Service considered withdrawing the interim rule. It decided, however, that the goal of minimizing confusion was better served by leaving the interim rule in place. The Service is withholding enforcement of violations related to the changes while the interim rule is in place.

What Changes are Made by This Proposed Rule?

This proposed rule contains provisions to implement three IIRIRA sections and other amendments to subpart A of part 274a. It also proposes to restructure the regulation to make it easier to use and cite. The Provisions currently contained in subpart A are proposed to be reorganized into the following sections.

Section 274a.1 Definitions.
Section 274a.2 Why is employment verification required and what does it involve?
Section 274a.3 What documents are acceptable for employment verification?
Section 274a.4 How long are employers and recruiters or referrers required to retain the Form I–9 and what must be retained with it?
Section 274a.5 Under what circumstances may employers and recruiters or referrers rely on a Form I–9 that an individual previously completed?
Section 274a.6 What happens when the Government asks to inspect Forms I–9?
Section 274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?
Section 274a.8 what are the requirements of state employment agencies that choose to verify the identity and employment eligibility of individuals referred for employment by the agency?
Section 274a.9 Can a person or entity require an individual to provide a financial guarantee or indemnity against potential liability related to the hiring, recruiting, or referring of the individual?
Section 274a.10 How are investigations initiated and employers notified of violations?
Section 274a.11 What penalties may be imposed for violations?

This reorganization is intended to make the regulation easier to use, understand, and cite. For example, the paragraph that explains that a parent or guardian may attest to the identity minor under 18 who cannot present an identity document is currently found at 8 CFR 274a.2(b)(1)(v)(B)(*3*). The citation for this paragraph becomes 8 CFR 274a.3(b)(2) in the proposed reorganization, a much shorter citation. A table providing a cross-reference from the new to the old sections appears at the end of this supplementary information section for ease of reference.

The Service welcomes comment on this restructuring and suggestions for other ways to make the regulation easier to use and understand. The Service recognizes the widespread impact of this regulation and is committed to making the requirements as straightforward as possible. The public is invited to submit alternative outlines for consideration or to suggest other ways to approach the restructuring.

The Service has taken several steps to adopt a ''plain English'' approach to this regulation. This effort was focused more intensely on the verification provisions currently at § 274a.2 than on the remainder of the regulation, and the Service is open to comments concerning whether additional changes would be helpful. In addition, the public is encouraged to comment on the practice of using question-and-answer format in the regulation. The proposed rule states the section headings in question form. The Service seeks comments on whether this practice is useful to persons who use the regulation and whether it should be extended to subheadings.

In addition, this proposal encompasses substantive changes intended to:

(1) Include the Federal Government in the definition of ''entity;''

(2) Clarify the definition of ''recruit for a fee;''

(3) Clarify the timing permitted for completion of the Form I–9;

(4) Specify reverification requirements, in response to public comment received on the 1993 proposed document reduction rule and 1995 supplement;

(5) Clarify and expand the receipt rule, under which work-eligible individuals who are unable to present a required document may present a receipt under certain circumstances;

(6) Shorten the list of documents acceptable for verification;

(7) Require the attachment and retention of copied documentation to the Form I–9; and

(8) Add a reference to the Service's authority to compel by subpoena the attendance of witnesses and production of evidence prior to the filing of a complaint.

The remainder of this supplementary information describes the changes in the order in which they appear in the proposed rule.

Section 274a.1—Definitions

Entity

The employer sanctions provisions apply to persons and entities. Section 412(d) of IIRIRA includes any branch of the Federal Government in the term ''entity.'' Accordingly, this proposed rule amends the definition of ''entity'' currently in the regulations at 8 CFR 274a.1(b) to include the Federal Government.

Recruit for a Fee

The proposed rule amends the definition of the term ''recruit for a fee'' at 8 CFR 274a.1(e) to remove overlap between the definitions of ''recruit for a fee'' and ''refer for a fee.'' Currently, the definition of ''recruit for a fee'' includes the act of soliciting a person, as well as the act of referring a person, with the intent of obtaining employment for that person. Thus, for a person or entity to be deemed to be recruiting, the person or entity must both solicit a person and refer that person. This overlap clouds the distinction between the two terms that is carefully maintained in the Act. The amendment eliminates the overlap by limiting the definition of ''recruit for a fee'' to the act of soliciting a person for a fee with the intent of obtaining employment for that person.

Recruiter or Referrer for a Fee

The proposed rule adds to 8 CFR 274a.1 a definition for the term ''recruiter or referrer for a fee.'' This language is being moved from 8 CFR 274a.2(a) and does not represent a substantive change.

Employer

The definition of ''employer'' at 8 CFR 274a.1(g) remains unchanged. However, language from this definition pertaining to an agent or anyone acting directly or indirectly in the interest of the employer is currently repeated in § 274a.2 in certain instances where the term ''employer'' is used. This rule eliminates such language because it is already a part of the definition of employer and, therefore, unnecessary to repeat.

Section 274a.2—Why is Employment Verification Required and What Does It Involve?

This section now contains a discussion of why verification must be completed on Form I–9, an overview of the verification process, specifications of the time for completing the Form I–9, and reverification requirements.

This rule proposes to amend the general discussion in 8 CFR 274a.2(a) introducing the employment verification requirements in several respects. As proposed, the rule:

(1) Adds references to a form proposed for reverification, the Employment Eligibility Reverification form, Form I–9A. This proposal is discussed in further detail in the reverification discussion;

(2) Adds the information that the Form I–9 may now be downloaded from the Service World Wide Web site; and

(3) Updates the discussion of the beginning date for the verification requirements in 1987.

Section 274a.2(b) previously covered all of the verification process. It now contains only an overview of the process and sets forth the basic requirements for completing Form I–9. It contains language reinforcing that the employee has the choice of which of the acceptable documents to present.

What Are the Requirements for Preparers and Translators?

The rule proposes to simplify the requirements for preparers and translators who assist employees in completing section 1 of the Form I–9.

Current regulations provide that preparers or translators must read the Form I–9 to the individual. The rule proposes to amend the current regulations by providing that the preparer or translator must provide such assistance as is necessary for the individual to understand and complete the form. This change provides needed flexibility for preparers and translators to adequately assist individuals completing section 1 of the Form I–9.

What Are the General Requirements for Documents That May Be Presented in the Verification Process?

The proposed rule includes the statement that only original, unexpired documents that appear on their face to be genuine and to relate to the individual presenting the documents can be accepted by employers and recruiters or referrers for a fee. These requirements apply to all three lists of documents, as well as to acceptable receipts. Currently, the regulations permit use of expired United States passports and expired identity documents. The proposed rule will require any document presented to be unexpired.

Why Is the Service Proposing To Permit Only Unexpired Documents in All Cases?

The Service notes that many states have taken steps to improve the integrity of their document-issuance procedures and the fraud-resistance of the documents they issue. The United States Department of State has taken similar steps with respect to passport issuance. If individuals are allowed to present expired documents, the verification process gains no benefit from those measures. The Service believes that the integrity of the verification process will be improved by a requirement that employees present only unexpired documents.

The Service recognizes that the requirement that individuals present unexpired documents may impose a cost on persons seeking employment. The Service anticipates and encourages public comment on this point. The Service is especially interested in the views of employers and recruiters or referrers for a fee concerning whether such a requirement simplifies verification for them, and of persons involved in assisting welfare recipients in transitioning to work concerning the burden imposed by the requirement. To that end, what follows is some of the analysis underlying our decision.

Replacing an expired United States passport is expensive ($55, plus an additional $30 for expedited service). Because a passport remains valid for 10 years, however, some employers have questioned whether an expired passport is a reliable identification document. They note that a person's appearance can change a great deal in 10 years. In addition, the Service does not believe that continuing to permit employees to present expired passports would be of help to most low income individuals, those for whom the cost of replacement documents would be the most serious issue, because they would be unlikely to have obtained a passport in the first place. Finally, the Service believes that most employers would prefer a simple requirement that documents be unexpired to a list that included exceptions to the rule.

The Service also researched the cost of obtaining an identity document in 10 states representing a wide range geographically and in population size. The cost of an identification card was the primary focus, because an individual who needs to drive must have an unexpired driver's license for that purpose, and otherwise an individual would not need to obtain a driver's license solely for verification purposes. In all but one of the states contacted, the cost of an identification card is lower than the cost of a driver's license. The charge for the card in those states ranges from $4 to $15 and averages around $10. In four states, the identification card does not expire, so it represents a one-time cost and the requirement that documents be unexpired would not be an issue.

§ 274a.2(c)—Time for Completing Form I–9

This section states when the Form I–9 must be completed, with separate paragraphs discussing employers, hires for duration of less than 3 days, recruiters and referrers, and receipts.

May an Employer Require Completion of Form I–9 Before an Employee Starts To Work? Must an Employer Always Give Employees 3 Days To Present Documentation?

This section contains one addition pertaining to when the Form I–9 must be completed. The regulations require section 1 of the Form I–9 to be completed by the individual at the time of hire and section 2 of the Form I–9 to be completed by the employer, or recruiter or referrer for a fee, within 3 business days of the date of hire (unless the duration of employment is less than 3 business days).

Current regulations are silent as to whether an employer, or recruiter or referrer for a fee, may complete the Form I–9 prior to the date that the individual is hired. in the past, employers have asked if they are permitted to require individuals to present the necessary documentation at the time of hire rather than within 3 business days of the hire. Service policy has been stated in the *Handbook for Employers*, the M–274. The *Handbook for Employers* states that an employer may complete the Form I–9 before the day that an individual starts work, but after the individual has been offered employment and has accepted the job, provided that the employer completes the Form I–9 at the same point in the employment process for all employees. The proposed rule incorporates in the regulations this longstanding Service interpretation of the employment verification requirements. The proposed rule permits the employer, or recruiter or referrer for a fee, to complete the Form I–9 prior to the date that an individual begins work, so long as the Form I–9 is completed after the hiring commitment is made and this practice is uniformly applied to all employees.

Section 274a.2(d)—Reverification of Employment Eligibility When Employment Authorization Expires

Current regulations require employers and recruiters or referrers for a fee to reverify on the Form I–9 if an individual's employment authorization expires. Reverification on the Form I–9 must occur no later than the date work authorization expires. The Service receives numerous questions from the public concerning this requirement. In response to questions and comments, the Service is attempting to clarify the reverification requirements in this proposed rule.

What Is the Form I–9A?

The Service proposes creation of the Form I–9A as a supplement to the Form I–9 which may be used for reverification. Form I–9A is structured similarly to the Form I–9, in that it has a section to be completed by the employee, a preparer/translator block, and a section to be completed by the employer. Form I–9A is shorter, however, containing only the information needed for reverification. The form provides blocks for two reverifications and may be duplicated as needed.

Why Is the Service Proposing Creation of Form I–9A?

The Service does not seek to impose an increased burden on the public by proposing this supplemental form. Rather, the Service is attempting to respond to earlier comments from employers. Currently, the updating and

reverification section on the Form I–9 contains an attestation for the employer only. In response to the 1993 proposed rule, several employers expressed the belief that the employee also should be required to attest to his or her continuing eligibility to be employed. This suggestion was incorporated in the Service's 1995 supplement. Adding an employee attestation to the updating and reverification section, however, also made it necessary to add a preparer/translator block. The result was a form that was crowded and difficult to complete. The Service considered simply requiring employers to complete a new Form I–9 when they reverified. Before doing so, however, the Service wished to obtain suggestions from employers concerning whether a reverification form would be more convenient. It seemed possible that a reverification form would help employers better understand when reverification is—and is not—required. For example, some employers apparently reverify identity documents when they expire, even though this is not required. Form I–9A provides no space for entering information about identity documents, which helps to reinforce that they need not be reverified.

Although Form I–9A is intended to simplify reverification, the Service seeks comment on whether employers would prefer to use the Form I–9 for reverification as well as verification at the time of hire. The proposed rule makes it clear that employers may elect to either use Form I–9A or complete a new Form I–9 for verification. The Service would appreciate comment on whether employers have a preference. If the comments reveal a strong and clear preference to use Form I–9 for reverification, and against creation of an additional form, the Service will not promulgate Form I–9A.

Who Is Exempt From Reverification?

The proposed rule also makes it clear that reverification does not apply to United States citizens or nationals or to lawful permanent residents. There is one exception: lawful permanent residents who present a foreign passport with a temporary I–551 stamp must present the actual Form I–551 when the stamp expires. However, under no other circumstance is reverification necessary for lawful permanent residents, even if their Alien Registration Receipt Card or Permanent Resident Card, Form I–551 expires or they naturalize.

How Does an Employer Know When Work Authorization Expires?

The proposed rule also states that an expiration date for work authorization, triggering the reverification requirement, may appear in either section 1 or section 2 of the Form I–9 or Form I–9A. Some employers have expressed uncertainty about whether they are responsible for information in both sections of the form.

Section 274a.3—What Documents Are Acceptable for Employment Verification?

To implement section 412(a) of IIRIRA, and meet the Service's longstanding document-reduction objectives, this rule proposes to amend the current regulations governing the lists of documents acceptable in the employment verification process.

Section 274a.3(a)—Documents That Establish Both Identity and Employment Authorization (List A)

How Does IIRRA Affect List A Documents?

Section 412(a) of IIRIRA amends section 274A(b)(1)(B) of the Act, which governs the documents that individuals may present to establish both identity and employment eligibility (List A). Section 412(a) of IIRIRA eliminates three documents from the statutory list: (1) Certificate of United States citizenship; (2) certificate of naturalization; and (3) an unexpired foreign passport with an endorsement that indicates eligibility for employment. The documents remaining on the list by statute are: a United States passport, resident alien card, alien registration card, or other document designated by the Attorney General.

What Conditions Must a Document Meet To Be Added to List A?

IIRIRA restricts the Attorney General's authority to add documents to List A. Each document designated by the Attorney General must meet three conditions. The document must:

(1) Bear a photograph and personal identification information;

(2) Constitute evidence of employment authorization, and

(3) Contain ''security features to make it resistant to tampering, counterfeiting, and fraudulent use.''

What Documents Will Be on List A Under the Proposed Rule?

The Service proposes to amend the current regulations to limit the documents that establish both identity and employment authorization to the following documents. Documents preceded by an asterisk are proposed to be added by regulation. The other documents are listed in the law, as amended by IIRIRA. Documents proposed for List A are:

(1) A United States passport;

(2) An Alien Registration Receipt Card or Permanent Resident Card, Form I–551;

*(3) A foreign passport with a Temporary I–551 stamp;

*(4) An employment authorization document issued by the Service which contains a photograph (Form I–766, For I–688, For I–688A, or Form I–688B); and,

*(5) In the case of a nonimmigrant alien authorized to work only for a specific employer, a foreign passport with an Arrival-Departure Record,—Form I–94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

What is the Service's Basis for including INS-Issued Employment Authorization Documents?

This proposed rule designates an employment authorization document, Forms I–766, I–688, I–688A, and I–688B, as an acceptable List A document. Forms I–766, I–688, I–688A, and I–688B meet the three statutory conditions that limit the Attorney General's authority to designate additional List A documents. First, these Service-issued forms all contain a photograph and additional identifying information of the bearer, including a fingerprint of the bearer and the bearer's date of birth. Second, the forms are evidence that the Service has granted employment authorization to the bearer. Third, the Service has designed each of the forms to contain security features that make them resistant to tampering, counterfeiting, and fraudulent use.

What Is the Service's Basis for Including Foreign Passports?

The Service proposes in this rule to designate foreign passports as acceptable evidence of identity and employment authorization, but limited to two instances. The first relates to aliens lawfully admitted for permanent residence under section 101(a)(20) of the Act. Persons newly admitted for or adjusted to lawful permanent residence may receive evidence of that status through a stamp in their passports. The stamp serves as temporary evidence of

permanent resident status until the individual receives Form I–551 from the Service. If the stamped endorsement includes an expiration date, the document must be reverified

In the newest versions of the Form I–551, the cards also bear an expiration date but need not be reverified when the card expires. Only the stamp must be reverified when expired. (See the discussion of the receipt rule, below, for discussion of the temporary I–551 stamp when it is placed on Form I–94 instead of a foreign passport.)

The second instance in which a foreign passport is designated as a List A document is when it is presented with Form I–94 indicating authorization to work for a specific employer. This will be an acceptable document only for persons whose employment is incident to status and authorized with a specific employer, and may be accepted only by the employer for whom the individual is authorized to work.

Aliens in classes identified in § 274a.12(b) are authorized employment incident to status with a specific employer. The Service does not currently require aliens in these classes to obtain a List A employment authorization document—i.e., an I–688B or I–766 EAD, and does not plan to implement such a requirement at this time. The proposed rule specifies the documentation the Service will issue to nonimmigrant alien classes that will not be issued an I–766 EAD. This documentation will be the Form I–94, with an endorsement that specifies the employer with which work is authorized. The Service will modify its procedures for endorsing the departure portion of nonimmigrants' Form I–94, so that the name of the approved employer will appear on the document. The employer's name will also be noted on the arrival portion of the Form I–94 and entered into Service databases for verification and record-keeping purposes.

The IIRIRA provides that the Attorney General ''may prohibit or place conditions on'' a specific document if the Attorney General finds that the document ''does not reliably establish [employment] authorization of identity or is being used fraudulently to an unacceptable degree.'' The Service finds that documentation issued to or used by nonimmigrants in these classes does not reliably establish work eligibility except for employment with a specific employer. The proposed rule, therefore, restricts the foreign passport with an I–94 bearing employer-specific work authorization, stipulating that it may be used only for purposes of establishing eligibility to work for the approved employer. This restriction does not relieve employers of the requirement to abide by any terms or conditions specified on any documentation issued by the Service. Similarly, the restrictions do not permit employers to require individuals to present a specific document. The restrictions do mean that a Form I–94 endorsed to permit employment with a specific employer may not be accepted as evidence of eligibility to work for other employers.

The Service finds that, in those two instances, foreign passports meet the three conditions that authorize the Attorney General to add documents to List A. First, foreign passports bear a photograph and identifying information (such as the birthdate and physical characteristics of the bearer). Second, they are evidence of employment authorization when they bear a temporary I–551 stamp or are presented with a Form I–94 endorsed to authorize employment with a specific employer. Finally, foreign passports contain security features to make them resistant to tampering, counterfeiting, and fraudulent use. Temporary I–551 stamps are made with secure ink and meet internal Service standards. An I–94 is acceptable with a foreign passport only in employer-specific situations in which the employer examining the I–94 for employment verification purposes is the same employer named on the I–94. The Service also notes that, in both these instances, the employers are required to reverify the individual's eligibility to work when the stamped authorization bears an expiration.

The proposed restrictions on Form I–94 pose special issues for two categories of nonimmigrants, students (F–1) and exchange visitors (J–1). Documentation for those categories will be addressed further in the forthcoming proposed amendments to Part 274a, Subpart B.

If the Service Has a New Employment Authorization Document, Why Are the Older Ones Still on This list?

The Service has been planning for several years to phase out use of three documents: (1) Temporary Resident Card, Form I–688; (2) Employment Authorization Card, Form I–688A; and (3) Employment Authorization Document, Form I–688B. As noted, on September 4, 1996, the Service published a final rule adding Form I–766 to List A and began to issue the I–766 EAD in February 1997. Through forthcoming proposed amendments to 8 CFR 274a, Subpart B, the Service will discuss its plans to consolidate card production. This consolidation will allow the Service to replace Forms I–688, I–688A, and I–688B with the I–766 EAD as the earlier documents expire. The Service anticipates phasing out these documents through the normal card replacement process. No document recall is planned. Based upon comments received in response to the 1993 proposed rule and 1995 supplement, the Service is not proposing a termination date for the validity of those documents at this time. The documents remain on List A in this proposed rule. At the appropriate time in the future, the Service will remove these documents from List A through rulemaking and update the Form I–9.

What Documents Are Being Removed From List A and Why?

The proposed rule does not designate the certificate of United States citizenship, certificate of naturalization, re-entry permit, and refugee travel document as acceptable List A documents. These documents were removed by the interim rule. The Service does not believe that these documents meet the three conditions required for the Attorney General to designate them as List A documents. Holders of these documents can easily obtain other acceptable documents which are more readily recognized by employers. Naturalized citizens are eligible for the same documents as other United States citizens, such as a passport and unrestricted social security card. Lawful permanent residents and refugees are eligible for an unrestricted social security card and, respectively, Form I–551 and Form I–688A or Form I–766.

What Happened to the Earliest Versions of the ''Green Card,'' Form I–151?

The Service phased out Form I–151, Alien Registration Receipt Card, as evidence of status as a lawful permanent resident effective March 20, 1996. Currently, Form I–551 is the only valid evidence of lawful permanent resident status. Employers are not required to reverify employees who were hired prior to March 20, 1996, and who presented Form I–151. However, employers and recruiters or referrers for a fee should not have accepted Form I–151 from employees hired after that date.

Section 274a.3(b)—Documents That Establish Identity Only (List B)

Does IIRIRA Affect List B Documents?

The IIRIRA made no statutory changes to List B documents.

Section 274A(b)(1)(D) of the Act specifies the following documents as acceptable documents for establishing identity:

(1) A driver's license or similar identification document issued by a state that contains a photograph or other identifying information, or

(2) For individuals under the age of 16 or in a state that does not issue an appropriate identification document, documentation of personal identity found by the Attorney General to be reliable.

Despite this limited list, current regulations permit a wide range of acceptable documents. List B currently is the longest of the three lists, and many of the documents either are unfamiliar to many employers or vary widely in appearance and the features they contain. In this proposed rule, the Service is retaining documents previously added to List B by regulation only in instances where there is an identifiable class for which elimination of the document could leave the class without an acceptable document to establish identity.

What Documents Will Be on List B Under the Proposed Rule?

The Service proposes to amend the regulations by reducing the list to the following documents:

(1) A state-issued driver's license or identification card;

(2) A Native American tribal document; and

(3) In the case of a Canadian nonimmigrant authorized to work incident to status with a specific employer, a Canadian driver's license or provincial identification card.

What Documents Are Begin Retained on List B by Regulation and Why?

The Service identified two documents previously added to List B by regulation for which there is an identifiable class that could be left without an acceptable document to establish identity if the document were removed from the list. The documents are: (1) A Native American tribal document and (2) a Canadian driver's license or provincial identification card.

Why Are Native American Tribal Documents Included on List B?

The proposed rule retains Native American tribal documents on both List B and List C (documents evidencing work authorization only). The removal of Native American tribal documents from the list of acceptable documents would pose a particular problem for Canadian-born American Indians who continue to reside in Canada, but who enter the United States temporarily for employment purposes under the terms of section 289 of the Act. These individuals are not required to present a passport for admission to the United States and would not necessarily have other identification documents acceptable for employment verification requirements.

Over the years, the Service has received many inquiries concerning why these documents appear on both List B and List C instead of List A. Until the enactment of IIRIRA, the Attorney General lacked the authority to designate List A documents beyond those specifically listed in the Act. Section 412(a) of IIRIRA extends this authority to the Attorney General. However, as noted, documents added to List A must meet three conditions, including that the document must contain security features. The number of authorities issuing tribal documents is too numerous, and the documentation too varied, for the Service to make a finding that tribal documents, as a class, meet all three conditions. Therefore, the Service is continuing the existing practice of including those documents on both List B and List C.

Why are Canadian Driver's Licenses and Identification Documents Included on List B?

The proposed rule includes on List B a driver's license or identification card issued by a Canadian Government authority. This rule proposes to make such documents acceptable only in the case of a Canadian nonimmigrant authorized to work incident to status with a specific employer. Through reciprocal international agreements and under Service regulations at 8 CFR 212.1(a), a visa generally is not required of Canadian nationals and aliens having a common nationality with nationals of Canada, and a passport is required of these aliens only when traveling from outside the Western Hemisphere. However, the Service controls and documents the arrival of Canadian nationals and aliens having a common nationality with nationals of Canada who establish admissibility in a nonimmigrant classification which entitles them to work with a specific employer (for example, as a professional under the North American Free Trade Agreement [TN], or as an intracompany transferee [L–1], or as a temporary worker [H–2B].) The Service issues the Form I–94 to these aliens as a record of lawful admission and as evidence of authorization to work in the United States with a specific employer. The Service also issues the Form I–94 to nationals of all other countries to document and control admission of nonimmigrants. The Form I–94 is generally placed in the passport of the nonimmigrant alien.

Because aliens of Canadian nationality are not required to present a passport for admission to the United States except when traveling from outside the Western Hemisphere, the Service is retaining on List B identity documents issued by Canadian authorities. However, to avoid confusion about the eligibility of Canadian nationals to engage in employment in the United States, the Service is adding language to make it clear that Canadian identification documents may be used only in the limited instance of a Canadian national admitted as a nonimmigrant who is authorized to work incident to nonimmigrant status with a specific employer. In other situations, authorized Canadian nationals would have other acceptable documentation. For instance, Canadian nationals who are lawful permanent residents would have been issued a Form I–551.

Over the years, the Service has received many inquiries concerning why Mexican driver's licenses are not included on List B. No reciprocal agreements exist between the United States and Mexico which would permit the use of Mexican driver's licenses or identification cards as List B documents.

What Documents Are Being Removed From List B and Why?

The Service proposes to remove the following documents from List B:

(1) An identification card issued by Federal or local authorities;

(2) A school identification card with a photograph;

(3) A voter's registration card;

(4) A United States military card or draft record;

(5) A military dependent's identification card;

(6) A United States Coast Guard Merchant Mariner Card; and

(7) For individuals under age 18 who are unable to produce an identity document, a school record or report card, clinic doctor or hospital record, and daycare or nursery school record.

When the Service published the 1993 proposed rule and 1995 supplement, several comments expressed concern about the elimination of specific documents and the special list for minors. Current regulations, however, were developed when not all states issued a non-driver's identification card. At present, all states do so. Therefore, this justification for an expanded list no longer exists. The Service believes that the proposed list will greatly reduce confusion for employers while enabling all work-eligible individuals to establish their identity for verification purposes.

Will It Still Be Possible for Someone Else To Attest to the Identity of a Minor or Person With a Disability if They Cannot Present an Acceptable Identity Document?

Yes. Current regulations permit employers, and recruiters or referrers for a fee, to accept an attestation concerning the identity of minors under the age of 18 and persons with disabilities who are unable to produce one of the acceptable identity documents. The Service is proposing no substantive changes to these provisions. Because the provision for persons with disabilities was developed prior to passage of the Americans with Disabilities Act (ADA), however, the proposed rule replaces terminology that pre-dates the ADA with the terms and definition used in the ADA.

Section 274a.3(c)—Documents That Establish Employment Authorization Only (List C)

How Does IIRIRA Affect List C Documents?

Section 412(a) of IIRIRA amends section 274A(b)(1)(C) of the Act by removing the certificate of birth in the United States (or other certificate found acceptable by the Attorney General as establishing United States nationality at birth) from the list of acceptable documents that may be used to establish employment authorization for compliance with the employment verification requirements. Acceptable List C documents are: a social security account number card (other than one which specifies on its face that the issuance of the card does not authorize employment in the United States) or other documentation found acceptable by the Attorney General that evidences employment authorization.

What Documents Will Be on List C Under the Proposed Rule?

The Service proposes to limit acceptable List C documents to the following:

(1) A social security account number care (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(2) A Native American tribal document; and

(3) In the case of a nonimmigrant alien authorized to work only for a specific employer, an Arrival-Departure Record, Form I–94, containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

Why Is the Service Changing the Language Describing an Acceptable Social Security Card?

Current regulations designate the ''social security number card other than one which has printed on its face 'not valid for employment purposes' '' as an acceptable List C document. In accordance with section 412(a) of IIRIRA this proposed rule retains the social security account number card on List C. The proposed rule, however, amends the language in the regulations so that it mirrors the statutory language. The proposed rule changes the term, ''social security number card,'' to ''social security account number card,'' as is stated in the Act and IIRIRA. In addition, the proposed rule replaces the phrase, ''other than one which has printed on its face 'not valid for employment purposes,''' with the statutory language, ''(other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States).''

The Social Security Administration (SSA) issues cards with the legend stated in the regulations, ''not valid for employment purposes,'' to individuals from other countries who are lawfully admitted to the United States without work authorization, but who need a number because of a Federal, state, or local law requiring a social security number to get a benefit or service. In 1992, SSA began issuing cards that bear the legend ''valid for work only with INS authorization'' to people who are admitted to the United States on a temporary basis with authorization to work. This proposed rule amends the language in the regulations to mirror the language in the Act and IIRIRA and to clarify that cards bearing either restrictive legend are not acceptable List C documents.

What Documents Are Being Added to List C by Regulation and Why?

Under section 274A(b)(1)(C)(ii) of the Act, as amended, it is within the Attorney General's authority to designate ''other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.'' Exercising that authority, the Service finds that the Native American tribal document and Form I–94 with endorsement of employment authorization are acceptable List C documents. As noted in the discussion of Native American tribal documents under List B, elimination of the documents from List C could leave certain Native Americans without an acceptable document to establish their eligibility to work. As noted in the discussion of Form I–94 under List A, Form I–94 will be the document issued to nonimmigrant aliens who are authorized to work only for a specific employer. Only the employer for whom the work is authorized will be permitted to accept the document.

What Documents Are Being Removed From List C and Why?

The Service proposes to eliminate the following documents as acceptable for establishing employment authorization:

(1) A Certification of Birth Abroad issued by the Department of State, Form FS–545;

(2) A Certification of Birth Abroad issued by the Department of State, Form DS–1350;

(3) A birth certificate issued by a State, county, municipal authority or outlaying possession of the United States bearing an official seal;

(4) A United States citizen Identification Card, INS Form I–197;

(5) An Identification card for use of a resident citizen in the United States, INS Form I–179; and

(6) An unexpired employment authorization document issued by the Service.

The IIRIRA provides for additions to List C by regulation of ''other documentation found acceptable by the Attorney General that evidences employment authorization.'' The Service recognizes that elimination of the birth certificate, in particular, may generate public comment.

The Service notes, however, that Congress specifically eliminated this document from the list, based on its concern that, ''Birth certificates, even if issued by lawful authority, may be fraudulent in that they do not belong to the person who has requested that one be issued. This problem is exacerbated by the large number of authorities—numbering in the thousands—that issued birth certificates.'' (*See* H.R. Rep. No. 104–469, at 404–05 (1996).)

In addition to believing that eliminating the birth certificate is consistent with Congressional intent, the Service has additional reasons for taking this action. Service officers have expressed concern by the lack of uniform controls among the states over the issuance of replacement birth certificates.

Officers are encountering situations in which unauthorized aliens have used fraudulently obtained birth certificates

to falsely claim United States citizenship and gain employment.

The other documents proposed for removal also pose burdens to employers because it can be difficult for employers to assess whether they appear genuine on their face. The certifications of birth abroad, issued by the State Department, are not commonly recognized documents with which the general public is familiar. The Service no longer issues the citizen identification cards which were on the list. Legitimate holders of the documents being removed are all eligible for an unrestricted social security card, which allows them to establish their eligibility to work in the United States. The Service believes that employers will find a shorter list of documents easier to work with.

In this proposed rule, the existing general category of documents characterized as ''employment authorization documents issued by the Service'' is no longer designated as an acceptable List C document. This general category was included in the current regulations while the Service was taking steps to standardize the employment authorization documents that it issues. The Service has taken several steps to issue uniform documentation. The Service introduced the I–688B EAD in 1989. The I–766 EAD, introduced in February of 1997, represents further improvement because the centralized process is more secure and efficient. These documents are List A documents which establish both identity and eligibility to work. Moreover, with his proposed rule, the Service announces additional steps, such as the endorsement of Form I–94 when it is issued to a nonimmigrant who is authorized to work for a specific employer. The Service believes that a general category for Service-issued employment authorization documents is no longer necessary.

Section 274a.3(d)—Receipts

Current regulations permit individuals to present a receipt showing that they have applied for a replacement document if the individual is unable to provide a required document or documents at the time of hire. This provision provides flexibility in situations where, for example, an individual has lost a document. The Service has received numerous questions about the applicability of this provision to various situations. The proposed rule attempt to clarify the circumstances in which a receipt may be accepted.

The interim rule amended the receipt rule to designate three instances in which receipts are acceptable and extended the receipt rule to reverification. The proposed rule restructures the receipt rule and moves this provision to the section of the regulations containing the lists of acceptable documents.

Employers have asked whether they must accept a receipt if an employee presents one. In the new structure, receipts are discussed in the same section as Lists A, B, and C to emphazie that the same standards that apply to List A, B, and C documents also apply to receipts. Further, the rule indicates that an employee has the choice of which documents to present. Just as with List A, B, and C documents, if the receipt appears to be genuine and to relate to the individual presenting it, the employer cannot ask for more or different documents and must accept the receipt. Otherwise, the employer may be engaging in an unfair immigration-related employment practice in violation of section 274B of the Act. The receipt presented, however, is only acceptable if it is one that is listed in the regulations.

Like the interim rule, the proposed rule also extends the receipt rule to reverification and identifies circumstances where a receipt is not acceptable.

In What Circumstances are Receipts Acceptable?

The proposed rule permits the use of receipts in three instances:

(1) a receipt for an application for a replacement document,

(2) A temporary I–551 stamp on a Form I–94, and

(3) A refugee admission stamp on a Form I–94.

Receipt for Application for a Replacement Document

The first instance in which a receipt is acceptable is when the individual presents a receipt for the application for a replacement document. An application for an initial or extension List A or C document, however, is not acceptable, except for nonimmigrants as provided under 8 CFR 274a.12(b)(20). The latter provision permits continued employment for a temporary period of certain nonimmigrants authorized to work for a specific employer incident to status, in situations where a timely application has been filed with the Service and has not been timely adjudicated.

Temporary Evidence of Permanent Resident Status on Form I–94

The second instance is the use of Form I–94 as temporary evidence of permanent resident status. If an alien is not in possession of his or her passport, and requires evidence of lawful permanent resident status, the Service may issue the alien the arrival portion of a Form I–94 with a temporary I–551 stamp and the alien's picture affixed. Although this document provides temporary evidence of permanent resident status, it does not contain security features and, therefore, does not meet the statutory requirements for inclusion on List A. The Services, therefore, proposes to designate Form I–94 with a temporary I–551 stamp as a receipt for Form I–551 for 180 days.

Special Rule for Refugees

The third instance is when the departure portion of Form I–94 contains a refugee admission stamp. The Service recognizes the importance of newly admitted refugees being able to seek employment promptly upon arrival in the United States. The Service has been working with SSA to ensure prompt issuance to refugees of social security cards which carry no employment restrictions. In most instances, the Service believes that refugees will receive social security cards timely and will be able to present them to employers. The Service also intends to give refugees the option of obtaining an I–766 EAD, but recognizes that in most instances refugees will be able to obtain a social security card faster. Refugees may wish to obtain an I–766 EAD so that they will have a Service-issued document with a photograph. In order to ensure that refugees are still able to work if they encounter delays in obtaining cards from either SSA or the Service, the Service proposes a special receipt rule. Under this rule, a Form I–94 with a refugee admission stamp will be a receipt evidencing eligibility to work valid for 90 days from the date of hire. It will not be a receipt for a specific document. The refugees will be permitted to present either an unrestricted social security card or an I–766 EAD at the end of the 90-day receipt period. If the refugee presents a social security card, the refugee will also need to present a List B document. If the refugee presents an I–766 EAD, he or she does not need to present another document.

Are There Circumstances Where a Receipt is not Acceptable?

The proposed rule notes two exceptions in which the special rules for receipts do not apply. These are if:

(1) The individual indicates or the employer, or recruiter or referrer for a fee, has actual or constructive

knowledge that the individual is not authorized to work; or

(2) The employment is for a duration of less than 3 business days.

The Services considered changing the term ''receipt'' in light of the expanded definition contained in this proposed rule. The Service's impression, however, is that employers are familiar with this term as it is used in the verification context. The Service seeks comment on whether other terminology would be clearer or the current term is preferred.

Section 274a.4 How long are Employers and Recruiters or Referrers Required to Retain the Form I–9 and What Must be Retained With it?

The proposed rule breaks what was formerly § 274a.2 into two sections, pertaining to retention (§ 274a.4) and inspection (§ 274a.6). The retention section addresses general requirements for employers and recruiters or referrers for a fee, reverification, copying of documentation, and limitations on the use of the Form I–9. Most of these provisions remain unchanged in content with the current rule. One change is to specify that a form used for reverification must be attached to the initial Form I–9 relating to the individual.

Another change relates to photocopies of documents. Employers and recruiters or referrers for a fee may, but are not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements. Current regulations state both that employers and recruiters or referrers for a fee should retain the copies with the Form I–9 and that the retention requirements do not apply to copies. The proposed rule removes this apparent inconsistency by providing that employers and recruiters or referrers for a fee who elect to photocopy documentation must attach the photocopies to the I–9 and I–9A form and present them with the forms upon inspection. This change is necessary to clarify the retention requirements for photocopies of documentation in response to investigation issues that have confronted the Service and the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

Section 274a.5 Under What Circumstances may Employers and Recruiters or Referrers Rely on a Form I–9 That an Individual Previously Completed?

This section addresses requirements in the cases of continuing employment (formerly § 274a.2(b)(1)(viii)), hiring an individual who was previously employed (formerly § 274a.2(c)), and recruiting or referring for a fee an individual who was previously recruited or referred (formerly § 274a.2(d)). The only substantive change the Service proposes is to eliminate language that could be construed as requiring recruiters and referrers to reverify all referred individuals whose work authorization expires. The proposed rule requires reverification only in the instance of an individual who was previously recruited or referred.

Section 274a.6 What Happens When the Government Asks to Inspect Forms I–9?

This section addresses the 3-day notice of inspection, the obligation to make records available, standards for microfilm and microfiche, and the consequences of failure to comply with an inspection. Most of these paragraphs were previously contained in § 274a.2(b)(2).

What Changes are Made in the Proposed Rule?

Section 416 of IIRIRA clarifies the Service's subpoena authority by stating that, ''immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint * * *.'' The current regulations at § 274a.2(b)(2)(ii) include a reference to the Service's subpoena authority, but they refer to the production of documents rather than the production of evidence and do not include a reference to the attendance of witnesses. This rule proposes to amend the current regulations to include a reference to the attendance of witnesses, replace the phrase, ''production of documents,'' with the phrase, ''production of evidence,'' and include a reference to the exercise of the subpoena authority prior to the filing of a complaint with the Office of the Chief Administrative Hearing Officer based upon a request for a hearing made by the employer, or recruiter or referrer for a fee, following service of the Notice of Intent to Fine. The proposed rule also simplifies the statement in the regulations regarding the Service's subpoena authority so that it is clear that the Service has the authority to compel by subpoena: Forms I–9 that a person or entity refuses to produce upon inspection; Forms I–9 that are the subject of an inspection whether or not the person or entity refuses to produce them; the production of any evidence; and the attendance of witnesses.

Will the Service Allow Electronic Storage of the Form I–9?

In the last several years, the Service has been in dialogue with the public over changes in information technology and their possible applicability to the Form I–9. One result of these discussions was the interim rule, published October 7, 1996, permitting electronic generation of a blank Form I–9. Following publication of this rule, the Service began to make the Form I–9 available for downloading from its world wide web site on the Internet (www.ins.usdoj.gov).

Employers have also expressed interest in electronic storage of the Form I–9. The Service is currently preparing to conduct a demonstration project to assess electronic storage of Forms I–9. In reviewing this technology, the Service is aware that many employers now scan and/or electronically store many of their personnel records.

The Form I–9, however, raises special issues because it requires two signatures. Fraudulent preparation of the form is a common issue in the Service's investigations. For example, during an investigation an unauthorized alien may claim that the employer did not complete a Form I–9 at the time of hire, while the employer presents a Form I–9 for the employee and claims that the employee lied about his unauthorized status. The determination of whose account is true is central to the question of liability for penalties. Investigations of such cases may require forensic analysis to determine the authenticity of the signatures. Scanned signatures provide adequate detail for such analysis only at a rate of resolution higher than those used for most records scanning systems. The Service is continuing to monitor developments in scanning and other technology. At present, however, the Service is considering scanned records for purposes of I–9 retention only in the context of the demonstration project.

§ 274a.7 What is the Prohibition on Hiring or Contracting With Unauthorized Aliens and What Defense can be Claimed?

This section contains the following three provisions pertaining to hiring or contracting and unauthorized aliens:

(1) Prohibition on the hiring and continuing employment of unauthorized aliens, currently at 8 CFR 274a.3;

(2) Use of labor through contract, currently at 8 CFR 274a.5; and

(3) Good faith defense to charge of knowingly hiring an unauthorized alien, currently at 8 CFR 274a.4.

The proposed rule amends the paragraph currently at 8 CFR 274a.3 by

adding a reference to the prohibition on the hiring of unauthorized aliens provided by section 274A(a) (1) (A) of the Act. It also clarifies that an employer's ''knowledge'' that an employee is unauthorized can be either actual or constructive for the provision prohibiting the hiring or continued employment of an unauthorized alien to be violated. Cross-references to the verification sections are amended to reflect the changes proposed by the rule. No other substantive changes were made.

Section 274a.8 What are the Requirements of State Employment Agencies that Choose to Verify the Identity and Employment Eligibility of Individuals Referred for Employment by the Agency?

This section contains the state agency certification requirements currently contained at 8 CFR 274.6. The Service proposes no changes to the contents of this section, in part because the Service is not aware of any state agencies currently issuing certifications under this provision. Under the Act, an employer may rely upon a state agency certification instead of completing Form I-9. The requirements in this section were developed during the first years that the verification requirements were in effect. In light of recent welfare reform efforts, the Service is prepared to revisit the requirements if there is new interest among state agencies in performing verifications for employers. The Service invites comment from state agencies concerning changes to the regulations that would facilitate their ability to provide this service.

Section 274a.9 Can a Person or Entity Require an Individual to Provide a Financial Guarantee or Indemnity Against Potential Liability Related to the Hiring, Recruiting, or Referring of the Individual?

This section contains the prohibition against indemnity bonds currently found at 8 CFR 274.8. No substantive changes have been made to this section.

Section 274a.10 How are Investigations Initiated and Employers Notified of Violations?

This section contains the paragraphs discussing the filing of complaints, investigations, notification of violations, and the procedures for requesting a hearing, which are currently found at 8 CFR 274a.9. No substantive changes have been made to this section.

Section 274a.11 What Penalties may be Imposed for Violations?

This section contains the penalty provisions currently found at 8 CFR 274a.10. It also contains the pre-enactment provision, which exempts employers from penalties for individuals hired prior to November 7, 1987, currently found at 8 CFR 274a.7. Minor language changes have been made to the latter for purposes of clarity. The substance in this section remains unchanged.

How can the Service Best Inform the Public of Changes to the Requirements?

Over the years, the Service has attempted to inform the public of new forms and requirements by mailing information. Mailings were conducted in 1987 to introduce the Form I–9; in 1989 to introduce the Form I–688B Employment Authorization Document (EAD); in 1991 to introduce the revised Form I–9; and in 1997 to introduce the new Form I–766 EAD.

Employers and trade associations have, from time to time, questioned the effectiveness of such mailings. Three of the mailings were conducted with the assistance of the Internal Revenue Service (IRS). Some of the feedback the Service received following those mailings suggested that many employers have IRS mail directed to attorneys or accountants, which meant that the Form I–9 information did not reach its intended audience. For the 1997 mailing, the Service used a commercial data base and indicated on the front that the material should go to the human resources department. In talking to employers who have called INS for information related to the Form I–9, the Service has identified few instances where the people responsible for Forms I–9 received the mailing.

The Service recognizes the impact that the Form I–9 has on the business community and wants to ensure that the public has ready access to the information it needs. The Service is developing a fax-back capability for employer information and is making increased use of its internet site. All materials related to changes in the requirements will be made available through these channels as they become available. The Service will also work through trade and professional associations and similar organizations to inform the public.

The Service seeks suggestions from the public concerning the most cost-effective means to reach and inform those affected by this rule. Similarly, suggestions concerning the preferred format for instructional materials, such as the M–274 *Handbook for Employers* or suggested alternatives, would be welcome.

Cross-reference table

The following cross-reference table is provided to assist the public in understanding how the Service proposes to restructure 8 CFR 274a, Subpart A.

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A

Proposed	Current
274a.1 Definitions. Definition of recruiters and referrers moved to this section.	274a.1 and 274a.2(a)
274a.2 Why is employment verification required and what does it involve?	
(a) Why employment verification is required	274a.2(a)
(1) Designation of Form I–9 and Form I–9A	274a.2(a)
(2) Obtaining and duplicating Form I–9 and Form I–9A	274a.2(a)
(3) Limitation on use of Form I–9 and attachments	274a.2(b)(4)
(4) Beginning date for verification requirements	274a.2(a)
(b) How to complete the Form I–9	274a.2(b)
(1) Employee information and documentation	274a.2(a)(b)(1)(i)(A)—responsibility to complete section 1 of Form I–9
(2) Document review and verification	274a.2(b)(1)(i)(B)—responsibility to present documentation 274a.2(b)(1)(ii)(A)—responsibility to review documentation 274a.2(b)(1)(ii)(B)—responsibility to complete section 2 of Form I–9
(3) Recruiters or referrers	274a.2(b)(1)(iv)—recruiter/referrer responsibility to complete Form I–9

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A—Continued

Proposed	Current
(c) Time for completing Form I–9 (new heading)	274a.2(b)
(1) Section 1 of the Form I–9	274a.2(b)(1)(i)(A)—timing to complete section 1
(2) Section 2 of the Form I–9	
(i) Hires for a duration of 3 or more business days	274a.2(b)(1)(ii)—timing to complete section 2 274a.2(b)(1)(iv)—timing for recruiters/referrers
(ii) Hires for a duration of less than 3 business days	274a.2(b)(1)(iii)—timing if hire is for less than 3 business days
(3) Receipts (new)	
(d) Reverification of employment eligibility when employment authorization expires.	274a.2(b)(1)(vii)
(1) Procedures	
(2) Continuing obligation (new)	
(3) Exception to reverification requirement (new)	
274a.3 What documents are acceptable for employment verification?	
(a) Documents that establish both identity and employment authorization (List A).	274a.2(b)(1)(v)(A)
(b) Documents that establish identity only (List B)	274a.2(b)(1)(v)(B)
(1) Acceptable List B documents	274a.2(b)(1)(v)(B)
(2) Special rule for minors	274a.2(b)(1)(v)(B)(*3*)
(3) Special rule for individuals with disabilities	274a.2(b)(1)(v)(B)(*4*)
(c) Documents that establish employment authorization only (List C).	274a.2(b)(1)(v)(C)
(d) Receipts	274a.2(b)(1)(vi)
(1) Acceptable receipts and their validity periods (includes new content).	274a.2(b)(1)(vi)
(2) Exceptions (includes new content)	274a.2(b)(1)(iii)—prohibition on receipts if hire is for less than 3 business days
274a.4 How long are employers and recruiters or referrers required to retain the Form I–9 and what must be retained with it?.	274a.2(b)(2)—retention of Form I–9
(a) Retention of Form I–9	
(1) Employers	274a.2(b)(2)(i)(A)
(2) Recruiters or referrers	274a.2(b)(2)(i)(B)
(b) Retention of attachments (new)	
(i) Reverification forms (new)	
(ii) Copies of documentation	274a.2(b)(3)
274a.5 Under what circumstances may employers and recruiters or referrers rely on a Form I–9 that an individual previously completed?	
(a) Continuing employment	274a.2(b)(1)(viii)
(b) Employment verification requirements in the case of an individual who was previously employed.	274a.2(c)
(c) Employment verification requirements in the case of recruiting or referring for a fee an individual who was previously recruited or referred.	274a.2(d)
274a.6 What happens when the Government asks to inspect Forms I–9?.	274a.2(b)(2)—Inspection
(a) Notice of inspection	274a.2(b)(2)(ii)
(b) Obligation to make records available	274a.2(b)(2)(ii)
(1) In general	
(2) Standards for submitting microfilm or microfiche	274a.2(b)(2)(iii)
(3) Recruiters or referrers	274a.2(b)(2)(ii)
(c) Compliance with inspection	274a.2(b)(2)(ii)
(d) Use of subpoena authority	274a.2(b)(2)(ii)
274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?	
(a) Prohibition on the hiring and continuing employment of unauthorized aliens.	274a.3
(b) Use of labor through contract	274a.5
(c) Good faith defense to charge of knowingly hiring an unauthorized alien.	274a.4
274a.8 What are the requirements of state employment agencies that choose to verify the identity and employment eligibility of individuals referred for employment by the agency?.	274a.6
274a.9 Can a person or entity provide a financial guarantee or indemnity against potential liability related to the hiring, recruiting, or referring of the individual?.	274a.8
274a.10 How are investigations initiated and employers notified of violations?.	274a.9
274a.11 What penalties may be imposed for violations?	
(a) Criminal penalties	b274a.10(a)
(b) Civil penalties	274a.10(b)
(c) Enjoining pattern or practice violations	274a.10(c)

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A—Continued

Proposed	Current
(d) Pre-enactment provisions for employees hired prior to November 7, 1986.	274a.7

Regulatory Flexibility Act

The Service has examined the impact of this proposed rule in light of Executive Order 12866 and the Regulatory Flexibility Act (RFA) (5 U.S.C. 603, et seq.) and has drafted the rule to minimize its economic impact on small businesses while meeting its intended objectives. The obligations of employment verification have been imposed by Congress since 1987 and for the most part remain unchanged after amendment by IIRIRA. This rule is intended to reduce the burden on small entities by simplifying the procedures for verifying employees' eligibility to work in the United States.

What Are the Reasons for This Regulatory Action?

This rule is necessary to implement certain provisions of IIRIRA, specifically provisions which: (1) Eliminate certain documents currently used in the employment eligibility verification process; (2) include any branch of the Federal Government in the definition of ''entity'' for employer sanctions purposes; and (3) clarify the Service's authority to compel by subpoena the appearance of witnesses and production of evidence when investigating possible violations of section 274A of the Act. In conjunction with revising the regulations to implement IIRIRA, the Service initiated a comprehensive review of the rule to minimize its impact on small businesses. Through that review, required by the RFA, the Service identified additional changes which are intended to simplify and clarify the requirements.

What Are the Objectives and Legal Basis for the Rule?

The legal basis for the rule is section 274A of the Act. The major objectives of the rule, with respect to its impact on small businesses, include:

(1) Clarifying the timing permitted for completion of the Form I–9. These changes respond to frequent questions from employers concerning their authority to perform verification before an employee actually starts to work, and whether employees must be given 3 days to present documentation in all circumstances;

(2) Specify reverification requirements. These changes respond to concerns expressed by employers and to their expressed preference that both the employee and the employer should be required to complete an attestation as part of reverification;

(3) Clarify and expand the receipt rule, under which work-eligible individuals who are unable to present a required document may present a receipt under certain circumstances. These changes respond to frequent questions from employers. In addition to revising the receipt rule itself, the Service has moved the discussion of receipts to the section that identifies acceptable documents. The changes are intended to retain the flexibility of the receipt rule, which helps to ensure that work-eligible employees are not prevented from working because their documents have been lost or stolen, while making the rule easier for employers to understand;

(4) Shorten the list of documents acceptable for verification. This is one of the most significant changes for small businesses. A shorter list will mean that employers have to be familiar with fewer documents. The Service has made a particular effort to limit the circumstances in which employers will need to examine a Service-issued ''paper'' document (e.g., a Form I–94 with a stamped endorsement), because those documents have been the subject of employer confusion; and

(5) Require the attachment to and retention with the Form I–9 of copied documentation, if employers elect to photocopy the documents presented. This is an area that is unclear in the current regulations.

In addition, the proposed rule proposes to restructure the regulation to make it easier to use and cite. This should reduce the need for small entities to rely on outside assistance to understand the basic requirements of the law.

How Many and What Kind of Small Entities Will Be Affected by the Proposed Rule?

The essential requirements in the proposed rule, which have been in place for 10 years, apply to all entities which hire individuals to perform services or labor in return for remuneration. The requirements also apply to recruiters or referrers for a fee which are an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802). Data obtained from the Bureau of Labor Statistics show the following number of employers in 1994, rounded to the nearest hundred (*See* Employment and Wages, 1994, Bureau of Labor Statistics):

ESTIMATED NUMBER OF BUSINESSES BY SIZE, 1994

Size of business (number of employees)	Number of employers
< 5	3,614,800
5 to 9	1,200,800
10 to 49	1,248,100
50 to 499	293,700
500 or more	14,700
Total	6,372,100

Although other data sources may provide different estimates of the actual number of small businesses, the distribution shown above indicates that the majority of businesses affected by these requirements are small businesses.

What Are the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule?

The proposed rule continues the existing requirement, imposed by Congress since 1987, for employers to complete the Form I–9 for all new hires and to retain the form for 3 years or 1 year after the employment terminates, whichever is longer. Under the proposed rule, if the employer elects to make photocopies of documentation presented, the employer must attach the photocopies to and retain them with the Form I–9. The requirement to attach and retain the photocopies is new, clarifying an area that is ambiguous under the existing regulation. If the employee's work authorization expires, the employer must reverify the employee's eligibility to work on Form I–9 or Form I–9A and attach the reverification form to and retain it with the Form I–9. Reverification is not a new requirement, but the proposed rule seeks to clarify what is required.

Because employers are already completing and retaining Forms I–9 and conducting reverifications when employees' authorization expires, the rule is not expected to impose significant new costs on small entities.

There will be some cost, however, associated with becoming familiar with the new requirements, obtaining new forms, and retraining employees who are familiar with the existing requirements.

Once the transition to the new forms and requirements is complete, the Service anticipates that the costs of compliance for most businesses will be lower than under the existing rule and Form I–9. Based on informal discussions with a limited number of employers, the Service believes that the smaller number of documents, simplified design of the Form I–9, and more comprehensive instruction sheet provided with the form, all make the verification process faster and easier than it is now.

Additional information on the estimated paperwork burden for the Form I–9 is provided under the discussion of the Paperwork Reduction Act.

Are There Any Federal Rules That May Duplicate, Overlap, or Conflict With the Rule?

The Service is not aware of overlap, duplication, or conflict with other Federal rules. The requirement for employers to verify the identity and eligibility to work is unique to section 274A of the Act and its implementing regulations.

The Service has heard complaints on occasion from employers to the effect that section 274A of the Act and its implementing regulations at subpart A conflict with section 274B of the Act and its implementing regulations at 28 CFR part 44, by on the one hand requiring employers to verify their employees' identity and work eligibility by examining documents, while on the other hand subjecting them to penalties for inquiring into the validity of those documents, particularly in light of the proliferation of false documentation. The Service firmly supports section 274B of the Act and its enforcement, and does not view it as conflicting with section 274A. The Service's proposed rule includes changes intended to clarify how employers may comply with 274A while avoiding practices prohibited by 274B. The Service invites the public to suggest other ways that the regulations could minimize any perceived inconsistency between these two provisions of law.

Are There Any Significant Alternatives That Would Accomplish the Objectives of the Rule and Minimize its Economic Impact?

In enacting the Immigration Reform and Control Act of 1986, Congress considered exempting employers with three or fewer employees from the requirements of the law. Congress did not do so, however, because of evidence that a significant number of unauthorized aliens are employed by small businesses. The Service believes that having a uniform set of requirements for all businesses, regardless of size, is consistent with congressional intent. What the Service has attempted to do is to take into account the needs of a wide variety of businesses in formulating the proposed rule.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The impact of this rule on small businesses is discussed under the Regulatory Flexibility Act. This preliminary analysis is the basis for the Service's finding that this is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

This proposed rule contains a revision to an information collection (Form I–9, Employment Eligibility Verification/ Form I–9A, Employment Eligibility Reverification) which is subject to review by OMB under the Paperwork Reductions Act of 1995 (Pub. L. 104–13). Therefore, the agency solicits public comments on the revised information collection requirements for 30 days in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service estimates a total annual reporting burden of 13,153,500 hours. This figure is based on the number of I–9 and I–9A respondents (78,890,000) × 9 minutes per response (.15) for the reporting requirements; of the 78,890,000 respondents, 20,000,000 are involved in record-keeping activities associated with the I–9 and I–9A process. The computation of the annual burden estimate for record-keeping activities is based on 20,000,000 × 4 minutes per response (0.66) equating to 1,320,000.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the revised information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Office of Information and Regulatory Affairs

(OMB), 725 17th Street, NW, Washington, DC 20503, Attn: DOJ/INS Desk Officer, Room 10235. The comments or suggestions should be submitted within 30 days of publication of this rulemaking.

List of Subjects

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

2. Section 274a.1 is amended by revising paragraphs (b) and (e), and by adding a new paragraph (m), to read as follows:

§ 274a.1 Definitions.

* * * * *

(b) The term *entity* means any legal entity including, but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association. For purposes of this part, the term *entity* includes an entity in any branch of the Federal Government;

* * * * *

(e) The term *recruit for a fee* means the act of soliciting a person, directly or indirectly, with the intent of obtaining employment for that person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that recruit union members, or non-union individuals who pay membership dues;

* * * * *

(m) The term *recruiter or referrer for a fee* means a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802).

3. Section 274a.2 is revised to read as follows:

§ 274a.2 Why is employment verification required and what does it involve?

(a) *Why employment verification is required.* It is unlawful for a person or entity to hire or to recruit or refer for a fee an individual for employment in the United States without complying with section 274A of the Act and §§ 274a.2 through 274a.5. The Act requires the person or entity to verify on a designated form that the individual is not an unauthorized alien.

(1) *Designation of Form I–9 and Form I–9A.* The Employment Eligibility Verification form, Form I–9, has been designated by the Service as the form to be used in complying with the employment verification requirements. The Employment Eligibility Reverification form, Form I–9A, is an optional supplement to the Form I–9 which may be used instead of Form I–9 when a person or entity must reverify an individual's eligibility to work under paragraph (d) of this section.

(2) *Obtaining and duplicating Form I–9 and Form I–9A.* Forms I–9 and I–9A may be obtained in limited quantities from the Service forms centers or district offices, downloaded from the Service World Wide Web site, or ordered from the Superintendent of Documents, Washington, DC 20402. Employers, or recruiters or referrers for a fee, may electronically generate blank Forms I–9 or I–9A, provided that: the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under §§ 274a.4 through 274a.6. When copying or printing Form I–9, Form I–9A, or the instruction sheet, the text may be reproduced by making either double-sided or single-sided copies.

(3) *Limitation on use of Form I–9 and attachments.* Any information contained in the Form I–9, and on any attachments, described in § 274a.4(b), may be used only for enforcement of the Act and 18 U.S.C. 1001, 1028, 1546, or 1621.

(4) *Beginning date for verification requirements.* Employers need to complete a Form I–9 only for individuals hired after November 6, 1986, who continue to be employed after May 31, 1987. Recruiters or referrers for a fee need to complete a Form I–9 only for individuals recruited or referred and hired after May 31, 1987.

(b) *How to complete the Form I–9*—(1) *Employee information and documentation.* A person or entity that hires, or recruits or refers for a fee, an individual for employment must ensure that the individual properly:

(i) Completes section 1 on the Form I–9. If an individual is unable to complete the Form I–9 or needs it translated, someone may assist him or her. The preparer or translator must provide the assistance necessary for the individual to understand the Form I–9 and complete section 1 and have the individual initial and sign or mark the Form in the appropriate places. The preparer or translator must them complete the ''Preparer/Translator'' portion of the Form I–9; and

(ii) Presents to the employer, or recruiter or referrer for a fee, documentation, described in this paragraph, that establishes the individual's identity and eligibility to work. An individual has the choice of which document(s) to present. Acceptable documentation is:

(A) An original unexpired document that establishes both identity and employment authorization (List A document described in § 274a.3(a)); or

(B) An original unexpired document that establishes identity (List B document described in § 274a.3(b)) and a separate original unexpired document which establishes employment authorization (List c document described in § 274a.3(C)); or

(C) If an individual is unable to present a document listed in §§ 274a.3(a), (b), or (c) and is hired for a duration of 3 or more business days, an acceptable receipt (listed in § 274a.3(d)) instead of the required document. A receipt is valid for a temporary period, specified under § 274a.3(d). The individual must present the required document at the end of such period.

(2) *Document review and verification.* An employer, or recruiter or referrer for a fee, must:

(i) Physically examine the documentation presented by the individual establishing identity and employment eligibility as set forth in § 274a.3 and ensure that the document(s) presented appear to be genuine and to relate to the individual. Employers and recruiters or referrers for a fee may not specify which document or documents an individual is to present. To do so may violate section 274B of the Act; and

(ii) Complete section 2 of the Form I–9.

(3) *Recruiters or referrers.* Recruiters or referrers for a fee may designate agents to complete the employment verification procedures on their behalf, including but not limited to notaries, national associations, or employers. If a recruiter or referrer designates an employer to complete the employment verification procedures, the employer need only provide the recruiter or

referrer with a photocopy of the Form I–9 and any attachments.

(c) *Time for completing Form I–9* — (1) *Section 1 of the Form I–9.* An employer, or recruiter or referrer for a fee, must ensure that the individual properly completes section 1 of the Form I–9 at the time of hire.

(2) *Section 2 of the Form I–9* —(i) *Hires for a duration of 3 or more business days.* An employer, or recruiter or referrer for a fee, must examine the documentation presented by the individual and complete section 2 of the Form I–9 within 3 business day of the hire. An employer, or recruiter or referrer for a fee, may require an individual to present documentation listed § 274a.3 at the time of hire or before the time of hire, so long as the commitment to hire the individual has been made and provided that this requirement is applied uniformly to all individuals.

(ii) *Hires for a duration of less than 3 business days.* An employer, or recruiter or referrer for a fee, must examine the documentation presented by the individual and complete section 2 of the Form I–9 at the time of the hire.

(3) *Receipts.* If an individual presents a receipt, as provided in § 274.3(d), for purposes for verification or reverification, the employer must update the Form I–9 (or Form I–9A, if applicable) within the time limits specified in that section.

(d) *Reverification of employment eligibility when employment authorization expires*—(1) *Procedures.* Except as provided in paragraph (d)(3) of this section, if section 1 or 2 of the Form I–9 indicates that the individual's employment authorization expires, the employer must reverify the individual's employment authorization. The employer must, not later than the date that work authorization expires, ensure proper completion of sections 1 and 2 of new Form I–9 or a Form I–9A by:

(i) Ensuring that the individual properly completes section 1 and attests that he or she is authorized to work indefinitely or until a specified date and signs and dates the attestation;

(ii) Examining and unexpired, original document presented by the individual establishing employment eligibility as set forth in § 274a.3(a), (c), or (d), and ensuring that it appears to be genuine and to relate to the individual. An employer should not reverify List B documents;

(iii) Completing section 2; and

(iv) Attaching the new Form I–9 or Form I–9A to the previously-completed Form I–9.

(2) *Continuing obligation.* Except as provided in paragraph (d)(3) of this section, for as long as the Form I–9 or Form I–9A used for reverification indicates that the individual is not a United States citizen or national, or a lawful permanent resident, and that the individual's employment authorization expires, the employer must reverify the individual's employment authorization as provided in paragraph (d)(1) of this section, no later than the date that employment authorization expires.

(3) *Exception to reverification requirement.* An employer shall not reverify the employment authorization of an individual who attests in section 1 of the Form I–9 or Form I–9A that he or she is a citizen or national of the United States. An employer shall not reverify the employment authorization of an individual who attests in section 1 of the Form I–9 or Form I–9A that he or she is a lawful permanent resident, unless the individual presents a foreign passport that contains a temporary I–551 stamp, provided in § 274a.3(a)(3).

4. Section 274a.3 is revised to read as follows:

§ 274a.3 What documents are acceptable for employment verification?

(a) *Documents that establish both identity and employment authorization (List A).*

(1) A United States passport;

(2) An Alien Registration Receipt Card or Permanent Resident Card, Form I–551'

(3) A foreign passport that contains a temporary I–551 stamp;

(4) An employment authorization document issued by the Service which contains a photograph, Form I–766, Form I–688 (Temporary Resident Card), Form I–688A, or Form I–688B; or

(5) In the case of a nonimmigrant alien authorized to work only for a specific employer, a foreign passport with an Arrival-Departure Record, Form I–94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

(b) *Documents that establish identify only (List B).*

(1) *Acceptable List B documents.*

(i) A driver's license or identification card issued by a state (as defined in section 101(a)(36) of the Act) or an outlying possession of the United States (as defined by section 101(a)(29) of the Act), provided that the document contains a photograph or the following identifying information: name, date of birth, sex, height, color of eyes, and address;

(ii) A Native American tribal document; or

(iii) In the case of a Canadian nonimmigrant alien or alien with common nationality with Canada who is authorized to work only for a specific employer, a driver's license issued by a Canadian Government authority or a Canadian federal or provincial identification card.

(2) *Special rule for minors.* Minors under the age of 18 who are unable to produce one of the identity documents listed in paragraph (b)(1) of this section are exempt from producing one of the specified identity documents if:

(i) The minor's parent or legal guardian completes section 1 of the Form I–9 and in the space for the minor's signature, the parent or legal guardian writes the words, ''minor under age 18'';

(ii) The minor's parent or legal guardian completes on the Form I–9 the ''Preparer/Translator certification''; and

(iii) The employer or the recruiter or referrer for a fee writes in section 2 under List B in the space after the words ''Document Identification #'' the words, ''minor under age 18''.

(3) *Special rule for individuals with diasbilities*—(i) *Procedures.* Individuals with disabilities, who are unable to produce one of the identity documents listed in paragraph (b)(1) of this section, and who are being placed into employment by a nonprofit organization or association, or as part of a rehabilitation program, are exempt from producing one of the specified identify documents if:

(A) The individual's parent or legal guardian, or a representative from the nonprofit organization, association, or rehabilitation program placing the individual into a position of employment completes section 1 of the Form I–9 and in the space for the individual's signature, writes the words, ''special placement'';

(B) The individual's parent or legal guardian, or the program representative, completes on the Form I–9 the ''Preparer/Translator certification''; and

(C) The employer or the recruiter or referrer for a fee writes in section 2 under List B in the space after the words ''Document Identification #'' the words, ''special placement''.

(ii) *Applicability.* For purposes of this section the term *disability* means, with respect to an individual:

(A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) A record of such impairment; or

(C) Being regarded as having such an impairment.

(c) *Documents that establish employment authorization only (List C).*

(1) A social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(2) A Native American tribal document; or

(3) In the case of a nonimmigrant alien authorized to work only for a specific employer, an Arrival-Departure Record, Form I–94, containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

(d) *Receipts*—(1) *Acceptable receipts and their validity periods.* (i) A receipt for an application to replace a document described in paragraph (a), (b), or (c) of this section because the document was lost, stolen, or damaged. Documentation acknowledging receipt of an application for an initial grant or extension of a document described in paragraph (a) or (c) of this section is not a receipt for this purpose, except for a receipt for the application of a timely filed application for an extension of nonimmigrant stay as provided in § 274a.12(b)(2). The individual must present the replacement document within 90 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 90 days of the date employment authorization expires or the date of rehire.

(ii) The arrival portion of Form I–94 marked with an unexpired Temporary I–551 stamp and affixed with a photograph of the individual. The individual must present the Form I–551 within 180 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 180 days of the date employment authorization expires or the date of rehire.

(iii) The departure portion of Form I–94 marked with an unexpired refugee admission stamp. The individual must present either an unexpired Employment Authorization Document (Form I–766 or Form I–688B) or a social security account number card that does not contain employment restrictions and an identity document described in paragraph (b) of this section within 90 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 90 days of the date employment authorization expires or the date of rehire.

(2) *Exceptions.* A receipt described in paragraph (d)(1) of this section is not an acceptable document if:

(i) The individual indicates or the employer, or recruiter or referrer for a fee, has actual or constructive knowledge that the individual is not authorized to work; or

(ii) The employment is for a duration of less than 3 business days.

5. Section 274a.4 is revised to read as follows:

§ 274a.4 How long are employers and recruiters or referrers required to retain the Form I–9 and what must be retained with it?

(a) *Retention of Form I–9*—(1) *Employers.* An employer must retain the Form I–9 for 3 years after the date of hire or 1 year after the date the individual's employment is terminated, whichever is later.

(2) *Recruiters or referrers.* A recruiter or referrer for a fee must retain the Form I–9 for 3 years after the date of hire.

(b) *Retention of attachments*—(1) *Reverification forms.* The employer, or recruiter or referrer for a fee, must attach Forms I–9 or I–9A used for reverification, as described in § 274a.2(d), to the initial Form I–9 relating to the individual and retain them with the initial Form I–9.

(2) *Copies of documentation*—(i) *Option to photocopy.* An employer, or recruiter or referrer for a fee, may, but is not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements described in § 274a.2. If such a copy is made, it must be attached to and retained with the Form I–9 (or Form I–9A if applicable).

(ii) *Obligation to complete Form I–9.* The copying and retention of any such document does not relieve the employer, or recruiter or referrer for a fee, from the requirement to fully complete section 2 of the Form I–9 or Form I–9A.

(iii) *Discrimination prohibited.* An employer, or recruiter or referrer for a fee, should not copy the documents only of individuals or certain classes of individuals based on national origin or citizenship status. To do so may violate section 274B of the Act.

6. Section 274a.5 is revised to read as follows:

§ 274a.5 Under what circumstances may employers and recruiters or referrers rely on a Form I–9 that an individual previously completed?

(a) *Continuing employment.* An employer will not be deemed to have hired for employment an individual who is continuing in his or her employment and has a reasonable expectation of employment at all times. Therefore, no verification is necessary for such individuals.

(1) An individual is continuing in his or her employment in one of the following situations:

(i) An individual takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the employer;

(ii) An individual is promoted, demoted, or gets a pay raise;

(iii) An individual is temporarily laid off for lack of work;

(iv) An individual is on strike or in a labor dispute;

(v) An individual is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

(vi) An individual transfers from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the individual's Form I–9 (and attachments if applicable) to the receiving unit;

(viii) An individual continues his or her employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains from the previous employer records and Forms I–9, and attachments, where applicable. For this purpose, a related, successor, or reorganized employer includes:

(A) The same employer at another location;

(B) An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets;

(C) An employer who continues to employ any employee of another employer's workforce where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement. For purposes of this section, any agent designated to complete and maintain the Form I–9 and attachments must record the employee's date of hire and/or termination each time the employee is hired and/or terminated by an employer of the multi-employer association; or

(D) An individual is engaged in seasonal employment.

(2) The employer who is claiming that an individual is continuing in his or her employment must also establish that the individual is expected to resume employment at all times and that the

individual's expectation is reasonable. Whether an individual's expectation is reasonable will be determined on a case-by-case basis taking into consideration several factors. Factors which would indicate that an individual has a reasonable expectation of employment include, but are not limited to, the following:

(i) The individual in question was employed by the employer on a regular and substantial basis. A determination of a regular and substantial basis is established by a comparison of other workers who are similarly employed by the employer;

(ii) The individual in question complied with the employer's established and published policy regarding his or her absence;

(iii) The employer's past history of recalling absent employees for employment indicates a likelihood that the individual in question will resume employment with the employer within a reasonable time in the future;

(iv) The former position held by the individual in question has not been taken permanently by another worker;

(v) The individual in question has not sought or obtained benefits during his or her absence from employment with the employer that are inconsistent with an expectation of resuming employment with the employer within a reasonable time in the future. Such benefits include, but are not limited to, severance and retirement benefits;

(vi) The financial condition of the employer indicates the ability of the employer to permit the individual in question to resume employment within a reasonable time in the future; or

(vii) The oral and/or written communication between the employer, the employer's supervisory employees and the individual in question indicates that it is reasonably likely that the individual in question will resume employment with the employer within a reasonable time in the future.

(b) *Employment verification requirements in the case of an individual who was previously employed*—(1) *Hired within 3 years from the date of the previously completed Form I–9.* An employer that hires an individual previously employed by the employer within 3 years of the date of the initial execution of a previously completed Form I–9 relating to the individual which meets the requirements set forth in §§ 274a.2 through 274a.4 may (instead of completing a new Form I–9) inspect the previously completed Form I–9 and all attachments (described in § 274a.4(b)).

(i) If the Form I–9 and attachments relate to the individual, and the individual continues to be authorized for employment, the previously completed Form I–9 is sufficient for purposes of section 274A(b) of the Act.

(ii) If the previously completed Form I–9 indicates that the individual is no longer authorized for employment, the employer must reverify in accordance with § 274a.2(d); otherwise, the individual may no longer be employed.

(iii) The employer must retain the previously completed Form I–9 and attachments for a period of 3 years commencing from the date of the initial execution of the Form I–9 or 1 year after the individual's employment is terminated, whichever is later.

(2) *Hired more than 3 years after the date of the previously executed Form I–9.* An employer that hires an individual previously employed by the employer more than 3 years after the date of the initial execution of a previously completed Form I–9 relating to the individual must complete a new Form I–9 in compliance with the requirements of §§ 274a.2 through 274a.4.

(c) *Employment verification requirements in the case of recruiting or referring for a fee an individual who was previously recruited or referred*—(1) *Recruited or referred within 3 years from the date of the previously completed Form I–9.* A recruiter or referrer for a fee that recruits or refers an individual previously recruited or referred by the recruiter or referrer for a fee within 3 years of the date of the initial execution of the Form I–9 relating to the individual which meets the requirements set forth in §§ 274a.2 through 274a.4 may (instead of completing a new Form I–9 inspect the previously completed Form I–9 and all attachments (described in § 274a.4(b)).

(i) If the Form I–9 and attachments relate to the individual, and the individual continues to be authorized for employment, the previously completed Form I–9 is sufficient for purposes of section 274a(b) of the Act.

(ii) If the previously completed Form I–9 indicates that the individual's employment authorization has expired, the recruiter or referrer for a fee must reverify in accordance with § 274a.2(d); otherwise the individual may no longer be recruited or referred.

(iii) The recruiter or referrer for a fee must retain the previously completed Form I–9 and attachments for a period of 3 years from the date of the rehire.

(iv) The reverification requirements in § 274a.2(d) do not apply to recruiters or referrers for a fee except as provided in paragraph (c)(1)(ii) of this section.

(2) *Recruited or referred more than 3 years after the date of the previously executed Form I–9.* A recruiter or referrer for a fee that recruits or refers an individual previously recruited or referred by the recruiter or referrer for a fee more than 3 years after the date of the initial execution of a previously completed Form I–9 relating to the individual must complete a new Form I–9 in compliance with the requirements of §§ 274a.2 through 274a.4.

7. Section 274a.6 is revised to read as follows:

§ 274a.6 What happens when the Government asks to inspect Forms I–9?

(a) *Notice of inspection.* Officers of the Service, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor may inspect the Forms I–9, and all attachments described in § 274a.4(b), after providing at least 3 days' notice to any person or entity required to retain Forms I–9.

(b) *Obligation to make records available*—(1) *In general.* At the time of inspection, the Forms I–9 and all attachments must be made available in their original form or on microfilm or microfiche at the location where the request for production was made. If the Forms I–9 and attachments are kept at another location, the person or entity must inform the officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at a Service office.

(2) *Standards for submitting microfilm or microfiche.* The following standards shall apply to Forms I–9 and attachments presented on microfilm or microfiche submitted to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor: Microfilm when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify it to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or whole numbers. A detailed index of all microfilmed data shall be maintained and arranged in such a manner as to permit the immediate location of any particular record. It is the responsibility of the employer, or recruiter or referrer for a fee:

(i) To provide for the processing, storage, and maintenance of all microfilm, and

(ii) To be able to make the contents thereof available as required by law. The person or entity presenting the microfilm will make available a reader-printer at the examination site for the ready reading, location, and reproduction of any record or records being maintained on microfilm. Reader-printers made available to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor shall provide safety features and be in clean condition, properly maintained, and in good working order. The reader-printers must have the capacity to display and print a complete page of information. A person or entity who is determined to have failed to comply with the criteria established by this regulation for the presentation of microfilm or microfiche to the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor, and, at the time of the inspection, does not present a properly completed Form I–9 with attachments for the employee, is in violation of section 274A(a)(1)(B) of the Act and §§ 274a.2 through 274a.6.

(3) *Recruiters or referrers.* A recruiter or referrer for a fee who has designated an employer to complete the employment verification procedures may present a photocopy of the Form I–9 and attachments instead of presenting the Form I–9 and attachments in its original form or on microfiche, as set forth in § 274a.2(b)(3).

(c) *Compliance with inspection.* Any refusal or delay in presentation of the Form I–9 and attachments for inspection is a violation of the retention requirements as set forth in section 274A(b)(3) of the Act.

(d) *Use of subpoena authority.* No subpoena or warrant shall be required for an inspection under this section, but the use of such enforcement tools is not precluded. Any Service officer listed in § 287.4 of this chapter may compel production of the Forms I–9 and attachments by issuing a subpoena if the person or entity has not complied with a request to present the Forms I–9 and attachments. Prior to the filing of a complaint under 28 CFR part 68, any Service officer listed in § 287.4 of this chapter may compel by subpoena the attendance of witnesses and production of any evidence, including but not limited to Forms I–9 and attachments. Nothing in this section is intended to limit the Service's subpoena power under sections 235(d)(4) or 274A(e)(2)(C) of the Act.

8. Section 274a.7 is revised to read as follows:

§ 274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?

(a) *Prohibition on the hiring and continuing employment of unauthorized aliens.* A person or entity who hires, or recruits or refers for a fee, an individual after November 6, 1986, and who has actual or constructive knowledge that the individual is unauthorized to work, is in violation of section 274A(a) (1)(A) of the Act. A person or entity who continues to employ an individual hired after November 6, 1986, and who has actual or constructive knowledge that the individual is or has become unauthorized, is in violation of section 274A(a)(2) of the Act.

(b) *Use of labor through contract.* Any person or entity who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986, to obtain the labor or services of an alien in the United States who has actual or constructive knowledge that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

(c) *Good faith defense to charge of knowingly hiring an unauthorized alien.* A person or entity who shows good faith compliance with the employment verification requirements of § § 274a.2 through 274a.6 shall have established a rebuttable affirmative defense that the person or entity has not violated section 274A(a)(1)(A) of the Act with respect to such hiring, recruiting, or referral.

9. Section 274a.8 is revised to read as follows:

§ 274a.8 What are the requirements of state employment agencies that choose to verify the identify and employment eligibility of individuals referred for employment by the agency?

(a) *General.* Under sections 274A(a)(5) and 274A(b) of the Act, a state employment agency as defined in § 274a.1 may, but is not required to, verify identity and employment eligibility of individual referred for employment by the agency. However, should a state employment agency choose to do so, it must:

(1) Complete the verification process in accordance with the requirements of §§ 274a.2 through 274a.6 *provided* that the individual may not present receipts, as set forth in § 274a.3(d), in lieu of documents in order to complete the verification process; and

(2) Complete the verification process prior to referral for all individuals for whom a certification is required to be issued under paragraph (c) of this section.

(b) *Compliance with the provisions of section 274A of the Act.* A state employment agency which chooses to verify employment eligibility of individuals according to §§ 274a.2 through 274a.6 shall comply with all provisions of section 274A of the Act and the regulations issued thereunder.

(c) *State employment agency certification.*—(1) A state employment agency which chooses to verify employment eligibility according to paragraph (a) of this section shall issue to an employer who hires an individual referred for employment by the agency, a certification as set forth in paragraph (d) of this section. The certification shall be transmitted by the state employment agency directly to the employer, personally by an agency official, or by mail, so that it will be received by the employer within 21 business days of the date that the referred individual is hired. In no case shall the certification be transmitted to the employer from the state employment agency by the individual referred. During this period:

(i) The job order or other appropriate referral form issued by the state employment agency to the employer, on behalf of the individual who is referred and hired, shall serve as evidence, with respect to that individual, of the employer's compliance with the provisions of section 274A(a)(1)(B) of the Act and the regulations issued thereunder.

(ii) In the case of a telephonically authorized job referral by the state employment agency to the employer, an appropriate annotation by the employer shall be made and shall serve as evidence of the job order. The employer should retain the document containing the annotation where the employer retains Forms I–9.

(2) Job orders or other referrals, including telephonic authorizations, which are used as evidence of compliance under paragraph (c)(1)(i) of this section shall contain:

(i) The name of the referred individual;

(ii) The date of the referral;

(iii) The job order number or other applicable identifying number relating to the referral;

(iv) The name and title of the referring state employment agency official; and

(v) The telephone number and address of the state employment agency.

(3) A state employment agency shall not be required to verify employment eligibility or to issue a certification to an employer to whom the agency referred an individual if the individual is hired for a period of employment not to exceed 3 days in duration. Should a state agency choose to verify employment eligibility and to issue a certification to an employer relating to an individual who is hired for a period of employment not to exceed 3 days in duration, it must verify employment eligibility and issue certifications relating to *all* such individuals. Should a state employment agency choose not to verify employment eligibility or issue certifications to employers who hire, for a period not to exceed 3 days in duration, agency-referred individuals, the agency shall notify employers that, as a matter of policy, it does not perform verifications for individuals hired for that length of time, and that the employers must complete the identify and employment eligibility requirements under §§ 274a.2 through 274a.6. Such notification may be incorporated into the job order or other referral form utilized by the state employment agency as appropriate.

(4) An employer to whom a state employment agency issues a certification relating to an individual referred by the agency and hired by the employer, shall be deemed to have complied with the verification requirements of §§ 274a.2 through 274a.6 provided that the employer:

(i) Reviews the identifying information contained in the certification to ensure that it pertains to the individual hired;

(ii) Observes the signing of the certification by the individual at the time of its receipt by the employer as provided for in paragraph (d)(13) of this section;

(iii) Complies with the provisions of § 274a.2(d) by either:

(A) Updating the state employment agency certification in lieu of Form I–9, upon expiration of the employment authorization date, if any, which was noted on the certification issued by the state employment agency under paragraph (d)(11) of this section; or

(B) By no longer employing an individual upon expiration of his or her employment authorization date noted on the certification;

(iv) Retains the certification in the same manner prescribed for Form I–9 and attachments in § 274a.4, to wit, 3 years after the date of the hire or 1 year after the date the individual's employment is terminated, whichever is later; and

(v) Makes it available for inspection to officers of the Service or the Department of Labor, according to the provisions of section 274A(b)(3) of the Act, and § 274a.6.

(5) Failure by an employer to comply with the provisions of paragraph (c)(4)(iii) of this section shall constitute a violation of section 274(a)(2) of the Act and shall subject the employer to the penalties contained in section 274A(e)(4) of the Act, and § 274a.11.

(d) *Standards for state employment agency certifications.* All certifications issued by a state employment agency under paragraph (c) of this section shall conform to the following standards. They must:

(1) Be issued on official agency letterhead;

(2) Be signed by an appropriately designated official of the agency;

(3) Bear a date of issuance;

(4) Contain the employer's name and address;

(5) State the name and date of birth of the individual referred;

(6) Identify the position or type of employment for which the individual is referred;

(7) Bear a job order number relating to the position or type of employment for which the individual is referred;

(8) Identify the document or documents presented by the individual to the state employment agency for the purposes of identity and employment eligibility verification;

(9) State the identifying number of numbers of the document or documents described in paragraph (d)(8) of this section;

(10) Certify that the agency has complied with the requirements of section 274A(b) of the Act concerning verification of the identify and employment eligibility of the individual referred, and has determined that, to the best of the agency's knowledge, the individual is authorized to work in the United States;

(11) Clearly state any restrictions, conditions, expiration dates, or other limitations which relate to the individual's employment eligibility in the United States, or contain an affirmative statement that the employment authorization of the referred individual is not restricted;

(12) State that the employer is not required to verify the individual's identity or employment eligibility, but must retain the certification in lieu of Form I–9;

(13) Contain a space or a line for the signature of the referred individual, requiring the individual under penalty of perjury to sign his or her name before the employer at the time of receipt of the certification by the employer; and

(14) State that counterfeiting, falsification, unauthorized issuance, or alteration of the certification constitutes a violation of Federal law under 18 U.S.C. 1546.

(e) *Retention of Form I–9 by state employment agencies.* A Form I–9 utilized by a state employment agency in verifying the identity and employment eligibility of an individual under §§ 274a.2 through 274a.6 must be retained by a state employment agency for a period of 3 years from the date that the individual was last referred by the agency and hired by an employer. A state employment agency may retain a Form I–9 either in its original form, or on microfilm or microfiche.

(f) *Retention of state employment agency certifications.* A certification issued by a state employment agency under this section shall be retained:

(1) By a state employment agency, for a period of 3 years from the date that the individual was last referred by the agency and hired by an employer, and in a manner to be determined by the agency which will enable the prompt retrieval of the information contained on the original certification for comparison with the relating Form I–9;

(2) By the employer, in the original form, and in the same manner and location as the employer has designated for retention of Forms I–9, and for the period of time provided in paragraph (c)(4)(iv) of this section.

(g) *State employment agency verification requirements in the case of an individual who was previously referred and certified.* When a state employment agency refers an individual for whom the verification requirements have been previously complied with and a Form I–9 completed, the agency shall inspect the previously completed Form I–9:

(1) If, upon inspection of the Form, the agency determines that the Form I–9 pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I–9 need be completed prior to issuance of a new certification *provided* that the individual is referred by the agency within 3 years of the execution of the initial Form I–9.

(2) If, upon inspection of the Form, the agency determines that the Form I–9 pertains to the individual but that the individual does not appear to be authorized to be employed in the United States based on restrictions, expiration dates, or other conditions annotated on the Form I–9, the agency shall not issue

a certification unless the agency follows the updating procedures under § 274a.2(d) of this part; otherwise the individual may no longer be referred for employment by the state employment agency.

(3) For the purposes of retention of the Form I–9 by a state employment agency under paragraph (e) of this section, for an individual previously referred and certified, the state employment agency shall retain the Form for a period of 3 years from the date that the individual is last referred and hired.

(h) *Employer verification requirements in the case of an individual who was previously referred and certified.* When an employer rehires an individual for whom the verification and certification requirements have been previously complied with by a state employment agency, the employer shall inspect the previously issued certification.

(1) If, upon inspection of the certification, the employer determines that the certification pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I–9 or certification need be completed *provided* that the individual is rehired by the employer within 3 years of the issuance of the initial certification, and that the employer follows the same procedures for the certification which pertain to Form I–9, as specified in § 274a.5(b)(1)(i).

(2) If, upon inspection of the certification, the employer determines that the certification pertains to the individual but that the certification reflects restrictions, expiration dates, or other conditions which indicate that the individual no longer appears authorized to be employed in the United States, the employer shall verify that the individual remains authorized to be employed and shall follow the updating procedures for the certification which pertain to Form I–9, as specified in § 274a.5(b)(1)(ii).

(3) For the purposes of retention of the certification by an employer under this paragraph for an individual previously referred and certified by a state employment agency and rehired by the employer, the employer shall retain the certification for a period of 3 years after the date that the individual is last hired, or 1 year after the date the individual's employment is terminated, whichever is later.

10. Section 274a.9 is revised to read as follows:

§ 274a.9 Can a person or entity require an individual to provide a financial guarantee or indemnity against potential liability related to the hiring, recruiting, or referring of the individual?

(a) *General.* It is unlawful for a person or other entity, in hiring or recruiting or referring for a fee for employment of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this part relating to such hiring, recruiting, or referring of the individual. However, this prohibition does not apply to performance clauses which are stipulated by agreement between contracting parties.

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil fine of $1,000 for each violation and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

11. Section 274a.10 is revised to read as follows:

§ 274a.10 How are investigations initiated and employers notified of violations?

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time, and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* The Service may conduct investigations for violations on its own initiative and without having received a written complaint. When the Service receives a complaint from a third party, it shall investigate only those complaints that have a reasonable probability of validity. If it is determined after investigation that the person or entity has violated section 274A of the Act, the Service may issue and serve a Notice of Intent to Fine or a Warning Notice upon the alleged violator. Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated.

(c) *Warning notice.* The Service and/or the Department of Labor may in their discretion issue a Warning Notice to a person or entity alleged to have violated section 274A of the Act. This Warning Notice will contain a statement of the basis for the violations and the statutory provisions alleged to have been violated.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274A of the Act is commenced when the Service issues a Notice of Intent to Fine on Form I–763. Service of this Notice shall be accomplished according to 8 CFR Part 103. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 239.1(a) of this chapter with concurrence of a Service attorney.

(1) *Contents of the Notice of Intent to Fine.* (i) The Notice of Intent to Fine will contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

(ii) The Notice of Intent to Fine will provide the following advisals to the respondent:

(A) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the Government;

(B) That any statement given may be used against the person or entity;

(C) That the person or entity has the right to request a hearing before an administrative law judge under 5 U.S.C. 554–557, and that such request must be made within 30 days from the service of the Notice of Intent to Fine;

(D) That the Service will issue a final order in 45 days if a written request for a hearing is not timely received and that there will be no appeal of the final order.

(e) *Request for hearing before an administrative law judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the Service, within 30 days of the service of the Notice of Intent to Fine, a written request for a hearing before an administrative law judge. Any written request for a hearing submitted in a foreign language must be

accompanied by an English language translation. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the 30-day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by ordinary mail, 5 days shall be added to the prescribed 30-day period. In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine.

(f) *Failure to file a request for hearing.* If the respondent does not file a request for a hearing in writing within 30 days of the day of service of the Notice of Intent to Fine (35 days if served by ordinary mail), the Service shall issue a final order from which there is no appeal.

12. Section 274a.11 is added to read:

§ 274a.11 What penalties may be imposed for violations?

(a) *Criminal penalties.* Any person or entity which engages in a pattern or practice of violations of section 274A(a)(1)(A) or (a)(2) of the Act shall be fined not more than $3,000 for each unauthorized alien, imprisoned for not more than 6 months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274A of the Act. Civil penalties may be imposed by the Service or an administrative law judge for violations under section 274A of the Act. In determining the level of the penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense. However, a single offense will include penalties for each unauthorized alien who is determined to have been knowingly hired or recruited or referred for a fee.

(1) A respondent found by the Service or an administrative law judge to have knowingly hired, or to have knowingly recruited or referred for a fee, an unauthorized alien for employment in the United States or to have knowingly continued to employ an unauthorized alien in the United States, shall be subject to the following order:

(i) To cease and desist from such behavior;

(ii) To pay a civil fine according to the following schedule:

(A) First offense—not less than $250 and not more than $2,000 for each unauthorized alien, or

(B) Second offense—not less than $2,000 and not more than $5,000 for each unauthorized alien; or

(C) More than two offenses—not less than $3,000 and not more than $10,000 for each unauthorized alien; and

(iii) To comply with the requirements of § 274a.2(b), and to take such other remedial action as appropriate.

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge to have failed to comply with the employment verification requirements as set forth in §§ 274a.2 through 274a.6, shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, consideration shall be given to:

(i) The size of the business of the employer being charged;

(ii) The good faith of the employer;

(iii) The seriousness of the violation;

(iv) Whether or not the individual was an unauthorized alien; and

(v) The history of previous violations of the employer.

(3) Where an order is issued with respect to a respondent composed of distinct, physically separate subdivisions which do their own hiring, or their own recruiting or referring for a fee for employment (without reference to the practices of, and under the control of, or common control with another subdivision) the subdivision shall be considered a separate person or entity.

(c) *Enjoining pattern or practice violations.* If the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of section 274A(a)(1) (A) or (B) of the Act, the Attorney General may bring civil action in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(d) *Pre-enactment provisions for employees hired prior to November 7, 1986.* The penalty provisions set forth in section 274A (e) and (f) of the Act for violations of sections 274A(a)(1)(B) and 274A(a)(2) of the Act shall not apply to employees who were hired prior to November 7, 1986, and who are continuing in their employment and have a reasonable expectation of employment and have a reasonable expectation of employment at all times (as set forth in § 274a.5(a)), except those individuals described in §§ 274a.5(a)(vii) and (a)(1)(vii) and (a)(1)(viii)). For purposes of this section, an employee who are hired prior to November 7, 1986, shall lose his or hers pre-enactment status if the employee:

(1) Quits;.

(2) Is terminated by the employer; the term termination shall include, but is not limited to, situations in which an employee is subject to seasonal employment.

(3) Is excluded or deported from the United States or departs the United States under a grant of voluntary departure; or

(4) Is no longer continuing his or her employment (or does not have a reasonable expectation of employment at all times) as set forth in § 274a.5(a).

PART 299—IMMIGRATION FORMS

13. Section 299.1 is amended by adding to the listing of forms, in proper numerical sequence, the entry for Form ''I–9A'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–9A	xxxxx	Employment Eligibility Reverification.
*	*	*

14. Section 299.5 is amended by adding to the listing of forms, in proper numerical sequence, the entry for form ''I–9A'' to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
* * *	* * *	
I–9A	Employment Eligibility Reverification	1115–
* * *	* * *	

Dated: January 22, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: The Form I–9 and Form I–9A will not appear in the Code of Federal Regulations.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Verification

INSTRUCTION SHEET- FORM I-9 AND FORM I-9A

PLEASE READ CAREFULLY BEFORE COMPLETING THIS FORM.
THIS INSTRUCTION SHEET MUST BE AVAILABLE TO PERSONS COMPLETING THIS FORM.

Employers are responsible for ensuring that the Employment Eligibility Verification form, Form I-9, is properly completed for all employees, citizens and noncitizens, hired after November 6, 1986. Federal law prohibits employers from knowingly hiring or continuing to employ aliens who are not authorized to work in the United States. Federal law provides for civil money penalties for failure to properly complete or maintain this form.

This version of the Form I-9 replaces earlier versions of the form. Starting xx-xx-xx, this is the only version of the form that may be used. The documents listed in Section 2 of the form are the only documents that employers may accept as evidence of identity and eligibility to work. Either Form I-9 or I-9A may be used if an employee's eligibility to work expires and must be reverified.

Discrimination prohibited: It is illegal to discriminate against any individual, other than an alien not authorized to work in the U.S., in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. Employers cannot specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Form I-9

Section 1 must be completed at the time employment begins. **Section 2** must be completed within three business days of the date employment begins. If the person is being hired for less than three business days, both Section 1 and Section 2 must be completed at the time employment begins. After making the commitment to hire, an employer may require employees to complete the Form I-9 at or before the time employment begins, provided that the employer applies this requirement uniformly.

Employee instructions
(1) Read all the instructions and information on this page and on the Form I-9. (2) Complete the information block in Section 1. (3) Read the attestation. Initial the block indicating the status that makes you eligible to work in the United States.

I attest, under penalty of perjury, that I am *(initial one of the following):*

LMG A citizen or national of the United States

If you are a Lawful Permanent Resident or other work-authorized alien, provide your A number or admission number in the space indicated.

MJB A Lawful Permanent Resident (A# A00001111)

If you are not a U.S. citizen or national, or a Lawful Permanent Resident, and your work authorization has an expiration date, put that date in the space indicated. (Some aliens, such as refugees, are not permanent residents but have work authorization that does not expire.) (4) Sign and date the Employee signature block. (5) Show your employer one document from List A or one document each from List B and List C in Section 2. You may choose which documents you wish to present from the lists of acceptable documents in Section 2. Also see the "receipts for documents" section on the second page of these instructions. An employer cannot prefer one document over others. If an employer refuses to accept the documents you choose to show, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-7688 to ask about your rights.
Warning: *Federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form. In addition, aliens who are found to have committed such acts may be subject to removal proceedings.*

Preparer/Translator instructions
If the employee needs assistance in completing Section 1, or needs the form translated, someone may assist him or her. The employee must still initial and sign Section 1 personally. If the employee is a minor under age 18 or a person with a disability who is unable to produce one of the identity documents listed, a parent or responsible person may attest to the person's identity. After providing the needed assistance, the preparer or translator must read the attestation, sign and date the Preparer/Translator signature block, and fill in the requested information. See pub. M-274 for detailed information.

Employer instructions
(1) Read all the instructions and information on this page and on the Form I-9. (2) Review Section 1 to ensure that it is properly completed. If the date of hire (first day of work) is not known when the form is being completed, that date should be entered on the form when it is known, and the change initialed and dated. State employment agencies completing the form may omit the date of hire. (3) Examine the document(s) presented by the employee. The employee may choose which documents to present from the lists of acceptable documents in Section 2. You must accept any document or combination of documents from Section 2 which reasonably appear on their face to be genuine and to relate to the person presenting them. Also see the "receipts for documents" section on the second page of these instructions. You may not prefer one document over others or ask to see a specific document. To do so could constitute discrimination. For more information on how to comply with employment eligibility verification without discriminating, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-8155. Employers may, but are not required to, photocopy the document(s) presented. If they do this, they must still complete the Form I-9. The photocopies must be attached to and retained with the form. The copies may be used only for the verification process. (4) Complete Section 2. Fill in the information requested for the document(s) presented. (Two information blocks are provided on the form for List A for use if the employee presents a foreign passport with a stamp or Form I-94.) The example below shows how the blocks would be completed for a driver's license. Other examples are shown in pub. M-274.

☒ Driver's License issued by a State or outlying possession
State: Virginia
Document # 123-45-6789
Expiration date 12/13/99

(5) Read the attestation. (6) Sign and date the Employer or Authorized Representative signature block, and fill in the requested information.
Note: *For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors.*

For more information *see pub. M-274,* ***Handbook for Employers.*** *This publication contains detailed instructions, examples of properly completed forms, and pictures of the documents that may be presented when completing the Form I-9.*

Receipts for documents

A person who is eligible to work, but who is unable to provide a required document, may present a receipt. The person must have attested in Section 1 that he or she is eligible for employment. An employer may not accept a receipt if the person indicates or the employer has actual or constructive knowledge that the person is not authorized to work. There are three kinds of acceptable receipts: (1) A person may present a receipt showing that they have applied for a replacement document The person must present the required document within 90 days of the hire. (2) Immigration and Naturalization Service (INS) Arrival-Departure Record (Form I-94) may be treated as a receipt if it bears a "Temporary I-551" stamp or a refugee admission stamp. The temporary I-551 stamp may be accepted as a receipt for the Permanent Resident Card (Form I-551). The person must present Form I-551 within 180 days of the hire. (3) An INS Form I-94 bearing a refugee admission stamp may be accepted as a receipt for either an Employment Authorization Document (Form I-766 or I-688B) or an unrestricted Social Security card. The person must present the required document within 90 days of the hire.

Note: *Employees hired for less than three business days must present the actual document(s) at the time of hire.*

Reverification (Form I-9A)

Employers are responsible for reverifying the work authorization for a person if Section 1 or 2 of the Form I-9 indicates that the individual's employment authorization expires. Employers may either complete a new Form I-9 or use Form I-9A for reverification. Whichever form is used, reverification must be completed no later than the date employment authorization expires. If the form used for reverification indicates in Section 1 or 2 that the individual's employment authorization expires, employers must again reverify no later than the expiration date. Employees may present a receipt for reverification, as described above. ***Note:*** *List B documents never need to be reverified. Documents presented by U.S. citizens and nationals and Lawful Permanent Residents are not subject to the reverification requirement, except in the case of Lawful Permanent Residents who present a foreign passport with a temporary I-551 stamp.*

Employee Instructions for Form I-9A: (1) Read all the instructions and information on this page and on the form I-9A. (2) Complete the information block in Section 1. (3) Read the attestation. Initial the block indicating the status that makes you eligible to work in the United States. If you are not a Lawful Permanent Resident and your work authorization has an expiration date, put that date in the space indicated. (4) Sign and date the Employee signature block. (5) Show your employer one document from List A or one document from List C in Section 2 of the Form I-9.

Preparer/Translator Instructions for Form I-9A: If someone assists the employee in completing Section 1, or translates the form, that person must read the attestation, sign and date the Preparer/Translator signature block, and fill in the requested information.

Employer Instructions for Form I-9A: (1) Read all the instructions and information on this page and on the form I-9A. (2) Review Section 1 to ensure that it is properly completed. (3) Examine the document(s) presented by the employee. Documents should appear to be genuine and to relate to the person presenting them. (4) Fill in the information requested for the document(s) presented. The example below shows how the blocks would be completed for an I-766 employment authorization document. Other examples are shown in pub. M-274.

Document Title: *I-766 Employment Auth. Document*

Document #: *A12345678* ***Expiration Date (if any):*** *2/26/99*

(5) Read the attestation. (6) Sign and date the Employer or Authorized Representative signature block, and fill in the requested information.

Note: *For as long as the Form I-9 or Form I-9A used for reverification indicates that the individual is not a United States citizen or national, or a lawful permanent resident, and that the individual's employment authorization expires, the employer must reverify the individual's employment authorization, no later than the date that employment authorization expires.*

Retaining Forms

Employers must maintain completed Forms I-9 for three years after the date the person begins work or one year after the date employment is terminated, whichever is later. Forms used for reverification (Form I-9 or I-9A) must be attached to and retained with the original Form I-9. Employers who elect to photocopy documents presented must attach the photocopies to and retain them with the Form I-9.

Obtaining and Duplicating Forms

The Form I-9 and the form I-9A may be obtained in limited quantities at INS District Offices, or ordered from the INS at 800-870-3676 or the Superintendent of Documents, Washington, DC 20402. They are also available for downloading from the Internet at http://www.usdoj.gov/ins/. Employers may electronically generate blank forms, provided that: the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under 8 CFR 274a.2(b). When copying or printing the Form I-9, Form I-9A, or this Instruction Sheet, the text may be reproduced by making either double-sided or single-sided copies. *The instruction sheet must be available to all persons completing this form.*

Privacy Act Notice. The authority for collecting this information is the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a). This information is for employers to verify the eligibility of persons for employment, to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the U.S. This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the U.S. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Naturalization Service, the Department of Labor, and the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. *However, a person may not begin employment unless this form is completed within the time required by regulation since employers are subject to civil or criminal penalties if they do not comply with the Act.* Under the Privacy Act, a person may complete Section 1 without providing the Social Security number.

Reporting Burden. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows. For the Form I-9: 1) learning about this form, 4 minutes; 2) completing the form, 4 minutes; and 3) assembling and filing (record keeping) the form, 4 minutes, for an average of 12 minutes per response. For the Form I-9A: 1) learning about this form, 3 minutes; 2) completing the form, 2 minutes; and 3) assembling and filing (record keeping) the form, 4 minutes, for an average of 9 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C., 20536. **Do not mail completed Forms I-9 to this address.**

For more information *see pub. M-274,* ***Handbook for Employers.*** *This publication contains detailed instructions, examples of properly completed forms, and pictures of the documents that may be presented when completing the Form I-9.*

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Verification

*The **instruction sheet** must be available to persons completing this form. Please read it carefully before you begin. For detailed information, see Pub. M-274, Handbook for Employers.*

***Anti-discrimination notice:** It is illegal to discriminate against work eligible individuals. Employers cannot specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.*

Date of hire: *(first day of work)* _____ *(month/day/year)*

Section 1. *To be completed at the time employment begins. **Employee** must provide the information requested, initial the space showing the status that makes him or her eligible to work in the US, and sign and date the attestation. **Employer** must review to ensure Section 1 is properly completed.*

Federal law provides for imprisonment and/or fines for false statements or use of false documents when completing the Form I-9.

Print Name *(Last, First, Middle Initial)*				Maiden Name
Address	Street Number and Name, Apt. #	City	State	ZIP Code
Date of Birth *(month/day/year)*		Social Security # *(optional)*		

I attest, under penalty of perjury, that I am ***(initial** one of the following):*

_____ A citizen or national of the United States

_____ A Lawful Permanent Resident (A# _____)

_____ An alien authorized to work (A# or Admission # _____)
until *(expiration date, if applicable - month/day/year)* _____/_____/_____

✘ _____
Employee's Signature **Date** *(month/day/year)*

***Preparer/Translator:** Complete and sign this section if you assisted in the completion of Section 1.*
I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

✘ _____
Preparer's/Translator's Signature Date *(month/day/year)*

Print Name	Address *(Street Name and Number, City, State, Zip Code)*

Section 2. *To be completed within three business days of the time employment begins. **Employee** must choose one document from List A **or** one document from List B **and** one from List C and present the document(s) to the employer. Documents must be unexpired. **Employer** must check the block next to the document(s), fill in the requested information, including the document number and expiration date (if any), and sign and date the attestation.*

List A	OR	List B	AND	List C
❑ United States Passport ❑ Permanent Resident Card or Resident alien card (I-551) ❑ Foreign Passport with temporary I-551 stamp ***Country:*** _____ ❑ Temporary resident card (I-688) Employment authorization document ❑ I-766 ❑ I-688B ❑ I-688A ❑ *(For aliens authorized to work only for a specific employer)* Foreign Passport with Form I-94 authorizing employment with this employer ***Country:*** _____		❑ Driver's License issued by a State or outlying possession ***State:*** _____ ❑ ID card issued by a State or outlying possession ***State:*** _____ ❑ Native American Tribal Document ***Issued by:*** _____ ❑ *(For Canadian aliens authorized to work only for a specific employer)* Canadian Driver's License or ID card with a photograph		❑ Social Security Account number card without employment restrictions ❑ Native American Tribal Document ***Issued by:*** _____ ❑ *(For aliens authorized to work only for a specific employer)* Form I-94 authorizing employment with this employer
Document # _____ ***Expiration date*** _____ ***Doc. #*** _____ ***Exp.*** _____		***Document #*** _____ ***Expiration date*** _____		***Document #*** _____ ***Expiration date*** _____

I attest, under penalty of perjury, that I have examined the document(s) presented by the employee, that the document(s) appear to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

✘ _____
Signature of Employer or Authorized Representative **Date** *(month/day/year)*

Print Name	Company Name and Address *(Street Name and Number, City, State, ZIP code)*

Form I-9 (rev xx-xx-xxxx)

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Reverification

This form is for reverification only.

Do not use if the employee has not previously completed a Form I-9. Do not use if the employee previously completed a Form I-9 and was verified as a US citizen or national or a Lawful Permanent Resident *(except for a Lawful Permanent Resident who presented an unexpired foreign passport with a temporary I-551 stamp). The* ***instruction sheet*** *and lists A and C must be available to persons completing this form. For details, see Pub. M-274, Handbook for Employers.*

Anti-discrimination notice: It is illegal to discriminate against work eligible individuals. *Employers cannot specify which document(s) they will accept from an employee. The refusal to continue to employ an individual because of a future expiration date may also constitute illegal discrimination.*

Federal law provides for imprisonment and/or fines for false statements or use of false documents when completing the Form I-9A.

Reverification Dated _____ *(month/day/year)*

Section 1. ***Employee*** *must complete and sign no later than the date employment authorization expires.* ***Employer*** *must review to ensure Section 1 is properly completed.*

Print Name *(Last, First, Middle Initial)*	Maiden Name

I attest, under penalty of perjury, that I am ***(initial*** *one of the following):*

_____ A Lawful Permanent Resident (A# _____)

_____ An alien authorized to work (A# or Admission # _____)
until *(expiration date, if applicable - month/day/year)* _____/_____/_____

✘ _____
Employee's Signature **Date** *(month/day/year)*

Preparer/Translator: *Complete and sign this section if you assisted in the completion of Section 1.* I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

✘ _____
Preparer's/Translator's Signature Date *(month/day/year)*

Print Name	Address *(Street Name and Number, City, State, Zip Code)*

Section 2. *To be completed and signed no later than the expiration date indicated for the employee's employment authorization on either Section 1 or Section 2 (List A or C) of the Form I-9.* ***Employee*** *must present one document from List A* ***or*** *List C on the Form I-9.* ***Employer*** *must fill in the requested information and sign and date the attestation.*

Document Title:_____ ***Document #:***_____ ***Expiration Date (if any):***___/___/___

I attest, under penalty of perjury, that I have examined the document presented by the employee, that the document appears to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

✘ _____
Signature of Employer or Authorized Representative **Date** *(month/day/year)*

Print Name	Company Name and Address *(Street Name and Number, City, State, ZIP code)*

Section 1. **Reverification Dated** _____ *(month/day/year)*

I attest, under penalty of perjury, that I am ***(initial*** *one of the following):*

_____ A Lawful Permanent Resident (A# _____)

_____ An alien authorized to work (A# or Admission # _____)
until *(expiration date, if applicable - month/day/year)* _____/_____/_____

✘ _____
Employee's Signature **Date** *(month/day/year)*

Preparer/Translator: I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

✘ _____
Preparer's/Translator's Signature Date *(month/day/year)*

Print Name	Address *(Street Name and Number, City, State, Zip Code)*

Section 2.

Document Title:_____ ***Document #:***_____ ***Expiration Date (if any):***___/___/___

I attest, under penalty of perjury, that I have examined the document presented by the employee, that the document appears to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

✘ _____
Signature of Employer or Authorized Representative **Date** *(month/day/year)*

Print Name

Form I-9A (xx-xx-xx)

[FR Doc. 98–2124 Filed 1–30–98; 8:45 am]
BILLING CODE 4410–10–C

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AF88

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On November 13, 1997 (62 FR 60789), the NRC published for public comment a proposed rule to amend the Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository (HLW proceeding). The comment period for this proposed rule was scheduled to expire on January 27, 1997. In a letter dated December 31, 1997, and received by NRC on January 12, 1998, a representative of Clark County, Nevada, requested a 30 to 60-day extension of the comment period. This extension is requested to allow Clark County, Nevada, and other affected units of local government, whose funding for participation in the HLW proceeding has only recently been restored, sufficient time to review the proposed rule and submit comments. In response to this request, the NRC has decided to extend the comment period for 60 days.

DATES: The comment period has been extended 60 days and will now expire on March 30, 1998. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1641, e-mail KLW@nrc.gov.

Dated at Rockville, Maryland, this 27th day of January, 1998.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Acting Secretary of the Commission.

[FR Doc. 98–2445 Filed 1–30–98; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 937

[No. 98–02]

Financial Disclosure by Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations to add a requirement that the Federal Home Loan Banks (Banks) provide annual audited financial statements, and quarterly unaudited financial statements, to their members, both in conformance with the requirements promulgated by the Securities and Exchange Commission (SEC). This amendment is intended to codify current prevailing practice at the Banks, and to establish uniform financial disclosure requirements and standards for the Banks.

DATES: Written comments must be received in writing on or before March 19, 1998.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Finance Board, 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: Joseph A. McKenzie, Director, Financial Analysis and Reporting Division, Office of Policy, 202/408–2845, or Deborah F. Silberman, Acting General Counsel, Office of General Counsel, 202/408–2570, Federal Housing Finance Board, 1777 F Street, NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1421 *et seq.*, authorizes the Finance Board to issue consolidated Bank obligations that are the joint and several obligations of the Banks in order to provide funds for the Banks, 12 U.S.C. 1431(b), (c). The Bank Act further authorizes the individual Banks to issue debt securities subject to rules and regulations adopted by the Finance Board, 12 U.S.C. 1431(a). The Finance Board has never adopted regulations concerning the issuance of debt securities by the individual Banks, and the Banks have never issued debt securities pursuant to this authority. However, the Banks are corporate entities with both mandatory and voluntary stockholders. Federal savings associations automatically become members of the FHLBank in the district in which the Federal savings association's principal office are located. *See* 12 U.S.C. 1464(f). Other eligible financial institutions may apply for and be granted membership in a Bank if they meet the statutory and regulatory membership eligibility criteria set forth in the Bank Act, *see* 12 U.S.C. 1424 and other regulatory requirements, *see* 12 CFR part 933. As a condition of membership, all members are required to maintain a minimum stockholding in their respective Banks. *See* 12 U.S.C. 1426. The aggregate stockholder investments in the Banks range from $700 million in the Bank of Topeka, to more than $3 billion in the Bank of San Francisco.

Pursuant to section 3(a)(2) of the Securities Act of 1933, 15 U.S.C. 77c(a)(2)), (Securities Act), securities issued by both the Finance Board and the Banks are exempt from the registration requirements of the Securities Act. Section 3(a)(2) exempts from registration and other requirements of the Securities Act, *inter alia*, securities issued or guaranteed by ''any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.'' 15 U.S.C. 77c(a)(2).

Classes of securities issued by the Finance Board and the Banks similarly are exempt from the registration and reporting requirements of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Exchange Act) pursuant to section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)). Section 3(a)(42)(B) designates as securities exempt from registration and reporting under the Exchange Act, ''government securities,''

including ''securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors.'' *Id.*, section 78c(a)(42)(B).

The applicable exemptions under both the Securities Act and the Exchange Act are principally grounded in a presumption that the securities activities of institutions acting as government entities, as designated under the federal securities laws, will be conducted in the public interest and for the protection of investors.

While securities issued by both the Finance Board and the Banks are exempt from the registration and reporting requirements of both the Securities Act and the Exchange Act, it is unclear whether the offer and sale of such securities may be subject to certain of the antifraud provisions of those Acts. The SEC's disclosure requirements prescribe that an issuer of securities into the capital markets make full and fair disclosure of all information material to an investment decision in connection with the offer, sale, and other market transactions in those securities. Generally, a securities issuer's compliance with SEC disclosure regulations will reduce risk of and liability for potential fraud. For a Bank, a material violation of the antifraud provisions of the federal securities laws would constitute an unsafe and unsound practice. In addition, the safety and soundness of the Bank system is dependent upon maintaining the system's capital base and upon the system's access to the capital markets. Indeed, one of the duties of the Finance Board specified in the Bank Act is that it ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets. *See* 12 U.S.C. 1422a(a)(3)(B)(iii).

All of the Banks provide annual reports, which include audited financial statements prepared in accordance with generally accepted accounting principles (GAAP), to their members. Some, but not all of the Banks issue quarterly financial reports, and the form and content of these quarterly reports varies widely. However, the Finance Board has never addressed the scope and content of the financial reports issued by individual Banks to their members. Because the Finance Board has supervisory and examination authority over the Banks, it is the Finance Board's responsibility to regulate the securities activities of those institutions when it finds such regulation to be necessary or appropriate for the protection of investors and the Bank system.

The Finance Board also wishes to address recent congressional actions in connection with the issuance of Bank System debt. Several months ago, the Subcommittee on Finance and Hazardous Materials of the House Commerce Committee approved an amendment to H.R.10, the Financial Services Act of 1997 that would have subjected both the Finance Board and Banks to the registration and reporting requirements of the 1933 and 1934 Acts. All FHLBank provisions were ultimately deleted from the version of H.R.10 that the Commerce Committee reported.

Because the disclosure provided by the Bank System already generally complies with the applicable disclosures that the SEC requires, the Finance Board believes that SEC registration would add an unnecessary additional layer of regulatory scrutiny that would raise the System's cost of funds. As discussed above, the proposed rule largely would codify existing practice. The comment period will allow the Congress and other interested parties to comment on the scope of the existing and proposed new disclosures and to indicate to the Finance Board any other disclosures that would be appropriate.

In order to fulfill its duties and achieve the above goals, the Finance Board has adopted, simultaneously with this proposal, a policy statement embodying the current practice of preparing the consolidated reports issued for the Bank system by the Finance Board in connection with the issuance of consolidated debt securities pursuant to section 11(c) of the Bank Act, 12 U.S.C. 1431(c), in accordance with the disclosure requirements promulgated by the SEC. *See* Proposed Policy Statement, Finance Board Res. No. 98–01, January 21, 1998. The Finance Board also is proposing this regulation to ensure that Bank stockholders receive timely, accurate and uniform financial information about their respective Banks. The regulation would codify prevailing practice at the Banks, which voluntarily prepare their reports generally in accordance with SEC standards, by requiring each Bank to file with the Finance Board and distribute to its members an annual report containing financial statements prepared in accordance with the requirements of the SEC's financial statement Regulation S–X, 17 CFR part 210, as referenced in the financial statement requirement (Item 8) of the annual report Form 10–K promulgated by the SEC, 17 CFR 249.310.

The proposed rule also would require each Bank to file with the Finance Board and distribute to its members a quarterly report containing unaudited financial statements prepared in accordance with the financial statement requirement (Item 1) of the quarterly report Form 10–Q promulgated by the SEC, 17 CFR 249.310, and the requirements of rule 10–01 of the SEC's financial statement Regulation S–X, 17 CFR 210.10–01.

Nothing in the proposed rule is intended to subject the FHLBanks to the jurisdiction of any other agency, nor to confer any private right of action on any member or on any investor in FHLBank system securities.

II. Analysis of the Proposed Rule

A. Definitions

Proposed section 937.1 sets forth definitions to be used in the part. The definitions of ''Bank,'' ''Finance Board,'' and ''Member'' are consistent with the definitions of those terms as used throughout the Finance Board's regulations. Definitions of ''SEC,'' ''Form 10–K,'' ''Form 10–Q,'' and ''Regulation S–X'' refer to and are consistent with regulations promulgated by the SEC under the Securities Act and the Exchange Act.

Issuers having a class of securities registered with the SEC under the Exchange Act (Registrant) are required to file with the SEC and provide to their shareholders an annual report on Form 10–K, 17 CFR 249.310. The Form 10–K generally requires detailed disclosure of 15 items, including information about the business, structure and operations of the Registrant, about ownership in and issuance of the Registrant's securities, about the officers and directors of the Registrant, and presentation of audited financial statements prepared in accordance with GAAP.

Registrants also are required to file with the SEC and distribute to shareholders a quarterly report on Form 10–Q, 17 CFR 249.308a. The 9 item requirements of the Form 10–Q focus primarily on abbreviated, unaudited interim financial information.

The SEC employs a regulatory scheme of uniform disclosure called ''integrated disclosure.'' Under this scheme, all of the SEC's accounting and financial disclosure requirements for forms required to be filed under both the Securities Act and the Exchange Act are centralized in Regulation S–X, 17 CFR part 210. Regulation S–X outlines comprehensive financial statement disclosure requirements, both of general applicability and of specific requirements tailored to the myriad

variety of SEC registrants. The regulation also prescribes standards for the qualifications and independence of accountants and for the content of accountant's reports. The regulation addresses such topics as preparation of financial statements in accordance with GAAP; principles of consolidation of financial statements, the form and line item content of consolidated balance sheets, consolidated statements of income and cash flows, age of financial statements, footnotes to the financial statements, and specific requirements for financial statements for financial institution holding companies, among other industries.

B. Financial Statement Requirement

Section 937.2 of the proposed rule imposes a requirement that the Banks file with the Finance Board for review, and distribute to their shareholders, annual and quarterly financial statements as provided further in the regulation. As discussed above, all of the Banks currently provide annual financial statements to their shareholders. However, not all of the Banks currently issue quarterly financial statements. Section 937.2 also states that the fact that annual or quarterly financial statements have been filed with the Finance Board shall not be deemed a finding by the Finance Board about the accuracy or adequacy of those financial statements.

The proposed rule would require filing and distribution only of financial statements. Comments are solicited on whether the Banks should be required to disclose other information in their annual and quarterly reports similar to that required by SEC Registrants, such as information regarding stockholdings by members, composition of the board, compensation, related transactions, etc.

The Finance Board also solicits specific comment on whether this requirement would provide information of utility to the Banks' shareholders and on whether the provision of this information would impose an undue burden on the Banks.

C. Annual Financial Statements

Section 937.3 of the proposed rule requires that a Bank's annual financial statements shall conform as to form and content to the requirements of Regulation S–X as referenced in Item 8 of Form 10–K. Item 8 of Form 10–K requires that financial statements meeting the requirements of Regulation S–X be furnished. For purposes of the Form 10–K, Regulation S–X requires presentation of consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed, along with all related required footnote disclosure.

Item 8 of Form 10–K also requires that the disclosure required by Item 302 of the SEC's Regulation S–K, 17 CFR 229.302. Item 302 of Regulation S–K requires disclosure of specific information by Registrants engaged in oil and gas producing activities, and of selected quarterly financial information by Registrants meeting a number of criteria related to publicly held shares quoted on the National Association of Securities Dealers' Automated Quotation system. Because item 302 is entirely inapplicable to the Banks, disclosure of this information is not being required in the proposed rule.

Proposed § 937.3 also requires that the Banks' annual financial statements shall be filed with the Finance Board and distributed to each member of the Bank within 90 days after the end of the fiscal year covered by the financial statements. This timing requirement is identical to the requirements of the SEC in the Form 10–K. The Finance Board solicits comments as to the utility of imposing a time period for the filing and issuance of the annual financial statements, and on whether the time period prescribed would impose an undue burden on the Banks.

Finally, proposed § 937.3 provides that a Bank shall indicate in a transmittal letter accompanying the annual financial statements whether the financial statements reflect a change from the preceding year in any accounting principles or practices, or in the method of applying any such principles or practices, and that, except where information is required by the requirements of Regulation S–X to be given for the fiscal year or as of specified date, it shall be given as of the latest practicable date. These requirements are drawn from the instructions to the Form 10–K and are consistent with SEC practice.

D. Quarterly Financial Statements

Proposed § 937.4 requires a Bank's quarterly financial statements to conform as to form and content to the requirements of Item 1 of Form 10–Q and to the requirements of rule 10–01 of Regulation S–X. Rule 10–01 requires disclosure of interim unaudited financial statements for the quarter covered, including interim balance sheets (i.e., an interim balance sheet as of the end of the most recent fiscal quarter and a balance sheet as of the end of the preceding fiscal year; an interim balance sheet as of the end of the corresponding fiscal quarter of the preceding fiscal year may, but need not, be provided); interim statements of income (i.e., for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year); abbreviated interim statement of changes in financial position (i.e., for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year); and any footnotes desired. This interim financial information need not be reviewed by an independent public accountant prior to filing.

Again, given that not all of the Banks currently provide quarterly financial statements to their members, and that even those that do provide such information may not do so in the form required by the proposed rule, the Finance Board solicits comment on whether this requirement would provide information of utility to the Banks' shareholders and on whether the provision of this information would impose an undue burden on the Banks.

Proposed § 937.4 also provides that the Bank's quarterly financial statements shall be filed with the Finance Board and distributed to each member of a Bank within 45 days after the end of the fiscal quarter covered by the financial statements, and that no financial statements need be filed or distributed for the fourth quarter of any fiscal year. These provisions are drawn from the instructions to the Form 10–Q and are consistent with SEC practice. The Finance Board solicits comments as to the utility of imposing a time period for the filing and issuance of the quarterly financial statements, and on whether the time period prescribed would impose an undue burden on the Banks.

III. Regulatory Flexibility Act

The proposed rule would apply only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently,

the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 937

Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, of the Code of Federal Regulations, by adding a new part 937, to read as follows:

PART 937—FINANCIAL STATEMENTS OF THE BANKS

Sec.
937.1 Definitions.
937.2 Financial statement requirement.
937.3 Annual financial statements.
937.4 Quarterly financial statements.

Authority: 12 U.S.C.1422a, 1422b, 1426, 1431, and 1440.

§ 937.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Finance Board means the agency established as the Federal Housing Finance Board.

Form 10–K means the Annual Report on Form 10–K (17 CFR 249.310) promulgated by the SEC pursuant to the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Form 10–Q means the Quarterly Report on Form 10–Q (17 CFR 249.308a) promulgated by the SEC pursuant to the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Regulation S–X means the accounting rules promulgated by the SEC (17 CFR part 210).

SEC means the agency established as the Securities and Exchange Commission.

§ 937.2 Financial statement requirement.

(a) Each Bank shall prepare, file with the Finance Board for review and distribute to its members annual and quarterly financial statements as provided in this part.

(b) The fact that annual or quarterly financial statements have been filed with the Finance Board shall not be deemed a finding that the Finance Board has passed upon the accuracy or adequacy of those financial statements.

§ 937.3 Annual financial statements.

(a) A Bank's annual financial statements shall conform as to form and content to the requirements of Regulation S–X as referenced in Item 8 of Form 10–K.

(b) Annual financial statements shall be distributed to each member of a Bank within 90 days after the end of the fiscal year covered by the financial statements.

(c) At the time the Bank's annual financial statements are distributed to the Bank's members, but no later than 90 days after the end of the fiscal year covered by the financial statements, five copies of the annual financial statements shall be filed with Elaine L. Baker, Secretary to the Finance Board, Federal Housing Finance Board, 1777 F Street, NW., Washington DC 20006. The annual financial statements will be available for public inspection at this address.

(d) The Bank shall indicate in a transmittal letter accompanying the annual financial statements whether the financial statements reflect a change from the preceding year in any accounting principles or practices, or in the method of applying any such principles or practices.

(e) Except where information is required by the requirements of Item 8 of Form 10–K or of Regulation S–X to be given for the fiscal year or as of specified date, it shall be given as of the latest practicable date.

§ 937.4 Quarterly financial statements.

(a) A Bank's quarterly financial statements shall conform as to form and content to the requirements of Item 1 of Form 10–Q and to the requirements of rule 10–01 of Regulation S–X (17 CFR 210.10–01).

(b) Quarterly financial statements shall be distributed to each member of a Bank within 45 days after the end of the fiscal quarter covered by the financial statements.

(c) At the time the Bank's quarterly financial statements are distributed to the Bank's members, but no later than 45 days after the end of the fiscal quarter covered by the financial statements, five copies of the quarterly financial statements shall be filed with Elaine L. Baker, Secretary to the Finance Board, Federal Housing Finance Board, 1777 F Street, NW., Washington DC 20006. The quarterly financial statements will be available for public inspection at this address.

(d) No financial statements need be filed or distributed for the fourth quarter of any fiscal year.

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

Bruce A. Morrison,

Chairperson.

[FR Doc. 98–1969 Filed 1–30–98; 8:45 am]

BILLING CODE 6725–01–U]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–144–AD]

RIN 2120–AA64

Airworthiness Directives; AERMACCI S.p.A. S.205 Series and Models S.208 and S.208A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to AERMACCI S.p.A. S.205 series and Models S.208 and S.208A airplanes. The proposed AD would require inspecting all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end, and replacing any control cable with any crack in the eye end. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent loss of critical airplane functions because of cracked flight control cables, which could result in loss of control of the airplane if occurring during flight.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–144–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–144–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–144–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on AERMACCI S.p.A. S.205 series and Models S.208 and S.208A airplanes. The R.A.I. reports that manufacturing tooling may have caused cracks in the cable eyes on the flight control cables. This includes the control cables for the elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems.

Cracked flight control cables, if not corrected in a timely manner, could result in loss of critical airplane functions with possible loss of control of the airplane if occurring during flight.

Relevant Service Information

SIAI Marchetti S.p.A. has issued Mandatory Service Bulletin No. 205B58, not dated, which includes procedures for inspecting the flight control cables for cracks in the eye end on the above-referenced airplanes. This service bulletin also specifies removing and discarding any cracked flight control cable.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 95–119, dated May 2, 1995, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

These airplane models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other AERMACCI S.p.A. S.205 series and Models S.208 and S.208A airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end, and replacing any control cable that has a crack in the eye end. Accomplishment of the proposed inspection would be in accordance with the previously referenced service information. Accomplishment of the proposed replacement(s), if applicable, would be in accordance with the maintenance manual.

Cost Impact

The FAA estimates that 70 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours per airplane to accomplish the actions in the proposed AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $910,000, or $1,300 per airplane.

Differences Between Service Bulletin, Italian AD, and This Proposed AD

SIAI Marchetti S.p.A. Mandatory Service Bulletin No. 205B58, not dated, includes procedures for inspecting the flight control cables for cracks in the eye end. This service bulletin also specifies removing and discarding any cracked flight control cable. Italian AD 95–119, dated May 2, 1995, mandates the actions in this service bulletin for all S.205 series and Models S.208 and S.208A airplanes on the Italian register.

No where in SIAI Marchetti S.p.A. Mandatory Service Bulletin No. 205B58 is there reference to replacing cracked flight control cables; only to removing and discarding these cables. The proposed AD differs from this service bulletin in that it proposes replacing cracked flight control cables with new cables of the same design.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Aermacci S.P.A.: Docket No. 97–CE–144–AD.

Applicability: Models S.205–18/F, S.205–18/R, S.205–20/F, S.205–20/R, .205–22/R, S.208, and S.208A airplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent loss of critical airplane functions because of cracked flight control cables, which could result in loss of control of the airplane if occurring during flight, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end. Accomplish this inspection in accordance with SIAI Marchetti, S.p.A. Mandatory Service Bulletin No. 205B58.

(b) If any cracked flight control cable is found, prior to further flight after the inspection required by paragraph (a) of this AD, replace the cracked cable with a new cable of the same design that is found to be free of cracks in the eye end. The replacement(s) shall be accomplished in accordance with the applicable maintenance manual.

(c) As of the effective date of this AD, no person may install a flight control cable on an affected airplane, unless the cable has been found to be free of cracks in the eye end.

(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) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Questions or technical information related to SIAI Marchetti, S.p.A. Mandatory Service Bulletin No. 205B58, should be directed to SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 95–119, dated May 2, 1995.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2421 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–147–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A.(Piaggio) Model P–180 airplanes. The proposed AD would require installing a shield on the front section of the engine cradles. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent water from damaging the power/propeller controls and cables, which could result in reduced airplane controllability.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–147–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Docket No. 97–CE–147–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE–147-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on certain Piaggio Model P–180 airplanes. The R.A.I. reports an incident where the power controls jammed during a high altitude flight on one of the above-referenced airplanes after it was parked in rainy conditions. The controls then became operational after the airplane descended to 10,000 feet.

Investigation of the conditions of this incident reveals that heavy rain may penetrate through the starter generator air discharge port area to the accessory gearbox zone. This condition may cause the engine power/propeller controls to jam in freezing conditions.

These conditions, if not corrected in a timely manner, could result in damage to the power/propeller controls and cables with possible reduced airplane controllability.

Relevant Service Information

Piaggio has issued Service Bulletin No. SB–80-0066, dated December 12, 1994, which specifies procedures for installing a shield on the front section of the engine cradles.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 95–087, dated June 4, 1995, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy 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, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio Model P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require installing a shield on the front section of the engine cradles. Accomplishment of the proposed installation would be required in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts would be provided by the manufacturer at no cost to the owner/operator of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $600, or $120 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Industrie Aeronautiche E Meccaniche Rinaldo Piaggio S.P.A.: Docket No. 97–CE–147–AD.

Applicability: Model P–180 airplanes, serial numbers 1001, 1002, 1004, and 1006 through 1033, 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 within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent water from damaging the power/propeller controls and cables, which could result in reduced airplane controllability, accomplish the following:

(a) Install a shield on the front section of both the left and right engine cradles in accordance with Piaggio Service Bulletin No. SB–80–0066, dated December 12, 1994.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Office, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Piaggio Service Bulletin No. SB–80–0066, dated December 12, 1994, should be directed I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 95–087, dated June 4, 1995.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2420 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–118–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH Segelflugzeugbau Model ASH–26E Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher GmbH Segelflugzeugbau (Alexander Schleicher) Model ASH–26E sailplanes. The proposed AD would require replacing the internal cooling air fan with a fan that incorporates a certain modification. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the internal cooling system air fan caused by the impeller slipping, which could result in loss of compression and power and possible engine failure.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–118–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–118–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–118–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASH–26E sailplanes. The LBA reports that the impeller of the internal cooling air fan on the above-referenced sailplanes could slip, causing a reduction of pressure in the internal cooling system. The higher internal temperatures that will follow could cause the engine to lose compression and power.

These conditions, if not corrected in a timely manner, could result in the engine overheating and possible engine failure.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 1, dated October 31, 1996, which specifies procedures for accomplishing in-flight temperature checks. This service bulletin also references Mid-West Engines Ltd. Service Bulletin No. 001, dated November 5, 1996, which includes procedures for replacing the internal cooling air fan with a fan that incorporates Modification Kit R1K555A. This modification kit includes the following provisions:

—a positive lock between the fan and spindle;

—a cable tie wrap for fan delivery duct sealing; and

—a smaller driven pulley on the fan spindle.

The LBA classified this service bulletin as mandatory and issued German AD No. 97–009, dated January 30, 1997, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany 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, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASH–26E sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the internal cooling air fan with a fan that incorporates Modification Kit R1K555A. Accomplishment of the proposed replacement would be in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 8 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 13 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $380 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,280, or $1,160 per sailplane.

Differences Between the Service Bulletin, German AD, and This Proposed AD

Alexander Schleicher Technical Note No. 1, dated October 31, 1996, specifies in-flight temperature checks of the internal cooling air fan during each flight until the modification is accomplished. German AD No. 97–009, dated January 30, 1997, also requires these in-flight checks until accomplishment of the modification.

The FAA does not have justification to require in-flight checks during each flight through AD action. The FAA suggests that the affected sailplane owners/operators have these checks accomplished, and the FAA is adding a note to the AD to recommend such action.

Compliance Time of the Proposed AD

The unsafe condition described in the proposed AD can happen at any time and is not based on the number of hours the sailplane is in operation. With this in mind, the compliance of the proposed AD is presented in calendar time instead of hours time-in-service (TIS).

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher Segelflugzeugbau: Docket No. 97–CE–118–AD.

Applicability: Model ASH–26E sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane 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 sailplanes 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 within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the internal cooling system air fan caused by the impeller slipping, which could result in loss of compression and power and possible engine failure, accomplish the following:

(a) Replace the internal cooling air fan with a fan that incorporates Modification Kit R1K555A in accordance with Mid-West Engines Ltd. Service Bulletin No. 001, dated November 5, 1996, as referenced in Alexander Schleicher Technical Note No. 1, dated October 31, 1996.

Note 2: Modification Kit R1K555A includes the following provisions:

—a positive lock between the fan and spindle;
—a cable tie wrap for fan delivery duct sealing; and
—a smaller driven pulley on the fan spindle.

Note 3: Although not required by this AD, the FAA recommends accomplishing in-flight temperature checks of the internal cooling air fan during each flight until the modification required by paragraph (a) of this AD is incorporated. These in-flight temperature checks are specified in Alexander Schleicher Technical Note No. 1, dated October 31, 1996, and are required by German AD No. 97–009, dated January 30, 1997, for sailplanes on the German registry.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 1, dated October 31, 1996; and Mid-West Engines Ltd. Service Bulletin No. 001, dated November 5, 1996, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

Note 5: The subject of this AD is addressed in German AD No. 97–009, dated January 30, 1997.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2419 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–140–AD]

RIN 2120–AA64

Airworthiness Directives; AERMACCI S.p.A. Models S208 and S208A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all AERMACCI S.p.A. Models S.208 and S.208A airplanes. The proposed action would require inspecting the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm), and replacing any that have a wire diameter of 4.0 mm. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent failure of the landing gear caused by an insufficient wire diameter of the rod springs, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE–140-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331-929117; facsimile: +39–331–922525. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–140–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–140–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on AERMACCI S.p.A. Models S.208 and S.208A airplanes. The R.A.I. reports that the above-referenced airplanes could have landing gear rod springs that have a wire diameter of 4.0 millimeters (mm) instead of 4.5 mm.

This condition, if not corrected in a timely manner, could result in failure of the landing gear with possible loss of control of the airplane during landing operations.

Relevant Service Information

SIAI Marchetti S.p.A. has issued Service Bulletin No. 205B59, dated July 29, 1995, which includes procedures for inspecting the landing gear rod springs for the correct wire diameter on the above-referenced airplanes, and specifies replacing any landing gear rod springs with an incorrect wire diameter.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 97–143 dated May 20, 1997, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

These airplane models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other AERMACCI S.p.A. Models S.208 and S.208A airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm), and replacing any that have a wire diameter of 4.0 mm. Accomplishment of the proposed inspection would be in accordance with the previously referenced service information. Accomplishment of the proposed replacement, if applicable, would be in accordance with the maintenance manual.

Cost Impact

The FAA estimates that 6 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 9 workhours per airplane to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. Parts cost

approximately $15 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,330, or $555 per airplane. This figure is based on the presumption that all of the affected airplanes would have landing gear rod springs with an incorrect diameter, and would require replacement of these rod springs.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AERMACCI S.P.A.: Docket No. 97–CE–140–AD.

Applicability: Models S.208 and S.208A airplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the landing gear caused by an insufficient wire diameter of the rod springs, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm). Accomplish this inspection in accordance with SIAI Marchetti S.p.A. Service Bulletin No. 205B59, dated July 29, 1995.

(b) If any landing gear rod springs are found to have a wire diameter of 4.0 mm, prior to further flight after the inspection required by paragraph (a) of this AD, replace these rod springs with rod springs that have a wire diameter of 4.5 mm. Accomplish this replacement in accordance with the applicable maintenance manual.

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to SIAI Marchetti S.r.1 Service Bulletin No. 205B59, dated July 29, 1995, should be directed to SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 97–143, dated May 20, 1997.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2416 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–142–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. (Piaggio) Model P–180 airplanes. The proposed AD would require inspecting the main landing gear (MLG) for interference between the MLG drag brace link and the MLG retraction actuator, and modifying this area if interference is found. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent MLG failure caused by interference between the MLG retraction actuator and the MLG drag brace link, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–142–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location

between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–142–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–142–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on certain Piaggio Model P–180 airplanes. The R.A.I. reports that inspections of several of the above-referenced airplanes reveal interference between the main landing gear (MLG) retraction actuator and the MLG drag brace link. Some of these airplanes had interference sufficient enough to cause side loads on the MLG retraction actuator.

These conditions, if not corrected in a timely manner, could result in MLG failure and possible loss of control of the airplane during landing operations.

Relevant Service Information

Piaggio has issued Service Bulletin No. SB–80–0064, dated December 5, 1994, which provides information on this issue and references Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994. Dowty Aerospace Landing Gear Service Bulletin P180–32–11 specifies procedures for inspecting the MLG for interference between the MLG drag brace link and the MLG retraction actuator, and modifying this area if interference is found.

The R.A.I. classified these service bulletins as mandatory and issued Italian AD No. 95–027, dated January 25, 1995, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy 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, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio Model P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the MLG for interference between the MLG drag brace link and the MLG retraction actuator, and modifying this area if interference is found. Accomplishment of the proposed installation would be in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,000, or $600 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Industrie Aeronautiche E Meccaniche Rinaldo Piaggio S.P.A.: Docket No. 97–CE–142–AD.

Applicability: Model P–180 airplanes, serial numbers 1001, 1002, 1004 and 1006 through 1031, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent main landing gear (MLG) failure caused by interference between the MLG retraction actuator and the MLG drag brace link, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the MLG for interference between the MLG drag brace link and the MLG retraction actuator. Accomplish this inspection in accordance with both Piaggio Service Bulletin No. SB–80–0064, dated December 5, 1994, and Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994.

(b) If any interference is found between the MLG drag brace and the MLG retraction actuator during the inspection required by paragraph (a) of this AD, prior to further flight, modify this area in accordance with both Piaggio Service Bulletin No. SB–80–0064, dated December 5, 1994, and Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994.

(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) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Piaggio Service Bulletin No. SB–80–0066, dated December 12, 1994, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 95–027, dated January 25, 1995.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2423 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–86–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes (formerly known as Beech Aircraft Corporation Models 1900D Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. The proposed action would require modifying the airplane by incorporating Raytheon Kit No. P129–5200–1, ''Ground Fine Switch Installation Kit''. The proposed AD is the result of design analysis during certification of 5.5 degree approach landings of the Model 1900D airplanes. The actions specified by the proposed AD are intended to prevent very hard landings which could result in structural damage to the airplane and possible passenger injury.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–86–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone (800) 625–7043. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209; telephone (316) 946–4145; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–86–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–86–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has been notified that certain Raytheon Model 1900D airplanes have a design defect involving the ground fine switch, which controls the ground idle low pitch stop system in the propeller control system. The

manufacturer discovered this problem during 5.5 degree approach landing certification tests. Raytheon has since developed a modification to the ground idle low pitch stop system that will improve the ground fine switch rigging and test capability for the propeller control system. Without this modification, a misrigged or loose ground fine switch may cause the blades of both propellers to move to the ground fine position during landing when the power levers are moved to the flight idle position. These conditions, if not corrected, could result in a hard landing with damage to the airplane and possible personal injury to passengers.

Relevant Service Information

Raytheon has issued Raytheon Aircraft Mandatory Service Bulletin No. 2714, Issued: June, 1997 which specifies modifying the ground idle low pitch stop system and the ground fine switch by installing Raytheon Kit No. P129–5200–1 in accordance with the Kit Instructions.

FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent very hard landings, which could result in structural damage to the airplane and possible passenger injury.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in certain Raytheon Model 1900D airplanes of the same type design, the proposed AD would require incorporating Raytheon Kit No. P129–5200–1.

Cost Impact

The FAA estimates that 271 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Raytheon is providing the kit and labor at no cost to the owner/operators under their Warranty Credit program for 12 months after the last day of the month that the manufacturer's service bulletin was issued. If there were no warranty on the parts and labor to accomplish the proposed action, the cost for U.S. operators is estimated to be $65,040 or $240 per airplane. This figure is based on the assumption that no affected operators have accomplished the proposed action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 97–CE–86–AD.

Applicability: Model 1900D airplanes (serial numbers UE–1 through UE–271), 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 within the next 800 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent very hard landings, which could result in structural damage to the airplane and possible passenger injury, accomplish the following:

(a) Modify the ground idle low pitch stop system on the airplane by incorporating Raytheon ''Ground Fine Switch Installation Kit'' No. P129–5200–1 in accordance with the Accomplishment Instructions section of Raytheon Aircraft Mandatory Service Bulletin No. 2714, Issued: June, 1997.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 23, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2422 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 259

[Docket No. OST–95–223]

RIN 2105–AC14

Aircraft Disinsection

AGENCY: Office of the Secretary (DOT).

ACTION: Termination of rulemaking.

SUMMARY: Effective immediately, the Department of Transportation is terminating a rulemaking that would have required U.S. airlines, foreign airlines and their agents, at time of booking transportation, to notify individuals purchasing tickets on flight segments originating in the United States if the aircraft would be sprayed with insecticide while passengers are on board and to provide, immediately upon request, the name of the insecticide used. The Department is terminating the rulemaking because almost all countries with direct air service from the United States have eliminated this practice.

FOR FURTHER INFORMATION CONTACT: Arnold G. Konheim, U.S. Department of Transportation (P–13), 400 7th Street, SW., Washington, DC 20590 (202) 366–4849.

SUPPLEMENTARY INFORMATION: In 60 FR 3596, January 18, 1995, the Department proposed a rule to require airlines and travel agencies to notify prospective customers, when booking transportation on flights outbound from the United States, if the aircraft would be sprayed with an insecticide while passengers are on board. In addition, the rule proposed to require carriers and agents to disclose the name of the insecticide used immediately upon request.

Forty-seven commenters responded to the Notice of Proposed Rulemaking. The commenters included a U.S. Senator, airlines, aviation-related associations, a flight attendant's union, foreign governments, health and environmental groups and private citizens. In general, the airlines and travel agents opposed the rule, while the general public, health organizations, flight attendants and pilots favored the promulgation of a rule.

Among the comments submitted by those opposing the rule were that it would be a burden on industry, would not be cost beneficial, that it would be difficult to keep up with changing disinsection requirements and that using diplomatic efforts would be a preferable solution. Those favoring the rule believed that the rule would provide important information to potential passengers in a timely manner.

In addition to pursuing a rulemaking, the United States turned to two United Nations agencies for assistance. In response to concerns of the U.S. and other countries, both the International Civil Aviation Organization and the World Health Organization recommended against the routine disinsection of flights with an aerosol while passengers are on board. Further, they recommended that the practice should be limited to flights originating in, or passing through, those places that pose a threat to a country's public health, agriculture or environment.

The United States also worked closely with countries that had a disinsection requirement. At the time of the notice of proposed rulemaking, 19 countries required the routine spraying of all inbound flights while passengers are on board. Today, that number has been reduced to four, of which only two—(1) Trinidad and Tobago, and (2) Grenada—would be covered by the rule. These two countries represent only 0.3 percent of the U.S.-international scheduled passenger market. The other two countries—Kiribati and Madagascar—are not served by non-stop flights from the U.S. and would, therefore, not have fallen under the purview of the rule.

The reduction in countries requiring spraying is even more dramatic when compared to the condition that existed when the issue was first brought to the attention of the Department in January 1994. At that time, 25 countries required the routine disinsection of all inbound flights while passengers are on board.

In light of the reduction in the number of countries requiring disinsection, the issuance of a final rule cannot be justified. However, terminating the rulemaking does not mean that the Department will abandon its efforts to eliminate unnecessary spraying. The Department intends to continue to keep the public informed of those countries that require disinsection. In addition to providing information to the media, the Department has established a site on the World Wide Web listing countries that require disinsection.

Regulatory Analysis and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department placed a regulatory evaluation that examined the estimated costs and impacts of the proposal in the docket. It has not quantified the costs of this termination but expects any economic impact to be minimal. Adopting a regulatory regime for the few flights involved would have been unnecessarily costly and burdensome, particularly for travel agents, many of which are small entities. Persons that wish to find out what countries still require spraying will be able to find out via the internet or by calling DOT or the airline.

Issued in Washington, DC on December 22, 1997.

Rodney Slater,

Secretary.

[FR Doc. 98–2503 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172

RIN 1515–AC01

Petitions for Relief; Seizures, Penalties, and Liquidated Damages

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes significant amendments to parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. The proposed regulations are briefer and are designed to allow more flexibility and useful contact with Government officials in an effort to administer cases in the most efficient way possible. These proposed regulations promote a more customer-friendly atmosphere and eliminate needless or redundant provisions. The affected parts are recrafted to include petition processing in seizure and unsecured penalty cases under part 171 and liquidated damages and secured penalty petition processing under part 172.

DATES: Comments must be received on or before April 3, 1998.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the Office of Regulations and Rulings, Regulations Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229, and inspected at the Regulations Branch, Ronald Reagan Building, Suite 3000, 1300 Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–927–2344.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of sections 618 and 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 and 1623), and sections 320 of title 46, United States Code App. (46 U.S.C.App. 320), and section 5321 of title 31, United States Code (31 U.S.C. 5321), the Secretary of the Treasury is empowered to remit forfeitures, mitigate penalties, or cancel claims arising from violation of Customs bonds upon terms and conditions that he deems appropriate. Under general rulemaking authority as provided by sections 66 and 624 of the Tariff Act of 1930, as amended (19 U.S.C. 66 and 1624), the Secretary is authorized to make such regulations necessary to carry out the provisions of the Tariff Act. Consistent with that authority, Parts 171 (relating to seizures and penalties) and 172 (relating to liquidated damages) of the Customs Regulations (19 CFR parts 171 and 172) were promulgated to provide for the petitioning process in order to allow for the orderly remission of forfeitures, mitigation of penalties, and cancellation of claims for liquidated damages.

Customs is proposing significant amendments to Parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. The new regulations will be briefer and will allow more flexibility and useful contact with Government officials in an effort to administer cases in the most efficient way possible. These regulations will promote a more customer-friendly atmosphere and will eliminate needless or redundant provisions.

The scope of Parts 171 and 172 has been changed. Inasmuch as certain penalties are guaranteed by the conditions of the International Carrier Bond, and, therefore involve surety participation, the provisions of Part 172 will relate to all claims for liquidated damages and penalties secured by a bond. This will mean that all claims against surety will be handled in a consistent manner. Part 171 will relate to unsecured fines and penalties and all seizure and forfeiture cases.

The proposed regulations anticipate that electronic filing of petitions is an inevitability even though Customs does not currently have, on a nationwide basis, the capabilities to accept petitions electronically. Accordingly, the regulations reflect the acceptance of electronic signatures and eliminate the requirement of duplicate copies if an electronic petition is filed.

The proposed regulations require that petitions for relief must be signed by the petitioner, his attorney-at-law or a Customs broker, but will allow others, in certain non-commercial violations (such as passenger/baggage violations), to file petitions on behalf of non-English speaking claimants to property or other petitioners who have some disability that may impede the ability to file a petition. Instances have occurred where these petitions have been rejected because they did not meet the signature requirements of the old regulations. A strict reading of the current regulations would bar Customs from considering those petitions. This position causes needless delay in administrative processing of cases. The new proposed provision will open the process in these situations and promote efficiency by allowing, in non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition to enlist a family member or other representative to file a petition on his behalf.

Under current regulation, Customs may limit the petitioning period to 7 days in cases involving violations of 19 U.S.C. 1592 when the running of the statute of limitations is imminent. Customs finds no reason to limit the 7-day petitioning period option to just 1592 cases. The proposed regulations extend the 7-day rule to all cases and clarify that it is 7 working days, rather than calendar days.

The current regulatory section entitled ''Additional evidence required with certain petitions'' is proposed to be eliminated as unnecessary. The provisions of proposed new § 171.2 indicate that the claimant or petitioner must establish a petitionable interest in seized property. How that proof is presented is not a subject that need be controlled by regulation.

Oral presentations will continue to be afforded as a matter of right in 1592 cases and only as a matter of discretion in other cases. The proposed regulations simply remove the reference to cases commenced subsequent to December 31, 1978. This provision has become obsolete with the passage of time.

Title VI of the North American Free Trade Agreement Implementation Act (known commonly as the Customs Modernization Act) (Pub.L. 103–182, 107 Stat. 2057) amended the provisions of 19 U.S.C. 1595a(c) to provide for the seizure and forfeiture of stolen property. Implementing regulations for this amendment were promulgated by Treasury Decision 96–2 (T.D. 96–2). This amendment has rendered § 171.22(c) obsolete, as those provisions of the new statute are applicable to any stolen property, not only that stolen in Canada and brought into the United States. Accordingly, it is proposed to no longer include that provision in the regulations.

Mitigation guidelines for monetary penalties assessed pursuant to 19 U.S.C. 1592 are currently published as Appendix B to Part 171 of the Regulations. Accordingly, the provisions of § 171.23 of the current regulations, making these guidelines available upon request, are obsolete and it is proposed that this section be eliminated.

The offices of Regional Commissioner and District Director were eliminated under Customs reorganization; therefore, all references to those offices and delegations of authority to those individuals to decide petitions and supplemental petitions for relief are obsolete. Through Treasury Decision 95–78 (T.D. 95–78), Customs published an Interim Rule which amended the regulations and authorized Fines, Penalties, and Forfeitures Officers to decide petitions for relief and certain designated Headquarters officials assigned to field locations to decide supplemental and second supplemental petitions for relief in certain cases (although this document proposes to eliminate second supplemental petitions, as discussed later herein). Those changes are reflected in this document.

Consistent with the reorganization and Customs policy of empowering employees, the proposed regulations remove specific delegations of mitigation authority from the body of regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions to the field through delegation orders, without the necessity of amending the regulations. A separate document will be published in the **Federal Register** detailing the new delegations.

The document proposes that the provisions of Part 111 be amended to eliminate the requirement of Headquarters approval of broker penalty cases assessed in excess of $10,000.

Novel or complex issues often arise concerning Customs policy with regard to Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or case assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. In those instances, Headquarters advice may need to be sought. Accordingly, the

proposed regulations include a section in both Parts 171 and 172 to allow any Customs officer or an alleged violator to initiate a request for advice to be submitted to the Fines, Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. The Fines, Penalties, and Forfeitures Officer will retain the authority to refuse to forward any request that fails to raise a qualifying issue.

Under current policy, Customs officers are empowered to accept petitions filed untimely in response to claims for liquidated damages. Those petitions can be accepted at any time prior to determination that a claim is eligible to be placed on a surety sanction list. The proposed regulations will permit Customs to accept late petitions in penalty cases as well, but, as articulated in guidelines published for cancellation of bond charges (see T.D. 94–38), lateness in filing a petition may be considered when considering remission or mitigation of a claim and less generous relief, if otherwise merited, may be afforded to the petitioner who files in an untimely manner.

The courts have consistently held that a claim for liquidated damages is not a ''charge or exaction'' which is properly the subject of a protest filed pursuant to the authority of 19 U.S.C. 1514. *See United States* v. *Toshoku America, Inc.*, 879 F.2d 815 (Fed.Cir. 1989); *Halperin Shipping Co., Inc.* v. *United States*, 14 CIT 438, 742 F.Supp. 1163 (1990). In light of these decisions, the proposed regulations indicate that claims for liquidated damages and decisions on petitions are not properly the subject of a protest filed pursuant to 19 U.S.C. 1514.

In *Trayco, Inc.* v. *United States*, —— Fed.Cir.(T) ———, 994 F.2d 832 (1993), the Court permitted a company that had petitioned for relief, received a decision on the petition and, although unhappy with the mitigation offered, paid that mitigated amount ''under protest'', to file suit to recover the amount paid. The Court noted that as ''* * * nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty and filing a second supplemental petition, we decline to hold that Trayco is estopped where it accompanied its payment with a statement expressly reserving its rights to judicial review.'' *See Id.* at 839. Customs proposes to amend the regulations to provide that any payment made in compliance with a mitigation decision will act as an accord and satisfaction whereby the paying party has elected to resolve the case through the administrative process and has waived the right to sue for a refund. This express statement will also be included in all mitigation decisions offered to petitioners in order to provide full disclosure as to their administrative or judicial rights. Customs will not accept payments ''under protest.''

Additionally, in the proposed regulations, second supplemental petitions are eliminated. Therefore, payment of a mitigated amount will never be necessary to receive original or appellate administrative review and a petitioner will not be required to later sue for a refund of monies paid if he believes the underlying penalty was incorrectly assessed or the claim improperly mitigated.

The proposed regulations include a provision whereby the deciding Customs official reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief. Upon receipt of such a waiver, any reduced time period for acceptance of a petition would not be necessary. The proposed regulations remove a restriction on the filing of supplemental petitions in broker penalty cases. Under current § 111.95, Customs Regulations, a final determination of $1,000 or less in response to a petition for relief in a case involving assessment of a penalty for violation of the provisions of 19 U.S.C. 1641 may not be the subject of a supplemental petition. There is no basis to single out this particular violation as not being worthy of a supplemental petition for relief. All parties should have the same administrative rights.

It is noted that no changes are proposed to Subpart F, Part 171, of the current regulations relating to expedited procedures promulgated as a result of passage of the Anti-Drug Abuse Act of 1988 and applicable to certain administrative forfeiture proceedings.

Sections 10.39(e) and (f) of the current regulations, relating to the filing of petitions in cases involving breaches of the terms and conditions of temporary importation bonds (TIBs), provide for different standards of review if there has been a default with respect to all of the articles entered under bond or if there has been a default with respect to part, but not all, of the articles entered under bond. This bifurcation is unnecessary. The proposed regulations combine the provisions of §§ 10.39(e) and (f) to provide a single standard for review of TIB petitions without regard to whether all or part of the merchandise entered under the TIB are in breach.

Current § 162.48, Customs Regulations, relating to the disposition of perishable and low-value property, permits Customs, by the authority granted in section 612 of the Tariff Act of 1930, as amended (19 U.S.C. 1612), to destroy summarily low-value seized property (less than $1,000) when the costs of storing and maintaining such property are disproportionate to its value. Customs would then reimburse any successful petitioning claimant from the Forfeiture Fund. The provisions of section 667 of the Customs Modernization Act remove this $1,000 cap and permit the summary destruction of any seized property, without regard to value, if the costs of maintaining such property are disproportionate to its value. The proposed amendment is consistent with this legislative change.

Finally, the provisions of Part 162 are proposed to be amended to specifically empower Fines, Penalties, and Forfeitures Officers to accept waivers of the statute of limitations with regard to actual or potential violations arising in ports over which they have jurisdiction. The Office of Regulations and Rulings would retain authority to accept waivers in established actual cases over which it has monetary jurisdiction and a petition for relief has been filed.

Proposed conforming amendments to Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, and 162 are also set forth in this document.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business hours of 9:00 a.m. to 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, D.C.

Regulatory Flexibility and Executive Order 12866

Inasmuch as small business entities are rarely repeat violators of Customs laws, and, therefore, will seldom need to avail themselves of these regulatory provisions and file petitions for relief on a regular basis, it is certified, pursuant to the provisions of the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. The document does not meet the criteria for a ''significant regulatory action'' under E.O. 12866.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Bonds, Customs duties and inspection, Labeling, Marking, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture, Trade agreements.

19 CFR Part 18

Bonds, Customs duties and inspection, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 111

Administrative practice and procedure, Bonds, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 114

Carnets, Customs duties and inspection.

19 CFR Part 125

Bonds, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Reporting and recordkeeping requirements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, seizures, and forfeitures.

19 CFR Part 172

Administrative practice and procedure, Customs duties and inspection, Penalties.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172, Customs Regulations (19 CFR parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

2. It is proposed to revise the introductory paragraph of § 10.39(e) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in part 172 of this chapter, it shall be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages as follows:

* * * * *

3. It is proposed to amend § 10.39 by removing paragraph (f) and redesignating current paragraphs (g) and (h) respectively as paragraphs (f) and (g).

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation and relevant specific authority citations for part 12 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.95 through 12.103 also issued under 15 U.S.C. 1241–1245;

* * * * *

2. It is proposed to amend § 12.102 by removing the number ''6O'' and adding in its place the number ''3O'.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation and relevant specific authority citations for part 18 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624.

* * * * *

Section 18.8 also issued under 19 U.S.C. 1623;

* * * * *

2. It is proposed to revise § 18.8(d) to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * *

(d) In any case in which liquidated damages are imposed in accordance with this section and the Fines, Penalties, and Forfeitures Officer is satisfied by evidence submitted to him with a petition for relief filed in accordance with the provisions of part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, the Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation and relevant specific authority citations for part 24 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701;

* * * * *

Section 24.24 also issued under 26 U.S.C. 4461, 4462;

* * * * *

2. It is proposed to amend the first sentence of § 24.24(h)(3) by removing the phrase ''published pursuant to the provisions of § 172.22(d)(1) of this chapter''.

PART 111—CUSTOMS BROKERS

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

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

2. It is proposed to amend § 111.92 by removing the last sentence.

3. It is proposed to revise § 111.95 to read as follows:

§ 111.95 Supplemental petition for relief.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

PART 113—CUSTOMS BONDS

1. The general authority citation and relevant specific authority citation for part 113 continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. It is proposed to revise § 113.46 to read as follows:

§ 113.46 Cancellation of bond charges resulting from failure to produce documents.

Guidelines published by the Commissioner of Customs set forth provisions relating to cancellation of bond charges resulting from failure to produce documents.

3. It is proposed to amend § 113.52 by removing the words ''and 172.22(c)'' from the parenthetical phrase contained therein.

4. It is proposed to amend § 113.54(a) by removing ''172.31'' and adding in its place ''172.11(b)''.

PART 114—CARNETS

1. The general authority citation for part 114 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. It is proposed to amend § 114.34(c) by removing the final non-parenthetical sentence and the final parenthetical sentence.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. The general authority citation and relevant specific authority citation for part 125 continue to read as follows:

Authority: 19 U.S.C. 66, 1565, 1624.

* * * * *

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

2. It is proposed to revise § 125.42 to read as follows:

§ 125.42 Cancellation of liability.

The Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel liquidated damages incurred under the bond of the foreign trade zone operator, containing the bond conditions set forth in § 113.73 of this chapter, or under the bond of the cartman, lighterman, bonded carrier, bonded warehouse operator, container station operator or centralized examination station operator on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of part 172 of this chapter.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. It is proposed to amend § 134.54(a) by removing the phrase ''plus any estimated duty thereon as determined at the time of entry.''

3. It is proposed to amend § 134.54(b) by removing the second sentence.

PART 145—MAIL IMPORTATIONS

1. The general authority citation and relevant specific authority citation for part 145 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618.

* * * * *

2. It is proposed to revise § 145.4(b) to read as follows:

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

* * * * *

(b) *Mitigation of forfeiture.* Any claimant incurring a forfeiture of merchandise for violation of this section may file a petition for relief pursuant to part 171 of this chapter. Mitigation of that forfeiture may occur consistent with mitigation guidelines.

* * * * *

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation and relevant specific authority citation for part 162 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

* * * * *

2. It is proposed to amend § 162.48 by revising the heading to read as follows:

§ 162.48 Disposition of perishable and other seized property.

3. It is proposed to amend paragraph (b) of § 162.48 by removing from the first sentence the phrase ''and such value is less than $1,000,''.

4. It is proposed to amend § 162.79b by removing the last sentence.

5. It is proposed to amend subpart G, part 162 by adding a new § 162.81 to read as follows:

§ 162.81 Statute of limitation waivers.

Waivers of the statute of limitations in any matter relating to any actual or potential penalty, seizure or claim for liquidated damages may be accepted by any Fines, Penalties, and Forfeitures Officer except that waivers of the statute of limitations submitted with regard to any penalty, seizure or liquidated damages case in which a petition has been filed and is under review by the Chief, Penalties Branch, Office of Regulations and Rulings, or the Secretary of the Treasury or his designee, shall be accepted by the Chief, Penalties Branch, Office of Regulations and Rulings.

PART 171—FINES, PENALTIES, AND FORFEITURES

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

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1624; 21 U.S.C. 881 note.

2. It is proposed to revise § 171.0 to read as follows:

§ 171.0 Scope.

This part contains provisions relating to petitions for relief from fines, forfeitures, and certain penalties incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property. This part does not relate to petitions on claims for liquidated damages or penalties which are guaranteed by the conditions of the International Carrier Bond (see § 113.64 of this chapter).

3. It is proposed to revise subparts A through E of part 171 to read as follows:

Subpart A—Application for Relief

§ 171.1 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs shall be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a representative of the corporation. Electronic signatures are acceptable. In non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition may enlist a family member or other representative to file a petition on his behalf. The deciding officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. It shall set forth the following:

(1) A description of the property involved (if a seizure);

(2) The date and place of the violation or seizure;

(3) The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and

(4) If a seizure case, proof of a petitionable interest in the seized property.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 171.2 Filing a petition.

(a) *Where filed.* A petition for relief shall be filed with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* (1) *Seizures.* Petitions for relief from seizures shall be filed within 30 days from the date of mailing of the notice of seizure.

(2) *Penalties.* Petitions for relief from penalties shall be filed within 60 days of the mailing of the notice of penalty incurred.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition shall be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty is assessed or a seizure is made and fewer than 180 days remain from the date of penalty notice or seizure before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter shall be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 171.3 Oral presentations seeking relief.

(a) *For violation of section 592.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), the person named in the notice, in addition to filing a petition, may make an oral presentation seeking relief in accordance with this paragraph. For purposes of this paragraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of claim or a monetary penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition.

Subpart B—Actions on Petitions

§ 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Remission or mitigation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any claim when he or she definitely determines that the act or omission forming the basis of any claim of penalty or forfeiture did not occur.

(c) *When violation is result of vessel in distress.* The Fines, Penalties, and Forfeitures Officer may remit without payment any penalty which arises for violation of the coastwise laws if he or she is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

§ 171.12 Petitions referred to Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and forfeitures which are outside of his or her delegated authority, the Fines, Penalties, and Forfeitures Officer shall refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate, unless there has been no delegation of authority to act by the Secretary of the Treasury or his designee. In those cases where there has been no delegation to act by the Secretary or his designee, the Chief, Penalties Branch, shall forward the matter to the Department with a recommendation.

§ 171.13 Limitations on consideration of petitions.

(a) *Late petitions.* Petitions filed after the expiration of the 30- or 60-day petitioning period may be considered by the deciding official if, in his or her discretion, the efficient administration of justice would be met.

(b) *Cases referred for institution of legal proceedings.* No action shall be taken on any petition after the case has been referred to the Department of Justice for institution of legal proceedings. The petition shall be forwarded to the Department of Justice.

(c) *Conveyance awarded for official use.* No petition for remission of forfeiture of a seized conveyance which has been forfeited and retained for

official use shall be considered unless it is filed before final disposition of the property is made. This does not affect petitions for restoration of proceeds of sale filed pursuant to the provisions of section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613).

§ 171.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case, without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to seizures and forfeitures, penalties (including penalty-based demands for duty), or mitigating or remitting any claim. The request for advice may be initiated by the alleged violator or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Subpart C—Disposition of Petitions

§ 171.21 Written decisions.

If a petition for relief relates to a violation of sections 592 or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592 or 19 U.S.C. 1641), the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

§ 171.22 Limitation on time decision effective.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount or arrangements for such payment are not made, or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for forfeiture shall be deemed applicable and shall be enforced by promptly referring the matter, after required collection action, if appropriate, to the appropriate Office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs.

§ 171.23 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit a forfeiture or mitigate a penalty is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit a forfeiture or mitigate a penalty is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated amount as accord and satisfaction.* Payment of a mitigated amount in compliance with an administrative decision on a petition or supplemental petition for relief shall be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 171.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 171.32 Authority to accept offers.

The authority to accept offers in compromise, when recommended by the General Counsel of the Treasury or his designee, resides with the official having authority to decide a petition for relief.

§ 171.33 Acceptance of offers in compromise.

An offer in compromise shall be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Restoration of Proceeds of Sale

§ 171.41 Application of provisions for petitions for relief.

The general provisions of subpart B of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

§ 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) shall be filed within 3 months after the date of the sale.

§ 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of subpart B of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall show the interest of the petitioner in the property. The petition shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

§ 171.44 Forfeited property authorized for official use.

If forfeited property which is the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) has been authorized for official use, retention or delivery shall be regarded as the sale thereof for the purposes of section 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contributions in general average that may have been filed.

4. It is proposed to amend part 171 by adding a new subpart G to read as follows:

Subpart G—Supplemental Petitions for Relief

§ 171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition shall be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated penalty or forfeiture remission amount designated in the decision on the original petition is paid.

§ 171.62 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officer.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer shall be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating same to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition shall be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds $10,000 shall be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, shall be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision.

(c) *Decisions of Treasury Department.* Supplemental petitions filed on cases where the original decision was made in the Treasury Department, shall be referred to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who shall forward the supplemental petitions to the Department with a recommendation.

(d) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.

A petitioner filing a supplemental petition pursuant to this subpart from a decision of the Chief, Penalties Branch, Office of Regulations and Rulings, with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary or his designee will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary or his designee declines to accept an appeal for decision, the petitioner will be so informed. In such a case, a decision will be issued thereon by the Director, International Trade Compliance Division.

§ 171.64 Waiver of statute of limitations.

The deciding official always reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a petition for relief or a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief.

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

1. The authority citation for Part 172 is revised to read as follows:

Authority: 19 U.S.C. 66, 1618, 1623, 1624.

PART 172—[REVISED]

2. It is proposed to revise part 172 to read as follows:

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

§ 172.0 Scope.

This part contains provisions relating to petitions for relief from claims for liquidated damages arising under any Customs bond and penalties incurred which are secured by the conditions of the International Carrier Bond (See § 113.64 of this chapter). This part does not relate to petitions on unsecured fines or penalties or seizures and forfeitures, nor does it relate to petitions for the restoration of proceeds of sale pursuant to 19 U.S.C. 1613.

Subpart A—Notice of Claim and Application for Relief

§ 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.

(a) *Notice of liquidated damages or penalty incurred.* When there is a failure to meet the conditions of any bond posted with Customs or when a violation occurs which results in assessment of a penalty which is secured by a Customs bond, the principal shall be notified in writing of any liability for liquidated damages or penalty incurred and a demand shall be made for payment. The sureties on such bond shall also be notified in writing of any such liability at the same time.

(b) *Notice of right to petition for relief.* The notice shall inform the principal that application may be made for relief from payment of liquidated damages or penalty.

§ 172.2 Petition for relief.

(a) *To whom addressed.* Petitions for the cancellation of any claim for liquidated damages or remission or mitigation of a fine or penalty secured by a Customs bond incurred under any law or regulation administered by Customs shall be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a representative of the corporation. Electronic signatures are acceptable. The deciding officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for cancellation, remission or mitigation need not be in any particular form. It shall set forth the following:

(1) The date and place of the violation; and

(2) The facts and circumstances relied upon by the petitioner to justify cancellation, remission or mitigation.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 172.3 Filing a petition.

(a) *Where filed.* A petition for relief shall be filed by the bond principal with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* Petitions for relief shall be filed within 60 days from the date of mailing to the bond principal the notice of claim for liquidated damages or penalty secured by a bond.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition shall be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty or claim for liquidated damages is assessed and fewer than 180 days remain from the date of penalty or liquidated damages notice before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the

filing of a petition for relief. If a petition is not filed within the time specified, the matter shall be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

172.4 Demand on surety.

If the principal fails to file a petition for relief or fails to comply in the prescribed time with a decision to mitigate a penalty or cancel a claim for liquidated damages issued with regard to a petition for relief, Customs shall make a demand for payment on surety. Surety will then have 60 days from the date of the demand to file a petition for relief.

Subpart B—Actions on Petitions

§ 172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Mitigation or cancellation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer, notwithstanding any other regulation, is empowered to mitigate any penalty or cancel any claim for liquidated damages on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any case without payment of a mitigated or cancellation amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur.

§ 172.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and claims for liquidated damages which are outside of his or her jurisdiction, the Fines, Penalties, and Forfeitures Officer shall refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered, notwithstanding any other regulation, to mitigate penalties or cancel bond claims on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate.

§ 172.13 Limitations on consideration of petitions.

(a) *Late petitions.* Petitions filed after the expiration of the 60-day petitioning period may be considered by the deciding official if, in his or her discretion, the efficient administration of justice would be met.

(b) *Cases referred for institution of legal proceedings.* No action shall be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition shall be forwarded to the Department of Justice.

(c) *Delinquent sureties.* No action shall be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to the provisions of § 113.38(c)(3) of this chapter.

§ 172.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case, without regard to jurisdictional amount, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to penalties secured by bonds (including penalty-based demands for duty), claims for liquidated damages or mitigating any claim. The request for advice may be initiated by the bond principal, surety or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Subpart C—Disposition of Petitions

§ 172.21 Limitation on time decision effective.

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages shall be deemed applicable and shall be enforced by promptly transmitting the matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this Chapter.

§ 172.22 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated or cancellation amount as accord and satisfaction.* Payment of a mitigated or cancellation amount in compliance with an administrative decision on a petition or supplemental petition for relief shall be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated or cancellation amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated or cancellation amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 172.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 172.32 Authority to accept offers.

The authority to accept offers in compromise, when recommended by the General Counsel of the Treasury or his designee, resides with the official having authority to decide a petition for relief, except that offers in compromise submitted with regard to penalties secured by a bond or claims for liquidated damages which are the subject of a letter to show cause issued to a surety in anticipation of possible sanction action authorized under the provisions of part 113 of this chapter

shall be accepted by the designated Headquarters official who issued the show cause letter.

§ 172.33 Acceptance of offers in compromise.

An offer in compromise shall be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Supplemental Petitions for Relief

§ 172.41 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition shall be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated amount designated in the decision on the original petition is paid.

§ 172.42 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officer.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, shall be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating same to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officers decides to grant no further relief, the supplemental petition shall be forwarded to a designated Headquarters official assigned to a field location for review and decision.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, shall be forwarded to the Director, International Trade Compliance Division, for review and decision.

(c) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 172.43 Waiver of statute of limitations.

The deciding official always reserves the right to require a waiver of the statute of limitations executed by the charged party or parties as a condition precedent before accepting a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: January 13, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–2250 Filed 1–30–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. 98N–0040]

Developing Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Developing Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring.'' The purpose of the public meeting is to provide a forum for FDA to gather information for the development of new regulations for the review of radiopharmaceutical applications as required by the Food and Drug Administration Modernization Act of 1997 (the FDAMA).

DATES: Submit written comments by March 4, 1998. The meeting will be held on February 27, 1998, 8 a.m. to 4 p.m.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The meeting will be held at the Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210, FAX 301–443–3874, e-mail ''Murphyd@CBER.FDA.GOV''.

SUPPLEMENTARY INFORMATION: Section 122 of the FDAMA (Pub. L. 105–115) requires the Secretary of Health and Human Services to issue proposed rules governing the evaluation and approval of radiopharmaceuticals within 180 days after the date of enactment of the FDAMA after soliciting input from patient advocacy groups, physicians licensed to use radiopharmaceuticals, regulated industry, and interested members of the public. Accordingly, FDA is holding a public meeting to solicit public input.

Comments: If attendance at the meeting is not possible, interested parties may submit written comments to the Dockets Management Branch (address above). 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. FDA will consider all comments received at the meeting and submitted to the docket in drafting proposed rules for the regulation of radiopharmaceuticals. FDA invites interested parties to comment on any aspect of the regulation of radiopharmaceuticals.

In general, comments should address how FDA should cover the safety and effectiveness of radiopharmaceuticals in its regulations, as well as any identifiable characteristics that might distinguish them from other articles intended for use in the diagnosis and monitoring of diseases, or manifestations of diseases, in humans. Also, because the FDAMA requires that certain factors be included in a rule governing the evaluation and approval of radiopharmaceuticals, FDA invites comments on the following topics: (1) How should the proposed use of a radiopharmaceutical in the practice of medicine determine the nature and extent of safety and effectiveness evaluations; (2) what general characteristics of a radiopharmaceutical should be considered in the preclinical and clinical pharmacological and toxicological evaluations of a radiopharmaceutical (including the radionuclide as well as the ligand and carrier components, i.e., nonradioactive components); (3) how should the estimated absorbed radiation dose in

humans be determined and considered; and (4) under what circumstances might an approved indication for marketing refer to manifestations of disease (biochemical, physiological, anatomic, or pathological processes) common to, or present in, one or more disease states?

Interested parties may want to review section 122 of the FDAMA and a draft regulation for radiopharmaceuticals submitted by the Council on Radionuclides and Radiopharmaceuticals (CORAR). Both the FDAMA and the CORAR proposal have been filed under the docket number found in the heading of this document, and they are available on the Internet.

Electronic Access: Persons with access to the Internet may obtain the FDAMA and the CORAR proposal using the World Wide Web (www) by connecting to ''www.fda.gov/cber/misc.htm''.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number) and written material and requests to make oral presentations, by February 18, 1998, to Gloria S. Blankenship, Center for Biologics Evaluation and Research (HFM–43), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1310, FAX 301–827–3079, e-mail ''Blankenship@CBER.FDA.GOV''. Registration at the site will be done on a space available basis on the day of the public meeting beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Gloria Blankenship (address above) at least 7 days before the meeting.

Transcripts: Transcripts 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.

Dated: January 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–2322 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA–037–1037b; FRL–5955–3]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa for the purpose of updating regulations of the state's two local air pollution control agencies. These agencies are the Polk County Public Works Department and Linn County Health Department.

In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. The general rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 4, 1998.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register** .

Dated: December 30, 1997.

Diane Callier,

Acting Regional Administrator, Region VII.

[FR Doc. 98–2487 Filed 1–30–98; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 195

[Docket No. RSPA–98–3347; Notice 1]

Pipeline Safety: Plastic Pipeline Safety Standards

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration, Office of Pipeline Safety (OPS) invites representatives of the pipeline industry, state and local government, and the public to an open meeting on the Federal gas pipeline safety regulations on plastic pipe system design, construction, maintenance, and rehabilitation in transmission, distribution, and service line applications. The meeting is scheduled to coincide with meetings of the American Gas Association (AGA) Plastic Materials Committee scheduled for the week of March 4, 1998, in Phoenix, Arizona. The purpose of this meeting is to gather information on experience with the current Federal pipeline safety regulations on plastic pipe design, construction, and maintenance and to solicit comments and suggestions to improve these regulations. In particular, OPS seeks comment on whether current regulations should be revised, supplemented, or replaced by references to applicable industry standards and recommended practices.

DATES: The meeting will be held on Wednesday, March 4, 1998, at the Hyatt Regency Phoenix Hotel in Phoenix, Arizona, from 9:00 a.m until all interested persons have been have been afforded an opportunity to speak. Interested persons are invited to attend the meeting and present oral or written statements. Persons wishing to speak at the meeting should notify Jenny Donohue at (202) 366–4046 by the close of business on Friday, February 27, 1998. Please estimate the time that will be required for your presentation. RSPA reserves the right to limit the time of each speaker to ensure that everyone is allowed sufficient time. Other speakers may present statements as time allows.

ADDRESSES: This meeting will be held at the Hyatt Regency Phoenix Hotel, 122 North Second Street, Phoenix, Arizona. The telephone number of the hotel is (602) 252–1234.

Comments

Persons unable to attend the meeting or who wish to comment in writing may submit written comments by May 4, 1998, to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number of this notice (RSPA–98–3347). Persons should submit the original document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to 'OPS.COMMENTS@RSPA.DOT.GOV'. The Dockets Facility is located on the plaza level of the Nassif Building in Room Number 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri, (202) 366–4503, U.S. Department of Transportation, RSPA, 400 Seventh Street, SW, Washington, D.C. 20590, or by e-mail at 'GOPALA.VINJAMURI@RSPA.DOT.GOV', regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: To further the goals of the President's National Performance Review (NPR) and Regulatory Reinvention Initiative (RRI), RSPA is reviewing the gas pipeline regulations that address plastic pipe systems design, installation, and operations in transmission, distribution, and service line applications. This review seeks to eliminate or revise those regulations that are outdated, ambiguous, or in need of reform. In conducting this review, OPS will endeavor to increase its use of standards developed by voluntary consensus standards bodies. See Pub. L. 104–113 ''The National Technology Transfer and Advancement Act of 1995,'' and ''Office of Management and Budget (OMB) Circular A119.''

OPS has organized this public meeting to coincide with the AGA Plastics Materials Committee meetings to encourage attendance by technical experts, pipeline operators, state pipeline safety officials, and other interested parties. OPS believes this forum is a good opportunity for the public to discuss plastic pipeline regulatory issues and suggest ways to enhance pipeline safety.

Natural gas utilities in the United States have been using plastic piping in underground gas distribution systems for over three decades. Presently, over 85 percent of the gas distribution and service lines, constituting over 500,000 miles, are installed using polyethylene pipe. Apart from occasional failures, mostly caused by third-party excavation damage, the safety performance of plastic pipe systems has been excellent, and the Federal pipeline safety regulations have been sufficient to ensure public safety. However, as plastic pipeline technology continues to improve, and the gas distribution infrastructure incorporates advanced plastics materials, installation methods, and operational techniques, there is a need to reexamine industry standards and the Federal regulations. Further, other critical issues, such as the long-term performance of the plastic piping installed in 1960s and 1970s, need to be addressed.

OPS is conducting this public meeting to elicit a free exchange of concerns, ideas, and technical knowledge among the attendees and the federal regulators. OPS seeks input on any concerns and comments the public has with the pipeline safety regulations on plastic pipe, and components in gas transmission, distribution, and service applications. In particular, OPS would like to know:

(1) Should the plastic pipe regulations accommodate different standards for new plastic materials, higher operating pressures, higher operating temperatures, and modern installation, and maintenance technologies?

(2) Are the current plastic pipeline regulations too general, too performance oriented, or too prescriptive? Should the regulations address design safety, testing of valves and fittings, and the use of joints with metal transition fittings? Do the regulations need an added level of safety for large-diameter pipe and fittings?

(3) Should OPS be concerned about the performance of large-diameter coiled plastic pipe? Is trenchless installation for large-diameter pipe an appropriate procedure?

(4) Should the pipeline safety regulations include procedures that address fusion welding of thick-walled pipe?

(5) Should there be specific requirements for natural gas plastic distribution and service lines and components in earthquake and other natural disaster-prone regions?

(6) Should the federal pipeline safety regulations address requirements for leak detection, leak surveying, and leak detection equipment?

(7) Are there other national standards that OPS should consider referencing?

(8) Should OPS consider adopting into the regulations the principles expressed in past waivers?

OPS welcomes comments on the above questions, and other issues regarding the regulation of plastic pipe in transmission, distribution, and service line applications. Because OPS's goal is to receive input from all interested parties attending the meeting, it will not prepare a formal agenda.

Issued in Washington, D.C., on January 27, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–2455 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AE26

Importation of Polar Bear Trophies From Canada: Addition of Populations to the List of Areas Approved for Import

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule announces proposed findings on the import of polar bears (*Ursus maritimus*) taken in sport hunts in the areas formerly known as Parry Channel-Baffin Bay and Queen Elizabeth Islands, Northwest Territories (NWT), Canada, under the Marine Mammal Protection Act (MMPA). The U.S. Fish and Wildlife Service summarizes the new research data used by Canada to redefine these areas into five populations: Queen Elizabeth Islands, Norwegian Bay, Kane Basin, Lancaster Sound, and Baffin Bay, and provides a summary of the Nunavut Land Claim and the new Flexible Quota Option. The Service proposes to find that Lancaster Sound and Norwegian Bay meet the requirements of the MMPA and to add them to the list of approved populations in the regulations. Further, the Service proposes to defer the decision on the remaining three populations, Queen Elizabeth Islands, Baffin Bay, and Kane Basin.

DATES: The Service will consider comments and information received by March 4, 1998 in formulating its decision on this proposed rule.

ADDRESSES: Comments and information should be sent to: Director, Fish and Wildlife Service, c/o Office of

Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 700. The Service prepared an Environmental Assessment (EA) for the final rule published February 18, 1997 (62 FR 7302), and finds the EA applicable to this proposed rule. A copy of the EA may be obtained by writing to this address or by telephoning the contact listed below. If substantial new information is received on the EA's alternatives and analysis of impacts as a result of the public review, a supplemental EA will be prepared.

FOR FURTHER INFORMATION CONTACT: Kenneth Stansell, Office of Management Authority, telephone (703) 358–2093; fax (703) 358–2281.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1997, the Service published in the **Federal Register** (62 FR 7302) the final rule for the import of trophies of personal sport-hunted polar bears taken in Canada. The rule established the application requirements, permit procedures, issuance criteria, permit conditions, and issuance fee for such permits and made legal and scientific findings required by the MMPA. Prior to issuing a permit for the import of a polar bear trophy, the Service must make a finding that the polar bear was legally taken by the applicant, and in consultation with the Marine Mammal Commission (MMC) and after opportunity for public comment, must make the findings listed in section 104(c)(5)(A) of the MMPA. The Service made these findings on an aggregate basis to be applicable for multiple harvest seasons as follows: (a) the Government of the Northwest Territories (GNWT) has a sport-hunting program that allows the Service to determine prior to import that each polar bear was legally taken; (b) the GNWT has a monitored and enforced program that is consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears (International Agreement); (c) the GNWT has a sport-hunting program that is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level for certain populations; and (d) the export of sport-hunted trophies from Canada and their subsequent import into the United States would be consistent with CITES, and would not likely contribute to illegal trade of bear parts. In addition, the Service found that the prohibition on the import of pregnant and nursing marine mammals in section 102(b) of the MMPA would be met under the application requirements, issuance criteria, and permit conditions in the regulation.

The Service provided information in the final rule to show that the following polar bear populations met the criteria specified in the MMPA: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville, M'Clintock Channel, and Western Hudson Bay. The Service deferred making a decision for other populations: Parry Channel-Baffin Bay, Queen Elizabeth Islands, Foxe Basin, Gulf of Boothia, Southern Hudson Bay, and Davis Strait. At the same time, the Service announced that upon receipt of substantial new scientific and management data, the Service would publish a proposal for public comment and consult with the MMC. Any population found to meet the criteria would be added to the list of approved populations in the regulation at § 18.30(i)(1).

When the Service proposed the polar bear rulemaking in July 1995 (60 FR 36382), the Department of Renewable Resources (DRR), GNWT, had begun an intensive population inventory of the Parry Channel-Baffin Bay area. The Service treated the Parry Channel-Baffin Bay area as a single population based on the best available scientific data at that time and current management practices by the GNWT. However, the Service recognized that forthcoming information would likely show the area to be composed of multiple populations. The final rule reflected the Service's response to the numerous comments received on the treatment of the Parry Channel-Baffin Bay area as a single unit, rather than the new data resulting from Canada's ongoing research and management changes. To avoid further delay in completing the final rule, the Service chose to complete the rulemaking on the proposed rule and to publish the new data in a subsequent proposed rule. Thus, the Service deferred making a decision for the Parry Channel-Baffin Bay population in the final rule. The Service also deferred making a decision on the Queen Elizabeth Islands population in the final rule. Although the status of the population was stable, the reliability of the data was poor. In addition, at that time the NWT shared this population with Greenland although the movement of polar bears between the NWT and Greenland was thought to be small. It was suggested that Canada would eventually manage this area as a sanctuary for polar bears.

Canada provided information to the Service as their research in the Parry Channel-Baffin Bay areas progressed. In August 1995, Environment Canada stated in a letter to the Service that current status information on the Parry Channel and Baffin Bay areas ''would disqualify these populations'', but new additional information could be available for review in early 1996. At the 1996 Polar Bear Technical Committee (PBTC) meeting the GNWT presented preliminary information that four polar bear populations were identified within an area that included the former Parry Channel-Baffin Bay and portions of the Queen Elizabeth Islands polar bear populations. Based on the preliminary data, the GNWT recommended boundary changes and renaming of the Parry Channel population as Lancaster Sound, boundary changes for the Baffin Bay population, and identification of the new Norwegian Bay and Kane Basin populations out of areas of Queen Elizabeth Islands. In July 1996, the Service received additional information on these areas and that research and inventory studies in the areas were ongoing. In January 1997 additional information on these areas was obtained at the PBTC meeting, including information on new population boundaries (Map 1) and population estimates, implementation of the Flexible Quota Option, and management changes as a result of further implementation of the Nunavut Land Claim. Although analysis of the data is ongoing, the Service believes there is enough information to reconsider whether these populations now meet the MMPA criteria that Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level.

Map 1. Boundaries of polar bear populations in Canada. Southern Beaufort Sea (SB), Northern Beaufort Sea (NB), Viscount Melville (VM), Queen Elizabeth Islands (QE), Norwegian Bay (NW), Kane Basin (KB), Lancaster Sound (LS), Baffin Bay (BB), Gulf of Boothia (GB), M'Clintock Channel (MC), Foxe Basin (FB), Davis Strait (DS), Western Hudson Bay (WH), and Southern Hudson Bay (SH).

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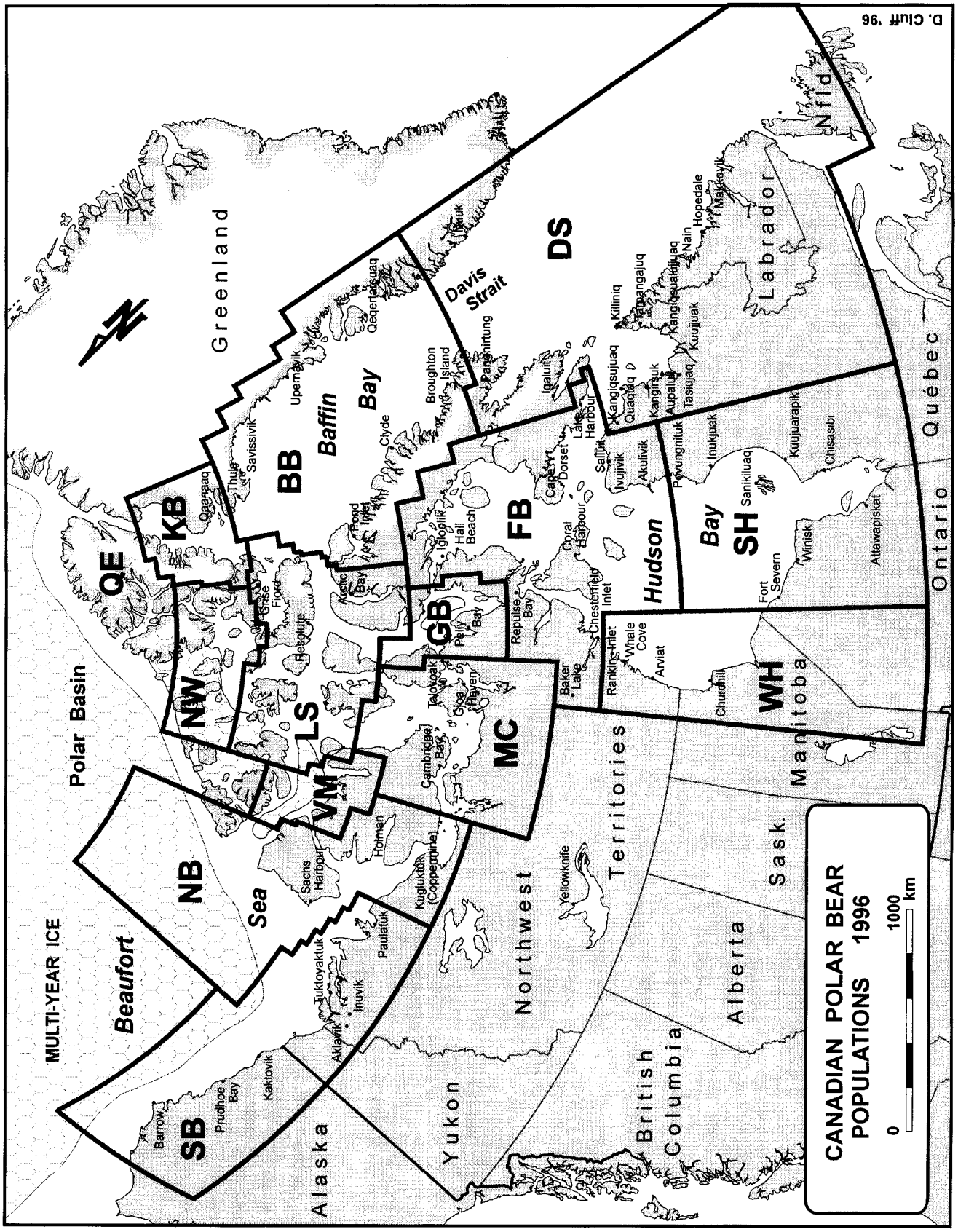

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The Service has reviewed the new information produced by ongoing research and other management actions for the populations now known as Lancaster Sound, Norwegian Bay, and Kane Basin, the revised Queen Elizabeth Islands, and Baffin Bay. This proposed rule provides new information on polar bear boundaries and estimated population size and new management considerations resulting from implementation of the Flexible Quota Option and the Nunavut Land Claim. Copies of this information have been provided to the MMC. The Service intends to announce its decision on the proposed findings for these five populations after consultation with the MMC and the opportunity for public comment. Once made, the findings will be applicable to polar bears taken on or after April 30, 1994, and into future sport-hunting seasons. These findings would not apply to polar bears sport hunted from these populations prior to April 30, 1994 for the following reason.

On June 12, 1997, Congress amended the MMPA to ease the criteria that need to be met before a permit can be issued to import polar bear trophies taken before April 30, 1994 (*i.e.*, pre-Amendment bears). Under the new language, the Service can issue an import permit for such trophies after: (a) The applicant has provided proof to show that the polar bear was legally hunted in Canada and (b) the Service has published a notice of the application in the **Federal Register** for a 30-day public comment period and collected the permit issuance fee, which has been set by regulation at $1,000. These pre-Amendment trophies are subject to the inspection, clearance, and tagging procedures previously described in the final rule published February 18, 1997 (62 FR 7302). Based on the June 12, 1997, amendment, the Service is currently accepting and processing applications for permits to import polar bear trophies sport hunted prior to April 30, 1994. In the near future, the Service plans to propose revision of the regulations in the February 18, 1997, final rule to clarify that those regulations now apply only to polar bear trophies sport hunted on or after April 30, 1994.

Scientific Findings and Summary of Information

Findings

The Service proposes to find that the Norwegian Bay and Lancaster Sound populations have sport-hunting programs based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level. The Service proposes to continue to defer making a finding for the Kane Basin and Baffin Bay populations pending the outcome of ongoing management actions between Canada and Greenland for the cooperative management of these shared populations. The Service also proposes to defer making a finding on the Queen Elizabeth Islands population that now contains land only in the far northern part of the Canadian Arctic Archipelago. Hunting is not allowed in this area, and the population size is unknown at this time.

Summary of Information

The Service considered the new information in reassessing whether the five populations now meet the required finding that there be a sport-hunting program based on scientifically sound quotas that ensure the maintenance of the affected population stock at a sustainable level. The Service considered the overall sport-hunting program for each population, including such factors as whether the sport-hunting program includes: (a) Reasonable measures to make sure the population is managed for sustainability (*i.e.*, monitoring to identify problems, ways of correcting problems, etc.); (b) harvest quotas calculated and based on scientific principles; (c) a management agreement between the representatives of communities that share the population; and (d) compliance with quotas and other aspects of the program as agreed to in the management agreements or other international agreements.

A. Population Management

The rationale of the GNWT polar bear management program is that the human-caused kill (*e.g.*, harvest, defense, or incidental kill) must remain within the sustainable yield, with the anticipation of slow growth for any population. This program has several components including: (a) Use of scientific studies to determine and monitor changes in population size and establish population boundaries; (b) involvement of the resource users and incorporation of traditional knowledge to enrich and complement scientific studies; (c) harvest data collection and a license tracking system; and (d) enforcement measures through regulations and management agreements.

In Canada, management of polar bears has been delegated to the Provinces and Territories. However, the Federal Department of Environment Canada (Canadian Wildlife Service) maintains an active research program and is involved in management of populations that are shared between jurisdictions, particularly between Canada and other nations. In addition, Native Land Claims have resulted in Co-Management Boards for most of Canada's polar bear populations. The PBTC and Federal/Provincial Polar Bear Administrative Committee (PBAC) meet annually to ensure a coordinated management process between these parties (Government of the Northwest Territories (GNWT) unpublished documents on file with the Service). Study of the Parry Channel-Baffin Bay area highlights the cooperative and shared management that has come to characterize Canada's polar bear program. The GNWT conducted the study of this area in cooperation with the Hunters and Trappers Associations of several communities, Parks Canada, the University of Saskatchewan, and the Greenland Fisheries Institute. Participation by the Institute is of relevance since polar bears of the Baffin Bay and Kane Basin populations are shared with Greenland and harvested by residents of both countries. The results of these studies have been shared among participants, representatives of the Wildlife Management Boards, and Provincial and Federal polar bear managers at the annual PBTC and PBAC meetings as well as at the World Conservation Union (IUCN) Polar Bear Specialist Group (PBSG) meetings which bring together specialists from all countries that have polar bears (GNWT).

The Service noted in the final rule that Canada has established an effective management program for polar bear. Independent reviewers have echoed these conclusions. In a recent report solicited by the MMC, biometrician Dr. J. Ward Testa independently reviewed Canada's polar bear management program. He concluded that the GNWT management program for polar bears is based upon sound principles of adaptive resource management as previously described in the scientific literature, uses the best available data and analyses, and implements the adaptive formula for sustainable harvest (Testa 1997). The Service's February 18, 1997, final rule provided additional information on the GNWT management program for polar bear including the use of inventory studies, population modeling, and peer review.

B. Calculation of Harvest Quotas Based on Population Inventories

The DRR calculates harvest quotas based upon population boundaries delineated from inventories and mark-recapture studies. The methods have been described in the February 18, 1997, final rule and the scientific literature

(Bethke *et al.* 1996). Using satellite telemetry technology, researchers place collars on female polar bears and track the movements of the collared animals. The data collected is then used to define the population boundaries. Collars, either for satellite telemetry or radio tracking, cannot be reliably used for adult male polar bears since their necks are approximately the same size as the head and collars are easily lost. Polar bear researchers are still seeking alternative tracking technology suitable for male bears.

Inventory of the Parry Channel-Baffin Bay area and bordering islands of the Queen Elizabeth Islands area was begun in 1991 with the use of satellite collars. Additional collars were used in successive years through 1995. The number of collars, the areas in which they were used, and the methods of analyzing the data is provided in detail in the 1997 NWT submission to the PBTC (GNWT 1997).

As described above, analysis of the data collected from this research supports the conclusion that there are five polar bear populations in these areas. The GNWT's use of data and management considerations to identify population boundaries is consistent with the definition of ''population stock'' as used in the MMPA and as described in the Service's February 18, 1997, final rule. The GNWT recognizes that the boundaries of the polar bear populations are partly determined by land mass, sea ice, and open water barriers that bar polar bear movement and partly by management considerations. One such management consideration has led to a recent change to the Northwest Territory Big Game Hunting Regulations. In the past, the take of a bear was counted against the quota of the population from which it was removed. In recognition of the sometimes overlapping nature of populations which are not separated by some physical barrier, current regulations establish a 30-km zone on either side of a contiguous boundary between two polar bear populations. Practically speaking, what this means for hunters is that they can continue to track a polar bear across the population boundary and up to 30 km within the adjoining population. The take of that bear is then counted against the quota of the population from which the hunter's tag was provided. This regulation change reflects the description of population units as functional management units where immigration and emigration are negligible relative to the effects of harvest or defense kills (GNWT 1997).

A more recent investigative tool for defining population boundaries is the study of genetic variation among polar bears. Data obtained from such studies suggest that there is a genetic basis to the population boundaries (Paetkau *et al.* 1995). Further work is needed to better understand how genetic variability should be interpreted and its relation to defining populations.

The second phase of each population inventory is to estimate population numbers using mark-recapture techniques. The DRR mark-recapture studies are based on the following: (a) Marking of 15 to 30 percent of the bears in the population; (b) sampling the entire range of the population to determine the fraction that are marked and the fraction that are unmarked; and (c) aiming for a target 15 percent coefficient of variation on the population estimates (GNWT 1997). For small populations, such as Kane Basin and Norwegian Bay, the DRR recognizes that it can be difficult to obtain a large enough sample size needed for the estimates. The alternative for these small populations would be to sample in areas where bears are known to concentrate. However, this would introduce bias. Instead, priority is given to reducing bias by using the same protocol in small as well as large areas which requires sampling throughout the entire range of the population. Since there are absolute limits to the precision of information from small populations that no sampling protocol can overcome, a full risk assessment will be done on these populations. A new computer program for this purpose has been developed and will be made available for peer review at the 1998 Biennial Conference on the Biology of Marine Mammals (M.Taylor, personal communication). This is an international forum attended by marine mammal researchers from many countries.

As described in the Service's February 18, 1997, final rule (62 FR 7302), three key characteristics of the GNWT calculation of sustainable harvest from the population estimates are: (a) Assumption of no density effects; (b) emphasis on conservation of female bears through hunting at a ratio of two males to one female; and (c) use of pooled best estimates for vital rates (*e.g.*, rates of birth and death) for all Canadian polar bear populations with the exception of Viscount Melville. In his review and evaluation of the procedures used by the GNWT to estimate sustainable harvests, Testa (1997) reported that the 3 percent harvest of the female segment of the polar bear population is sustainable and probably conservative, and that the assumptions made for calculation of the sustainable harvest are reasonable. Further information on the allocation of the sustainable harvest as community quotas can be obtained from the Service's February 18, 1997, final rule.

The GNWT expects that 1997 will be the final year of mark-recapture work needed to estimate population numbers in the Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations. The last field season for the Norwegian Bay, Lancaster Sound, and Kane Basin populations was conducted in Spring 1997 while the last Baffin Bay field season will be completed in the fall during the open water season when polar bears are onshore. Preliminary estimates for these populations have been calculated based on the data obtained by the GNWT through the Fall 1996 field season. The Service anticipates it will receive data from the GNWT on the 1997 Spring and Fall field seasons at the 1998 Polar Bear Technical Committee meeting. Table 1 provides information based on the GNWT reporting format for each of these populations including the population estimate, the total kill (excluding natural deaths), percentage of females killed, and the calculated sustainable harvest. Based on this information the status is expressed as increasing, stable or decreasing represented by the symbols ''+'', ''0'', and ''−''. The symbol ''0*'' refers to the recent implementation of the Flexible Quota Option in the management program as described below.

Pop.	Pop. est.	Reliability	5-Year average 91/92–95/96		3-Year average 93/94–95/96		Season 95/96		Season 96/97		Pop.1, 2 Trend
			Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	
NW	100	FAIR	4.0(30.0)	4.5	4.7(42.9)	3.5	7(57.1)	2.6	2(0.0)	4.5	0/0/0*/+
LS	1700	GOOD	81.2(24.9)	76.5	81.7(26.0)	76.5	80(26.9)	76.5	77(22.1)	76.5	0*/0*/0*/0
KB	200	FAIR	6.2(37.1)	8.1	6.3(38.1)	7.9	6(35.0)	8.6	5(60.0)	5.0	0/0/0/0*

Pop.	Pop. est.	Reliability	5-Year average 91/92–95/96		3-Year average 93/94–95/96		Season 95/96		Season 96/97		Pop.1, 2 Trend
			Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	
BB	2200	GOOD	122.2(35.4)	93.2	120.3(35.0)	94.3	117(34.2)	96.5	57(35.7)	92.4	–/–/–/0
QE	200	NONE	0.0(—)	0.0	0.0(—)	0.0	0(—)	0.0	0(—)	0.0	0/0/0/0

[1] – Overharvest.
+ Underharvest.
0 No change, a difference of 3 or less between the kill and the sustainable harvest.
0* Population stable because of management changes.
[2] – Population Trend expressed for 5 yr. avg./ 3 yr. avg./ 95–96 season/ 96–97 season.

As described in the Service's February 18, 1997, final rule, the Service considers the use of qualitative terms to report the reliability of population estimates to be acceptable. The Service also recognizes the use of these population estimates within the present context to be valid since they were determined through research using scientific methodology.

C. Management Agreements and the Nunavut Land Claim

Polar bear management in Canada is a shared responsibility involving Federal, Territorial, Provincial, and land claim participants. Coordination of these parties is the result, in part, of PBTC and PBAC meetings as well as management agreements between the resource users and the GNWT. These management agreements are an intrinsic part of cooperative polar bear management in Canada. In § 18.30(i)(1)(iii) the Service recognized management agreements as an essential part of making the finding that there is a sport-hunting program to ensure the sustainability of the affected polar bear population.

The settlement of native land claims in Canada served as an impetus for the development of the management agreements. The Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations, among others, fall within the Nunavut Land Claim signed in 1993. Both this claim and the Inuvialuit Land Claim signed in 1984 establish co-management boards for cooperative management of wildlife resources, including polar bear (GNWT). The respective roles of the GNWT and the Nunavut Wildlife Management Board and the Inuvialuit Wildlife Management Advisory Council are defined in law. The wildlife management advisory boards are regarded as the main instrument of wildlife management action in the NWT, although the Minister of the Department of Renewable Resources is the ultimate management authority (GNWT). The current approach to polar bear management begins with community meetings and concludes with Population Management Agreements that are signed by the communities that share a population and the Minister of Renewable Resources, reviewed by the Native Land Claim Boards, and finally transmitted to the Minister of the Department of Renewable Resources as recommendations for regulation changes to implement the agreements (GNWT).

One effect of the Nunavut Land Claim is the division in 1999 of the NWT into the Nunavut Territory and some presently unnamed western territory. The transition for this change has already begun with restructuring of departments including amalgamation of the DRR and others into the Department of Resources, Wildlife and Economic Development (M. Taylor, personal communication). The NWT polar bear project has been transferred from Yellowknife, NWT, to Iqaluit, the future capital of the Nunavut Territory. The Service views these changes as a continuation of a process begun with settlement of the Nunavut Land Claim in 1993. Management actions taken to date, including development of the management agreements, have been with an eye toward establishment of the Nunavut Territory and are a further example of Canada's commitment to a responsive management program for polar bear.

The success of the Canadian management agreements and others, such as the Inupiat-Inuvialuit Agreement for the Southern Beaufort Sea polar bear population, has led to the acceptance of such agreements as an important tool for interjurisdictional polar bear management. At the 1997 IUCN meeting for polar bear, the PBSG reiterated the need for cooperative management of shared populations both as a benefit to polar bears and as a requirement of the International Agreement. Specifically, the contribution of management agreements was recognized and the need for additional agreements called for in a new resolution to the International Agreement which concluded that ''the development of sound conservation practices for shared populations requires systematic cooperation, including use of jointly collected research and management information to develop cooperative management agreements'' (PBSG 1997).

The Canadian Government is actively pursuing development of a management agreement for polar bear populations shared between Canada and Greenland. These shared populations include the Kane Basin, Baffin Bay, and Davis Strait polar bear populations. A meeting was held in January 1997 to identify management needs and to discuss the potential development of a management agreement for these shared populations. The following areas were identified as necessary elements of a co-management agreement: (a) Agreement on the boundaries, population, and sustained yield of the three populations; (b) acceptable division of the sustained yield; (c) harvest monitoring; (d) a management system to ensure the sustained yield is not exceeded; and (e) agreement on other harvest practices, such as family groups, protection of dens, etc.

Representatives of Greenland have clarified that, unlike the Inuvialuit-Inupiat agreement for the Southern Beaufort Sea population, any management agreement for populations shared with that country would need to be government to government rather than user group to user group. At this point it was uncertain how Canada would be represented given the complex sharing of management responsibilities for polar bear within Canada. A committee was formed to examine the options of Canadian representation. The options are expected to be discussed at future meetings on development of management agreements between Canada and Greenland (GNWT).

D. Compliance With Quotas and the Sport-Hunting Program

As discussed in the February 18, 1997, final rule, the community quotas are based on harvest of polar bears at a ratio of two males:one female. While this allows for the harvest to be 50 percent higher than if polar bears were harvested at a 1:1 ratio, implementation

of the sex selective harvest has posed problems. For some communities where the sex ratio was set as a target of management agreements there was ineffective enforcement when the harvest of females exceeded the target in some years. For those communities where the sex-selective harvest was implemented through regulation, difficulty distinguishing between male and female polar bears led to mistakes and inconsistent law enforcement action for those mistakes. To respond to these problems, the Flexible Quota Option was developed. All communities within the four populations of Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay have agreed to follow the Flexible Quota Option. This change has been incorporated into the respective management agreements and, subsequently, into the regulations which implement those agreements.

The premise behind the Flexible Quota Option is that it will allow for mistakes in sex identification and for community preferences in sex-selective harvesting while keeping the harvest within sustainable yield. There are two parts to this system. The first part is a harvest tracking system that monitors the number of males and females killed in the past 5 years. If the sustained yield was not taken in any one of the past 5 years, then the difference between the sustained yield and the actual kill is counted as a positive credit. These accrued credits can then be used to compensate for an overharvest in a future harvest season within a 5-year timespan. If no credits are available (*i.e.*, the full sustained yield was taken over the past 5 years or any available credits have already been used), then an overharvest can be mitigated by quota reductions in future years. Once the overharvest has been corrected by a quota reduction, the quota returns to its original level. Since community quotas are a shared allocation of the overall population quota, a community without positive credits can receive credits from one of the other communities hunting from that same polar bear population. If there are no credits available or if a community chooses not to provide credits to another, then the overharvest is mitigated by a quota reduction to the community which experienced the overharvest.

The second part of the Flexible Quota Option is the calculation of the quota based on sustainable sex-selective harvesting of one female bear for every two males. The GNWT summarizes the system as follows. The number of quota tags allocated to a community depends on the community's allocation of the sustainable yield of female bears (F) from any one population as established through a management agreement, the number of female bears killed in the previous year (K_{t-1}), and the proportion of female bears in the previous year's harvest (P_{t-1}). The quota for the current year (Q_t) is then calculated as:

$$Q_t = (2F - K_{t-1}) / P_{t-1}.$$

The value of $(2F - K_{t-1})$ cannot exceed F, and the value of P_{t-1} cannot exceed 0.33. If the value of $(2F - K_{t-1})$ is less than zero, the quota is zero and the subsequent year's quota is calculated by designating K_t as the value of $-(2F - K_{t-1})$ (GNWT 1996). Testa (1997) concluded that ''This is simply a way to average the quota over two years when a village inadvertently exceeds its quota in a given year.'' In this way the average take of female polar bears cannot exceed the sustainable rate.

Because of the emphasis on conservation of female bears, the sex ratio of the overharvest must be taken into consideration when a quota reduction is necessary. As a result, the reduction is handled differently for male versus female bears. Reductions to the quota as a result of an overharvest of males occur only when the maximum number of females has also been taken or exceeded. The correction for such an overharvest is one male for each male overharvested. A correction is not made for an overharvest of male bears if the number of females taken is less than their sustained yield. The rationale for this decision is that although males were overharvested, females were not. As a result, those females not harvested will reproduce and compensate for the additional males removed from the population. In contrast, when an overharvest of females has occurred, the quota reduction is not simply one quota tag for each female overharvested. Instead, the sex ratio of the harvest must be considered in determining the necessary quota reduction for the following year or subsequent years, if necessary (GNWT 1996).

The management agreements identify the steps to be taken to implement the flexible quota system. The DRR reviews the harvest data of the previous season and identifies any overharvest. Then the community HTO's, Regional Wildlife Boards, Wildlife Officers, and Regional Managers develop sustainable alternatives to quota reductions, if possible. These could include use of credits from that community that experienced the overharvest or the borrowing of credits from another community that hunts from the same polar bear population. By July 1 of each year the DRR must report the harvest data and quota recommendations to the Nunavut Wildlife Management Board (NWMB). The NWMB can accept these recommendations or vary them depending on the input of the Board and consultation with the communities. They submit final recommendations to the Department Minister who must make a final decision, taking into consideration the DRR harvest report and NWMB recommendations, by August 1 (GNWT).

The 1996/97 polar bear harvest season was the first in which the communities used the Flexible Quota Option. In the first year of implementation, all populations were hunted within sustained yield for both males and females. Some corrections were made for communities that were unable to meet their harvest targets. These corrections included use of credits from another community and quota reductions. In developing the Flexible Quota Option, the GNWT believed that it would be able to accommodate differences in hunting preferences, differences in hunting opportunities as a result of weather effects, and will keep each population's harvest within sustainable yield (GNWT 1996). Although this system of regulating and monitoring the quota is considered less conservative than the past method, it has already shown itself to be an effective option. These early results suggest the system is working as planned.

As referred to above, there are some less conservative elements to the Flexible Quota Option. The first element is the manner in which the DRR assigned the initial credit balance. All communities that agreed to use the new system entered it with a zero balance of negative credits but were allowed to retain their positive credits. These positive credits can be used to offset future overharvests. The DRR recognizes the inconsistency of this approach but believes that it will not have a long term negative effect on the populations and that such an approach was necessary to win support for the system. The second element is the Flexible Quota Option feature that allows unused quota tags to essentially be ''rolled over'' to the following year as a positive credit. In the past, unused quota tags were not retained into the following year. Although this change could theoretically slow the growth of Canadian polar bear populations, the Service believes that the flexible quota system is a reasonable alternative for those communities that have had difficulty consistently hunting at a 2:1 ratio. Testa (1997) similarly recognized that the flexible quota system was conceptually sound and needed to be

given a chance to have its wrinkles worked out.

Status of Populations the Service Proposes to Approve

The Service proposes to approve the Norwegian Bay and Lancaster Sound populations as meeting the required findings of section 104(c)(5)(A)(ii) of the MMPA based on currently available information and to add them to the list of approved populations in § 18.30(i).

Norwegian Bay (NW)

The preliminary population estimate for this new area is 100 with fair reliability based on the analysis of data collected to date from the inventory and mark-recapture studies. This population was identified as being separate from the Queen Elizabeth Islands population previously described in the final rule. A harvest quota of four bears has been calculated for this population. The quota is allocated to the community of Grise Fiord. The community residents of Grise Fiord have agreed to the terms of a revised management agreement which includes use of the Flexible Quota Option to ensure that future harvests are sustainable and all family groups are protected. Although the sustainable harvest was decreased over successive seasons due to harvest of females in excess of the prescribed 2:1 ratio, no females were taken in the 1996/97 season during the first year of the Flexible Quota Option.

Lancaster Sound (LS)

The GNWT reports a preliminary population estimate of 1,700 with good reliability. Based on the population estimate, a harvest quota of 76.5 has been calculated. Three communities, Grise Fiord, Resolute, and Arctic Bay, harvest bears from the Lancaster Sound area. All family groups are protected in this population. Based on the 1993/94 harvest data and the 3- and 5-year averages, the Service pointed out in the final rule that the kill in this population exceeded the quota by more than 70 percent. The GNWT recalculated previous harvests in the Lancaster Sound population based on the separation of the data for the former Parry Channel-Baffin Bay area and the new population estimates for Lancaster Sound and Baffin Bay. These data do not reveal the extent of overharvest previously reported in the final rule. Although this may appear somewhat confusing, it does help to show that while there was a substantial harvest in excess of the quota in the larger geographic area, the Lancaster Sound population was not overharvested and is being managed on a sustainable basis.

Beginning with the 1994/95 season, harvest data for the Lancaster Sound and Baffin Bay populations were presented separately. The communities are working to avoid overharvests and have signed a new management agreement which includes the use of the Flexible Quota Option to help ensure compliance with quotas and correct for overharvests if they do occur in the future. Data for this population averaged over several seasons and for the 1995/96 and 1996/97 seasons demonstrates that females are being conserved (Table 1).

As described above, under the Flexible Quota Option an overharvest of male bears results in a quota reduction only when the harvest of female bears has met or exceeded the maximum allowed. The 5-year harvest history for the Flexible Quota Option shows the Lancaster Sound area had 30 credits for female bears. In contrast, the harvest history shows an accumulated debit of 38.5 male bears for the population. The Service notes that one of the communities in this population predominately harvested male bears, a practice that could become a problem. It is unclear whether the predominance of males in the harvest was due to hunter preference or to a greater availability of male bears in this area. This emphasis on harvesting male bears from this population by one community was relieved, however, to a limited extent by the predominance of harvesting females by another community.

Status for Populations for Which Scientific and Management Data Are Not Presently Available for Making a Decision

After reviewing the best available scientific and management data on the populations addressed below, the Service proposes not to make a final decision on whether populations of Kane Basin, Baffin Bay, or Queen Elizabeth Islands satisfy the statutory criteria of section 104(c)(5)(A) of the MMPA. As future scientific and management data become available on these populations, the Service will evaluate such data to determine whether a proposed rule should be published that would add such populations to the approved list in § 18.30(i)(1).

The NWT shares the Kane Basin, Baffin Bay, and Davis Strait populations with Greenland. Greenland does not have an agreement with NWT or communities as to how they will manage their portion of the populations. The management of polar bears in Greenland rests with the Greenland Home Rule Government. There is no limit on the number of polar bears taken. Although females with cubs-of-the-year are protected, older family groups are harvested. In 1993 Greenland started to systematically collect harvest data. In 1994, a harvest questionnaire was developed for all species, including polar bears. Greenland has experienced difficulties in obtaining complete and accurate harvest records, but the collection of data is expected to improve as the harvest reporting system becomes better known (GNWT).

As mentioned above, Greenland and the GNWT have conducted cooperative population inventory studies for the past 4 years. The brief summary of the January 26, 1997, meeting for the co-management of polar bear stocks shared between Greenland and Canada reported that the status of polar bears in the shared populations is disturbing. ''It appears that the Davis Strait and Baffin Bay populations are being depleted by over-harvesting. Additionally, Grise Fiord has identified a quota for the Canadian portion of Kane Basin which, if taken, will cause this population to decline as well'' (GNWT).

The Service also proposes to defer making a finding on the Queen Elizabeth Islands population. This revised population now contains land only in the far northern part of the Canadian Arctic Archipelago. No hunting is allowed in this area and the population size is unknown. Canada's plans for this area are unclear at this time.

Kane Basin (KB)

Like Norwegian Bay this new population was identified as occupying an area formerly considered to be part of the Queen Elizabeth Islands population. Unlike the Norwegian Bay population, the Kane Basin population is shared with Greenland. The population estimate for this area is 200. Management agreements for the NWT portion of Kane Basin and Baffin Bay populations are in place that include protection of all family groups and use of the Flexible Quota Option. During the 1996/97 harvest season more than 50% of the quota was taken as female bears. As a result, under the Flexible Quota Option the quota for this population will be reduced to one for the 1997/98 harvest season. As long as the 1997/98 quota of one bear is not exceeded and no females are taken, the overharvest of females in the 1996/97 season will have been compensated for and the quota will return to five (M. Taylor, personal communication).

The Kane Basin population is currently considered stable but a single NWT community, Grise Fiord, has a quota for harvesting from the Kane

Basin population. If this occurs, the population is expected to decline since Greenland hunters also harvest from this population. Discussions of a co-management agreement between Canada and Greenland are expected to be conducted concurrently for the Kane Basin, Baffin Bay, and Davis Strait populations.

Baffin Bay (BB)

The preliminary population estimate for this area is 2,200. The combined Parry Channel-Baffin Bay population estimate of 2,470 reported in the final rule was derived from the 2,000 estimated for Parry Channel (now Lancaster Sound) and 470 from northeastern Baffin Bay. In spring the polar bears in the Baffin Bay area are distributed throughout Baffin Bay and much of the population is unavailable for mark-recapture, leading to underestimates of the population size. For this reason the mark-recapture work of the most recent inventory study has been conducted in the fall, open water season when Baffin Bay polar bears are on shore in Canada (GNWT 1997). Fall 1997 is expected to be the last field season required to complete the inventory study. The harvest data for this population is presented in Table 1 but should be considered preliminary pending harvest information from Greenland. The communities of Broughton Island, Clyde River, and Pond Inlet that harvest from this population have agreed to a revised management agreement which includes protection of all family groups and use of the Flexible Quota Option.

As explained above for the Lancaster Sound population, the GNWT has re-examined the population status of past years based on the new population estimate. Overharvesting is a problem for this shared population. Data from Canadian hunts conducted in the 1996/97 harvest season show a total kill substantially below the sustainable harvest level, and a harvest sex ratio of nearly 2:1. However, as previously described, there is currently no management agreement between Canada and Greenland for this shared population and there are concerns that the population may be declining.

Queen Elizabeth Islands (QE)

Recent research data led the GNWT to redefine the boundaries of this population. The area was divided into three populations: Kane Basin, Norwegian Bay, and Queen Elizabeth Islands. The revised Queen Elizabeth Islands population is comprised now of land only in the far northern part of the Canadian Arctic Archipelago. The population size is unknown but it is believed that there are few polar bears in this remote area. No hunting is allowed in the area.

Public Comments Solicited

The Service invites comments on this proposal. The Service will take into consideration the comments and any additional information received in making a decision on this proposal, and such consideration may lead to final findings that differ from this proposal.

Required Determinations

The Service prepared an EA on the final rule published in the **Federal Register** (62 FR 7302) on February 18, 1997, in accordance with the National Environmental Policy Act (NEPA). The Service anticipates this EA is still current but will decide after the close of the comment period whether it needs to supplement the EA or use the existing EA. A determination will be made at the time of the final decision as to whether the proposed rule is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA.

This proposed rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant economic effect on a substantial number of small entities, which include businesses, organizations, and governmental jurisdictions. The proposal will affect a relatively small number of U.S. hunters who have hunted, or intend to hunt, polar bear in Canada. Allowing the import of legally taken sport trophies, while maintaining the restriction on the sale of trophies and related products, will provide direct benefits to individual sport hunters and a probable small beneficial effect for U.S. outfitters and transportation services as U.S. hunters travel to Canada. If each year an estimated 50 U.S. citizens hunted a polar bear in Canada at an approximate cost of $21,000, then $1,050,000 would be expected to be spent, mostly in Canada. It is expected that the majority of taxidermy services will be provided in Canada. Since the trophies are for personal use and may not be sold in the United States, there are no expected market, price, or competitive effects adverse to U.S. business interests.

The Department of the Interior (Department) has determined that these regulations meet the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988. The Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

The Service has submitted a request for approval to the Office of Management and Budget for the collection of information as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The collection of information will not be required until it has been approved by OMB and the proposal is adopted. The Service will collect information through the use of the Service's form 3–200, which was modified pursuant to 50 CFR 18.30. The Service is collecting the information to evaluate permit applications. The likely respondents to this collection will be sport hunters who wish to import sport-hunted trophies of polar bears legally taken while hunting in Canada. The Service will use the information to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance or denial of permits. The applicant must respond to obtain or retain a permit. A single response is required to obtain a benefit. The Service estimates the public reporting burden for this collection of information to vary from 15 minutes to 1.5 hours per response, with an average of 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated number of likely respondents is less than 150, yielding a total annual reporting burden of 75 hours or less.

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Working Meet. IUCN/SSC PBSG Feb. 3–7, 1997.
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List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend Part 18 of chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Amend § 18.30 by revising paragraph (i)(1) introductory text to read as follows:

§ 18.30 Polar bear sport-hunted trophy import permits.

* * * * *

(i) *Findings.* * * *

(1) We have determined that the Northwest Territories, Canada, has a monitored and enforced sport-hunting program that meets issuance criteria of paragraphs (d)(4) and (5) of this section for the following populations: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound (subject to the lifting of the moratorium in this population), Western Hudson Bay, M'Clintock Channel, Lancaster Sound, and Norwegian Bay, and that:

* * * * *

Dated: January 21, 1998.

Donald Barry,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–2442 Filed 1–28–98; 4:11 pm]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 21
Monday, February 2, 1998

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

Research, Education, and Economics; Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Conference Call Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of advisory board conference call meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting by conference call of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127), has scheduled a conference call meeting on February 3, 1998. The meeting agenda will focus on development of preliminary priorities for agricultural research, extension, education, and economics. The following list of high priority initiatives has been suggested to date. These initiatives are: Education and Outreach Initiative, National Agricultural Genome Initiative; Emerging Animal and Plant Issues—Preparedness & Response Initiative; Precision Agriculture Initiative; Added Value and New Use Products Initiative; and Nutrition Research Initiative. The Advisory Board members will also discuss how public communication and environmental stewardship issues can be addressed as overarching priorities.

DATE OF CONFERENCE CALL: February 3, 1998, 10:00 a.m.

Type of Meeting: The conference call will be initiated by the Officers and Executive Committee of the Advisory Board and will involve all available Advisory Board members.

Comments: The public may file written comments to the preliminary list of initiatives for research, extension, education, and economics by Friday, February 6, 1998, with the contact person listed below. Public written comments will be considered by the Advisory Board at the March 11–13, 1998, meeting in Washington, D.C. (to be announced soon in the **Federal Register**). Also, these written comments will be available in the Advisory Board minutes of the February 3 conference call meeting and will be maintained in the public file of the Office of the Advisory Board, REE, USDA.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Office of the Advisory Board, Room 3918 South, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 26th day of January 22, 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–2415 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: This notice corrects the information previously published in a notice that appeared in the **Federal Register** of December 24, 1997 (62 FR 67327) listing the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR Part 215 and 36 CFR 217. The earlier document listed the wrong effective dates. This notice gives a corrected effective date for publication of legal notices.

DATES: Publication of legal notices in the listed newspapers in the December 24, 1997, (62 FR 67327) notice will begin with decisions subject to appeal that are made on or after Feb. 1, 1998, and remain in effect until October 1998 when another notice will be published in the **Federal Register.**

Dated: January 9, 1998.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 98–2424 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Diamond Lake Drawdown, Umpqua National Forest, Douglas County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) that addresses the impacts associated with the temporary drawdown of Diamond Lake in 1999. Diamond Lake is approximately 80 air miles northeast of Medford, Oregon, on the Diamond Lake Ranger District of the Umpqua National Forest. The proposed action, which was put forth by the Oregon Department of Fish and Wildlife (ODF&W), will lower the level of Diamond Lake approximately seven (7) feet. This drawdown will allow the ODF&W to treat the Lake with rotenone in September of 1999 in order to remove an undesirable baitfish known as the tui chub. The chub, which is believed to have been illegally introduced into the lake within the past ten years, has populated the Lake to the extent that it is adversely affecting the favored rainbow trout. Prior to the introduction of the tui chub, Diamond Lake was recognized as a premier trout fishery in Southern Oregon.

The Forest Service began internal scoping of this proposal in November of 1997. The public was given notice of the proposal in January of 1998 through the Forest's Schedule of Proposed Actions. An informational letter with a copy of the ODF&W proposal was mailed to interested publics in January as part of

the agency's external scoping effort. Following the mailing, an Open House was held in Roseburg and Medford, Oregon, as a continuation of the scoping effort.

As a result of the scoping performed to date, a number of concerns have been identified. Those concerns are associated with the rate at which the ODF&W has proposed to lower the Lake, and the disposition of the dead fish after it is treated by the Department of Fish and Wildlife. These concerns are likely to lead to the development of one or more alternatives to the proposed action.

Any alternatives to the Proposed Action must meet the need of lowering the level of Diamond Lake to a reasonably safe level by September 15 during the year the Lake is scheduled for treatment.

The agency invites written comments on this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the decision making process.

DATES: Comment concerning this proposal must be received by March 6, 1998.

ADDRESSES: Submit written comments and suggestions to Don Ostby, Forest Supervisor, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon 97470.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits each confidentiality. Persons requesting such confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be re-submitted with or without name and address within 10 days.

FOR FURTHER INFORMATION: Direct questions concerning the proposed action and environmental analysis to Jim Leoni, Interdisciplinary Team Leader, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon 97470, phone (541) 957–3391.

SUPPLEMENTARY INFORMATION: The need for action is to lower the level of Diamond Lake to a reasonably safe level by September 15 during the year the lake is to be treated. The Purpose of lowering the Lake is to allow the ODF&W to treat the Lake with a fish toxicant known as rotenone. The ODF&W has proposed the use of four pumps to lower the Lake from its natural level of approximately 72,880 acre feet to a level of 53,000 acre feet, which is approximately seven (7) feet below the Lake's natural level. The proposed pumping period is July 1 to September 15 of 1999. A Lake level of approximately seven feet below the natural level is intended to prevent any treated water from escaping down Lake Creek where it could be harmful to non-target fish during the first 14 to 21 days following treatment. Diamond Lake is expected to refill in April of 2000 and resume its normal flow down Lake Creek.

The Forest Service is conducting this analysis as a basis for issuing a special use permit to the ODF&W allowing the Department to do the following: (a) Temporary placement of four (4) pumps, with a fifth pump as a backup, at the north end of Diamond Lake where the Lake empties into Lake Creek; (b) temporary use of Forest Service boat ramps and launch facilities during the storage and application of the rotenone; and (c) temporary drawdown of Diamond Lake.

The application of rotenone by the ODF&W is a connected action. The EIS will also disclose the effects of this connected action.

Diamond Lake is a natural lake situated at an elevation of 5,182 feet in the Cascade mountains of southern Oregon. The Lake has a surface of approximately 2,930 acres and is relatively shallow, with a maximum depth of just over 50 feet. Diamond Lake drains into Lake Creek, which empties into Lemolo Lake and two other impoundments before the water becomes free-flowing in the upper reaches of the North Umpqua River. The flow of water from Lemolo Lake and the other impoundments is regulated by Pacific Corp and is outside the scope of this analysis.

The ability of the tui chub to reproduce prolifically has interrupted the traditional food chain of the rainbow trout. As a result, there has been a severe decline in the survival of fingerling rainbow trout and the subsequent growth of the surviving trout. The decline in the number of rainbow trout may be responsible for the perceived decline in bald eagles and osprey that inhabit or visit the Lake. These species rely heavily on the rainbow trout as a source of food, and the tui chub are not large enough to provide an alternative food source.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review July 1998. Your comments and suggestions are encouraged and should be in writing. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage as a result of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS 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.* versus *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* versus *Hodel,* 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin heritages, Inc.* versus *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 it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS 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 EIS 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).

The final EIS is scheduled to be completed in September 1998. In the

final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Don Ostby, Forest Supervisor for the Umpqua National Forest, is the responsible official. The Forest Supervisor will document the decision and rationale for the Diamond Lake Drawdown decision in the Record of Decision, which will be subject to Forest Service Appeal Regulations 36 CFR part 215.

Dated: January 27, 1998.

Don Ostby,

Forest Supervisor.

[FR Doc. 98–2439 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Arkansas (AR) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Memphis Grain Inspection Service (Memphis) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: March 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1997, **Federal Register** (62 FR 63513), GIPSA asked persons interested in providing official services in the Little Rock area, formerly assigned to Arkansas Grain Inspection Service, to submit an application for designation. Applications were due by October 30, 1997. There were two applicants: Memphis Grain Inspection Service, a currently designated official agency, located at Memphis, Tennessee, and contiguous to the Little Rock area, applied for designation to provide official services in the Little Rock area; and the former Arkansas agency reorganized and applied for designation to provide official services in the Little Rock area.

GIPSA requested comments on the applicants for the Arkansas area in the December 1, 1997, **Federal Register** (62 FR 63513). Comments were due by December 30, 1997. GIPSA received eight written comments by the deadline. Two oral comments in favor of Memphis were also received, one of which expressed concerns about the former Arkansas Agency. Four grain companies had been provided official services by the former Arkansas agency and supported designation of Memphis discussing favorably the quality of service received. Memphis has been providing official services in the Little Rock area on an interim basis.

Six commentors supported designation of Arkansas with one comment noting that their support was contingent upon the business being properly managed and staffed. Others indicated that having an official agency in Little Rock was of concern and expressed concern about timeliness of service. Some of the comments stated that they had received previously excellent services from the Arkansas agency.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Memphis is better able to provide official services in the Arkansas geographic area. Effective March 1, 1998, and ending May 31, 2000, concurrent with the termination of their current designation Memphis is designated to provide official services in the geographic area specified in the October 1, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Memphis at 901–942–3216 or 501–372–5302.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 23, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–2121 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Frankfort (IN) and Indianapolis (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Frankfort Grain Inspection, Inc., (Frankfort) and Indianapolis Grain Inspection and Weighing Service, Inc., (Indianapolis) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: March and April 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 2, 1997, **Federal Register** (62 FR 46244), GIPSA asked persons interested in providing official services in the geographic areas assigned to Frankfort and Indianapolis to submit an application for designation. Applications were due by October 1, 1997. Frankfort and Indianapolis, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Frankfort and Indianapolis were the only applicants, GIPSA did not ask for comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Frankfort and Indianapolis are able to provide official services in the geographic areas for which they applied. Effective March 1, 1998, and ending February 28, 2001, Frankfort is designated to provide official services in the geographic area specified in the September 2, 1997, **Federal Register**. Effective April 1, 1998, and ending February 28, 2001, Indianapolis is designated to provide official services in the geographic area

specified in the September 2, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Frankfort at 765–258–3624 and Indianapolis at 317–782–8938.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 20, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–2120 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held February 25, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on implementation of the National Defense Authorization Act computer control regulations.
4. Update on the Wassenaar Arrangement implementation regulation.
5. Discussion on the ''deemed export'' rule.
6. Discussion on the encryption regulations.
7. Update on the License Process Review initiative.
8. Discussion on efforts to conform the Foreign Trade Statistics Regulations and the Export Administration Regulations on export clearance requirements.
9. Discussion on clarification of EPCI (Enhanced Proliferation Control Initiative).

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA MS:3886C, 14th & Pennsylvania Avenue, N.W., U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 16, 1996, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: January 27, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–2393 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 950]

Grant of Authority for Subzone Status; ARCO Pipe Line Company (Crude Oil Transshipment Terminal), Lincoln County, Oklahoma

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Tulsa-Rogers County Port Authority, grantee of FTZ 53, for authority to establish special-purpose subzone status at the crude oil transshipment terminal of ARCO Pipe Line Company, in Lincoln County, Oklahoma, was filed by the Board on March 19, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 18–97, 62 FR 15461, 4/1/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the crude oil transshipment terminal of ARCO Pipe Line Company, located in Lincoln County, Oklahoma (Subzone 53B), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of January 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–2479 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 951]

Grant of Authority for Subzone Status; Seaway Pipeline Company (Crude Oil Transshipment Terminal), Brazoria County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Brazos River Harbor Navigation District, grantee of FTZ 149, for authority to establish special-purpose subzone status at the crude oil transshipment terminal of Seaway Pipeline Company, in Brazoria County, Texas, was filed by the Board on March 19, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 19–97, 62 FR 15461, 4/1/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the crude oil transshipment terminal of Seaway Pipeline Company, located in Brazoria County, Texas (Subzone 149D), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23d day of January 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–2480 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 952]

Grant of Authority for Subzone Status; Seaway Pipeline Company (Crude Oil Transshipment Terminal), Texas City, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Texas City Foreign Trade Zone Corporation, grantee of FTZ 199, for authority to establish special-purpose subzone status at the crude oil transshipment terminal of Seaway Pipeline Company, in Texas City, Texas, was filed by the Board on March 19, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 20–97, 62 FR 15462, 4/1/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the crude oil transshipment terminal of Seaway Pipeline Company, located in Texas City, Texas (Subzone 199D), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of January 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–2481 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Termination of Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia for the period March 1, 1996 through February 28, 1997.

We have preliminarily determined that sales have been made below the normal value by various companies subject to this review. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price or constructed export price and the normal value (NV). For certain companies who have requested that we rescind their requests for review, we have granted that request.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. The deadlines for submission of argument are listed at the end of this notice. All memoranda referred to in this notice can be found in the public reading room, located in the Central

Records Unit, room B–099 of the main Department of Commerce building.

EFFECTIVE DATE: February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong or Marian Wells, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–1278 or 482–6309, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 353 (April 1997).

Background

On March 7, 1997, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' with respect to the antidumping duty order on certain fresh cut flowers from Colombia. *See* 62 FR 10521. In accordance with 19 CFR 353.22(c), on April 15, 1997, we initiated an administrative review of this order. *See* 62 FR 18312. On October 15, 1997, in accordance with section 751(a)(3)(A) of the Act, we extended the deadline for these preliminary results until January 26, 1998. *See* 62 FR 53593. From December 8 through December 16, 1997, we verified the responses of one respondent, the Caicedo Group. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The scope of the order under review is shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). Although the HTS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive. The period of review (POR) is March 1, 1996 through February 28, 1997.

Respondent Selection

Section 777A(c)(2) of the Act provides the Department with the authority to determine margins by limiting its examination to a statistically valid sample of exporters or exporters accounting for the largest volume of the subject merchandise that can reasonably be examined. This subparagraph is formulated as an exception to the general requirement of the Act that each company for which a review is requested will be individually examined and receive a calculated margin. In this administrative review, 424 companies were either named in the initiation notice or have been identified as being affiliated with a company named in the initiation notice.

Because of the large number of companies involved in the review and the limited resources available to the Department, we determined that it was administratively necessary to restrict the number of respondents selected for examination. This enabled us to conduct thorough and accurate analyses of the responses to our questionnaires and other relevant issues within the statutory deadlines. Restricting the number of respondents for examination is consistent with the most recent administrative review of this order and other past cases involving large numbers of potential respondents, statutory deadlines and limited resources. *See, e.g., Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 16772 (April 8, 1997) *(Flowers Ninth Review); Preliminary Determination of Sales at Less Than Fair Value: Pasta from Italy,* 61 FR 1344 (January 19, 1996); *Preliminary Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190 (October 10, 1996).

The Department limited its examination in the present review to ten groups of exporters and producers accounting for the largest volume of flowers, in accordance with section 777A(c)(2)(B) of the Act. These exporters accounted for over 30 percent by volume of the total exports made during the POR to the United States from Colombia. Therefore, respondents are the following ten parties: the Agrodex Group (Agrodex); Caicedo Group (Caicedo); Claveles Colombianos Group (Clavecol); Cultivos Miramonte Group (Cultivos Miramonte); Floraterra Group (Floraterra); Florex Group (Florex); Guacatay Group (Guacatay); Queens Flowers Group (Queens); Tinzuque Group (Tinzuque); and Tuchany Group (Tuchany).

Non-Selected Respondents

Consistent with our practice in *Flowers Ninth Review,* we have assigned the non-selected respondents a weighted-average margin based on the calculated margins of selected respondents, excluding any *de minimis* margins and margins based on facts available. The firms in question are listed under ''Non-Selected Respondents'' in the *Preliminary Results of Review* section below.

Terminations

On July 9, 1997, Flexport de Colombia & Cia S.A. (Flexport), Flores Silvestres S.A. (Silvestres), Vegaflor, and Agropecuaria Sierra Loma S.A. (Sierra Loma) withdrew their requests for review. Silvestres, Sierra Loma, and Vegaflor were included in the Department's initiation notice, but Flexport was inadvertently omitted from the initiation notice. In accordance with 19 CFR 353.22(a)(5), we are terminating this review with respect to Sierra Loma and Vegaflor because these companies have filed timely requests for withdrawal and no other interested party requested that they be reviewed. The cash deposit rates for Sierra Loma and Vegaflor will continue to be the rates established for them in the most recently completed final results. Because Flexport was inadvertently omitted from the initiation notice and because no other party requested a review of it, Flexport continues not to be included in this review.

With respect to Silvestres, a request for review was received for this company from the petitioner, the Floral Trade Council (FTC), on March 3, 1997. Because of the FTC's request, we are not terminating our review for this company.

Verification

All ten selected respondents were verified during the two immediately preceding reviews. With the exception of one respondent, Caicedo, the verifications of all selected respondents during the two preceding reviews were successful. Therefore, Caicedo was the only respondent verified in the present review. We verified information provided by Caicedo using standard verification procedures, including on-site examination of relevant sales and financial records, and inspection of original documentation containing relevant information.

Use of Facts Available

Tuchany

In *Flowers Ninth Review* and during the POR of the present review, the Tuchany group consisted of five growers. The group has since dissolved with three of the companies now out of business and the remaining two growers sold to different, unaffiliated owners. While Tuchany was able to report sales data for all subject merchandise sold by the group during the POR, it was not able to report the cost data for the three growers no longer in existence. The questionnaire response, therefore, contained only the costs of the two operational farms.

Section 776(a)(1) of the Act requires, *inter alia*, that if necessary information is not available on the record, the Department shall use facts available (FA). Pursuant to the Act, if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use an adverse inference in selecting from among FA.

Based on the circumstances described by Tuchany, we find it reasonable that the company would have difficulty compiling a complete response. Tuchany indicated that it acted to the best of its ability to locate the missing data and provided a detailed explanation of its efforts. Tuchany explained that cost data, unlike sales records, were maintained individually by each company and Tuchany's exhaustive efforts at locating the former employees and accounting records of the three defunct companies were futile. Accordingly, we believe the use of adverse FA is not warranted in this case. Therefore, for purposes of these preliminary results, we have used the cost data of the two operational farms as FA for the margin calculations of the entire Tuchany group, including the three companies dissolved shortly after the POR. Where cost data for a flower type was unavailable because that flower type was not grown by one of the growers for which cost information was reported, we have applied to those sales, as FA, the margin calculated for the flower type for which cost data was available. *See* Memorandum from Team to Richard W. Moreland, Deputy Assistant Secretary, Import Administration, re: Constructed Value Data for Tuchany Group Companies, dated January 26, 1998.

Fair Value Comparisons

United States Price

Consistent with section 777A(d)(2) of the Act and *Flowers Ninth Review*, we determined that it was appropriate to average U.S. prices on a monthly basis in order (1) to use actual price information that is often available only on a monthly basis, (2) to account for large sales volumes, and (3) to account for perishable-product pricing practices.

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and 772(b) of the Act, as appropriate. CEP was used for consignment sales through unaffiliated U.S. consignees and sales (consignment or otherwise) made through affiliated importers.

We calculated EP based on the packed price, consisting of invoice price (either f.o.b. Bogota, c.i.f. Miami or c.i.f. Chicago) plus certain additional charges, *e.g.*, box charges and antidumping duties paid, to the first unaffiliated purchaser in the United States. We made deductions, where appropriate, for discounts and rebates, foreign inland freight, international (air) freight, brokerage and handling, U.S. customs fees, and return credits.

For sales made on consignment, CEP was calculated based on the packed price consisting of invoice price plus certain additional charges by the consignee, *e.g.*, box charges and antidumping duty deposits paid, to the unaffiliated purchaser. For sales made through affiliated parties, CEP was based on the packed price, consisting of invoice price plus certain additional charges, *e.g.*, box charges and antidumping duty deposits paid, to the first unaffiliated customer in the United States. We made adjustments to these prices, where appropriate, for box charges, discounts and rebates, foreign inland freight, international (air) freight, freight charges incurred in the United States, brokerage and handling, U.S. customs fees, direct selling expenses (credit expense and contributions to the Colombian Flower Council) relating to commercial activity in the United States, return credits, royalties and indirect selling expenses incurred in the home market that related to commercial activity in the United States. Finally, consistent with our practice in *Flowers Ninth Review*, we made adjustments for either commissions paid to unrelated U.S. consignees or the indirect U.S. selling expenses of related consignees.

Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP for sales made through affiliated parties. The CEP profit rate was calculated using the expenses incurred by the responding companies on their sales of the subject merchandise in the United States and of the like product in the home market (for those companies that had home market sales) and the profit associated with those sales.

Normal Value

Section 773 of the Act provides that the normal value (NV) of the subject merchandise shall be (1) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country (home market (HM) sales), in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, (2) the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States (third country (TC) sales) or (3) the constructed value of that merchandise.

Some companies selected to respond in this review have sales in the home market of export quality flowers exceeding 5 percent of the sales to the U.S. market, *i.e.*, have a viable home market. However, most companies report no selling expenses on these sales and report them as being incidental to their real purpose of business, the production and exportation of flowers. They also state that export quality sales in the home market are not planned on and generally are the result of excess production. Consistent with our practice in previous reviews of this order and based on information provided by respondents, we have determined that these sales are not within the ordinary course of trade.

Section 773(a)(4) of the Act states that if the administering authority determines that the NV of the subject merchandise cannot be determined using home market prices, then, notwithstanding the possible use of third country prices, the NV of the subject merchandise may be the constructed value (CV) of that merchandise. We received comments and factual information concerning this issue from petitioners on October 10, 1997 and January 9, 1998, and from respondents on December 15, 1997.

During this POR, certain companies selected to respond had viable third country markets in Europe, Japan, and Canada. In prior reviews, we have rejected using prices to Europe because the particular market situation prevents a proper comparison. *See Certain Fresh Cut Flowers from Colombia; Final*

Results and Partial Rescission of Antidumping Administrative Review, 62 FR 53287 at 53296 (October 14, 1997). Information submitted by respondents shows that this market situation has continued. Therefore, we are not basing NV on sales to European markets.

With respect to Japan and Canada, because these are not significant export markets for Colombia, we have determined that, under the facts of this case, prices to Canada or Japan are not representative within the meaning of section 773(a)(1)(B)(ii)(I) of the Act. As discussed above in the section on ''Respondent Selection,'' we have limited our analysis to a subset of the Colombian companies exporting to the United States and we are basing the antidumping duty assessments for the non-selected companies on the margins calculated for the selected companies. Given this, we want to make our analysis as representative as possible of the companies that were not selected to respond to our questionnaire.

It is clear that neither Japan nor Canada is an important export market for Colombian flower growers. Evidence on the record indicates that Canada represents less than three percent of flower exports from Colombia and Japan represents less than one percent of flower exports from Colombia. Thus, to use sales to Japan or Canada as the basis of our margin calculations for the few exporters that have viable markets in Japan and Canada and then include those results in calculating the rate used for assessing duties on the non-selected respondents would be inappropriate for the vast majority of growers. Therefore, in accordance with section 773(a)(4) of the Act, we are basing NV on CV. As an alternative method for ensuring that NV was representative, we considered using third country sales for those companies with a viable third country market, but excluding those companies from the calculation of the assessment rate for non-selected exporters. However, that methodology would substantially reduce the percentage of exports during the POR that would form the basis of the assessment calculation for non-selected exporters. Therefore, we determine that the use of CV is a more reasonable means of establishing a representative NV for purposes of calculating the assessment rates for all exporters under review.

We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, and the selling, general and administrative expenses reported by respondents. Consistent with the methodology used in the Final Results of *Flowers Ninth Review* to calculate a per-unit CV, *see* 62 FR 53287 (October 14, 1997), we first converted each month's CVs from pesos to dollars using the corresponding month's exchange rate. We totaled the monthly CV expressed in dollars over the POR and divided by the quantity of export quality flowers sold by the grower/exporter to arrive at the per-stem CV in U.S. dollars. The dollar per-stem CV was then converted to pesos using the period-end exchange rate and then deflated these peso-denominated amounts to the value of Colombian peso in each month of the POR. Next, we converted the peso per-stem CV to dollars based on the date of the U.S. sale, in accordance with section 773A(a) of the Act.

We consider non-export quality flowers (culls) that are produced in conjunction with export quality flowers to be by-products. Therefore, revenue from the sales of culls was offset against the cost of producing the export quality flowers.

We based selling, general and administrative expenses on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product for consumption in the home market. Where respondents had no home market sales, we used the general and administrative expenses associated with their sales to all other markets. Regarding selling expenses, with the exception of Floraterra, all respondents reporting sales of export quality flowers in the home market stated they had no selling expenses in that market. Therefore, we did not include selling expenses for those respondents. For Floraterra, we included the actual selling expenses incurred.

With respect to profit, we preliminarily determine that the conditions that led to the use of FA for the profit rate in *Flowers Ninth Review* continue to exist in the current POR. We find that home market sales of culls and/or export quality flowers were outside the ordinary course of trade because the record indicates that they were made at below cost prices. Consequently, we are unable to apply the methods specified in section 773(e)(2)(A) or 773(e)(2)(B)(ii) of the Act for calculating profit. Also, none of the respondents realized a profit on merchandise in the same general category as flowers produced for sale in Colombia. Therefore, we are also not able to apply the profit methodology described in section 773(e)(2)(B)(i) of the Act.

Section 773(e)(2)(B)(iii) permits the Department to use ''any other reasonable method'' to compute an amount for profit, provided that the amount ''may not exceed the amount normally realized by exporters or producers . . . in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.'' Despite our efforts, we have not been able to find any information on the profits earned in Colombia by producers of merchandise that is in the same general category of products as flowers. Therefore, we cannot determine a ''profit cap'' as described in section 773(e)(2)(B)(iii). Consistent with our practice in *Flowers Ninth Review*, we have applied section 773(e)(2)(B)(iii) on the basis of facts available and have developed a profit figure from the financial statements of a Colombian producer of agricultural and processed agricultural goods. *See* Statement of Administrative Action (SAA) at 841. We preliminarily determine that it is appropriate to use the profit rate for that company, 4.47 percent of cost of production, for all respondents.

We added U.S. packing to constructed value. In addition, for EP sales, we made circumstance of sale adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. Finally, we adjusted for commissions paid in the U.S. market by deducting any indirect selling expenses included in CV up to the amount of the U.S. commissions.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See Notice of Final Determination of Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61971 (November 19, 1997). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our comparison of EP and CEP with NV, we preliminarily determine that there are margins in the amounts listed below for the period March 1, 1996 through February 28, 1997.

Selected Respondents

The following 10 groups of firms (composed of 86 companies) were selected as respondents and received individual rates, as indicated below:

	Percent
Agrodex Group	0.88
Agricola de las Mercedes S.A.	
Agricola el Retiro Ltda.	
Agrodex Ltda.	
Degaflores Ltda.	
Flores Camino Real Ltda.	
Flores Cuatro Esquinas Ltda.	
Flores de la Comuna Ltda.	
Flores de Los Amigos Ltda.	
Flores de los Arrayanes Ltda.	
Flores de Mayo Ltda.	
Flores del Gallinero Ltda.	
Flores del Potrero Ltda.	
Flores dos Hectareas Ltda.	
Flores de Pueblo Viejo Ltda.	
Flores el Trentino Ltda.	
Flores la Conejera Ltda.	
Flores Manare Ltda.	
Florlinda Ltda.	
Horticola el Triunfo Ltda.	
Horticola Montecarlo Ltda.	
Caicedo Group	3.71
Agrobosque S.A.	
Andalucia S.A.	
Aranjuez S.A.	
Consorcio Agroindustrial Colombiano S.A. ''CAICO''	
Exportaciones Bochica S.A.	
Floral Ltda.	
Flores del Cauca S.A.	
Productos el Rosal S.A.	
Productos el Zorro S.A.	
Claveles Colombianos Group	0.90
Claveles Colombianos Ltda.	
Elegant Flowers Ltda.	
Fantasia Flowers Ltda.	
Splendid Flowers Ltda.	
Sun Flowers Ltda.	
Cultivos Miramonte Group	0.61
C.I. Colombiana de Bouquets S.A.	
Cultivos Miramonte S.A.	
Flores Mocari S.A.	
Floraterra Group	6.10
Floraterra S.A.	
Flores Casablanca S.A.	
Flores Novaterra Ltda.	
Flores San Mateo S.A.	
Siete Flores S.A.	
Florex Group	1.17
Agricola Guacari S.A.	
Agricola el Castillo	
Flores San Joaquin	
Flores Altamira S.A.	
Flores de Exportacion S.A.	
Flores Primavera S.A.	
Guacatay Group	2.49
Agricola Cunday S.A.	
Agricola Guacatay S.A.	
Agricola Ventura	
Jardines Bacata Ltda.	
Multiflora Comercializadora Internacional S.A.	
Queens Flowers Group	0.11
Agroindustrial del Rio Frio	
Cultivos General Ltda.	
Flora Nova	
Flora Atlas Ltda.	
Flores Calima S.A.	
Flores Canelon Ltda.	
Flores de Bojaca	
Flores del Cacique	
Flores del Hato	
Flores el Aljibe Ltda.	
Flores el Cipres	
Flores El Pino Ltda.	
Flores el Tandil	
Flores la Mana	
Flores las Acacias Ltda.	
Flores la Valvanera Ltda.	
Flores Jayvana	
Flores Ubate Ltda.	
Jardines de Chia Ltda.	
Jardines Fredonia Ltda.	
M.G. Consultores Ltda.	
Mountain Roses	
Queens Flowers de Colombia Ltda.	
Quality Flowers S.A.	
Florval S.A. (Floval)	
Jardines del Rosal.	
Tinzuque Group	1.23
Tinzuque Ltda.	
Catu S.A.	
Tuchany Group	9.21
Tuchany S.A.	
Flores Sibate	
Flores Tikaya	
Flores Munya	
Flores Xue S.A.	

Non-Selected Respondents

The following 338 companies were not selected as respondents and will receive a rate of 2.55 percent, calculated as discussed above in the section on ''Non-Selected Respondents'':

Abaco Tulipanex de Colombia
Achalay
Aga Group
  Agricola la Celestina
  Agricola la Maria
  Agricola Benilda Ltda.
Agrex de Oriente
Agricola Acevedo Ltda.
Agricola Altiplano
Agricola Arenales Ltda.
Agricola Bonanza Ltda.
Agricola Circasia Ltda.
Agricola de Occident
Agricola del Monte
Agricola el Cactus S.A.
Agricola el Redil
Agricola Guali S.A.
Agricola la Corsaria Ltda.
Agricola la Siberia
Agricola Las Cuadras Group
  Agricola las Cuadras Ltda.
  Flores de Hacaritama
Agricola Megaflor Ltda.
Agricola Yuldama
Agrocaribu Ltda.
Agro de Narino
Agroindustrial Don Eusebio Ltda. Group
  Agroindustrial Don Eusebio Ltda.
  Celia Flowers
  Passion Flowers
  Primo Flowers
  Temptation Flowers
Agroindustrial Madonna S.A.
Agroindustrias de Narino Ltda.
Agromonte Ltda.
Agropecuria Cuernavaca Ltda.
Agropecuaria la Marcela
Agropecuaria Mauricio
Agrorosas
Agrotabio Kent
Aguacarga
Alcala
Alstroflores Ltda.
Amoret
Ancas Ltda.
Andalucia
Andes Group
  Cultivos Buenavista Ltda.
  Flores de los Andes Ltda.
  Flores Horizonte Ltda.
  Inversiones Penas Blancas Ltda.
A.Q.
Arboles Azules Ltda.
Aspen Gardens Ltda.
Astro Ltda.
Becerra Castellanos y Cia.
Bojaca Group
  Agricola Bojaca
  Universal Flowers
  Flores y Plantas Tropicales
  Flores del Neusa Nove Ltda.
  Tropiflora
Cantarrana Group
  Cantarrana Ltda.
  Agricola los Venados Ltda.
Carcol Ltda.
Cienfuegos Group
  Cienfuegos Ltda.
  Flores la Conchita
Cigarral Group
  Flores Cigarral
  Flores Tayrona
Classic
Claveles de los Alpes Ltda.
Clavelez
Coexflor
Colibri Flowers Ltda.
Color Explosion
Combiflor
Consorcio Agroindustrial
Cota
Crest D'or
Crop S.A.
Cultiflores Ltda.
Cultivos Guameru
Cultivos Medellin Ltda.
Cultivos Tahami Ltda.
Cypress Valley
Daflor Ltda.

Degaflor
De La Pava Guevara E. Hijos Ltda.
Del Monte
Del Tropico Ltda.
Dianticola Colombiana Ltda.
Disagro
Diveragricola
Dynasty Roses Ltda.
El Antelio S.A.
Elite Flowers (The Elite Flower/Rosen Tantau)
El Milaro
El Tambo
El Timbul Ltda.
Envy Farms Group
  Envy Farms
  Flores Marandua Ltda.
Euroflora
Exoticas
Exotic Flowers
Exotico
Expoflora Ltda.
Exportadora
Falcon Farms de Colombia S.A. (formerly Flores de Cajibio Ltda.)
Farm Fresh Flowers Group
  Agricola de la Fontana
  Flores de Hunza
  Flores Tibati
  Inversiones Cubivan
Ferson Trading
Flamingo Flowers
Flor Colombiana S.A.
Flora Bellisima
Flora Intercontinental
Floralex Ltda..
  Floralex Ltda.
  Flores el Puente Ltda.
  Agricola Los Gaques Ltda.
Florandia Herrera Camacho & Cia.
Floreales Group
  Floreales Ltda.
  Kimbaya
Florenal (Flores el Arenal) Ltda.
Flores Abaco S.A.
Flores Acuarela S.A.
Flores Agromonte
Flores Aguila
Flores Colon Ltda.
Flores de la Sabana S.A.
Flores de Serrezuela S.A.
Flores de Suesca S.A.
Flores del Rio Group
  Agricola Cardenal S.A.
  Flores del Rio S.A.
  Indigo S.A.
Flores El Molino S.A.
Flores El Zorro Ltda.
Flores la Cabanuela
Flores la Fragrancia
Flores la Gioconda
Flores la Lucerna
Flores la Macarena
Flores la Pampa
Flores la Union/Gomez Arango & Cia. Group
  Santana
Flores las Caicas
Flores las Mesitas
Flores los Sauces
Flores Monserrate Ltda.
Flores Montecarlo
Flores Monteverde
Flores Palimana
Flores Ramo Ltda.
Flores S.A.
Flores Sagaro
Flores Saint Valentine
Flores Sairam Ltda.
Flores San Andres
Flores San Carlos
Flores San Juan S.A.
Flores Santa Fe Ltda.
Flores Santana
Flores Sausalito
Flores Selectas
Flores Silvestres
Flores Sindamanoi
Flores Suasuque
Flores Tenerife Ltda.
Flores Tiba S.A.
Flores Tocarinda
Flores Tomine Ltda.
Flores Tropicales (Happy Candy) Group
  Flores Tropicales Ltda.
  Happy Candy Ltda.
  Mercedes Ltda.
  Rosas Colombianos Ltda.
Flores Urimaco
Flores Violette
Florexpo
Floricola
Floricola la Gaitana S.A.
Florimex Colombia Ltda.
Florisol
Florpacifico
Flor y Color
Flowers of the World/Rosa
Four Seasons
Fracolsa
Fresh Flowers
F. Salazar
Funza Group
  Flores Alborada
  Flores de Funza S.A.
  Flores del Bosque Ltda.
Garden and Flowers Ltda.
  German Ocampo
  Granja
Green Flowers
Grupo el Jardin
  Agricola el Jardin Ltda.
  La Marotte S.A.
  Orquideas Acatayma Ltda.
Gypso Flowers
Hacienda la Embarrada
Hacienda Matute
Hana/Hisa Group
  Flores Hana Ichi de Colombia Ltda.
  Flores Tokai Hisa
Hernando Monroy
Horticultra Montecarlo
Horticultura de la Sasan
Horticultura El Molino
Hosa Group
  Horticultura de la Sabana S.A.
  HOSA Ltda.
  Innovacion Andina S.A.
  Minispray S.A.
  Prohosa Ltda.
Illusion Flowers
Industria Santa Clara
Industrial Agricola
Industrial Terwengel Ltda.
Ingro Ltda.
Inverpalmas
Inversiones Almer Ltda.
Inversiones Bucarelia
Inversiones Cota
Inversiones el Bambu Ltda.
Inversiones Flores del Alto
Inversiones Maya, Ltda.
Inversiones Morcote
Inversiones Morrosquillo
Inversiones Playa
Inversiones & Producciones Tecnica
Inversiones Santa Rita Ltda.
Inversiones Silma
Inversiones Sima
Inversiones Supala S.A.
Inversiones Valley Flowers Ltda.
Iturrama S.A.
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines Natalia Ltda.
Jardines Tocarema
Jardines de America
Jardines de Timana
J.M. Torres
Karla Flowers
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
La Plazoleta Ltda.
Las Amalias Group
  Las Amalias S.A.
  Pompones Ltda.
  La Fleurette de Colombia Ltda.
  Ramiflora Ltda.
Las Flores
Laura Flowers
L.H.
Linda Colombiana Ltda.
Loma Linda
Loreana Flowers
Los Geranios Ltda.
Luisa Flowers
Luisiana Farms
M. Alejandra
Manjui Ltda.
Mauricio Uribe
Maxima Farms Group
  Agricola los Arboles S.A.
  Colombian D.C. Flowers
  Polo Flowers
  Rainbow Flowers
  Maxima Farms Inc.
Merastec
Monteverde Ltda.
Morcoto
Nasino
Natuflora Ltda../San Martin Bloque B
Olga Rincon
Oro Verde Group

Inversiones Miraflores S.A.
Inversiones Oro Verde S.A.
Otono (Agroindustrial Otono)
Papagayo Group
Agricola Papagayo Ltda.
Inversiones Calypso S.A.
Petalos de Colombia Ltda.
Pinar Guameru
Piracania
Pisochago Ltda.
Plantaciones Delta Ltda.
Plantas S.A.
Prismaflor
Propagar Plantas S.A.
Reme Salamanca
Rosa Bella
Rosaflor
Rosales de Colombia Ltda.
Rosales de Suba Ltda.
Rosas Sabanilla Group
Flores la Colmena Ltda.
Rosas Sabanilla Ltda.
Inversiones la Serena
Agricola la Capilla
Rosas y Jardines
Rose
Rosex Ltda.
Roselandia
San Ernesto
San Valentine
Sansa Flowers
Santa Rosa Group
Flores Santa Rosa Ltda.
Floricola La Ramada Ltda.
Santana Flowers Group
Santana Flowers Ltda.
Hacienda Curibital Ltda.
Inversiones Istra Ltda.
Sarena
Select Pro
Senda Brava Ltda.
Shasta Flowers y Compania Ltda.
Shila
Siempreviva
Soagro Group
Agricola el Mortino Ltda.
Flores Aguaclara Ltda.
Flores del Monte Ltda.
Flores la Estancia
Jaramillo y Daza
Solor Flores Ltda.
Starlight
Superflora Ltda.
Susca
Sweet Farms
Flores Santa Rosa Ltda.
Floricola la Ramada Ltda.
Tag Ltda.
The Beall Company
The Rose
Tomino
Toto Flowers Group
Flores de Suesca S.A.
Toto Flowers
Tropical Garden
Uniflor Ltda.
Velez de Monchaux Group
Velez De Monchaux e Hijos y Cia S. en C.
Agroteusa
Victoria Flowers
Villa Cultivos Ltda.
Villa Diana
Vuelven Ltda.
Zipa Flowers

Parties to the proceeding may request disclosure within five days of publication of this notice. Interested parties may request a hearing not later than ten days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 45 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific per-stem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the quantity of subject merchandise entered during the POR. We have used the number of stems entered during the POR, rather than entered values, because respondents reported average monthly prices and, moreover, the entered values were not associated with particular importers. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original Less-Than-Fair-Value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 3.10 percent, the adjusted ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: January 26, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–2482 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804, A–533–813, A–560–802, and A–570–851]

Initiation of Antidumping Investigations: Certain Preserved Mushrooms From Chile, India, Indonesia, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 2, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office 5, AD/CVD Enforcement Group II, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W.,

Washington, DC 20230; telephone: (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Applicable State and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

The Petition

On January 6, 1998, the Department of Commerce (''the Department'') received a petition filed in proper form by the Coalition for Fair Preserved Mushroom Trade which is comprised of the following companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Sunny Dell Foods, Inc., and United Canning Corp. (''the petitioners''). The Department received supplemental information to the petitions on January 15 and 20, 1998.

In accordance with section 732(b) of the Act, petitioners allege that imports of certain preserved mushrooms (''mushrooms'') from Chile, India, Indonesia, and the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support (*see* discussion below).

Scope of Investigations

For purposes of these investigations, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under these investigations are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole. sliced, diced, or as stems and pieces. Included within the scope of the investigation are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

The merchandise subject to these investigations is classifiable under subheadings 2003.10.27, 2003.10.31, 2003.10.37, 2003.10.43, 2003.10.47.2003.10.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1) All other species of mushroom including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1] Section 771(10) of the Act defines domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigation'' section, above. The Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department has, therefore, adopted the domestic like product definition set forth in the petition. In this case, the petitioners established industry support above the statutory requirement, as detailed in a memorandum to the file dated January 23, 1998. Accordingly, the Department determines that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department received the following comments regarding industry support. With respect to the petition on imports of mushrooms from Chile, Nature's Farm Products (Chile) S.A. (''NFP Chile''), a foreign exporter of the subject merchandise, filed a submission on January 22, 1998, which argued that the petitioners do not constitute a U.S. industry. NFP Chile stated that the petitioners are not producers because ''[f]ew of them even grow mushrooms which are the underlying product that is the subject of the investigation.'' According to NFP Chile, petitioners represent canners or packagers that cannot be considered an industry. Instead, NFP Chile requests that the Department poll members of the American Mushroom Institute to assess industry support.

We disagree with NFP Chile that petitioners, that is, domestic producers

[1] See *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan; Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

of preserved mushrooms, do not constitute an industry. As defined in the scope of the petition, ''preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting, which are then packed and heated in various containers in a suitable liquid. Petition at 12. Therefore, the proper focus of our industry support analysis lies with the producers of preserved mushrooms, not the growers of mushrooms. We note that in an earlier antidumping investigation, *Canned Mushrooms form the People's Republic of China,* the petition was filed by a canner of mushrooms, the Four ''H'' Company. 48 Fed. Reg. 45,445, (10/5/83). In that investigation, the ITC concluded that the domestic industry was comprised of ''the U.S. facilities engaged in canning mushrooms.'' *Canned Mushrooms from the People's Republic of China,* Inv. No. 731–TA–115 (Prelim.), USITC Pub. 1324 at 3–4 (1982). As described in our industry support memorandum, the Department confirmed with the ITC the known universe of producers of preserved mushrooms. There is no basis for polling an industry group (growers) which does not produce the merchandise identified in the petition.

With respect to the petition on imports of preserved mushrooms from India, on January 22, 1998, we received an expression of opposition from Giorgio Foods Inc. (''Giorgio''), which is both a domestic producer of the subject merchandise, as well as an importer of subject merchandise from India. Because Giorgio is an importer of the subject merchandise from India the Department has the authority to disregard Giorgio's position, in accordance with section 732(c)(B)(ii) of the Act. However, our analysis shows that the supporters of the petition account for over 50 percent of production of the domestic producers who have expressed an opinion even if Giorgio's position is not disregard. *See* Memorandum to The File dated January 23, 1998, on Industry Support.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Chile

The petitioners identified NFP Chile as the sole exporter and producer of mushrooms from Chile. The petitioners based export price (''EP'') on U.S. sales prices obtained by one of the petitioning companies for the first sales to unaffiliated purchases, specifically, sales made by Nature's Farm-USA to a customer in 1997. The petitioners calculated a net U.S. price by subtracting import charges based upon the official U.S. import statistics and import duties based on the 1997 import duty rate.

Pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioners based normal value (''NV'') for sales in Chile on constructed value (''CV''). The petitioners claimed that there are insufficient sales of the foreign like product in the home market to form an adequate basis for comparison with EPs to the United States.

Pursuant to section 773(e) of the Act, CV consists of the cost of materials, fabrication, other processing (*i.e.,* cost of manufacturing (''COM'')), selling, general, and administrative expenses (''SG&A''), and packing. To calculate COM and SG&A, the petitioners relied on market research and NFP Chile's corporate financial statements. The petitioners also based packing information on market research.

Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Because the petitioners claim that NFP Chile has failed to realize a profit since 1990, the petitioners relied upon the 1996 profit margin for Iansafrut S.A., a leading Chilean fruit and vegetable producer, as a reasonable surrogate to estimate a profit margin for NFP Chile's sales.

The estimated dumping margin in the petition, based on a comparison between NFP Chile's U.S. price and the CV, is 83.30 percent.

India

The petitioners identified the following as exporters and producers of mushrooms from India: Agro Dutch Foods, Ltd. (''Agro Dutch''); Alpine Biotech Ltd. (''Alpine''); Mandeep Mushrooms Ltd. (''Mandeep''); Pond's India Ltd. (''Pond's''); Saptarishi Agro Industries Ltd. (''Saptarishi''); Transchem Ltd. (''Transchem''); Premier Mushroom Farms (''Premier''); and Flex Foods Ltd. (''Flex Foods''). For export price (''EP''), the petitioners used price quotes, as obtained from their market research, and average unit prices derived from U.S. Customs IM 146 statistical import data.

The petitioners adjusted these prices by subtracting amounts for foreign inland freight and estimated international movement expenses, U.S. merchandise processing fee, and U.S. harbor maintenance fee, as appropriate. The movement expenses were based on information obtained from the petitioners' market research and the difference between the CIF import value and the Customs Import value reported in the official 1997 U.S. import statistics for January through September 1997.

With respect to NV, the petitioners provided calculations using both home market prices and CV. In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of mushrooms in the home market were made at prices below the cost of production (''COP''), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation. Therefore, pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioners also based NV for sales in India on CV.

As noted above, CV consists of COM, SG&A, and profit. The petitioners calculated the direct portion of COM and packing based on Indian costs obtained through their market research. To calculate the indirect portion of COM, SG&A and CV profit, the petitioners relied on financial statements of Indian producers of the subject merchandise, as included in the petition.

Based on comparisons of EP to NV, the petitioners estimate margins of 31.76 to 274.05 percent.

Indonesia

The petitioners identified five exporters and producers of mushrooms: Dieng Djaya, PT (''Dieng Djaya''); Indo Evergreen Agro Business Co., PT (''Indo Evergreen''); Surya Jaya Abadi Perkasa, PT (''Surya Jaya''); Tuwuh Agung, PT (''Tuwuh Agung''); and Zeta Agro Corporation (''Zeta''). The petitioners based EPs on U.S. price quotes obtained from their market research, and average unit prices derived from U.S. Customs IM 146 statistical import data. Where appropriate, the petitioners subtracted foreign inland freight from the EP. As the petitioners could not obtain freight expense data from Indonesia, they applied a freight expense based on Indian data.

The petitioners based NV on home market prices quotes, as obtained by their market research, and CV.

As noted above, CV consists of COM, SG&A, packing and profit. The petitioners based their calculations for COM, SG&A and packing on Indonesian costs obtained through their market

research. Profit, net interest, and depreciation are based on public information from a major Indonesian food processing company. The petitioners made no adjustments to the home market price quote.

Comparison of NV and net EPs for sales of mushrooms from Indonesia results in estimated dumping margins that range from 35.40 percent to 42.30 percent.

People's Republic to China

The petitioners identified 36 potential PRC exporters and producers of mushrooms. The petitioners based EP on average Customs import values and U.S. prices quotes obtained from industry contacts. From these starting prices, the petitioners deducted international freight and insurance fees, based on the difference between the CIF import value and the Customs import value. The petitioners then subtracted U.S. entry fees, U.S. merchandise processing fees and U.S. harbor maintenance fees.

Because the PRC is considered a nonmarket economy (NME) country under section 771(18) of the Act, the petitioners based NV on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. For the factors of production, the petitioners used Indian consumption data for materials, labor, and energy, based on data in the market research report for the companion Indian petition and included in the public version of that petition. Materials were valued based on Indian prices obtained from the petitioner's market research. Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate published in the annual report of an Indian producer of the subject merchandise. For factory overhead, SG&A and profit, the petitioners applied rates derived from the public annual reports of several Indian preserved mushroom producers. Packing factors were based on the Indian market research report, and packing materials valued based on the Indian market research. Packing labor was valued in the same manner as direct labor.

Based on comparisons of EP to NV, the petitioners estimate dumping margins from 85.38 percent to 198.63 percent.

Initiation of Cost Investigation

Pursuant to section 773(b) of the Act, the petitioners alleged that sales in the home market of India were made at prices below the COP and, accordingly, requested that the Department conduct a country-wide sales below COP investigation in India. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess., at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition of the foreign like product in India to the COP calculated in the petition, we find ''reasonable grounds to believe or suspect'' that sales of these foreign like products were made below their respective COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation for India.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of mushrooms from Chile, India, Indonesia, and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioning firms, U.S. Customs import data and a pricing report from an industry trade journal. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigations

We have examined the petition on mushrooms and have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of mushrooms from Chile, India, Indonesia, and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations for the antidumping duty investigations by June 15, 1998.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Chile, India, Indonesia, and the PRC. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by February 20, 1998, whether there is a reasonable indication that imports of mushrooms from Chile, India, Indonesia, and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: January 26, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–2478 Filed1–30–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

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: 97–102. *Applicant:* University of Nebraska-Lincoln, Engineering Mechanics Department, 212 Bancroft Hall, Lincoln, NE 68588–0347. *Instrument:* Scanning Acoustic Microscope, Model KSI SAM 2000. *Manufacturer:* Kramer Scientific Instruments, Germany. *Intended Use:* The instrument will be used for acoustic wave analysis and imaging of advanced materials, composites and coatings. The objective of the investigation is detection of subsurface, optically invisible microcracks and localized stiffness analysis. *Application accepted by Commissioner of Customs:* December 16, 1997.

Docket Number: 97–103. *Applicant:* The Ohio State University, 477 Watts Hall, 2041 College Road, Columbus, OH 43210. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for morphological and structural studies of ceramics and metals, including high-temperature superconductors, high-temperature metal alloys, evaporated metal thin films, silicon bicrystals, soils and geological minerals, polymers and possibly some biological samples. The instrument will also be used for teaching purposes in microscopy classes and individual training of faculty, staff and students. *Application accepted by Commissioner of Customs:* December 17, 1997.

Docket Number: 97–104. *Applicant:* University of Colorado, Department of Buying and Contracting, Regent Administrative Center, Room 1B29, Campus Box 8, Boulder, CO 80309–0008. *Instrument:* Experimental Set-ups (Frames & Trusses). *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for teaching structural engineering to junior level undergraduate students in civil, environmental and architectural engineering. *Application accepted by Commissioner of Customs:* December 17, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2483 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

At-Sea Scale Certification Program; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sally Bibb, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907–586–7228).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) plans to revise an approved information collection to allow inspectors other than those from NMFS-designated agencies to conduct inspections of scales aboard certain fishing vessels in the groundfish fisheries of the Gulf of Alaska and of the Bering Sea and Aleutian Islands. Vessels would not yet be required to have these scales, so the revision is in preparation of such possible requirements in the future. Such inspectors would have to notify NMFS in writing that they meet requirements set forth in regulation. Approved inspectors must submit to NMFS a copy of any inspection reports made. NMFS must also be notified 3 working days prior to any inspections to be made by these inspectors.

II. Method of Collection

Respondents would comply with requirements to be set forth in 50 CFR 679. No specific forms are required.

III. Data

OMB Number: 0648–0330.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit; state, local, or tribal government.
Estimated Number of Respondents: 2.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 1 hour.
Estimated Total Annual Cost to Public: None (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2473 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coast Pilot Report; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Skillings, N/CS26, Room 7359, 1315 East-West Highway, Silver Spring, MD 20910–3282 (301–713–2737 x 112).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Coast Pilot is a series of nine books published by NOAA to supplement marine nautical charts with information that cannot be graphically shown on the charts. The Coast Pilot Report form provides a formalized instrument for members of the public to recommend changes to the U.S. Coast Pilot or to the format, scale, or layout of nautical charts.

II. Method of Collection

The report form is made available as ''tear-out'' pages in the back of each Coast Pilot volume.

III. Data

OMB Number: 0648–0007.
Form Number: NOAA Form 77–6.
Type of Review: Regular Submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 50.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required of the public).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2474 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Dealer and Interview Family of Forms—Southeast Region; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149 (305–361–4263).

SUPPLEMENTARY INFORMATION:

I. Abstract

The reporting burden for this family of forms is comprised of two types of data collection. Mandatory dealer reporting is authorized under 50 CFR 622.5, 678.5 and 630.5 and is to monitor Federally-mandated fishery quotas. Dockside interviews with fishermen are used to collect biological data from fishing trips. These data consist of the measurement and weights of fish, fishing effort and fishing area. The data are used for fishery management purposes.

II. Method of Collection

Mandatory dealer reporting is accomplished with forms provided by the Science and Research Director, Southeast Fisheries Science Center. Dockside interviews are conducted on-site and data are recorded by trained Federal port agents.

III. Data

OMB Number: 0648–0013.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit (seafood dealers and fishermen).
Estimated Number of Respondents: 300 dealers and 5,000 fishermen.
Estimated Time per Response: 2 to 15 minutes.
Estimated Annual Burden Hours: 2,500.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2475 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 4, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 26, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351–1a TRADOC

SYSTEM NAME:

Automated Instructional Management System (AIMS) *(February 2, 1996, 61 FR 3919).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Automated Instructional Management System-Redesign (AIMS-R)'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Course data to include scheduling, testing, academic, graduation, personnel and attrition data.'

PURPOSE(S):

Delete entry and replace with 'To automate those processes associated with the scheduling, management, testing, and tracking of resident student training. This TRADOC standard management system is composed of several subsystems which perform functions for personnel, student load management, academic records management, test creation, scoring and grading, student critique, resource scheduling and utilization, and query.'

* * * * *

A0351–1a TRADOC

SYSTEM NAME:

Automated Instructional Management System-Redesign (AIMS-R).

SYSTEM LOCATION:

Headquarters, Training and Doctrine Command (TRADOC); TRADOC Service Schools; and Army Training Centers. Addresses for the above may be obtained from the Commander, U.S. Army Training Support Center, ATTN: ATIC–TIS, Fort Eustis, VA 23604–5166.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Army, Navy, Marine Corps, and Air Force, and civilians employed by the U.S. Government, and approved foreign military personnel enrolled in a resident course at a U.S. Army service school.

CATEGORIES OF RECORDS IN THE SYSTEM:

Course data to include scheduling, testing, academic, graduation, personnel and attrition data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To automate those processes associated with the scheduling, management, testing, and tracking of resident student training. This TRADOC standard management system is composed of several subsystems which perform functions for personnel, student load management, academic records management, test creation, scoring and grading, student critique, resource scheduling and utilization, and query.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche, computer discs, and paper printouts.

RETRIEVABILITY:

Retrieved by Social Security Number and course/class number.

SAFEGUARDS:

Use of system is restricted to the personnel responsible for the administration of personnel enrolled in the resident student training programs at U.S. Army service schools and Army training centers.

Different user identification sign-on codes are assigned to each person authorized access to the database. Each sign-on is authenticated by system software. Identification sign-on codes are changed every six months, added at any time a new person is assigned or deleted when someone leaves. The above meets Army's Information System Security Regulation requirements.

RETENTION AND DISPOSAL:

Machine records are maintained on-line for 4 years, at that time they are moved to microfiche. Microfiche are stored indefinitely for reference. Paper records are destroyed after 40 years as follows: Army elements serviced by a records holding area (RHA) for 3 years in the current files area (CFA) and transfer them to RHA for 2 years in CFA, then retire them to NPRC for the remaining 38 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Transportation Center, ATTN: ATZS-IMO-RM (Privacy Act Officer), Fort Eustis, VA 23651–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide the full name, Social Security Number, and

military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from the individual, DoD staff, Personnel and Training systems, and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–2396 Filed 1–30–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: February 12–13, 1998 (800am to 500pm).

ADDRESS: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Director/Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: January 26, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2395 Filed 1–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–07: National Spherical Torus Experiment (NSTX) Research Program

AGENCY: Office of Energy Research, Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Energy Research, (ER), U.S. Department of Energy (DOE) announces its interest in receiving grant applications for imaginative research initiatives to be conducted on the NSTX device in furtherance of its research mission. Successful applications will be funded throughout FY 1999, depending in part on the detailed schedule of the research topics that are undertaken.

The Office of Fusion Energy Sciences is interested in applications for research that have the possibility of contributing to the achievement of the NSTX research program goals. The research should be aimed at elucidating the physics principles involved through experimental and theoretical means. Research projects are sought which are original, and which provide scientific insights into the novel operating regimes that will be the thrust of the NSTX program. The program of collaboration must be developed through cooperation and discussions with the NSTX research team at Princeton Plasma Physics Laboratory (PPPL).

DATES: To permit timely consideration for awards in Fiscal Year 1999, formal applications submitted in response to this notice must be received no later than 4:30 p.m., April 23, 1998.

ADDRESSES: Completed formal applications referencing Program Notice 98–07 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 98–07. The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant. No electronic submissions of formal applications will be accepted.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Dove, Science Division, ER-55, Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–4911, or by Internet address, william.dove@mailgw.er.doe.gov.

SUPPLEMENTARY INFORMATION: It is expected that the NSTX research program will be inaugurated during FY 1999. The initiation and scheduling of detailed research activities will depend on operational factors. Not all of the research tasks will be undertaken simultaneously. In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce experimental results that are needed by the NSTX program within the first two years of experimental operations. However, the OFES intends to build a research team to meet the longer duration program goals. Theoretical research will be accepted for consideration under this Notice as a collaboration with, and in support of, experimental programs.

The detailed description of the proposed research collaboration should contain the following items: (1) Synopsis of the proposed research program plan; (2) A detailed experimental research plan describing the elements of the collaboration with PPPL including the PPPL collaborators and any local support needed from PPPL, and arrangements for access to the device; (3) Goal of the research and how it supports the NSTX program; (4) The specific results or deliverables expected at the end of the project period as a consequence of the collaboration; (5) Discussion of why this research would have an important impact on the NSTX research program; and (6) Discussion of how the research would elucidate the physics principles of the Spherical Torus approach to fusion confinement.

Collaboration and Training

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including PPPL and the other DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to the program.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which

includes another organization as a lower-tier participant (subcontract) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. Separate Face Pages and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic applicants who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subcontract). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for their portion of the project. The FFRDC must include separate Budget Pages for their portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically intended for new FFRDC projects. DOE FFRDCs will not compete for funding already intended for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Further information on the NSTX program at PPPL may be found at http://www-local.pppl.gov/nstxhome/index.shtml, and detailed information on the NSTX research activities may be found in the NSTX Meeting Information Home Page: http://www-local.pppl.gov/nstxhome/nstx/meetings/

It is anticipated that up to $3 million in FY 1999 will be available for new grants from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Future year funding is anticipated to be greater but will depend on the nature of the applications, suitable experimental progress and the availability of funds. Because of the total amount of anticipated available funding and because of the intent to have a broadly based program, experimental applications with a requirement in any twelve-month period in excess of $1.5 million are unlikely to be funded. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements.

To facilitate the review, the application must be limited to a maximum of twenty (20) pages (including text and figures) plus not more than one page each of biographical information and publications of the principal investigator, plus any additional forms required as a part of a standard grant application. Appendices including publications are acceptable; however, they must not be used as a method of avoiding the page limit. Reviewers are not required to read such appendices.

An original and seven copies of each application must be submitted. Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of the applicant's personnel and adequacy of the proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance and responsiveness of the proposed research to the terms of the announcement and the agency's programmatic needs, specifically including the stated needs of the NSTX research program. General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. Electronic access to the Application Guide is possible via the Internet using the following Web site address: http://www.er.doe.gov/production/grants/grants.html

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, D.C., on Janaury 23, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–2471 Filed 1–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–187–008]

Arkansas Western Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 27, 1998.

Take notice that on January 22, 1998, Arkansas Western Pipeline Company (AWP) tendered for filing as part of its FERC Gas Tariff, repaginated and edited tariff sheets that were effective December 8, 1997.

AWP states that the filing sets forth the corrections to AWP's tariff sheets that are necessary to comply with FERC's January 7, 1998 Letter Order in Docket No. RP97–187–007.

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 petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2430 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

January 27, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on February 3, 1998 at 9:30 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Robert A. Young at (202) 208–5705.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2431 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–192–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

January 27, 1998.

Take notice that on January 20, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–192–000 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 construct, own and operate a new meter station (Orr Plant Meter Station) in Dade County, Florida for Metropolitan Dade County (County), a political subdivision of the State of Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000, 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.

FGT proposes to construct, own and operate the Orr Plant Meter Station, which will include a tap, meter, electronic flow measurement (EFM) equipment, and any other related appurtenant facilities necessary for FGT to deliver natural gas quantities of up to 1167 MMBtu per day and up to 425,955 MMBtu per year on an firm basis to County.

FGT states that County has elected to reimburse FGT for the costs incurred by FGT relating to the proposed construction of the tap, 555-foot lateral, meter station and EFM equipment. The estimated total cost of the proposed construction is $185,000. FGT has stated that the gas quantities proposed to be delivered by FGT to County will be based upon County or an agent acquiring firm capacity under FGT's Capacity Relinquishment Program and will have no incremental effect on any of FGT's firm 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2426 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–3–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 27, 1998.

Take notice that on January 22, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective February 1, 1998, the following tariff sheets:

Twenty-Fifth Revised Sheet No. 8A
Sixteenth Revised Sheet No. 8A.01
Seventeenth Revised Sheet No. 8A.02
Twenty-Second Revised Sheet No. 8B
Fifteenth Revised Sheet No. 8B.01

FGT states that in Docket No. TM98–2–34–001 filed on September 9, 1997 and approved by Commission order dated September 26, 1997, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.05% to become effective October 1, 1997. In the instant filing, FGT is filing a flex adjustment of <0.30<% to be effective February 1, 1998, which, when combined with the Base FRCP of 3.05%, results in an Effective Fuel Reimbursement Charge Percentage of 2.75%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

FGT states that it has experienced an overretention of fuel for the three months ended December 31, 1997, the period during which the Base FRCP of 3.05% has been in effect. This trend toward overrecovery appears to be continuing during the month of January, 1998. Consequently, to minimize the operational problems experienced as a result of this overrecovery of fuel, and to minimize the balance of the deferred fuel account to be resolved in a subsequent period, FGT is decreasing the Effective Fuel Reimbursement Charge Percentage to 2.75%.

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, DC 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2435 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–116–000]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

January 27, 1998.

Take notice that on January 22, 1998, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 26, 1997:

First Revised Sheet No. 26

South Georgia states that its filing is in compliance with the Commission's February 27, 1997 Order on Remand directing pipelines to reduce the matching term cap of their right-of-first-refusal provisions from twenty to five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and 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. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2434 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–115–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

January 27, 1998.

Take notice that on January 22, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective August 26, 1997:

First Revised Sheet No. 160

Southern states that its filing is in compliance with the Commission's February 27, 1997 Order on Remand directing pipelines to modify the matching term cap of their right-of-first-refusal provisions from twenty to five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and 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. An 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2433 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–194–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 27, 1998.

Take notice that on January 21, 1998, Texas Gas Transmission Corporation (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–194–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point for AK Steel Corporation (AK Steel) in Warren County, Ohio to accommodate AK Steel's request for interruptible natural gas service directly from Texas Gas. Texas Gas makes such request under its blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Texas proposes to install, own, operate and maintain a dual 8-inch delivery meter station with flow control and a 10-inch side valve on a site owned by Texas Gas. The proposed new delivery point will be known as the Lebanon-AK Steel Delivery Point, and will be located on Texas Gas' Main Line System at Mile Post 712+2990 at Texas Gas' Dispatch Station at Lebanon, Warren County, Ohio. AK Steel's natural gas requirements for its Middletown plant, in Warren County are presently supplied on an interruptible basis by Cincinnati Gas & Electric Company, an existing customer of Texas Gas.

It is stated that the proposed facilities will enable Texas Gas to deliver up to 90,000 MMBtu of interruptible natural gas per day for use at AK Steel's Middletown plant. Texas Gas states that the transportation service will be provided pursuant to the authority of Texas Gas' blanket certificate issued in Docket No. CP88–686–000 and pursuant to Section 284.223 of the Commission's Regulations.

Texas Gas states the rate schedule applicable to the transportation service will be Texas Gas' IT Rate Schedule, as contained in First Revised Volume No. 1 of Texas Gas' FERC Gas Tariff. It is averred that AK Steel indicates that it may also serve its requirements through the purchase of released firm capacity on Texas Gas' system.

Texas Gas states that AK Steel will reimburse in full, Texas Gas' estimated $239,000 facility cost for this project.

It is further stated that because only interruptible transportation service is proposed to be provided to AK Steel at this point, the above proposal will have no significant effect on Texas Gas' peak day and annual deliveries, and service to AK Steel through this point can be accomplished without detriment to Texas Gas' 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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2427 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–114–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 27, 1998.

Take notice that on January 21, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective February 1, 1998:

Fifth Revised Sheet No. 141
First Revised Sheet No. 142
First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146
Original Sheet No. 147

Viking states that the purpose of this filing is to facilitate customer service on Viking's system by updating Viking's Electronic Bulletin Board Access Service Agreement to reflect the replacement of Viking's Voyager computer system with WebShipper for EBB purposes. Replacement of Voyager with WebShipper for EBB purposes has no effect other than to change the specific technology used for EBB communication. Viking is making this change in conjunction with replacing its computer system to comply with the requirements of Order Nos. 587, 587–B, and 587–C. Viking will continue to comply with all EBB requirements established by the Commission. Viking is filing these sheets under Section 4 of the Natural Gas Act, 15 U.S.C. § 717c (1996).

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2432 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–10–000, et al.]

Montana Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 26, 1998.

Take notice that the following filings have been made with the Commission:

1. Montana Power Company

[Docket No. DR98–10–000]

Take notice that on December 15, 1997, Montana Power Company (Montana Power), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. Montana Power states that the proposed rates were approved by the Montana Public Service Commission and became effective for retail purposes as of July 1, 1996. Montana Power requests that the Commission allow the proposed depreciation rates to become effective as of July 1, 1996.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Electric Company

[Docket No. DR98–11–000]

Take notice that on December 17, 1997, El Paso Electric Company (El Paso), filed an Application for approval of depreciation rates for accounting purposes pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. El Paso stated that the proposed rates were approved by the Public Utility Commission of Texas and became effective for retail purposes as of March 1996. El Paso requests that the Commission allow the proposed depreciation rates to become effective as of March 1996.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket No. DR98–12–000]

Take notice that on December 18, 1997, Delmarva Power & Light Company (Delmarva), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. Delmarva stated that the proposed rates, except for Account 312, Boiler Plant Equipment, were approved by the Delaware Public Service Commission on April 29, 1997. Delmarva requests that the Commission allow the proposed depreciation rates to become effective as of July 1, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Indiana Michigan Power Company

[Docket No. DR98–13–000]

Take notice that on December 18, 1997, American Electric Power Company, on behalf of Indiana Michigan Power Company (I&M), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. I&M stated that the proposed rates were approved by the Michigan Public Service Commission on June 16, 1994. I&M requests that the Commission allow the proposed depreciation rates to become effective as of January 1, 1995, 1996 and 1997, in accordance with the above-mentioned Michigan Public Service Commission order.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Appalachian Power Company

[Docket No. DR98–14–000]

Take notice that on December 18, 1997, American Electric Power Company, on behalf of Appalachian Power Company (Appalachian) filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. Appalachian stated that the proposed rates were approved by the Public Service Commission of West Virginia on June 16, 1994. Appalachian requests that the Commission allow the proposed depreciation rates to become effective on November 1, 1995.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. DR98–15–000]

Take notice that on December 17, 1997, Cinergy Services, Inc., on behalf PSI Energy, Inc. (PSI), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. PSI stated that the proposed rates were approved by the Indiana Utility Regulatory Commission on September 27, 1996. PSI requests that the Commission allow the proposed depreciation rates to become effective on September 27, 1996.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Arkansas, Inc.

[Docket No. DR98–16–000]

Take notice that on December 19, 1997, Entergy Services, Inc., on behalf of its affiliate, Entergy Arkansas, Inc. (EAI) filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. EAI stated that the proposed rates were approved by the Arkansas Public Service Commission on December 12, 1997. EAI requests that the Commission allow the proposed depreciation rates to become effective on January 1, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy

[Docket No. DR98–46–000]

Take notice that on December 29, 1997, Duke Energy, filed a request for approval of changes in depreciation rates made on or after April 19, 1994 and prior to December 29, 1997, for accounting purposes only pursuant to Section 302 of the Federal Power Act.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. MidCon Power Services Corp. and K N Services, Inc.

[Docket No. EC98–25–000]

Take notice that on January 20, 1998, MidCon Corp., and K N Services, Inc., both brokers and marketers of electric power, filed a request for approval of the disposition of the jurisdictional assets of MidCon Power Services Corp., to K N Energy, Inc., and the indirect merger of the jurisdictional facilities of MidCon Power Services Corp., and K N Services, Inc., that may result from the disposition, and a notice of change in status relating to the transaction.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Potomac Electric Power Company v. Allegheny Power System, West Penn Power Company, Mongahela Power Company, the Potomac Edison Company

[Docket No. EL98–17–000]

Take notice that on January 21, 1998, Potomac Electric Power Company tendered for filing a Complaint against the Allegheny Power System and its operating utility subsidiaries.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before February 25, 1998.

11. Energy Services, Inc.

[Docket No. EL98–18–000]

Take notice that on January 16, 1998, Energy Services, Inc., on behalf of Energy Gulf States Inc. (EGSI), tendered for filing a petition for waiver of the Commission's fuel clause regulations to allow EGSI to pass through its wholesale FAC the costs associated with a License and Option Agreement between EGSI and Southern Gulf Railway Company regarding access to a railroad spur connecting EGSI's Nelson Coal Unit No. 6, generating plant with Southern Pacific Railroad Company.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER96–1320–001]

Take notice that on December 24, 1997, Public Service Electric and Gas Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Unitil Power Corp.

[Docket No. ER98–1194–000]

Take notice that on December 23, 1997, Unitil Power Corp. (UPC), tendered for filing three service agreements between UPC and Green Mountain Power, Inc., New England Power Company, and New Energy Ventures for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

UPC requests an effective date of November 23, 1997, for Green Mountain Power, Inc., and New England Power Company, and an effective date of December 26, 1997, for New Energy Ventures.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Upper Peninsula Power Company

[Docket No. ER98–1244–000]

Take notice that on December 29, 1997, Upper Peninsula Power Company, tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service under its open access transmission service tariff for service to Wisconsin Electric Power Company. UPPCO proposes to make the service agreement effective as of February 23, 1998.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–1245–000]

Take notice that on December 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Entergy Power Marketing Corp. (Entergy).

Cinergy and Entergy are requesting an effective date of December 22, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Long Island Lighting Company

[Docket No. ER98–1246–000]

Take notice that on December 30, 1997, Long Island Lighting Company (LILCO), filed Service Agreements for Non-Firm Point-to-Point Transmission

Service between LILCO and KIAC Partners (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of December 5, 1997, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Consumers Energy Company

[Docket No. ER98–1247–000]

Take notice that on December 30, 1997, Consumers Energy Company (Consumers), tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service with the Municipal Cooperative Coordinated Pool for service during 1998. A copy of the filing was served on the Michigan Public Service Commission, Michigan Public Power Agency and Wolverine Power Supply Cooperative.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER98–1248–000]

Take notice that on December 30, 1997, Consumers Energy Company (Consumers), tendered for filing an unexecuted Transmission Service Agreement with the Lansing Board of Water & Light (Lansing). The filed Service Agreement makes available non-firm point-to-point transmission service. A copy of the filing was served upon Lansing and the Michigan Public Service Commission.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER98–1249–000]

Take notice that on December 30, 1997, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire, tendered for filing pursuant to § 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Citizens Power Sales.

NUSCO states that a copy of this filing has been mailed to Citizens Power Sales.

NUSCO requests that the rate schedule change become effective on January 1, 1998.

Comment date: Februrary 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER98–1250–000]

Take notice that on December 30, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for firm point-to-point transmission service to AIG Trading Corporation (AIG), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on December 31, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Company Services, Inc.

[Docket No. ER98–1251–000]

Take notice that on December 30, 1997, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), filed a Service Agreement by and among itself, as agent for Southern Companies, Southern Companies and East Kentucky Power Cooperative, Inc. (East Kentucky), pursuant to which Southern Companies will make wholesale power sales to East Kentucky for a term in excess of one (1) year.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER98–1253–000]

Take notice that on December 30, 1997, Illinois Power Company (IP), tendered for filing a revised Schedule D to its Amended and Restated Power Coordination Agreement with Soyland Power Cooperative, Inc.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER98–1254–000]

Take notice that on December 30, 1997, Commonwealth Edison Company (ComEd), submitted for filing three Service Agreements establishing Avista Energy, Inc. (AVI), Plum Street Energy Marketing, Inc., (PSEM), and Tenaska Power Services Co. (TPS), as non-firm transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of December 30, 1997, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon PSEM, TPS, and the Illinois Commerce Commission.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER98–1255–000]

Take notice that on December 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Entergy Services, as agent for Entergy Arkansas.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Constellation Power Source, Inc.

[Docket No. ER98–1256–000]

Take notice that on December 30, 1997, constellation Power Source, Inc. (CPS), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that CPS had completed all the steps for pool membership. CPS requests that the Commission amend the WSPP Agreement to include it as a member.

CPS requests an effective date of December 31, 1997, for the proposed amendment. Accordingly, CPS requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee and WSPP's General Counsel.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Tucson Electric Power Company

[Docket No. ER98–1257–000]

Take notice that on December 30, 1997, Tucson Electric Power Company (TEP), tendered for filing the following service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under the agreements. The details of the service agreements are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

3. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

4. Service Agreement for Firm Point-to-Point Transmission Service with PacifiCorp dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. The Toledo Edison Company

[Docket No. ER98–1258–000]

Take notice that on December 30, 1997, The Toledo Edison Company filed an Amendment to the Interconnection and Service Agreement between The Toledo Edison Company and American Municipal Power-Ohio, Inc., Toledo Rate Schedule FERC No. 34, dated May 1, 1989, to amend Service Schedules A, B, C, J, and K.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Boston Edison Company

[Docket No. ER98–1259–000]

Take notice that on December 30, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff), for Cinergy Services, Inc., (Cinergy). Boston Edison requests that the Service Agreement become effective as of December 1, 1997.

Edison states that it has served a copy of this filing on Cinergy and the Massachusetts Department of Public Utilities.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services, Inc.

[Docket No. ER98–1260–000]

Take notice that on December 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Entergy Power Marketing Corp., (Entergy).

Cinergy and Entergy are requesting an effective date of December 22, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. The Washington Water Power Company

[Docket No. ER98–1262–000]

Take notice that on December 31, 1997, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Short-Term Firm Point-To-Point Transmission Service and Non-Firm Point-To-Point Transmission Service with Avista Energy, Inc. WWP requests that the Service Agreement be given an effective date of December 23, 1997.

Copies of this filing have been provided to the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. New Energy Ventures, L.L.C.

[Docket No. ER98–1263–000]

Take notice that on December 31, 1997, New Energy Ventures, L.L.C. (NEV LLC), submitted for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that NEV LLC has satisfied the requirements for WSPP membership. Accordingly, NEV LLC requests that the Commission amend the WSPP Agreement to include it as a member.

NEV LLC requests waiver of the 60-day prior notice requirement to permit its membership in the WSPP to become effective as of December 31, 1997, the date of filing.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. American Electric Power Service Corporation

[Docket No. ER98–1264–000]

Take notice that on December 31, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff. 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 respectfully requests the Commission to permit this service agreement to become effective upon 60 days notice (March 1, 1998).

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: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. FirstEnergy System

[Docket No. ER98–1265–000]

Take notice that on December 31, 1997, FirstEnergy System filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for, Carolina Power & Light Company, ConAgra Energy Services, Incorporated, Vitol Gas & Electric, LLC, Wisconsin Electric Power Company, Commonwealth Edison Company, and GPU Energy, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under the Service Agreements is December 3, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Pacific Gas and Electric Company

[Docket No. ER98–1266–000]

Take notice that on December 31, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing Modification A000 to Contract No. DE-AC03–97SF21478 the Special Facilities Agreement for the Installation, Operation and Maintenance of Parallel Interconnection Facilities for the Lawrence Livermore National Laboratory (Modification) between PG&E and the United States of America, Department of Energy, Oakland Operations Office (DOE/OAK).

The purpose of the Modification is to assign Contract No. DE–AC03–97SF21478 to the April 8, 1997, Special

Facilities Agreement (Agreement), and to obligate funds for this Agreement. All other terms and conditions will remain unchanged. Copies of this filing have been served upon DOE/OAK, Western and the CPUC.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Louisville Gas and Electric Company

[Docket No. ER98–1268–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Purchase and Sales Agreement between LG&E and CMS Marketing, Services & Trading Company under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Louisville Gas and Electric Company

[Docket No. ER98–1269–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of a Service Agreement between LG&E and City Water, Light and Power, Springfield, Illinois under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Louisville Gas and Electric Company

[Docket No. ER98–1270–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Service Agreement between LG&E and Plum Street Energy Marketing under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Louisville Gas and Electric Company

[Docket No. ER98–1271–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Purchase and Sales Agreement between LG&E and Engage Energy US, L.P., under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Louisville Gas and Electric Company

[Docket No. ER98–1272–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Service Agreement between LG&E and Hoosier Energy under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Louisville Gas and Electric Company

[Docket No. ER98–1273–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Purchase and Sales Agreement between LG&E and Constellation Power Source, Inc., under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Louisville Gas and Electric Company

[Docket No. ER98–1274–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Purchase and Sales Agreement between LG&E and Market Responsive Energy, Inc., under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Louisville Gas and Electric Company

[Docket No. ER98–1275–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Service Agreement between LG&E and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Deborah Ann Beck

[Docket No. ID–3120–000]

Take notice that on December 2, 1997, Deborah Ann Beck (Applicant), tendered for filing an application under Section 305(b) of the Federal Power Act:

Director: St. Joseph Light & Power Company

Senior Vice President, Insurance Operations: The Northwestern Mutual Life Insurance Company

Comment date: February 9, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2425 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Land and Waters

January 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Non-Project Use of Project Land and Waters.

b. Project No.: 2354–054.

c. Date Filed: September 25, 1997.

d. Applicant: Georgia Power Company.

e. Name of Project: North Georgia.

f. Location: The proposed facilities are located on Lake Burton on the Tallulah River in Rabun County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Larry Wall, Georgia Power Company, Bin 20020, 333 Piedmont Avenue, N.E., Atlanta, GA 30308–3374, (404) 526–2054.

i. FERC Contact: Jon Cofrancesco, (202) 219–0079.

j. Comment Date: March 5, 1998.

k. Description of Project: Georgia Power Company, licensee for the North Georgia Project, proposes to grant permission to Cherokee Marina, Inc. to install 12 covered, boat slips adjacent to Cherokee Marina, Inc.'s existing boat storage facilities located on Lake Burton.

l. This notice also consists of the following standard paragraphs: B, C1, and 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, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2428 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Aesthetic Flow Release Plan Pursuant to Article 409 of the License

January 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Aesthetic Flow Release Plan pursuant to Article 409 of license.

b. Project No: 2354–059.

c. Date Filed: January 2, 1998.

d. Applicant: Georgia Power Company.

e. Name of Project: North Georgia Project.

f. Project location: Flows will be released through Tallulah Gorge State Park in Habersham and Rabun Counties, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Michael Phillips, Georgia Power Company, 333 Piedmont Avenue-Bin 10170, Atlanta, GA 30308–3374, (404) 506–2392.

i. FERC Contact: Patti Pakkala, (202) 219–0025.

j. Comment Date: March 12, 1998.

k. Description of Project: Georgia Power Company, licensee for the North Georgia Project, has filed an aesthetic flow plan pursuant to article 409 of the project license issued on October 3, 1996. The filed plan proposes aesthetic flow releases for 28 days during the year. As proposed, the flows will occur on weekend days during spring and late summer. During the month of October, the flows will be released on Wednesdays and Fridays, with the exception of the last week of the month when the flows will be released on weekend days.

1. This notice also consists of the following standard paragraphs: B, C1, and 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, 888 First Street NE., Washington, DC 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2429 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Open Access Transmission Service Tariff; Correction

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice; Correction.

SUMMARY: The Western Area Power Administration published a document in the **Federal Register** of January 6, 1998, adopting its Open Access Transmission Service Tariff (Tariff). The document contains errors which need to be corrected.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert J. Harris, Power Marketing Manager, Upper Great Plains Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7394

Mr. Dave Sabo, CRSP Manager, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493

Mr. Anthony H. Montoya, Power Marketing Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2789

Mr. James D. Keselburg, Power Marketing Manager, Rocky Mountain Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7370

Ms. Zola Jackson, Power Marketing Manager, Sierra Nevada Region,

Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4421

Mr. Robert Fullerton, Corporate Communications Office, Western Area Power Administration, Post Office Box 3402, Golden, CO 80401–0098, (303) 275–2700

Corrections

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 524, in the eighth paragraph of the left column, replace ''them'' with ''the Transmission Customer''. The section will then read:

Comment: Several commentors strongly encouraged the inclusion of transmission losses in Sections 15.7 and 28.5 of the Tariff and that the associated section in the applicable Service Agreements be removed, thus providing the Transmission Customer with some reasonable assurance that these factors will be applied in a non-discriminatory and comparable manner.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 524, in the first paragraph of the middle column, ninth line, insert ''Transmission Customer'' after ''Regional Offices(s)'' and before ''s''. Also delete the ''(s)'' from ''Regional Offices(s)''. The section will then read:

Response: Since this is a Western-wide document and transmission loss factors are calculated separately for each Transmission System, Sections 15.7 and 28.5 of the pro forma tariff were modified to allow the applicable transmission loss percentages to be included in the Regional Office specific Service Agreements. Each of Western's Regional Offices periodically modifies its Transmission System loss factors based on system losses and all of its Regional Office(s) Transmission Customers are subject to these loss factors.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 554, in the third column the sentence in brackets immediately above paragraph 14.0 that reads ''[This section will be included as appropriate at the Transmission Provider's discretion]'' appears to relate to paragraph 13.0, but actually applies to paragraph 14.0. The sentence in brackets should be separated from paragraph 13.0 with a line return. Once separated, paragraphs 13.0 and 14.0 will read as follows:

13.0 *Charges for Service:* Charges for Firm Point-to-Point Transmission Service and associated Ancillary Services shall be calculated in accordance with [Rate Schedules] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

[This section will be included as appropriate at the Transmission Provider's discretion]

14.0 *Independent System Operator:* The Parties understand that the Transmission Provider may join an independent system operator under Commission jurisdiction. In the event the Transmission Provider either joins or is required to conform to protocols of the independent system operator, the Parties agree that the Transmission Provider either may (1) make any changes necessary to conform to the terms and conditions required by Commission approval of the independent system operator, or (2) terminate this Service Agreement by providing a one-year written notice to the Transmission Customer.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 555, in the middle column the sentence in brackets immediately above paragraph 13.0 that reads ''[This section will be included as appropriate at the Transmission Provider's discretion]'' appears to relate to paragraph 12.0, but actually applies to paragraph 13.0. The sentence in brackets should be separated from paragraph 12.0 with a line return. Once separated, paragraphs 12.0 and 13.0 will read as follows:

12.0 *Charges for Service:* Charges for Non-Firm Point-to-Point Transmission Service and associated Ancillary Services shall be calculated in accordance with [Rate Schedules] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

[This section will be included as appropriate at the Transmission Provider's discretion]

13.0 *Independent System Operator:* The Parties understand that the Transmission Provider may join an independent system operator under Commission jurisdiction. In the event the Transmission Provider either joins or is required to conform to protocols of the independent system operator, the Parties agree that the Transmission Provider either may (1) make any changes necessary to conform to the terms and conditions required by Commission approval of the independent system operator, or (2) terminate this Service Agreement by providing a one-year written notice to the Transmission Customer.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 556, in the third column the sentence in brackets immediately above paragraph 11.0 that reads ''[This section will be included as appropriate at the Transmission Provider's discretion]'' appears to relate to paragraph 10.0, but actually applies to paragraph 11.0. The sentence in brackets should be separated with line return from paragraph 10.0. Once separated, paragraphs 10.0 and 11.0 will read as follows:

10.0 *Charges for Service:* Charges for associated Ancillary Services shall be calculated in accordance with [Rate Schedule] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

[This section will be included as appropriate at the Transmission Provider's discretion]

11.0 *Independent System Operator:* The Parties understand that the Transmission Provider may join an independent system operator under Commission jurisdiction. In the event the Transmission Provider either joins or is required to conform to protocols of the independent system operator, the Parties agree that the Transmission Provider either (1) may make any changes necessary to conform to the terms and conditions required by Commission approval of the independent system operator, or (2) terminate this Service Agreement by providing a one-year written notice to the Transmission Customer.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 557, in the first column in the language included in Attachment G, there is an unnecessary gap between the words ''UGPR) Network Integration'' and ''Transmission provided . . .'' What looks like the final paragraph of Attachment G, is actually not supposed to be a separate paragraph at all. It is the remainder of the alternative language to be used only by the Upper Great Plains Region, which begins with the words ''Network Integration Transmission provided by the . . .'' The paragraph should read as follows:

(Alternative language to be used only by UGPR) Network Integration Transmission provided by the Transmission Provider will be subject to all operating and scheduling procedures and protocols of the Mid-Continent Area Power Pool (MAPP) as stated in the

MAPP Restated Agreement and the MAPP Operating Handbook as existing and as may be amended, superseded or replaced. The Transmission Provider will, therefore, not enter into a separate Network Operating Agreement with each Network Customer.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 558 in the third column, third and last paragraphs, each reference to ''Western Regional Transmission Group'' and ''Southwest Regional Transmission Group'' should be replaced with ''Western Regional Transmission Association'' and ''Southwest Regional Transmission Association'' respectively.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 559 in the first column, third and sixth paragraphs, each reference to ''Western Regional Transmission Group'' should be replaced with ''Western Regional Transmission Association''.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, in the section that begins in the third column, last paragraph on page 558 and concludes in the first column on page 559 the following sentence should have been included in the section, ''For the purpose of implementing this Tariff, references in the Tariff to ''deliveries of long-term firm capacity and energy'' include the deliveries of Boulder Canyon Project electric service over the DSR Transmission System.'' The section should read as follows:

Desert Southwest Region

The Desert Southwest Region (DSR) manages transmission facilities in the states of Arizona, California, and Nevada. The DSR transmission facilities are interconnected with transmission facilities of several non-Federal entities. DSR is a member of the Southwest Regional Transmission Group and the Western Regional Transmission Association and its system is operated in the WSCC. For the purpose of implementing this Tariff the transmission facilities of the Parker-Davis Projects and the Pacific Northwest-Pacific Southwest Intertie Project will be utilized. For the purpose of implementing this Tariff, references in the Tariff to ''deliveries of long-term firm capacity and energy'' include the deliveries of Boulder Canyon Project electric service over the DSR Transmission System. DSR manages a control area operations center through its Desert Southwest Regional Office located in Phoenix, Arizona.

The DSR application processing fee will be $1,700.

Dated: January 16, 1998.

Michael S. Hacskaylo,

Acting Administrator.

[FR Doc. 98–2472 Filed 1–30–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5958–20]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Adam's Mark Hotel, Mobile, Alabama.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000 at (228) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held at the Adam's Mark Hotel, Mobile, Alabama. The committee will meet from 1:00 p.m. to 5:00 p.m. on February 25 and from 9:00 a.m. to 3:00 p.m. on February 26. Agenda items will include: Organizational Changes; Special Federal/State/Local Program Reports; Legislative Program Briefing; Focus Team and Committee Membership Status and Bylaws; Program Area Status Reviews; Support Committees and Teams Reports; and Special Activity Reports.

The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program.

[FR Doc. 98–2488 Filed 1–30–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

January 28, 1998.

Deletion of Agenda Items From January 29th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the January 29, 1998, Open Meeting and previously listed in the Commission's Notices of January 22, 1998 and January 23, 1998.

Item No.	Bureau	Subject
1	Mass Media	Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider petitions for reconsideration filed in response to the Commission's Fifth Report and Order in the digital television proceeding.
4	Office of Engineering and Technology	Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider petitions for reconsideration filed in response to the Commission's Sixth Report and Order regarding allotment of channels for digital television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–2585 Filed 1–29–98; 12:14 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974: Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the FCC is issuing notice of our intent to amend the system of records entitled the Pay, Leave, and Travel Records—FCC/Central 1, to include new routine uses.

We invite public comment on this publication.

DATES: Written comments on the proposed amended system should be received by March 4, 1998. Office of Management and Budget, which has oversight responsibility under the Privacy Act to review the system may submit comments on or before March 16, 1998. The amended system shall be effective without further notice on March 16, 1998, unless the FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC submitted reports on this amended system to both houses of Congress.

ADDRESSES: Comments should be mailed to Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, NW, Washington, DC 20554. Written comments will be available for inspection at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, 1919 M Street, NW, Washington, DC 20554, Telephone number, (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the FCC will disclose data from its Pay, Leave, and Travel Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the FCC, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each FCC employee, within one month of the end of the quarterly reporting period.

Information submitted by the FCC to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by FCC to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the Pay, Leave, & Travel Records system notice originally published in the **Federal Register** on May 18, 1992, 57 FR 21091 is amended as set forth below. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

9. The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

FCC/Central—1

SYSTEM NAME:

Pay, Leave, and Travel Records.

SYSTEM LOCATION:

Personnel Resources Division, Associate Managing Director—Human Resources Management; Financial Management Division; Associate Managing Director—Operations; Office of Managing Director; administrative offices of the Federal Communications Commission (FCC), 1919 M Street, NW, Washington, DC 20554; and FCC field offices. (See FCC telephone directory for field office addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains various records required to administer the pay, leave, and travel requirements of the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3102, 3309.

PURPOSE(S):

1. To authorize payroll deductions for allotments, savings bonds, charitable contributions, union dues, health benefits and life insurance; collect indebtedness for overpayment of salary and unpaid Internal Revenue taxes; pay income tax obligation to Internal Revenue Service; authorize issuing of salary checks by Treasury Department obtain reimbursement of travel expenses for official business; report gross wages and separation information for unemployment compensation; pay any uncollected compensation due a deceased employee; and provide for a summary of employees payroll data and retirement contributions.

2. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation

or for enforcing or implementing the statute, rule, regulation or order.

2. A record from this system may be disclosed to request information from a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, if necessary to obtain information relevant to a Commission 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. A record from this system 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.

4. A record on an individual in this system of a records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

5. A record from the system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

6. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

7. A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

8. A record in this system of records may be disclosed to the Office of Personnel Management in order for it to carry out its legally authorized Government-wide functions and duties.

9. The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an automated personnel and payroll system as well as manual files in folders, cards, magnetic tapes, and loose leaf binders.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Records are maintained in filing cabinets in an office that is locked when not occupied by staff. Automated and manual records are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for varying periods of time from one year to permanently in accordance with General Records Schedules issued by the National Archives and Records Administration. Disposal is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of the Managing Director, FCC, 1919 M St. NW., Washington, DC 20554 or the appropriate administrative office in which the individual is employed.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested.

A. Full name.

B. Date of Birth.

C. Social Security Number.

D. Mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above. Requesters should reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Same as above. Requesters should reasonably specify the record contents being contested.

RECORD SOURCE CATEGORIES:

Information is provided by management officials and by the individuals on whom the record is maintained.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2389 Filed 1–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 1998–5]

Filing Dates for The California Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special election on April 7, 1998, to fill the U.S. House seat in the Forty-Fourth Congressional District held by the late Congressman Sonny Bono. Should no candidate achieve a majority vote, a Special Runoff Election will be held on June 2, 1998, among the top vote-getters of each qualified political party, including qualified independent candidates.

Committees required to file reports in connection with the Special General Election on April 7 should file a 12-day Pre-General Election Report on March 26, 1998. Committees required to file reports in connection with both the Special General and Special Runoff Election must file a 12-day Pre-General Election Report on March 26, an April Quarterly Report on April 15, a Pre-Runoff Report on May 21, and a consolidated Post-Runoff & July Quarterly Report on July 15, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on March 26, 1998, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through March 18,

1998; an April Quarterly Report on April 15, 1998, with coverage dates from March 19 through March 31, 1998; a Pre-Runoff Report on May 21, 1998, with coverage dates from April 1 through May 13, 1998; and a consolidated Post-Runoff & July Quarterly Report on July 15, 1998, with coverage dates from May 14 through June 30, 1998.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on March 26, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through March 18; an April Quarterly Report on April 15, with coverage dates from March 19 through March 31; and a Post-General Report on May 7, with coverage dates from April 1 through April 27, 1998.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on May 21, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through May 13, and a consolidated Post-Runoff & July Quarterly Report on July 15, with coverage dates from May 14 through June 30, 1998.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Close of books [1]	Registered/ Certified mailing date [2]	Filing date
If only the special general is held (04/07/98), committees must file:			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98
Post-General	04/27/98	05/07/98	05/07/98
If two elections are held, but a Committee is involved only in the special general (04/07/98):			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98
Committees involved in the special general (04/07/98) and special runoff (06/02/98) must file:			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98
Pre-Runoff	05/13/98	05/18/98	05/21/98
Post-Runoff & July Quarterly [3]	06/30/98	07/15/98	07/15/98
Committees involved in the special runoff (06/02/98) only must file:			
Pre-Runoff	05/13/98	05/18/98	05/21/98
Post-Runoff & July Quarterly [3]	06/30/98	07/15/98	07/15/98

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] Committees should file a consolidated Post-Runoff and July Quarterly Report by the filing date of the July Quarterly Report.

Dated January 28, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–2461 Filed 1–30–98; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following teleconference meeting will be held:

NAME: Technical Mapping Advisory Council.

DATE OF MEETING: February 12, 1998.

PLACE: The FEMA Conference Operator in Washington, DC will arrange the teleconference. Individuals interested in participating should fax a request including their telephone number to (202) 646–4596 by February 6, 1998.

TIMES: 11:00 a.m. to 1:00 p.m.

PROPOSED AGENDA: Council members will provide progress reports on subgroup assignments and action items from the last meeting.

STATUS: This teleconference meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, D.C. 20472; telephone (202) 646–2756 or by fax as noted above.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–2462 Filed 1–30–98; 8:45 am]

BILLING CODE 6718–04–P]

FEDERAL HOUSING FINANCE BOARD

[No. 98–01]

Statement of Policy: Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Proposed policy statement.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is proposing to adopt a statement of policy entitled ''Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System.'' The policy statement will generally require that the combined annual and quarterly financial reports of the Federal Home Loan Bank (FHLBank) System be prepared in accordance with the disclosure rules applicable to Securities and Exchange Commission (SEC) registrants.

DATES: The Finance Board will accept comments through March 19, 1998.

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

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Director, Financial Analysis and Reporting Division, Office of Policy, 202–408–2845, or Deborah F. Silberman, Acting General Counsel, Office of General Counsel, 202–408–2570, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: The FHLBank Act (12 U.S.C. 1431(c)) authorizes the Finance Board to issue FHLBank consolidated obligations. As issuer of the FHLBank System debt, the Finance Board prepares the combined annual and quarterly financial reports that are used as principal disclosure documents in conjunction with the offering of this debt.

Until now, the Board of Directors of the Finance Board has established no formal policies as to the scope and content of the combined annual and quarterly financial reports of the FHLBank System. Since the establishment of the Finance Board in 1989, the combined annual report has grown in length as the disclosures have become more detailed and more comprehensive. Current practices represent an evolving consensus reached among Finance Board staff, FHLBank staff, the independent outside accountant for the combined financial report, and outside bond counsel. As generally accepted accounting principles and industry disclosure standards have changed, so have the combined annual and quarterly reports keep up with industry disclosure standards.

In most but not all respects, the combined annual and quarterly financial reports are similar in scope and content to reports that registrants must file with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, (1934 Act). The Finance Board staff prepares the combined financial reports using financial and other information provided by the FHLBanks and the Office of Finance. Office of Finance staff and outside bond counsel review these combined reports. The independent outside accountant audits the financial statements that appear in the combined annual financial report. In addition, the independent outside accountant reviews but does not issue an opinion on the combined quarterly financial statements.

The Finance Board's proposed policy statement would require that the combined annual and quarterly financial reports of the FHLBank System follow existing SEC disclosure rules with certain specific exceptions. For three reasons, the Finance Board is proposing the adoption of this policy statement concerning financial and other disclosures in the combined annual and quarterly financial reports. The first reason is that Finance Board, as one of the largest issuers of debt securities in the U.S. capital markets, believes it has an obligation to provide adequate disclosures that generally agree with industry standards.[1] In addition, one of the statutory responsibilities of the Finance Board is to ensure that the FHLBanks remain able to raise funds in the capital markets (see 12 U.S.C. 1422a(a)(3)(b)(iii)). By adopting the proposed statement of policy, the Finance Board will address a significant policy matter on how the FHLBank System disclosure is provided to maintain the ability of the FHLBanks to raise funds in the capital markets. The second reason is that SEC disclosure rules represent ''best practice,'' and the financial and other disclosures provided by the FHLBank System should follow this standard.

Thirdly, the proposed policy statement will address recent Congressional actions that could have subjected the FHLBanks and the Finance Board to the registration and reporting requirements of the Securities Act of 1993, 15 U.S.C. 77c(a)(2)), (1933 Act), and the 1934 Act.

The proposed policy affirms existing practice generally to provide disclosure that complies with SEC requirements. The Finance Board solicits comments on the scope, adequacy, and usefulness of the existing and proposed disclosures and whether the Finance Board should provide any additional disclosures.

Disclosure Standards

Section 3(a)(2) of the 1933 Act exempts the Finance Board and the FHLBanks from all SEC registration requirements under the 1933 Act. In addition, publicly traded commercial banks and savings associations that are not part of holding companies are exempt from SEC registration under the 1933 Act, but must register and file reports with their primary Federal regulators pursuant to 1934 Act. Further, the Office of the Comptroller of the Currency (OCC) has adopted securities offering disclosure policies for non-affiliated commercial banks that are almost identical to SEC disclosure requirements. The Office of Thrift Supervision (OTS) also has securities offering disclosure rules for its regulated institutions that mirror SEC disclosure requirements. The OCC, OTS, and Federal Deposit Insurance Corporation (FDIC) all require their regulated institutions to file reports under the 1934 Act in conformance with the forms and requirements promulgated by the SEC under the 1934 Act or in accordance with forms and requirements adopted by the agencies but modeled after SEC requirements and forms. The SEC disclosure rules represent the industry standard, and the bank and thrift regulators have largely adopted these standards.

The proposed policy statement would require as a general matter that the combined annual and quarterly financial reports of the FHLBank System meet the SEC disclosure standards, with noted exceptions. The combined annual financial reports already generally comply with SEC disclosure requirements, with several exceptions. These current exceptions include biographical information about FHLBank directors, executive compensation, capital stock holdings, and related-party transactions. In addition, the 1996 combined annual report did not provide disclosures about derivatives as comprehensive as that required by new SEC derivative disclosure rules adopted in 1997. In following the SEC disclosure rules, the combined annual financial report would, under the proposed policy statement, include new disclosures on compensation, capital stock holdings, related-party transactions, and property and premises.

The SEC rules were broadly written, and thus contain disclosures that were not intended for wholesale financial institutions such as the FHLBanks. Furthermore, the FHLBanks are cooperatives where officers of members serve on the boards of directors of the FHLBanks. As such, related-party transactions are to be expected.

Exceptions to Following SEC Rules

The FHLBank System presents a number of unique institutional factors. These include the cooperative nature of the System, the fact that the FHLBanks are wholesale financial institutions, and the unusual role of the Finance Board as issuing the debt and preparing the financial report for combined 12 regulated entities. For these reasons,

[1] At September 30, 1997, consolidated obligations outstanding were $284.5 billion, and the amount of consolidated obligations issued in the first nine months of 1997 was $1.572 trillion.

some of the SEC disclosure rules are either inapplicable or inappropriate for the FHLBank System.

The combined annual and quarterly financial reports would, under the proposed policy statement, not follow the SEC rule in the following areas:

Derivatives. On February 10, 1997, the SEC published a final rule that established new required disclosures for derivative transactions and holdings (Item 305, Regulation S–K, 17 CFR 229.305) (SEC rule). The SEC rule applies to all filings made with the SEC after June 15, 1997, and encompasses all types of derivatives—commodity, currency, equity, and financial. The Finance Board believes that the only facet of the FHLBanks' operations that meets the threshold test for disclosure in the SEC rule is the interest-rate risk associated with financial derivatives.

The rule presents only one issue unique to the FHLBank System. The System combined financial report rolls up the financial information of 12 independent portfolios. Many complex financial organizations fall within the scope of the rule, but these complex organizations ultimately report to a single board of directors. The FHLBanks report to 12 separate boards of directors, and each has differing investment strategies, yet each FHLBank is jointly and severally liable for the consolidated obligations of the FHLBank system issued by the Finance Board.

Information for the System's quantitative disclosures would come from simulation of interest-rate shocks in the asset-liability management models of the FHLBanks. The FHLBanks use different modeling software and assumptions. Any analysis that would roll up the results from 12 separate models should first ensure some uniformity of assumptions and methodology to make sure the results will be meaningful.

In light of these complexities, the Finance Board proposes that the FHLBanks provide the Finance Board the information required to make the required qualitative disclosures about derivatives in the 1997 combined financial report, but proposes a one-year delay in providing the quantitative disclosures in the combined annual financial report. Finance Board staff will work with FHLBanks' staff in developing a methodology for arriving at a common set of assumptions for the quantitative analysis that would appear in the 1998 combined financial report.

Related-Party Transactions. SEC disclosure rules require the disclosure of any transaction greater than $60,000 between a director and a related party. Due to the cooperative nature of the System, it is expected that the FHLBanks will have business dealings with members whose officers also serve as directors of the FHLBank. It would be unwieldy to present full disclosures of all credit relationships between the FHLBanks and the members their directors represent in the combined annual report. The FHLBanks may wish to consider making this disclosure in their individual annual reports. However, the Finance Board proposes that the combined annual report present an aggregate disclosure about the percentage of advances to members whose officers serve as directors of an FHLBank. In addition, it proposes that the combined annual report disclose the amount of advances to individual members if those advances amounted $1 billion or more and indicate which of these members had an officer that also served as an FHLBank director. The Finance Board specifically solicits comments on whether the $1 billion threshold is appropriate or whether the threshold should be higher, lower, or a different type of threshold.

Information about Directors and Officers. The SEC disclosure rules require information about all directors and executive officers of the registrant. The required information includes name, age, current and previous positions with the registrant, terms of office, family relationships with the registrant, business experience, and other directorships. Presenting biographical information on all FHLBank directors and all FHLBank executive officers in the combined annual report would be unwieldy. The FHLBanks may wish to consider making this disclosure in their individual annual reports. The Finance Board proposes that the existing biographical information about members of the Board of Directors of the Finance Board and FHLBank presidents be expanded to include the age of those persons. In addition, the Finance Board proposes to provide similar biographical information about the managing director of the Office of Finance and the chairs and vice chairs of the FHLBanks.

Submission of Matters to a Vote of Stockholders. The SEC disclosure rule requires registrants to provide certain information about matters submitted to stockholders for a vote. The only item that FHLBank stockholders vote upon is the annual election of directors. For two reasons, the Finance Board has determined to exclude election-of-director information from the combined annual financial statements. First, matters concerning election of directors can be handled more expeditiously and efficiently by separate mailings to an FHLBank's stockholders as a part of the election process. Second, election of directors occurs in the fall, but the annual combined financial report is published in late spring, making it impossible to provide timely information about the election of directors in the combined annual report.

Exhibits. The exhibits specified in the SEC disclosure rules are generally not applicable.

The text of the proposed policy follows:

Federal Housing Finance Board—Statement of Policy

Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System

1. Policy Objective

The Federal Housing Finance Board (Finance Board) policy on Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System provides that purchasers of Federal Home Loan Bank (FHLBank) System consolidated obligations receive the same types of disclosures that Securities and Exchange (SEC) registrants must provide. As issuer of the debt for the FHLBank System, the Finance Board provides many of the disclosures normally made in conjunction with the offering of FHLBank System debt in the combined annual and quarterly financial reports of the FHLBank System. The Finance Board has the explicit statutory responsibility to ensure that the FHLBanks are able to raise funds in the capital markets, and the provision of industry-standard disclosures facilitates the issuance of this debt.

2. General Policy

To the extent they are applicable to the FHLBank System, it is the policy of the Finance Board that the combined annual and quarterly financial reports of the FHLBank System present the disclosures required by Regulations S–K and S–X of the SEC (*see* 17 CFR parts 229 and 210).

3. Exceptions to the General Policy

a. *Derivatives.* Item 305, Regulation S–K, 17 CFR 229.305, requires certain registrants to present information about their derivatives holdings and activities. The requirement includes a discussion of accounting policy for derivatives, a qualitative discussion about derivatives by management, and an analysis that presents quantitative information about derivatives. The presentation of the required quantitative information will

be deferred until the 1998 combined annual report of the FHLBank System.

b. *Related-Party Transactions.* Item 404 of Regulation S–K, 17 CFR 229.404, requires the disclosure of certain relationships and related transactions. In light of the cooperative nature of the FHLBank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will provide disclosures on (1) the percent of advances to members an officer of which serves and an FHLBank director, (2) a listing of all members that hold $1 billion or more of advances, with a further disclosure that indicates which of these members has an officer that serves as an FHLBank director, and (3) a general disclosure about equitable advances pricing.

c. *Biographical Information.* The biographical information required by Items 401 and 405 of Regulation S–K, 17 CFR 229.401, 229.405, will be provided only for the members of the Board of Directors of the Finance Board, FHLBank presidents, the managing director of the Office of Finance, and FHLBank chairs and vice chairs.

d. *Compensation.* The information on compensation required by Item 402 of Regulation S–K, 17 CFR 229.402, will be provided only for members of the Board of Directors of the Finance Board, FHLBank presidents, and the managing director of the Office of Finance.

e. *Submission of Matters to a Vote of Stockholders.* No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10–K, 17 CFR 249.310. The only item shareholders vote upon is the annual election directors.

f. *Exhibits.* The exhibits required by Item 601 of Regulation S–K, 17 CFR 229.601, are not applicable and will not be provided.

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

Dated: January 21, 1998.

Bruce A. Morrison,

Chairperson.

[FR Doc. 98–1968 Filed 1–30–98; 8:45 am]

BILLING CODE 6725–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–010689–070.

Title: Transpacific Westbound Rate Agreement (''TWRA'').

Parties:

American President Lines, Ltd. (''APL'')
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Container Line, Ltd. (''NOL'')
Nippon Yusen Kaisha Ltd.
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification revises TWRA's voting provisions applicable to APL, to accommodate APL's sale to NOL. The parties have requested short review.

Agreement No.: 202–010689–071.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
APL Co. PTE Ltd.
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Container Line, Ltd.
Nippon Yusen Kaisha Ltd.
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification reflects the withdrawal of Neptune Orient Container Line, Inc. as of April 8, 1998. It also adds APL Co. PTE Ltd. as a party, although American President Lines, Ltd. and APL Co. PTE Ltd. will operate and hold out as a single carrier.

Agreement No.: 202–010776–108.

Title: Asia North America Eastbound Rate Agreement (''ANERA'').

Parties:

American President Lines, Ltd. (''APL'')
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Container Line, Ltd. (''NOL'')
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification revises ANERA's voting and expense sharing provisions applicable to APL, to accommodate APL's sale to NOL.

Agreement No.: 232–011607.

Title: Columbus/Blue Star/ANZDL Space Charter and Sailing Agreement

Parties:

Columbus Line
Blue Star Line (North America) Limited
Australia-New Zealand Direct Line

Synopsis: The proposed Agreement would permit the parties to charter space to one another, to coordinate their vessel operations, and to cooperate with respect to terminal and related shore side activities in the trade between United States Pacific Coast ports, and inland U.S. points via such ports, and ports and points in Australia, New Zealand, and various South Pacific islands. The parties have requested a shortened review period.

Agreement No.: 217–011608.

Title: Blue Star/BHP IMT Space Charter Agreement.

Parties:

Blue Star (North America) Limited
BHP International Marine Transport

Synopsis: The proposed Agreement will permit the parties to charter space to each other in the trade between the U.S. Atlantic, Gulf and Pacific Coasts and ports in Australia and New Zealand. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: January 27, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–2412 Filed 1–30–98; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Comment Request Entitled Placement of Orders and Ordering Information

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0248).

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), that it is

requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0248, Placement of Orders and Ordering Information. This information collection advances improved information technology usage by facilitating the use of electronic data interchange (EDI). GSA's Federal Supply Service has discontinued placing paper delivery orders and now maximizes the use of computer-to-computer EDI. As an alternative, a contractor can receive EDI delivery orders through facsimile transmission. This extended use of EDI furthers congressional and executive branch policies that Federal agencies provide leadership in advancing environmental objectives through technology and the expanded use of electronic commerce.

DATES: April 3, 1998.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th & F Streets, NW, Washington, DC 20405.

Annual Reporting Burden: Respondents: 260; annual responses: 260; average hours per response: .30; burden hours: 130.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

COPY OF PROPOSAL: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th & F Streets NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: January 27, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–2477 Filed 1–30–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement 123: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Grants for Education Programs in Occupational Safety and Health, Program Announcement 123.

Times and Dates: 8 p.m.–10:30 p.m., February 22, 1998; 8 a.m.–6 p.m., February 23, 1998; 8 a.m.–5 p.m., February 24, 1998.

Place: Commonwealth Hilton Hotel, I–75 and Turfway Road, Florence, Kentucky 45275.

Status: Open: 8 p.m.–9:30 p.m., February 22, 1998; Closed: 9:30 p.m., February 22, 1998, through 5 p.m., February 24, 1998.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 123.

Portions of this meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person for More Information: Bernadine Kuchinski, Ph.D., Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, CDC, M/S D–40, Atlanta, Georgia 30333, telephone 404/639–3342.

Dated: January 26, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2438 Filed 1–30–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Time and Date: 2 p.m.–4:30 p.m., February 18, 1998.

Place: National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1006, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85.)

Status: Open: 2 p.m.–2:15 p.m., February 18, 1998. Closed: 2:15 p.m.–4:30 p.m., February 18, 1998.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

Matters to be Discussed: Agenda items include announcements, discussion of review procedures, future meeting dates, and review of grant applications.

Beginning at 2:15 p.m., through 4:30 p.m., February 18, the Committee will meet to conduct a review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–4580.

Dated: January 26, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2440 Filed 1–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites; Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Services Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and dates: 1 p.m.–5 p.m., February 18, 1998. 8:30 a.m.–5 p.m., February 19, 1998. 8:30 a.m.–12 noon, February 20, 1998.

Place: Hilton Hotel, 23 Ocean Drive, Palmetto Dunes, Hilton Head Island, South Carolina 29938, telephone 803/842–8000, fax 803/842–4988.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and

Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities and the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

Dated: January 26, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2436 Filed 1–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0507]

Mountaire Vitamins, Inc., et al.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of eight new animal drug applications (NADA's) as requested by the sponsors. The NADA's provide for use of products that are no longer made or marketed. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries that reflect approval of the NADA's.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: The following sponsors have requested withdrawal of approval of NADA's that provide for use of the animal drug products noted:

NADA No.	Drug name	Sponsor name and address
38–247	Hygromycin B Type A medicated article	Mountaire Feeds, Inc., 124 East Fifth, P.O. Box 5391, North Little Rock, AR 72119, formerly Mountaire Vitamins, Inc., 400 North Poplar St., P.O. Box 9210, North Little Rock, AR 72119
44–013	Tylosin Type A medicated article	do.
65–273	Chloramphenicol capsules, USP	Zenith Goldline Pharmaceuticals, Inc., 140 Legrand Ave., Northvale, NJ 07647, formerly Zenith Laboratories, Inc., 50 Williams Dr., Ramsey, NJ 07446
65–456	Tetracycline HCl capsules, USP	do.
95–736	Hygromycin B Type A medicated article	Mountaire Feeds, Inc.
98–895	Starbar GX–118 Topical (phosmet)(prolate)	Wellmark International, 1000 Tower Lane, Bensenville, IL 60106, formerly Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018
137–138	Pyrantel tartrate Type A medicated article	Mountaire Feeds, Inc.
139–239	Banminth (pyrantel tartrate) Type A medicated article	Growmark, Inc., 950 North Meridian St., Indianapolis, IN 46204–3909, formerly at 1701 Towanda Ave., Bloomington, IL 61701

The sponsors are requesting withdrawal of approval of the NADA's because the products approved under the NADA's are no longer made or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 38–247, 44–013, 65–273, 65–456, 95–736, 98–895, 137–138, and 139–239, and all supplements and amendments thereto is hereby withdrawn, effective February 12, 1998.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 510.600, 520.390b, 520.2345a, 524.1742, 558.274, 558.485, and 558.625 to reflect the withdrawal of approval of these NADA's.

Dated: January 8, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–2408 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0041]

Ethicon, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ethicon, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of [phthalocyaninato(2-)] copper in coloring nonabsorbable sutures for general and opthalmic surgery made from a blend of poly(vinylidene fluoride) and poly(vinylidene fluoride-co-hexafluoropropylene).

DATES: Written comments on the petitioner's environmental assessment by March 4, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1)), notice is given that a color additive petition (CAP 8C0253) has been filed by Ethicon, Inc., P.O. Box 151, Somerville, NJ 08876–0151. The petition proposes to amend the color additive regulations in § 74.3045 *[Phthalocyaninato(2-)] copper* (21 CFR 74.3045) to provide for the safe use of [phthalocyaninato(2-)] copper in coloring nonabsorbable sutures for general and opthalmic surgery made from a blend of poly(vinylidene fluoride) and poly(vinylidene fluoride-co-hexafluoropropylene).

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 4, 1998, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 15, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–2497 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0009]

Medical Devices; Exemptions From Premarket Notification and Reserved Devices; Class I

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of class I devices, subject to certain limitations, that will be exempt from premarket notification requirements on February 19, 1998. FDA is also publishing a list of those class I devices that FDA believes will remain subject to premarket notification requirements because they meet the new statutory criteria for premarket notification requirements. These lists do not include class I devices that have been previously exempted by regulation from the premarket notification requirements. FDA is taking this action in order to meet a requirement of the Food and Drug Administration Modernization Act of 1997 (the FDAMA). The agency requests comments on whether the list of class I devices that will remain subject to the premarket notification requirements should be modified.

DATES: This notice is effective February 19, 1998. Submit written comments by May 4, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the act (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device, or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section

510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is substantially equivalent within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval. Unless exempted from premarket notification requirements, persons may not market a new device under section 510(k) of the act, unless they receive a substantial equivalence order from FDA or an order reclassifying the device into class I or class II, section 513(i) of the act. On November 21, 1997, the President signed into law the FDAMA (Pub. L. 105–115). Section 206 of the FDAMA, in part, added a new section 510(l) to the act. Under section 501 of the FDAMA, new section 510(l) of the act becomes effective on February 19, 1998. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury (hereafter ''reserved criteria''). Based on these reserved criteria, FDA has evaluated all class I devices to determine which device types should be subject to premarket notification requirements.

In developing the list of reserved devices, the agency considered its experience in reviewing premarket notifications for these device types, focusing on the risk inherent with the device and/or the disease being treated or diagnosed, e.g., devices with rapidly evolving technology or expansions of intended uses. The agency considered the history of adverse event reports under the medical device reporting program for these devices, as well as their history of product recalls. Given the inherent risks with the devices listed and/or the disease or condition being treated or diagnosed, FDA believes that the devices listed as reserved are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury. In this notice, FDA is publishing two lists of devices: (1) A list of the class I devices that FDA believes will be exempt from the premarket notification requirements on February 19, 1998, under section 510(l) of the act, subject to certain limitations from the premarket notification requirements described herein; and (2) a list of the devices that FDA believes fit the reserved criteria under section 510(l) of the act and, therefore, will continue to be subject to premarket notification requirements. These lists do not include class I devices that have been previously exempted by regulation from the premarket notification requirements. FDA believes that class I devices that have previously been exempted generally do not fall within the reserved criteria under section 510(l) of the act. When FDA issues a proposed rule to amend the regulations to codify class I devices that remain subject to the premarket notification requirements, FDA, in limited cases, may propose to revoke the exemption from the premarket notification requirements based on the reserved criteria of section 510(l) of the act.

II. Limitations on Exemptions

As stated previously, FDA believes that the generic types of class I devices listed herein, in addition to a vast majority of class I devices previously exempted, should be exempt from the premarket notification requirements under section 510(l) of the act. FDA further believes, however, that these generic device categories should be exempt only to the extent that they have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device, would not be associated with high morbidity or mortality. FDA believes that certain changes to devices within a generic type that is generally exempt may make the device intended for a use that is of substantial importance in preventing impairment of human health or may make the device present a potential unreasonable risk of illness or injury. Accordingly, devices changed in this manner would fall within the reserved criteria under section 510(l) of the act and would require premarket notification.

FDA believes that devices that have different intended uses than legally marketed devices in that generic type present a potential unreasonable risk of illness or injury because their safety and effectiveness characteristics are unknown. Moreover, FDA believes that in vitro diagnostic devices that are intended for a use, for which a misdiagnosis as a result of using the device, could result in high morbidity or mortality, either are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury.

Accordingly, because FDA believes that devices incorporating the characteristics described above fit within the reserved criteria under section 510(l) of the act, FDA considers any class I device to be subject to premarket notification requirements if the device: (1) Has an intended use that is different from the intended use of a legally marketed device in that generic type; e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals; or (2) operates using a different fundamental scientific technology than that used by a legally marketed device in that generic type, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization or amplification technology rather than culture or immunoassay technology; or (3) is a in-vitro device that is intended: (a) For use in the diagnosis, monitoring or screening of neoplastic diseases with the exception of immunohistochemical devices; (b) for use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism; (c) for measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy; (d) to assess the risk of cardiovascular diseases; (e) for use in diabetes management; (f) to identify or infer the identity of a microorganism directly from clinical material; (g) for detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma; uses noninvasive testing; and (h) for near patient testing (point of care).

Class I devices incorporating such changes or modifications are not exempt from premarket notification because FDA believes they meet the reserved criteria described above, under 510(l).

In addition to the general limitation on exemptions that FDA considers applicable to all class I devices that is described above, FDA also considers certain devices within a generic class to remain subject to the premarket notification requirements because they

either are intended for a use that is of substantial importance in preventing impairment of human health or they present a potential unreasonable risk of illness or injury. For example, FDA, elsewhere in this document, states that it considers liquid bandages generally to be exempt from the premarket notification requirements, but considers a subcategory of those devices, those intended for treatment of burns and other open wounds, to remain subject to the premarket notification requirements. FDA believes that liquid bandages intended for burns and other open wounds should remain subject to this requirement because they are of substantial importance in preventing impairment of human health by helping to prevent infections.

FDA advises additionally that an exemption from the requirement of premarket notification does not mean that the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation.

III. Lists of Devices

The following devices are devices that FDA believes meet the reserved criteria in section 206 of the FDAMA and, therefore, would remain subject to premarket notification under new section 510(l) added to the act:

TABLE 1.—RESERVED CLASS I DEVICES

21 CFR Section	Name of Device
862.1065	Ammonia test system
862.1113	Bilirubin (total and unbound) in the neonate test system
862.1410	Iron (non-heme) test system
862.1415	Iron-binding capacity test system
862.1495	Magnesium test system
862.1580	Phosphorous (inorganic) test system
862.1660	Quality control material (assayed and unassayed)[1]
862.1680	Testosterone test system
862.1775	Uric acid test system
862.3110	Antimony test system
862.3120	Arsenic test system
862.3220	Carbon monoxide test system
862.3240	Cholinesterase test system
862.3600	Mercury test system
864.7040	Adenosine triphosphate release assay
864.8950	Russell viper venom reagent
864.9050	Blood bank supplies
864.9125	Vacuum-assisted blood collection system
864.9195	Blood mixing devices and blood weighing devices[2]
866.2390	Transport culture medium
866.2560	Microbial growth monitor[3]
866.2850	Automated zone reader
866.2900	Microbiological specimen collection and transport device
866.3110	Campylobacter fetus serological reagents
866.3120	Chlamydia serological reagents
866.3235	Epstein-Barr virus serological reagents
866.3370	Mycobacterium tuberculosis immunofluorescent reagents
866.3870	Trypanosoma spp. serological reagents
872.4200	Dental handpiece and accessories
872.6250	Dental chair and accessories[4]
872.6640	Dental operative unit and accessories[5]
872.6710	Boiling water sterilizer
876.5160	Urological clamps for males[6]
878.4460	Surgeon's glove
880.5090	Liquid bandage[7]
880.5680	Pediatric position holder
880.6250	Patient examination glove
880.6375	Patient lubricant
880.6760	Protective restraint
882.1030	Ataxiagraph
882.1420	Electroencephalogram (EEG) signal spectrum analyzer
882.4060	Ventricular cannula[8]
882.4545	Shunt system implantation instrument[9]
884.2980(a)	Telethermographic system[10]
884.2982(a)	Liquid crystal thermographic system[11]
886.4070	Powered corneal burr[12]
886.4300	Intraocular lens guide[13]
886.4370	Keratome
888.1500	Goniometer
890.3850	Mechanical wheelchair
890.5710	Hot or cold disposable packs[14]
892.1100	Scintillation (gamma) camera
892.1110	Positron camera

[1] Meets reserved criteria when assayed and unassayed when used for donor screening.
[2] Meets reserved criteria when automated.
[3] Meets reserved criteria when automated blood culturing systems.
[4] Meets reserved criteria when dental chair with the operative unit.
[5] Meets reserved criteria when it is not the accessory tray to the unit.

[6] Meets reserved criteria when devices are for internal use or are used for females.
[7] Meets reserved criteria for uses other than as a skin protectant.
[8] Meets reserved criteria if not made of surgical grade stainless steel.
[9] Meets reserved criteria if not made of surgical stainless steel.
[10] Meets reserved criteria if an adjunct use system.
[11] Meets reserved criteria if nonelectrically powered and AC-powered adjunctive system.
[12] Meets reserved criteria if for use other than for removing rust rings.
[13] Meets reserved criteria if used as folders and injectors for soft or foldable IOL's.
[14] Meets reserved criteria if indicated for use on infants.

The following devices are devices that FDA believes do not meet the reserved criteria under section 206 of the FDAMA and, therefore, will be exempt from premarket notification as of February 19, 1998, under new section 510(l) added to the act:

TABLE 2.—EXEMPTED CLASS I DEVICES

21 CFR Section	Name of Device
862.1030	Alanine amino transferase (ALT/SGPT) test system
862.1040	Aldolase test system
862.1060	Delta-aminolevulinic acid test system
862.1075	Androstenedione test system
862.1080	Androsterone test system
862.1095	Ascorbic acid test system
862.1115	Urinary bilirubin and its conjugates (nonquantitative) test system
862.1130	Blood volume test system
862.1135	C-peptides of proinsulin test system
862.1165	Catecholamines (total) test system
862.1175	Cholesterol (total) test system
862.1180	Chymotrypsin test system
862.1185	Compound S (11-deoxycortisol) test system
862.1195	Corticoids test system
862.1200	Corticosterone test system
862.1240	Cystine test system
862.1245	Dehydroepiandrosterone (free and sulfate) test system
862.1250	Desoxycorticosterone test system
862.1260	Estradiol test system
862.1265	Estriol test system
862.1270	Estrogen (total, in pregnancy) test system
862.1275	Estrogens (total, nonpregnancy) test system
862.1280	Estrone test system
862.1285	Etiocholanolone test system
862.1300	Follicle-stimulating hormone test system
862.1310	Galactose test system
862.1325	Gastrin test system
862.1330	Globulin test system
862.1335	Glucagon test system
862.1360	Gamma-glutamyl transpeptidase and isoenzymes test system
862.1370	Human growth hormone test system
862.1375	Histidine test system
862.1385	17-Hydroxycorticosteroids (17-ketogenic steroids) test system
862.1390	5-Hydroxyindole acetic acid/serotonin test system
862.1395	17-Hydroxyprogesterone test system
862.1400	Hydroxyproline test system
862.1405	Immunoreactive insulin test system
862.1430	17-Ketosteroids test system
862.1435	Ketones (nonquantitative) test system
862.1450	Lactic acid test system
862.1460	Leucine aminopeptidase test system
862.1465	Lipase test system
862.1475	Lipoprotein test system
862.1485	Luteinizing hormone test system
862.1500	Malic dehydrogenase test system
862.1505	Mucopolysaccharides (nonquantitative) test sytem
862.1510	Nitrite (nonquantitative) test system
862.1520	5′-Nucleotidase test system
862.1530	Plasma oncometry test system
862.1535	Ornithine carbamyl transferase test system
862.1540	Osmolality test system
862.1542	Oxalate test system
862.1550	Urinary pH (nonquantitative) test system
862.1560	Urinary phenylketones (nonquantitative) test system
862.1570	Phosphohexose isomerase test system
862.1590	Porphobilinogen test system
862.1595	Porphyrins test system
862.1605	Pregnanediol test system

TABLE 2.—EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
862.1610	Prenanetriol test system
862.1615	Pregnenolone test system
862.1620	Progesterone test system
862.1625	Prolactin (lactogen) test system
862.1630	Protein (fractionation) test system
862.1645	Urinary protein or albumin (nonquantitative) test system
862.1650	Pyruvate kinase test system
862.1655	Pyruvic acid test system
862.1660	Quality control material (assayed and unassayed)[1]
862.1705	Triglyceride test system
862.1725	Trypsin test system
862.1730	Free tyrosine test system
862.1780	Urinary calculi (stones) test system
862.1785	Urinary urobilinogen (nonquantitative) test system
862.1790	Uroporphyrin test system
862.1795	Vanilmandelic acid test system
862.1805	Vitamin A test system
862.1820	Xylose test system
862.2140	Centrifugal chemistry analyzer for clinical use
862.2150	Continuous flow sequential multiple chemistry analyzer for clinical use
862.2160	Discrete photometric chemistry analyzer for clinical use
862.2170	Micro chemistry analyzer for clinical use
862.2250	Gas liquid chromatography system for clinical use
862.2260	High pressure liquid chromatography system for clinical use
862.2270	Thin-layer chromatography system for clinical use
862.2300	Colorimeter photometer, or spectrophotometer for clinical use
862.2400	Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use
862.2500	Enzyme analyzer for clinical use
862.2540	Flame emission photometer for clinical use
862.2560	Fluorometer for clinical use
862.2680	Microtitrator for clinical use
862.2700	Nephelometer for clinical use
862.2730	Osmometer for clinical use
862.2750	Pipetting and diluting system for clinical use
862.2850	Atomic absorption spectrophotometer for clinical use
862.2860	Mass spectrometer for clinical use
862.2900	Automated urinalysis system
862.3280	Clinical toxicology control material
864.2280	Cultured animal and human cells
864.5240	Automated blood cell diluting apparatus
864.9185	Blood grouping view box
864.9195	Blood mixing devices and blood weighing devices[2]
864.9225	Cell-freezing apparatus and reagents for in vitro diagnostic use
864.9275	Blood bank centrifuge for in vitro diagnostic use
864.9320	Copper sulphate solution for specific gravity determination
864.9750	Heat-sealing device
866.2660	Microorganism differentiation and identification device
866.3040	*Aspergillus* spp. serological reagents
866.3140	*Corynebacterium* spp. serological reagents
866.3145	Coxsackievirus serological reagents
866.3200	*Echinococcus* spp. serological reagents
866.3240	Equine encephalomyelitis virus serological reagents
866.3355	*Listeria* spp. serological reagents
866.3360	Lymphocytic choriomeningitis virus serological reagents
866.3375	*Mycoplasma* spp. serological reagents
866.3380	Mumps virus serological reagents
866.3405	Poliovirus serological reagents
866.3480	Respiratory syncytial virus serological reagents
866.3500	Rickettsia serological reagents
866.3600	*Schistosoma* spp. serological reagents
866.3680	*Sporothrix scheneckii* serological reagents
866.3740	*Streptococcus* spp. serological reagents
866.3850	*Trichinella spiralis* serological reagents
866.5060	Prealbumin immunological test system
866.5065	Human allotypic marker immunological test system
866.5160	*Beta-globulin* immunological test system
866.5200	Carbonic anhydrase B and C immunological test system
866.5330	Factor XIII, A, S, immunological test system[3]
866.5400	*Alpha*-globulin immunological test system
866.5420	*Alpha*-I-glycoproteins immunological test system
866.5425	*Alpha*-2-glycoproteins immunological test system
866.5430	*Beta*-2-glycoprotein I immunological test system

TABLE 2.—EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
866.5440	*Beta*-2-glycoprotein III immunological test system
866.5560	Lactic dehydrogenase immunological test system
866.5570	Lactoferrin immunological test system
866.5590	Lipoprotein X immunological test system
866.5715	Plasminogen immunological test system
866.5735	Prothrombin immunological test system[4]
866.5765	Retinol-binding protein immunological test system
866.5890	Inter-*alpha* trypsin inhibitor immunological test system
868.1910	Esophageal stethoscope
868.5620	Breathing mouthpiece
868.5640	Medicinal nonventilatory nebulizer (atomizer)
868.5675	Rebreathing device
868.5700	Nonpowered oxygen tent
868.6810	Tracheobronchial suction catheter
872.3400(b)(1)	Karaya and sodium borate with or without acacia denture adhesive
874.1070	Short increment sensitivity index (SISI) adapter
874.1500	Gustometer
874.1800	Air or water caloric stimulator
874.1925	Toynbee diagnostic tube
874.3300(b)(1)	Hearing aid[5]
874.4100	Epistaxis balloon
874.5300	Ear, nose, and throat examination and treatment unit
874.5550	Powered nasal irrigator
874.5840	Antistammering device
876.5160	Urological clamps for males[6]
876.5210	Enema kit
876.5250(b)(2)	Urine collector and accessories
878.4040	Surgical apparel[7]
878.4200	Introduction/drainage catheter and accessories
878.4320	Removable skin clip
878.4680	Nonpowered, single patient, portable suction apparatus
878.4760	Removable skin staple
878.4820	Surgical instrument motors and accessories/attachments
878.4960	Operating tables and accessories and operating chair and accessories
880.5090	Liquid bandage[8]
880.5270	Neonatal eye pad
880.5420	Pressure infusor for an I.V. bag
882.4060	Ventricular cannula[9]
882.4545	Shunt system implantation instrument[10]
882.4650	Neurosurgical suture needle
882.4750	Skull punch[11]
884.1040	Viscometer for cervical mucus
886.1350	Keratoscope[12]
886.1780	Retinoscope[13]
886.1940	Tonometer sterilizer
886.4070	Powered corneal burr[14]
886.4300	Intraocular lens guide[15]
886.5850	Sunglasses (nonprescription)
890.5180	Manual patient rotation bed
890.5710	Hot or cold disposable pack[16]
892.1300	Nuclear rectilinear scanner
892.1320	Nuclear uptake probe
892.1330	Nuclear whole body scanner
892.1410	Nuclear electrocardiograph synchronizer
892.1890	Radiographic film illuminator
892.1910	Radiographic grid
892.1960	Radiographic intensifying screen
892.1970	Radiographic ECG/respirator, synchronizer
892.5650	Manual radionuclide applicator system

[1] Exemption is limited to unassayed material, except when used in conjunction with donor screening tests.
[2] Exemption is limited to manual devices.
[3] This exemption should not be confused with § 864.7290.
[4] This exemption should not be confused with §§ 864.5425 or 864.7750.
[5] Exemption is limited to air-conduction hearing aids.
[6] Exemption does not include devices for internal use or devices used for females.
[7] Exemption is limited to class I category other than surgical gowns and surgical masks.
[8] Exemption is limited to uses as a skin protectant.
[9] Exemption is limited to surgical grade stainless steel.
[10] Exemption is limited to devices made of surgical grade stainless steel.
[11] Exemption should not be confused with § 882.4305.
[12] Exemption is extended to those with software.
[13] Exemption is limited to class I battery-powered devices.
[14] Exemption is limited to rust ring removal.

[15] Exemption does not apply if used as folders and injectors for soft or foldable IOL's.
[16] Exemption does not apply when indicated for infants.

IV. Comments

Interested persons may, on or before May 4, 1998, submit to the Dockets Management Branch (address above) written comments regarding the notice. 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.

Dated: January 23, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–2498 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 12, 1998, 8:30 a.m. to 5 p.m.

Location: Parklawn Bldg., conference rooms G and H, 5600 Fishers Lane, Rockville, MD.

Contact Person: Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12523. Please call the Information Line for up-to-date information on this meeting.

Procedure: On February 12, 1998, from 9:30 a.m. to 10:30 a.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 6, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 6, 1998, 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 requested to make their presentation.

Closed Committee Deliberations: On February 12, 1998, from 10:30 a.m. to 5 p.m., FDA staff will present to the committee confidential information regarding present and future device issues. The committee will also hear and review trade secret and/or confidential commercial information on a product development protocol. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4).

FDA regrets that it was unable to publish this notice 15 days prior to the February 12, 1998, Gastroenterology and Urology Devices Panel of the Medical Devices meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Gastroenterology and Urology Devices Panel of the Medical Devices were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 26, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2409 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Microbiology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 12, 1998, 9:30 a.m. to 5:30 p.m., and February 13, 1998, 9:30 a.m. to 6 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 12, 1998, the committee will provide advice and recommendations to the agency on issues regarding tests for hepatitis viruses intended for detecting antigens or nucleic acids of hepatitis viruses B and C, or antibodies (total, IgG, or IgM) to antigens of hepatitis viruses A, B, and C. These assays may be indicated for the diagnosis of current (acute or chronic), recent, or past infection; management of current infection; determination of prior immunologic experience or pre- and post-vaccination antibody responses. These devices are not indicated for screening donors of blood or blood products, unless specifically indicated for such uses. The intent of the committee discussion is not to resolve issues related to the clinical practice or treatment of patients with viral hepatitis. Rather, the focus of discussion will be on appropriate clinical studies for establishing the safety and effectiveness of devices for these hepatitis viruses when used for the previously stated indications for use. On February 13, 1998, the committee will discuss a petition for reclassification of fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II.

Procedure: On February 12, 1998, from 9:30 a.m. to 5:30 p.m., and on February 13, 1998, from 10 a.m. to 6

p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 4, 1998. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11:15 a.m. on February 12, 1998, and between approximately 10:15 a.m. and 10:45 a.m. on February 13, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 4, 1998, 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 requested to make their presentation.

Closed Committee Deliberations: On February 13, 1998, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). FDA staff will present to the committee trade secret and/or confidential commercial information regarding pending and future device submissions.

FDA regrets that it was unable to publish this notice 15 days prior to the February 12 and 13, 1998, Microbiology Devices Panel of the Medical Devices meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Microbiology Devices Panel of the Medical Devices were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 26, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2465 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051, (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of

Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267,

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784 / 915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361/801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025,415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788/254–771–8379

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999–LABS

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484/610–631–4600 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

St. Lawrence Hospital & Healthcare System, Toxicology Laboratory, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373/800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:

Dynacare Kasper Medical Laboratories, 14940–123 Ave., Edmonton, Alberta Canada T5V 1B4, 800–661–9876/403–451–3702

Gamma-Dynacare Medical Laboratories, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–2413 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–64–02]

Notice of Proposed Information Collection for Public Comment; Consolidated Planning; Comment Due Date

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection for public comments.

SUMMARY: On December 31, 1997 (62 FR 68296), HUD published a notice of proposed information collection for Consolidated Planning for Community and Development (CPD) programs, and solicited comments on the proposed information collection. The December 31, 1997 notice inadvertently omitted the comment due date. The purpose of this notice is to advise that the comment due date for the December 31, 1997 notice is March 2, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sal Sclafani, Acting Director, Policy Division, 202–708–0614, ex. 4364.

SUPPLEMENTARY INFORMATION: On December 31, 1997 (62 FR 68296), HUD published a notice of proposed information collection for Consolidated Planning for Community and Development (CPD) programs, and solicited comments on the proposed information collection. The December 31, 1997 notice inadvertently omitted the comment due date. The purpose of this notice is to advise that the comment due date for the December 31, 1997 notice is March 2, 1998.

Dated: January 27, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–2390 Filed 1–30–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4196–N–06]

Announcement of Awards for the Economic Development and Supportive Services Program—Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1997 Public and Indian Housing applicants under the Economic Development and Supportive Services (EDSS) Program. The purpose of this document is to announce the awards to be used to further the Department's commitment to provide economic development opportunities and supportive services to assist families, the elderly and persons with disabilities that reside in Public and Indian Housing to become self-sufficient; to live independently or to prevent premature or unnecessary institutionalization.

FOR FURTHER INFORMATION CONTACT: Maria-Lana Queen, Office of Community Relations and Involvement (OCRI), U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410; or Tracy C. Outlaw, National Office of Native American Programs (NONAP), 1999 Broadway, Suite 3390, Box 90, Denver, CO 80202; telephone numbers: OCRI (202) 708–4214; and NONAP (303) 675–1600. Hearing- or speech-impaired persons may use the Telecommunications Devises for the Deaf (TTY) by contacting the Federal Information Relay Services on 1–800–877–TTY (1–800–877–8339) or (202) 708–9300. (With exception of the ''800'' number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1997 (Pub. L. 104–204, 110 Stat. 2874; approved September 26, 1996) (FY 1997 Appropriations) set aside sixty ($60) million for the FY 1997 ED/SS program.

Five ($5) million of the sixty ($60) million available under the ED/SS set-aside was further allocated to the Tenant Opportunities Program (TOP) for FY 1997. Of the remaining fifty-five ($55) million available for the ED/SS program, the following was set-aside:

—$5 million for the Moving to Work Demonstration;

—$250,000 to the community of St. Petersburg, Florida for a self-sufficiency program for public housing residents (as part of a package of assistance in response to the civil disturbances in St. Petersburg);

—$2.5 million to be used in conjunction with funding from the Department of Health and Human Services for a Resident Uplift and Economic Development Program; and

—$5 million for service coordinators, administered by the Office of Housing.

The remaining $42.25 was made available for the purposes of providing grants to Public Housing Agencies and Indian Housing Authorities to enable them to establish and implement programs that increase resident self-sufficiency and support continued independent living for elderly and disabled residents.

On June 6, 1997 (62 FR 31272), HUD published a Notice of Funding Availability (NOFA) that announced $42.25 million in ED/SS funds. The NOFA was amended as follows.

—July 17, 1997 (62 FR 38318). Corrected the maximum grant amounts for Elderly and Disabled Supportive Services; clarified the ineligible activities and cost items; and announced a $1,000,000 set-aside to the Seminole Tribe of Florida (which was not funded in the FY 1996 funding cycle because of a technical computation error.

Accordingly, this document announces the recipients that were reviewed and evaluated in accordance with ranking factors set forth in the NOFA published June 6, 1997, and that funding to the Seminole Tribe of Florida was made in accordance with the amendment notice published July 17, 1997.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545) the Department is publishing details regarding recipients of funding awards. This information is provided in Appendix A to this document. The list of recipients may also be found on the internet site

located at WWW.HUD.gov/pr286cht.html.

Dated: January 26, 1998.

Kevin E. Marchman,

Assistant Secretary for Public and Indian Housing.

Appendix A—Economic Development and Supportive Services Program Recipients FY 1997

Kodiak Island Housing Authority, 3137 Mill Bay Road, Kodiak, AK 99615, (907) 486–81111 Grant Amount: $200,000

Housing Authority of the City of North Little Rock, P.O. Box 516, North Little Rock, AR 72115, (501) 758–8911, Grant Amount: $125,500

Los Angeles County Housing Authority, 2 Coral Circle, Monterey Park, CA 91755, (650) 802–3398, Grant Amount: $500,000

Owens Valley Indian Housing Authority, P.O. Box 490, Big Pine, CA 93513, (760) 872–5000, Grant Amount: $77,500

Housing Authority of the City of Calexico, 1006 East 5th Street, Calexico, CA 92231, (209) 443–8493, Grant Amount: $75,000

Housing Authority of the City and County of Fresno, 1331 Fulton Mall, Fresno, CA 93721, (209) 443–8493, Grant Amount: $500,000

Dublin Housing Authority, 22941 Atherton Street, Hayward, CA 94541, (510) 727–8541, Grant Amount: $37,500

Housing Authority of the City of Los Angeles, 520 South Lafayette Park Place, Los Angeles, CA 90057, (213) 252–2755, Grant Amount: $999,928

Housing Authority of the County of Contra Costa, 3133 Estudillo Street, Martinez, CA 94553, (510) 372–0791, Grant Amount: $294,501

San Diego Housing Commission, 1625 Newton Avenue, San Diego, CA 92113–1038, (619) 525–3716, Grant Amount: $268,775

San Diego Housing Commission, 1625 Newton Avenue, San Diego, CA 92113–1038, (619) 525–3716, Grant Amount: $79,250

Housing Authority of the County of San Joaquin, 448 S. Center Street, Stockton, CA 95203, (209) 466–7036, Grant Amount: $268,750

Southern Ute Indian Housing Authority, Shoshone Avenue, Ignacio, CO 81137, (970) 563–4575, Grant Amount: $21,877

Housing Authority of the City of Middleton, 40 Broad Street, Middleton, CT 06457, (860) 346–8671, Grant Amount: $106,500

Jacksonville Housing Authority, 1300 Broad Street, Jacksonville, FL 32202, (904) 630–6313, Grant Amount: $500,000

The Key West Housing Authority, 1400 Kennedy Drive, Key West, FL 33040, (305) 296–5621, Grant Amount: $145,250

Metro-Dade Housing Authority, 1401 NW 7th Street, Miami, FL 33125, (305) 644–5100, Grant Amount: $300,000

Lake Wales, Florida Public Housing Authority, 7501 Okeechobee Court, Temple Terrace, FL 33617, (813) 303–4825, Grant Amount: $60,000

Seminole Housing Authority, 6300 Stirling Road, Hollywood, FL 33024, 967–3800, Grant Amount: $1,000,000

Housing Authority of Atlanta, 739 West Peachtree Street, NE, Atlanta, GA 30365, (404) 817–7213, Grant Amount: $1,000,000

Housing Authority of Fulton County, 10 Park Place S.E., Atlanta, GA 30303, (404) 730–5841, Grant Amount: $134,750

Housing Authority of the City of Augusta, 1425 Walton Way, Augusta, GA 30901, (706) 724–5466, Grant Amount: $370,000

Housing Authority of the City of Augusta, 1425 Walton Way, Augusta, GA 30901, (706) 724–5466, Grant Amount: $91,500

Housing Authority of the City of Summerville, 16 Boss Street, Summerville, GA 30747, 857–3016, Grant Amount: $56,000

Hawaii Housing Authority, 1002 North School Street, Honolulu, HI 96816, (808) 832–5983, Grant Amount: $500,000

Housing Authority of the City of East St. Louis, 700 North 20th Street, East St. Louis, IL 62205, (618) 271–0498, Grant Amount: $500,000

Rockford Housing Authority, 223 South Winnebago Street, Rockford, IL 61102, (815) 961–3186, Grant Amount: $500,000

The Housing Authority of the City of Evansville, 500 Court Street, Evansville, IN 47708, (812) 428–8500, Grant Amount: $307,500

Housing Authority of Bowling Green, 247 Double Springs Road, Bowling Green, KY 42101, (502) 843–6071, Grant Amount: $131,250

Housing Authority of Bowling Green, 247 Double Springs Road, Bowling Green, KY 42101, (502) 843–6071, Grant Amount: $131,250

Housing Authority of Covington, 2940 Madison Avenue, Covington, KY 41015, (606) 491–5311, Grant Amount: $240,250

Housing Authority of Henderson, 901 Dr. Martin Luther King, Jr. Drive, Henderson, KY 42420, (1) 827–1294, Grant Amount: $67,500

Lexington-Fayette Urban County Housing Authority, 300 West New Circle, Lexington, KY 40505, (606) 281–5060, Grant Amount: $100,000

Housing Authority of Owensboro, 2161 East 19th Street, Owensboro, KY 42301, (502) 683–5365, Grant Amount: $148,000

Housing Authority of Paintsville, 700 Sixth Street, Paintsville, KY 41240, (606) 789–1782, Grant Amount: $100,000

Cambridge Housing Authority, 675 Massachusetts Avenue, Cambridge, MA 02139, (617) 499–7191, Grant Amount: $354,285

Cambridge Housing Authority, 675 Massachusetts Avenue, Cambridge, MA 02139, (617) 499–7191, Grant Amount: $100,000

Chelsea Housing Authority, 54 Locke Street, Chelsea, MA 02150, (617) 884–5617, Grant Amount: $37,750

Holyoke Housing Authority, 475 Maple Street, Holyoke, MA 01040, (413) 539–2220, Grant Amount: $202,250

Lynn Housing Authority, 174 South Common Street, Lynn, MA 01905, (617) 477–2830, Grant Amount: $115,000

Salem Housing Authority, 27 Charter Street, Salem, MA 01970, (1) 744–4431, Grant Amount: $7,500

Baltimore City Housing Authority, 417 E. Fayette Street, Baltimore, MD 21201, (1) 396–3232, Grant Amount: $800,000

Bath Housing Authority, 80 Congress Avenue, Bath, ME 04530, (207) 443–3116, Grant Amount: $97,710

Inkster Housing Commission, 4500 Inkster Road, Inkster, MI 48141, (313) 561–2600, Grant Amount: $33,000

Lansing Housing Commission, 310 North Seymour Avenue, Lansing, MI 48933, (517) 487–6550, Grant Amount: $150,000

Melvindale Housing Commission, 3501 Oakwood Boulevard, Melvindale, MI 48122, (313) 381–0012, Grant Amount: $100,000

Saginaw Housing Commission, 2811 Davenport Avenue, Box A, Saginaw, MI 48602, (1) 755–8183, Grant Amount: $123,000

Fond du Lac Housing Authority, 1720 Big Lake Road, Cloquet, MN 55720, (218) 879–0351, Grant Amount: $66,250

Hibbing Housing and Redevelopment Authority, 3112 East 6th Avenue, Hibbing, MN 55746, (218) 263–3661, Grant Amount: $42,000

Minneapolis Public Housing Authority, 1001 N. Washington Ave., Minneapolis, MN 55401, (612) 342–1215, Grant Amount: $498,200

Olmsted County Housing and Redevelopment Authority, 2122 Campus Drive SE, Rochester, MN 55904, 285–8224, Grant Amount: $150,000

Housing Authority of the City of Columbia, 207 Park Avenue, Columbia, MO 65203, (573) 443–2556, Grant Amount: $99,038

Housing Authority of St. Louis County, 8865 Natural Bridge, St. Louis, MO 63121–3900, (314) 428–3200, Grant Amount: $270,000

Helena Housing Authority 812 Abbey Street, Helena, MT 59601, (406) 442–7970, Grant Amount: $88,000

Greensboro Housing Authority, P.O. Box 21287, Greensboro, NC 27420, (910) 275–8501, Grant Amount: $500,000

The Housing Authority of the City of Durham, 330 Main Street, Durham, NC 27701, (919) 683–1551, Grant Amount: $457,180

Minot Housing Authority, 310 Second Street SE, Minot, ND 58701, (701) 852–0485, Grant Amount: $36,000

Housing Authority of the County of Scotts Bluff, 89-A Woodley Park Road, Gering, NE 69341, (308) 635–3815, Grant Amount: $17,000

Housing Authority of the County of Scotts Bluff, 89-A Woodley Park Road, Gering, NE 69341, (308) 635–3815, Grant Amount: $23,500

Garfield Housing Authority, 71 Daniel P. Conte Court, Garfield, NJ 07026, (973) 340–4170, Grant Amount: $67,500

Newton Housing Authority, 32 Liberty Street, Newton, NJ 07860–1723, (973) 383–5191, Grant Amount: $20,000

Housing Authority of the City of Paterson, 60 Van Houten Street, Paterson, NJ 07509, (973) 345–5671, Grant Amount: $500,000

Housing Authority of the City of Perth Amboy, 881 Amboy Avenue, Perth Amboy, NJ 08862, (908) 826–3114, Grant Amount: $150,000

Housing Authority of the City of Las Cruces, NM, 929 South San Pedro Street, Las

Cruces, NM 88001, (505) 526–5541, Grant Amount: $79,250
Housing Authority of the City of Las Vegas, 420 North 10th Street, Las Vegas, NV 89101, (702) 386–2727, Grant Amount: $150,000
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202, (518) 445–0711, Grant Amount: $500,000
Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204, (716) 855–6711, Grant Amount: $500,000
Geneva Housing Authority, 10 Goodman Street, Geneva, NY 14456, (315) 789–3245, Grant Amount: $62,750
Hudson Housing Authority, 41 North 2nd Street, Hudson, NY 12534, (518) 828–5415, Grant Amount: $39,500
New York City Housing Authority, 250 Broadway, New York, NY 10007, (212) 306–3721, Grant Amount: $700,000
Niagara Falls Housing Authority, 744 Tenth Street, Niagara Falls, NY 14301, (716) 285–6961, Grant Amount: $57,600
Schenectady Municipal Housing Authority, 375 Broadway, Schenectady, NY 12305, (1) 372–3346, Grant Amount: $243,100
Syracuse Housing Authority, 516 Burt Street, Syacuse, NY 13202, (315) 475–6181, Grant Amount: $500,000
Municipal Housing Authority of the City of Utica, 509 Second Street, Utica, NY 13501, (315) 735–5246, Grant Amount: $258,000
Ashtabula Metropolitan Housing Authority, 3526 Lake Aveune, Ashtabula, OH 44004, (216) 992–3156, Grant Amount: $145,250
Stark Metropolitan Housing Authority, 400 E. Tuscarawas, Canton, OH 44702, (330) 454–8051, Grant Amount: $500,000
Allen Metropolitan Housing Authority, 600 South Main Street, Lima, OH 45804, (419) 228–6065, Grant Amount: $58,250
Lorain Metropolitan Housing Authority, 1600 Kansas Avenue, Lorain, OH 44052, (216) 288–1600, Grant Amount: $200,000
Lucas Metropolitan Housing Authority, 435 Nebraska Avenue, Toledo, OH 43602, (419) 259–9432, Grant Amount: $500,000
Miami Public Housing Authority, 205 B Northeast, Miami, OK 74354, (918) 542–6691, Grant Amount: $99,945
Oklahoma City Housing Authority, 1700 Northeast Fourth Street, Oklahoma City, OK 73117, (405) 239–7551, Grant Amount: $145,800
Housing Authority of the City of Tulsa, 415 East Independence, Tulsa, OK 74106, (918) 581–5715, Grant Amount: $500,000
Housing Authority of the County of Butler, 111 South Cliff Street, Butler, Pa 16003–1917, (412) 287–6797, Grant Amount: $105,750
Harrisburg Housing Authority, 351 Chestnut Street, Harrisburg, PA 17105, (717) 233–6781, Grant Amount: $500,000
Lancaster City Housing Authority, 333 Church Street, Lancaster, PA 17602–2835, (717) 397–2835, Grant Amount: $75,500
Lycoming County Housing Authority, 1941 Lincoln Drive, Williamsport, PA 17701, (717) 323–3755, Grant Amount: $125,000
Delaware County Housing Authority, 1855 Constitution Avenue, Woodlyn, PA 19094, (610) 490–6252, Grant Amount: $202,500
Delaware County Housing Authority, 1855 Constitution Avenue, Woodlyn, PA 19094, (610) 490–6252, Grant Amount: $67,700
Housing Authority of the City of Aiken, 100 Rogers Place, Aiken, SC 29801, (803) 649–6673, Grant Amount: $97,500
Chattanooga Housing Authority, 505 W. Martin Luther King, Jr., Chattanooga, TN 37402, (423) 752–4827, Grant Amount: $500,000
Metropolitan Development and Housing Agency, 701 South Sixth Street, Nashville, TN 37206, (615) 252–8521, Grant Amount: $499,654
Housing Authority, of the City of Dallas, 3939 North Hampton Road, Dallas, Tx 75212, (214) 951–8319, Grant Amount: $500,000
Fort Worth Housing Authority, 1201 East 13th Street, Fort Worth, TX 76102, (817) 336–2419, Grant Amount: $350,250
Housing Authority of the City of Lubbock, 1301 Broadway, Lubbock, TX 79401, (806) 762–1191, Grant Amount: $93,750
Waco Housing Authority, 1001 Washington, Waco, TX 76701, (254) 752–4447, Grant Amount: $100,000
Housing Authority, of Salt Lake City, 1776 South West Temple, Salt Lake City, UT 84115, (801) 487–2161, Grant Amount: $75,000
Housing Authority of the County of Salt Lake, 3595 South Main Street, Salt Lake City, UT 84115, (801) 284–4400, Grant Amount: $150,000
Hampton Redevelopment and Housing Authority, 22 Lincoln Street, Hampton, VA 23669, (757) 825–4623, Grant Amount: $189,000
Hampton Redevelopment and Housing Authority, 22 Lincoln Street, Hampton, VA 23669, (757) 825–4623, Amount: $68,000
Cumberland Plateau Regional Housing Authority, P.O. Box 1328, Lebanon, VA 24266, (540) 889–4910, Grant Amount: $78,000
Cumberland Plateau Regional Housing Authority, P.O. Box 1328, Lebanon, VA 24266, (540) 889–4910, Grant Amount: $53,250
Marion Housing Authority, 237 Miller Avenue, Marion, VA 24354, (540) 783–3381, Grant Amount: $30,000
Norfolk Redevelopment and Housing Authority, 201 Granby Street, Norfolk, VA 23510, (757) 623–1111, Grant Amount: $293,994
Waynesboro Redevelopment and Housing Authority, 1700 New Hope Road, Waynesboro, VA 22980, (540) 946–9230, Grant Amount: $26,250.
Waynesboro Redevelopment and Housing Authority, 1700 New Hope Road, Waynesboro, VA 22980, (540) 946–9230, Grant Amount: $49,500
Housing Authority of the County of King, 15455—65th Avenue South, Seattle, WA 98188, (206) 431–5292, Grant Amount: $500,000.
Seattle Housing Authority, 120 Sixth Avenue North, Seattle, WA 98109, (206) 615–3500, Grant Amount: $500,000
Madison CDA, 215 Martin Luther King Jr Blvd, Madison, WI 53701–1785, (608) 267–1146, Grant Amount: $100,000.
Housing Authority of the City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202, (414) 286–2177, Grant Amount: $200,000
Housing Authority of the City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202, (414) 286–2177, Grant Amount: $300,000
The Huntington West Virginia Housing Authority, #30 Northcott Court, Huntington, WV 25701, (304) 526–4400, Grant Amount: $244,750
Housing Authority of the City of Wheeling, 11 Community Street, Wheeling, WV 26003, (304) 242–4447, Grant Amount: $60,000.

[FR Doc. 98–2392 Filed 1–30–98; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Distribution of Fiscal Year 1998 Contract Support Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of method of distribution and use of Fiscal Year (FY) 1998 contract support funds (CSF).

SUMMARY: The purpose of this announcement is to issue the Bureau of Indian Affairs (BIA) administrative instructions for the implementation of Public Law (Pub. L.) 93–638 as amended by Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994 (the Act). These administrative instructions are designed to provide BIA personnel with assistance in carrying out their responsibilities when distributing CSF. These instructions are not regulations establishing program requirements.

DATES: The CSF Needs Report of ongoing/existing contracts and annual funding agreements are due on July 15, 1998. The CSF Needs Reports for new and expanded contracts and annual funding agreements are due periodically throughout the year as the need arises. All new and expanded contracts and annual funding agreements starting between October 1, 1997, and January 1, 1998, will be considered to have a January 1, 1998, start date.

ADDRESSES: Bureau of Indian Affairs, Division of Self-Determination Services, 1849 C Street, N.W., MS–2526–MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jim Thomas, Chief, Division of Self-Determination Services, Telephone (202) 208–5727.

SUPPLEMENTARY INFORMATION: A total of $110,829,000 is available for contract support requirements (excluding construction requirements) during FY 1998. Congressional language sets a ceiling on the amount of CSF available in FY 1998. Of this amount $105,829,000 is available for contract

support requirements associated with FY 1998 costs of ongoing self-determination and self-governance awards for programs under contract prior to FY 1998. The balance of $5,000,000 is provided to continue the Indian Self-Determination (ISD) Fund to provide contract support for new and expanded contracts and annual funding agreements first entered into in FY 1998. Each BIA Area Office and the Office of Self-Governance (hereinafter office) has the responsibility for tribes located within their respective area to work with the tribes in identifying new and expanded contracts and annual funding agreements and reporting this information to the Division of Self-Determination Services as specified in this announcement. CSF shall be added to awards made under Sec. 102 and Title IV of the Indian Self-Determination and Education Assistance Act, as amended. Awards made under the authority of Sec. 103 of this Act shall not receive CSF to meet indirect costs, as contract support provisions do not apply to Sec. 103 grants.

Basis for Payment of CSF

The BIA may only pay indirect costs attributable to programs included in the Bureau's Pub. L. 93–638 contracts.

BIA will utilize tribal indirect cost rates to determine the amount of CSF to be paid to eligible contracting tribes and tribal organizations and eligible self-governance tribes and tribal consortia. In determining legitimate indirect cost requirements each area and self-governance director should fund only those contracting or compacting tribal organizations that have an approved indirect cost rate or indirect cost proposal currently under consideration by the Office of Inspector General. In those instances where a tribe or tribal organization has more than one approved rate or a current proposal under consideration by the Office of the Inspector General, the director should use the most current rate or pending proposal in determining the amount to award. For those tribes who are unable to negotiate an indirect cost rate because of circumstances beyond their control (i.e., which do not have the administrative capability to negotiate a rate), area contract officers may negotiate reasonable lump sum amounts with these tribes.

Ongoing/Existing Contracts/Annual Funding Agreements—Method of Distribution

Each area office will submit CSF Needs Report to the Central Office for ongoing contracts and annual funding agreements by July 15, 1998. A final distribution of contract support will be made on or about July 31, 1998. CSF will be provided to each office from the remaining available $105,829,000 based on these reports. If these reports indicate that $105,829,000 will not be sufficient to cover the entire need, this amount will be distributed pro rata, so that all contractors and compactors receive the same percentage of their reported need.

Should the amount provided for these existing contracts and annual funding agreements prove insufficient, a tribe or group of tribes may wish to reprogram funds to make up deficiencies necessary to recover full indirect costs. This tribal reprogramming authority is limited to funds from their Tribal Priority Allocation (TPA), or annual funding agreement. Congressional appropriations language does not provide authority for the BIA to reprogram funds from other Bureau programs to meet any CSF shortfalls.

For programs other than TPA, tribes are not constrained from recovering full indirect costs from within the overall program and contract support funds awarded for each program.

Each office has been suballotted 85 percent of the total amount which was provided in FY 1997. From this amount each office should award 75 percent of required contract support to each contract/annual funding agreement meeting the criteria established below.

All contractors and self-governance tribes/consortia with either an approved indirect cost rate, current indirect cost proposal, or FY 1998 approved lump sum amount is eligible for 75 percent of the appropriate total amount to be paid with the first allotment of CSF in FY 1998. After the second allotment of CSF is made (approximately July 31, 1998) all contractors and self-governance tribes/consortia should again receive their pro rata share of CSF, based on the amount provided at that time.

An ongoing/existing contract or annual funding agreement is defined as a BIA program operated by the tribal contractor or compactor on an ongoing basis which has been entered into prior to the current fiscal year. An increase or decrease in the level of funding from year to year for such contracts or annual funding agreements would not affect the designation of such contracts or annual funding agreements as being ongoing. An assumption of additional BIA program responsibilities would be required to trigger a change in designation.

Method of Distribution for New and Expanded Contracts/Annual Funding Agreements

Each office will submit CSF Need Reports to the Central Office for new and expanded contracts and annual funding agreements periodically throughout the year as new contracts or annual funding agreements are awarded or existing contracts or annual funding agreements are expanded. Funds will be provided to the offices as these reports are received and will be taken from the $5,000,000. These funds will be distributed on a first-come-first-serve basis at 100 percent of need using the office reports.

In the event the $5,000,000 is depleted, new or expanded contracts or annual funding agreements awarded after this fund has been exhausted will not be provided any CSF during this fiscal year. Requests received after this fund has been exhausted will be considered first for funding in the following year, from funds appropriated for this purpose. It should be noted that there were a number of FY 1997 new and expanded contracts and annual funding agreements which were not funded during FY 1997, and, in line with the process outlined herein, they will be given priority for funding over FY 1998 new and expanded contracts and annual funding agreements.

Priority of Funding for New and Expanded Contracts/Annual Funding Agreements

Contract support will be awarded from the ISD fund to all new and expanded contracts/annual funding agreements based on the start date of the award, and the application date, on a first-come-first-serve basis. An Indian Self-Determination Fund ''applicant roster'' shall be maintained, which shall list, in order of priority, the name of the tribe or tribal organization, the name of the program, the start date, the application date, the amount of program funds, the program cost code(s), the amount of contract support funds required, and the date of approved indirect cost rate agreement or lump sum agreement.

''Start date'' means the date or commencement of operation of the new or expanded portion of the contract or annual funding agreement by the tribe/consortium or tribal organization. However, because the Self-Determination Act provides that contracts/annual funding agreements will be on a calendar year basis unless otherwise provided by the tribe, any start date on or prior to January 1 of

each year shall be considered a January 1 start date.

''Application date'' shall be the date of the request by the tribe which includes: (1) a tribal resolution requesting a contract or annual funding agreement; (2) a summary of the program or portion thereof to be operated by the tribe/consortium or tribal organization; and (3) a summary identifying the source and amount of program or services funds to contracted or included in an annual funding agreement and contract support requirements. In the event that two tribes or tribal organizations have the same start date and application date, then the next date for determination of priority shall be the date the fully complete application was received by the BIA.

If all of the above are equal, and if funds remaining in the ISD fund are not adequate to fill the entire amount of each award's contract support requirement, then each will be awarded a proportionate share of its requirement and shall remain on the Indian Self-Determination Fund Roster in appropriate order of priority for future distributions.

New contract/annual funding agreement is defined as the initial transfer of a program, previously operated by the BIA to the tribe/consortium or tribal organization.

An expanded contract/annual funding agreement is defined as a contract/annual funding agreement which has become enlarged, during the current fiscal year through the assumption of additional programs previously operated by the BIA.

Criteria for Determining CSF Need for Ongoing/Existing Contracts/Annual Funding Agreements

CSF for ongoing and existing contracts/annual funding agreements will be determined using the following criteria:

1. All TPA contracted programs or those programs included in annual funding agreements in FY 1997 and continued in FY 1998, including contracted or annual funding agreement programs moved to TPA in FY 1998, such as New Tribes, HIP, and Road Maintenance.

2. Direct program funding increases due to inflation adjustments and general budget increases.

3. TPA programs started or expanded in FY 1998 that are a result of a change in priorities from other already contracted/annual funding agreement programs.

4. CSF differentials associated with tribally-operated schools that receive indirect costs through the application of the administrative cost grant formula. These differentials are to be calculated in accordance with the criteria prescribed in the Choctaw decision dated September 18, 1992, issued by the Contracting Officer, Eastern Area Office. Copies of this decision can be obtained by calling the telephone number provided in this announcement. Tribes that received differential funding under this category in FY 1997 are eligible to receive funding from this account in FY 1998. Tribes that did not receive differential funding under this category in FY 1997 are eligible for funding from the ISD fund.

5. CSF will be distributed to the Office of Self-Governance for ongoing annual funding agreements, on the same basis as area offices. All additional CSF requirements will be met from the ISD fund in accordance with the criteria established above.

6. Funds available for Indian Child Welfare Act (ICWA) programs or reprogrammed from ICWA to other programs will be considered ongoing for the purposes of payment of contract support costs.

7. The use of CSF to pay prior year shortfalls is not authorized.

8. Programs funded from sources other than those listed above that were contracted in FY 1997 and are to be contracted in FY 1998 are considered as ongoing.

Dated: January 26, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–2463 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–030–5101–00–YCKD; COC–51280]

Availability of the Draft Supplement to the Final Environmental Impact Statement for a TransColorado Gas Transmission Project; Colorado and New Mexico

AGENCY: Bureau of Land Management, Department of the Interior and Forest Service, Department of Agriculture.

ACTION: Amendment to Notice of Availability of a Supplement to The Final Environmental Impact Statement TransColorado Gas Transmission Project; Colorado and New Mexico; Comment period extended to March 18, 1998.

SUMMARY: In accordance with the National Environmental Policy Act, the Bureau of Land Management (BLM), as lead agency, and in cooperation with the U. S. Forest Service (USFS) has prepared a Draft Supplement (Supplement) to the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission (TransColorado) project on federal lands in Colorado and New Mexico.

TransColorado is the proponent. Lands managed by the BLM in the Montrose, Craig, and Grand Junction Districts in Colorado, and the Farmington District in New Mexico, and the USFS in the Uncompahgre and San Juan National Forests, Colorado, are crossed by the TransColorado pipeline project. The Supplement addresses the environmental impacts of the construction, operation, maintenance, and ultimate abandonment of known proposed route changes and minor realignments (less than 100 feet from centerline of the existing right-of-way grant) of the approved pipeline and right-of-way (ROW) grant COC–51280, and the impacts of the proposed construction and use of known additional temporary work areas adjacent to the approved ROW or, proposed ROW route changes or minor realignments.

This Supplement will also address the impacts of the construction and use minor realignments and alternative temporary work areas in unspecified locations. These unspecified temporary work areas and minor realignments will be addressed to accommodate conditions that might be encountered during construction. Also addressed in the Supplement are proposed modifications to several environmental protection measures contained in the original right-of-way (ROW) grant and Record of Decision (ROD).

Please focus comments on the proposed actions and alternatives in the Supplement to the FEIS.

DATES: Due to an error in calculation, the 60-day public comment period for the Draft Supplement has been extended to March 18, 1998. This notice amends and extends the comment period published by the BLM and USFS in the **Federal Register** on January 23, 1998 (63 FR 3584). Written comments on the Draft Supplement must be submitted or postmarked no later than March 10, 1998. Written comments may also be submitted at the public meetings to be held on February 17, 1998 at 7:00 pm at the Double Tree Inn, 501 Camino del Rio in Durango, Colorado; on February

18, 1998 at 7:00 pm at the Ponderosa Restaurant, 108 South 8th in Delores, Colorado; and at 7:00 pm at the Holiday Inn, 755 Horizon Drive in Grand Junction, Colorado.

Public reading copies are available at the federal depository libraries in Colorado and New Mexico and public libraries within San Juan County, New Mexico, and La Plata, Montezuma, Dolores, San Miguel, Montrose, Delta, Mesa, Garfield and Rio Blanco Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly (970) 240–5337, Ilyse Auringer (970) 385–1341, or Steve Hemphill (970) 874–6633.

Signed: January 23, 1998.

Mark W. Stiles,

District Manager, Montrose District, BLM.

Robert L. Storch,

Forest Supervisor, Grand Mesa/Uncompahgre/Gunnison National Forests.

[FR Doc. 98–2317 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new collection of information.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (Act), the Department of the Interior has submitted the collection of information discussed below to the Office of Management and Budget (OMB) for approval. The Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by March 4, 1998.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–NEW), 725 17th Street, N.W., Washington, D.C. 20503. Send a copy of your comments to the Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the supporting statement and collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Form MMS–131, Performance Measures Data Form.

Abstract: The Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The MMS will use the information collected on Form MMS–131 to evaluate the effectiveness of industry's continued improvement of safety and environmental management in the OCS. The MMS can better focus its regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting MMS expectations. The MMS should be more effective in leveraging its resources by redirecting research efforts, promoting appropriate regulatory initiatives, and shifting inspection program emphasis. The performance measures will also give MMS a verifiable gauge against which we can begin to judge the reasonableness of company requests for any specific regulatory relief. This information will also provide offshore operators and organizations with a credible data source to demonstrate to those outside the industry how well the industry and individual companies are doing. Knowing how the offshore operators as a group are doing and where their own company ranks will provide company management with information to focus their continuous improvement efforts. This should lead to more cost-effective prevention actions and, therefore, better cost containment. The collection of this information involves no proprietary information. No items of a sensitive nature are collected. Responses are voluntary.

Estimated Number and Description of Respondents: Approximately 120 Federal OCS oil and gas or sulphur lessees.

Frequency: The frequency of reporting is annual. There are no recordkeeping requirements.

Estimated Annual Reporting and Recordkeeping Hour Burden: 3,220 total burden hours, averaging approximately 28 hours per response.

Estimated Annual Reporting and Recordkeeping Cost Burden: None.

Comments: Section 3506 (c)(2)(A) of the Paperwork Reduction Act requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful, (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, (c) enhance the quality, usefulness, and clarity of the information to be collected, and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments March 4, 1998.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: January 12, 1998.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–2468 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil Penalties

AGENCY: Minerals Management Service, Interior.

ACTION: Notice Summarizing OCS Civil Penalties Paid, September 1, 1997 through December 31, 1997.

SUMMARY: This notice provides a listing of civil penalties paid September 1, 1997 through December 31, 1997, for violations of the Outer Continental Self Lands Act (OCSLA). The goal of the MMS OCS Civil Penalties Program is to assure safe and clean operations on the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of

criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Greg Gould, Program Coordinator at (703) 787–1591.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act (OPA 90) strengthened section 24 of the OCSLA. Subtitle B of OPA 90, entitled ''Penalties,'' increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $20,000 per violation for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

On August 8, 1997, MMS published new regulations implementing the civil penalty provisions of the OCSLA. Written in ''plain English,'' the new question-and-answer format provides a better understanding of the OCS civil penalty process. In addition, the provisions of OPA 90 require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. The new rule increases the maximum civil penalty to $25,000 per day per violation.

Between August 18, 1990 and December 31, 1997, MMS initiated 170 compliance reviews resulting in 170 civil penalty cases. MMS assessed 102 civil penalties and collected $1,398,820 in fines. Eighteen cases were dismissed and 50 are under review.

On September 1, 1997, the Associate Director for Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that MMS will annually publish a summary of OCS civil penalties paid. The annual summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the penalties paid September 1, 1997 through December 31, 1997. A quarterly update of this list will be posted on the MMS worldwide web home page, http://www.mms.gov.

SUMMARY OF OCS CIVIL PENALTIES PAID 9/1/97–12/31/97

Company name (case No.)	Regulation(s) violated (violation date(s))	Penalty paid (date paid)
Panaco Inc. (GOM–96–04)	30 CFR 250.60(c)(2)(iii) (06/13/95)	$10,000 (10/29/97)
Violation Summary: Drilling operations were conducted with an inoperable mud return indicator.		
Energy Development Corp. (GOM–96–26)	30 CFR 250.123(b)(9) 30 CFR 250.40(a) (01/27/95–02/09/95)	$10,000 (10/09/97)
Violation Summary: Failure to install Gas Detection System/vent; hydraulic control line for surface controlled substance safety valve (SCSSV) on Well A–5 leaked oil into Gulf of Mexico.		
Vastar Resources, Inc. (GOM–96–33)	30 CFR 250.123(c)(1) 30 CFR 250.124(a)(4) 30 CFR 250.124(a)(5) 30 CFR 250.124(a)(1)(i) (09/07/95)	440,500 (10/16/97)
Violation Summary: Pressure safety high level (PSHL) bypassed for Well G–8; Well D–35 continued to produce after surface safety valve (SSV) was found to be leaking; Well A–9D continued to produce after flow safety valve (FSV) failed a leakage test; Well A–25A continued to produce after SCSSV failed to test; Well A–28A continued to produce after FSV failed to leakage test.		
Shell Offshore, Inc. (GOM–96–35)	30 CFR 250.20(a) (10/18/95	$8,000 (09/30/97)
Violation Summary: Unsafe trap door on pig launcher (missing bolts).		
Mobil Oil Exploration & Production (GOM–97–12)	30 CFR 250.124(a)(1)(i) 30 CFR 250.123(c)(1) (09/05/96–12/04–96)	$45,000 (12/01/97)
Violation Summary: 7 SCSSV's not tested within the required timeframe; Pressure Safety Valve (PSV) blocked out of service on the water polisher.		
Kerr-McGee Corporation (GOM–97–14)	30 CFR 250.123(c)(1) (11/07/96)	$8,000 (10/30/97
Violation Summary: Level sensor low (LSL) on wet and dry oil tanks was blocked out of service.		
Norcen Explorer, Inc. (GOM–97–16)	30 CFR 250.123(c)(1) (02/06/97)	$5,000 (11/14/97)
Violation Summary: The fuel supply valve for both sump pumps bypassed.		
Total Penalties Paid, 9/1/97–12/31/97, 7 Cases		$126,500

Dated: January 26, 1998.

Thomas R. Kitsos,

Associate Director for Offshore Minerals Management.

[FR Doc. 98–2193 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Mesa Southwest Museum, Mesa, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Mesa Southwest Museumwhich meet the definition of ''objects of cultural patrimony'' under Section 2 of the Act.

The items are one Navajo Talking God yei mask, and one Navajo Monster Slayer yei mask. These are case masks made of buckskin and painted.

In 1986, these two masks were donated to the museum by a private individual.

The cultural affiliation of these masks is clearly Navajo as documented by museum records and through consultation with representatives of the Navajo Nation. Representatives of the Navajo Nation have documented the ongoing historical, traditional, and cultural importance of these items, and that they could not have been alienated by any individual tribal member.

Based on the above-mentioned information, officials of the Mesa Southwest Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Mesa Southwest Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Navajo Nation.

This notice has been sent to officials of the Navajo Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Tray C. Mead, Museum Administrator, Mesa Southwest Museum, 53 N. Macdonald, Mesa, AZ 85201; or telephone Dr. Susan Shaffer Nahmias, NAGPRA/Tribal Liaison at (602) 644–2563 before March 4, 1998. Repatriation of these objects to the Navajo Nation may begin after that date if no additional claimants come forward.

Dated: January 28, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–2458 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 24, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by February 17, 1998.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Baldwin County

Sunnyside Hotel, 14469 Oak St., Magnolia Springs, 98000111

Bullock County

Merritt School, (The Rosenwald School Building Fund and Associated Buildings MPS), Old Troy Rd., 0.5 mi. S of US 82, Midway vicinity, 98000110

Hale County

Emory School (The Rosenwald School Building Fund and Associated Buildings MPS), Co. Rd. 16, approx. 1 mi. W of jct. AL 69 and Co. Rd. 16, Cedarville vicinity, 98000109

Oak Grove School (The Rosenwald School Building Fund and Associated Buildings MPS), 0.25 mi. W of AL 69, 1 mi. N of jct. of AL 69 and US–80, Prairieville vicinity, 98000108

Jackson County

Scottsboro Memphis and Charleston Railroad Depot, jct. of N. Houston and Maple Ave., Scottsboro, 98000107

Jefferson County

Avondale Park Historic District, Roughly bounded by 47th st., 7th Ave., 8th Court, 34th St., and AL 4, Birmingham, 98000106

Downtown Birmingham Historic District (Boundary Increase II), Roughly along 23rd St. and 3rd Ave., bounded by 5th Ave., 22nd St., and 2nd Ave., Birmingham, 98000105

Talladega County

Thornhill, 29229 AL 21, Talledega, 98000104

ILLINOIS

Clay County

Baltimore and Ohio Railroad Depot, 225 W. Railroad St., Flora, 98000112

LOUISIANA

Lincoln Parish

Bogard Hall—Louisiana Tech University, (1930's Buiding Boom at Louisiana Tech University MPS), Jct. of Arizona and College St., Ruston, 98000119

Howard Auditorium—Louisiana Tech University, (1903's Building Boom at Louisiana Tech University MPS), Jct. of Adams Blvd. and Arizona St., Ruston, 98000113

Keeny Hall—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Keeny Circle, Ruston, 98000114

Prescott Memorial Library—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Keeny Circle, Ruston, 98000116

Reese Agriculture Building—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Tech Farm, US 80, Ruston, 98000118

Robinson Hall—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Madison Ave., Ruston, 98000117

Toliver Dining Hall—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Wisteria St., Ruston, 98000115

MASSACHUSETTS

Barnstable County

Lawrence Academy, 20 Academy Ln., Falmouth, 98000123

North Falmouth Village Historic District, 85–408 Old Main Rd., and 6 Wild Harbor Rd., Falmouth, 98000121

Essex County

Palmer School, 33 Main St., Boxford, 98000122

Plymouth County

Stetson—Ford House, 2 Meadow Farms Way, Norwell, 98000120

MONTANA

Powell County, Rialto Theater, 418 Main St., Dear Lodge, 98000124

Sweet Grass County

Big Timber Town Hall, 225 McLeod St., Big Timber, 98000125

NEW YORK

Albany County

Delaware and Hudson Railroad Freight House, 116 Saratoga Ave., Cohoes, 98000135

Dickey, William J., House, 16 Imperial Ave., Cohoes, 98000138

Houghtaling, Abraham, House, 54 Church St., Coeymans, 98000134

Lackman, J. Leonard, House, 28 Imperial Ave., Cohoes, 98000136

Chenango County

Calvary Epsicopal Church, (Historic Churches of the Episcopal Diocese of North St., W of Moon Hill Rd., McDonough, 98000130

Delaware County

District 10 School, NY 28, 2 mi SW of Margaretville, Margaretville vicinity, 98000131

Fulton County

First United Methodist Church, 7 Elm St. at Bleecker Sq., Gloversville, 98000128

Johnstown Colonial Cemetery, ct. of W. Green and N. Market Sts., Johnstown, 98000129

Onondaga County

First English Lutheran Church, 501 James St., Syracuse, 98000139

First Presbyterian Church of East Syracuse, 300 N. Center St., East Syracuse, 98000126

Orange County

Harrison Meeting House Site and Cemetery, Co. Rd. 416, S of jct. of NY 211 and Co. Rd. 416, Montgomery, 98000133

Rockland County

First Methodist Episcopal Church of Nyack, North Broadway, S of jct. of North Broadway and Birchwood Ave., Upper Nyack, 98000132

Saratoga County

West Charlton United Presbyterian Church, 1331 Sacandaga Rd., West Charlton, 98000127

Steuben County

Southside Historic District, Roughly bounded by NY 17, Chemung St., Spencer Hill, and Washington St., Corning, 98000137

OKLAHOMA

Tulsa County

Swan Lake Historic District, Roughly bounde by E. 15th St., S. Utica Ave., E. 21st St. and S. Peoria Ave., Tulsa, 98000140

TEXAS

Gray County

Gray County Courthouse, 205 N. Russell, Pampa, 98000142

Harris County

National Biscuit Company Building, 15 N. Chenevert, Houston, 98000141

McLennan County

Washington Avenue Bridge, Washington and Elm Aves. across Brazos River, Waco, 98000143

A Removal has been requested for:

MICHIGAN

Emmet County

Four Mile Clearing Rural Historic District, Roughly, jct. Of Mitchell and Fletcher Rds. and jct. of Country Club and Fletcher Rds., Bear Lake Township, Petoskey, 96001379.

[FR Doc. 98–2456 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the Torribio Site, Sandoval County, NM in the Possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Sandoval County, NM in the possession of the Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM.

A detailed assessment of the human remains was made by Museum of Indian Arts and Culture professional staff in consultation with representatives of the Pueblo of Zia.

In 1969, human remains representing two individuals were removed from the Torribio site (LA 9193) during legally authorized excavations conducted by Museum of New Mexico staff during a New Mexico State Highway and Transportation Department work project (permitted by the National Park Service under the Federal Antiquities Act). No known individuals were identified. The seven associated funerary objects include ceramic pots, shell beads, and turquoise beads.

Based on the associated funerary objects and archeological context, the Torribio site has been identified as a Pueblo II occupation dating between 900–1100 A.D. Further, the Torribio site is located on Pueblo of Zia tribal lands, and based on continuity of occupation and oral tradition presented by representatives of the Pueblo of Zia, is also culturally affiliated with the Pueblo of Zia.

Based on the above mentioned information, officials of the Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Museum of New Mexico have also determined that, pursuant to 43 CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Zia.

This notice has been sent to officials of the Pueblo of Zia. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. David Hayden or Ms. Sibel Melik, NAGPRA staff, Museum of Indian Arts and Culture, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344, before March 4, 1998. Repatriation of the human remains and associated funerary objects to the Pueblo of Zia may begin after that date if no additional claimants come forward.

Dated: January 28, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–2457 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–70–F

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 4–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time:

Friday, February 6, 1998, 9:30 a.m. to 5:00 p.m.

Monday, February 9, 1998, 9:30 a.m. to 5:00 p.m.

Wednesday, February 11, 1998, 9:30 a.m. to 5:00 p.m.

Friday, February 13, 1998, 9:30 a.m. to 5:00 p.m.

Wednesday, February 18, 1998, 9:30 a.m. to 5:00 p.m.

Friday, February 20, 1998, 9:30 a.m. to 5:00 p.m.

Subject Matter: (1) Oral Hearings and Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany; (2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

Status: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on January 28, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–2592 Filed 1–29–98; 12:04 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) No. 1090]

Bureau of Justice Assistance; State Criminal Alien Assistance Program

RIN 1121–ZA41

AGENCY: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

ACTION: Notice of funding availability.

SUMMARY: This notice is to announce that jurisdictions eligible in Fiscal Year 1997 (FY 1997) under the State Criminal Alien Assistance Program (SCAAP), as authorized under 8 U.S.C. § 1251(i), may file application requests for funding through March 4, 1998. Under this authorization states and political subdivisions of states may apply to the Bureau of Justice Assistance (BJA) for assistance in meeting their expenditures for the incarceration of undocumented criminal aliens. This notice announces the availability of FY 1997 funds for an additional thirty day window. This is not an announcement of the availability of FY 1998 funds. Detailed guidance governing the program in this fiscal year, including the application form, is available from the Bureau of Justice Assistance. A copy may be obtained by contacting the Bureau of Justice Assistance through the Response Center below.

DATES: The deadline for submitting application materials is March 4, 1998.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center or Linda McKay, SCAAP Coordinator, at 1–800–421–6770.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

SCAAP provides Federal assistance to states and localities for costs incurred for the imprisonment of undocumented criminal aliens who are convicted of qualifying offenses. Congress appropriated $500 million under the FY 1997 SCAAP legislation, codified at 8 U.S.C. 1251(i), (see also Fiscal Year 1997 Omnibus Appropriations Act, Pub. L. 104–208, 110 Stat. 3009 (September 30, 1996)), of which approximately $492 million dollars is available for distribution ($500 million minus administrative costs).

The BJA, part of the Office of Justice Programs (OJP), is administering SCAAP through a grants mechanism according to the application requirements contained in the guidance and application kit. Jurisdictions that have previously applied need not resubmit; their data will automatically be included in the process for award distribution. To avoid further delays, the new deadline for applications is firm and will not be extended or waived. Applicants must provide information regarding inmate records for all foreign born inmates in their facilities from 7/1/96 through 6/30/97, including names, dates of birth, lengths of stay, and offense code for qualifying convictions. Only those alien inmates who have been convicted of a felony or two misdemeanors may be counted. All applicants that comply with the application requirements will share in the appropriation based on the number of incarcerated aliens found to be reimbursable, their average length of incarceration, and the costs of inmate upkeep. Data provided by applicants on their potentially eligible incarcerated populations will be verified by the Immigration and Naturalization Service (INS) using a computerized matching technique.

The application, verification, and award processes are fully explained in the guidance document which is available from BJA.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 98–2469 Filed 1–30–98; 8:45 am]

BILLING CODE 4410–18–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–6 CARP NCBRA]

Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration.

SUMMARY: The Librarian of Congress is announcing initiation of the 180-day arbitration period for the adjustment of the rates for the noncommercial educational broadcasting license.

EFFECTIVE DATE: January 30, 1998.

ADDRESSES: All hearings and meetings for the section 118 compulsory license proceeding shall take place in the James Madison Memorial Building, Room 414, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William Roberts, Senior Attorney, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1996, the Library published a Notice in the **Federal Register** initiating a voluntary negotiation period for adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license, 17 U.S.C. 118, 61 FR 54458 (October 18, 1996). Section 118 creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. The Library set a date of April 7, 1997, for initiation of arbitration. 61 FR at 54461 (1996). The parties who filed Notices of Intent to Participate in this proceeding,

however, requested additional time to negotiate voluntary agreements.

The Library has received several negotiated agreements and joint proposals for rates and terms, and has adopted certain proposed rates and terms. *See* 62 FR 63502 (Dec. 1, 1997). A controversy remains, however, regarding the rates to be paid by the Public Broadcasting Service and National Public Radio for the use of musical works licensed by the American Society of Composers, Authors and Publishers, and Broadcast Music, Inc. Consequently, it is necessary to commence a Copyright Arbitration Royalty Panel (CARP) proceeding to resolve this controversy. This notice fulfills the requirements of 37 CFR 251.64 and sections 118 and 803(c) of title 17, United States Code.

Selection of Arbitrators

In accordance with § 251.6 of the CARP rules, the arbitrators have been selected for this proceeding. They are:

The Honorable Lewis Hall Griffith (Chairperson)
The Honorable Jeffrey Gulin
The Honorable Edward Dreyfus

Initiation of Proceeding

Pursuant to § 251.64 of the CARP rules, the Librarian is formally announcing the existence of a controversy as to the establishment of rates and terms for the adjustment of rates for the section 118 compulsory license, and is initiating an arbitration proceeding under chapter 8 of title 17 to resolve the determination. The arbitration proceeding commences on January 30, 1997, and runs for a period of 180 days. The arbitrators shall file their written report with the Librarian by July 28, 1998, the end of the 180-day period, in accordance with § 251.53 of the rules.

A meeting between the participants in the rate adjustment proceeding and the arbitrators shall take place on Tuesday, February 3, 1998, at 1:30 p.m. at the Library of Congress, James Madison Building, LM 414, First and Independence Avenue, S.E., Washington, D.C., to discuss the hearing schedule, arbitrator billing and payment, and any other procedural matters. The meeting is open to the public. Copies of the hearing schedule, once finalized, will be available at the Copyright Office upon request.

Dated: January 28, 1998.

David Carson,

General Counsel.

[FR Doc. 98–2476 Filed 1–30–98; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons or firms concerning NASA's procurement policies and practices. The purpose of the meeting is to have an open discussion among NASA's Associate Administrator for Procurement, industry, and the public.

DATES: March 4, 1998, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at NASA-Ames Research Center in the Space Science Auditorium located on the 2nd floor of Building 245, North Warehouse Road, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Michael R. Basta, NASA-Ames Research Center, Mail Stop 241–1, Moffett Field, CA 94035, (650) 604–4010.

SUPPLEMENTARY INFORMATION:

Format

There will be a presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed including NASA policies used in the award and administration of contracts.

Admittance

Doors will open at 1:00 p.m. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 90 persons; therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Initiatives

In addition to the general discussion mentioned above, NASA invites comments or questions relative to its ongoing Procurement Initiatives, some of which include the following:

Consolidated Contracting Initiative. The CCI initiative emphasizes developing, using, and sharing contract resources to meet Agency objectives.

Contractor Performance Assessment Program. The Contractor Performance Assessment Program assesses the overall performance of NASA's top contractors across all of their major NASA contracts.

Performance Based Contracting. This initiative is focused on structuring an acquisition around the purpose of the work to be performed instead of how the work is to be performed or broad and imprecise statements of work.

Electronic Contracting. NASA's EC initiative is moving procurement transactions from traditional paper-based systems to electronic processing wherever possible. These transactions include solicitation and award documents as well as payment for our goods and services.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

[FR Doc. 98–2466 Filed 1–30–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer—Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer—Communications Research (1192).

Date: February 5–6, 1998 and February 19–20, 1998.

Place: 8:00 a.m.–5:00 p.m.

Place: Rooms 365, 1105.17, and 1120, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John H. Cozzens, Program Director/Signal Processing Systems, C–CR, room 1155, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, #703/306–1936.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Signal Processing Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individual associated with the proposals. These matters are exempt under 5 U.S.C. 552b, (4) and (6) of the Government in the Sunshine Act.

Dated: January 28, 1998.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 98–2467 Filed 1–30–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Omaha Public Power District (licensee) for an amendment to Facility Operating License No. DPR–40 issued to the licensee for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska. Notice of Consideration of issuance of this amendment was published in the **Federal Register** on March 1, 1995 (60 FR 11137).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to delete the requirements for the toxic gas monitoring system for toxic chemicals.

The NRC staff has concluded that the portion of the licensee's amendment request pertaining to the chemical ammonia cannot be granted. The monitoring requirements for ammonia will remain in the TS. The licensee was notified of the Commission's denial of this proposed portion of the amendment request by a letter dated January 26, 1998.

By March 4, 1998, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

For further details with respect to this action, see (1) the application for amendment dated January 9, 1995, as supplemented by letters dated October 17, 1996, and January 26, 1998, and (2) the Commission's letter to the licensee dated January 26, 1998.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building 2120 L Street, N.W., Washington, D.C., and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 26th day of January 1998.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2443 Filed 1–30–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Callaway Plant; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for records pertaining to Union Electric Company's Callaway Plant, Unit 1, from the Callaway County Public Library, Fulton, Missouri, to the University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri. The hours of operation are Monday through Thursday 7:30 a.m. to Midnight, Friday 7:30 a.m. to 11:00 p.m., Saturday 9:00 a.m. to 9:00 p.m., and Sunday 12:00 noon to Midnight. For information concerning the LPDR, interested persons in the local area can contact the LPDR directly by calling Ms. Sally Schilling, Head, Government Documents, at (573)882–0748. Persons outside the local area should contact the NRC's LPDR Program Staff toll-free at 1–800–638–8081.

Dated at Rockville, Maryland, this 28th day of January 1998.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 98–2444 Filed 1–30–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form U–6B–2, File No. 270–169, OMB Control No. 3235–1063.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (''Commission'') requests comments on the collections of information summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for extension and approval.

The Public Utility Holding Company Act of 1935 [15 U.S.C. Section 79a *et seq.*] requires the filing of an application and/or declaration on Form U–1 for prior Commission approval both for the issue and sale of a security and its acquisition by a company in a registered holding company system.[1] Section 6(b) provides that the Commission shall exempt from the requirement of filing a declaration on Form U–1, by rules and regulations or orders and subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers, certain security issuances and sales.

Section 6(b) also contains a reporting requirement. It directs the issuer of securities exempted under section 6(b) to file with the Commission within ten days of the issue or sale a certificate of notification and directs the Commission to prescribe the form of and information required in this certificate. Rule 20(d) prescribes Form U–6B–2 as the form of certificate of notification to be filed pursuant to section 6(b). Form U–6B–2 is also prescribed by rule 52(b) (17 CFR 250.52(b)) and rule 47(b) (17 CFR 250.47(b)) as the form of certificate of notification to be filed by a public-utility subsidiary company of a registered holding company to notify the Commission of exempt issuances and sales of securities under rules 52 (exemption for certain issuances and sales of securities approved by state commissions) and 47 (exemption for certain issuances and sales of securities to the Rural Electrification Administration). The Commission receives about 52 Form U–6B–2s per year, which imposes an annual burden of about 52 hours.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

[1] *See* section 6(a) (requiring prior Commission approval under the standards of section 7 for the issue and sale of securities) and section 9(a)(1) (requiring prior Commission approval under the standards of section 10 for the acquisition of securities).

It should be noted that ''an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.''

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 20, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2460 Filed 1–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39582; File Nos. SR–NYSE–98–01; SR–Amex–98–03; SR–BSE–98–01; SR–CHX–98–02; SR–Phlx–98–02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; American Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Chicago Stock Exchange, Inc.; and Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to an Extension and Modification of Certain Market-Wide Circuit Breaker Provisions

January 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 1998, the New York Stock Exchange, Inc. (''NYSE''); on January 16, 1998, the American Stock Exchange, Inc. (''Amex''); on January 14, 1998, the Boston Stock Exchange, Inc. (''BSE''); on January 16, 1998, the Chicago Stock Exchange, Inc. (''CHX''); and on January 21, 1998, the Philadelphia Stock Exchange Inc. (''Phlx'') (collectively referred to as the ''Exchanges''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), proposed rule changes relating to certain market-wide circuit breaker provisions as described in Items I, II, and III below, which items have been prepared by the Exchanges. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. As discussed below, the Commission is also granting accelerated approval of these proposed rule changes.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to amend the timing and duration of their respective circuit breaker procedures and to extend the circuit breaker pilot program until April 30, 1998.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchanges included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item V below. The self-regulatory organizations have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchanges propose to amend their respective rules relating to ''Trading Halts Due to Extraordinary Market Volatility—circuit breakers'' to extend the effectiveness of their respective rules and alter the timing and duration of trading halts that occur late in the trading day. In 1988, the Commission approved rule proposals by the Exchanges, along with a policy statement of the National Association of Securities Dealers, Inc. (''NASD''), implementing trading halts during significant market declines (''circuit breakers''). These rules provided for a one hour market-wide trading halt if the Dow Jones Industrial Average[3] (''DJIA'') declined by 250 points from its previous day's close, and a two hour halt if, on that same day, it fell 400 points.[4] Amendments approved by the SEC in July 1996 reduced the duration of the 250 and 400 point halts to one-half hour and one hour, respectively.[5] Amendments approved in January 1997 increased the trigger values to 350 and 550 points, respectively.[6] These circuit breakers have been adopted by all U.S. securities markets, and by those commodities markets that trade stock index futures.

On October 27, 1997, these circuit breakers were activated for the first time. The first circuit breaker (thirty minute halt) was activated at 2:35 p.m. After trading resumed at 3:05 p.m., the second circuit breaker (one hour halt) was activated at 3:30 p.m., within the last hour of trading, thereby closing the market for the remainder of the day.

The Commission and the industry continue to discuss possible further refinements to the circuit breaker rules in light of the October 27, 1997 experience. In the interim, the Exchanges[7] are proposing to amend

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

[4] *See* Exchange Act Release Nos. 26198 (October 19, 1988), 53 FR 41637 (NYSE, Amex, NASD, and Chicago Board Options Exchange, Inc. (''CBOE'')); 26218 (October 26, 1988), 53 FR 44137 (CHX); 26357 (December 14, 1988), 53 FR 51182 (BSE); 26368 (December 16, 1988), 53 FR 51942 (Pacific Stock Exchange, Inc. (''PSE'')); 26386 (December 22, 1988), 53 FR 52904 (Phlx); and 26440 (January 10, 1989), 54 FR 1830 (Cincinnati Stock Exchange, Inc. (''CSE'')).

[5] *See* Exchange Act Release Nos. 37457 (July 19, 1996), 61 FR 39176 (NYSE); 37458 (July 19, 1996), 61 FR 39167 (Amex); and 37459 (July 19, 1996), 61 FR 39172 (BSE, CBOE, CHX, and Phlx).

[6] *See* Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) (NYSE, Amex, CBOE, CHX, BSE, and Phlx). The Commission approved each of the Exchanges' revised circuit breaker rules on a one-year pilot basis which will expire on January 31, 1998. *See id.* at 5874.

[7] The CBOE, CSE, Pacific Exchange, Inc. (''PCX'', formerly PSE), and the NASD have general rules that require them to halt trading during a triggering of the intermarket circuit breakers. Consequently, they do not need to file conforming rule changes because their circuit breaker halts will conform automatically to the halt periods adopted by the other exchanges. *See* letters to Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, Commission, from David P. Semak, Vice President of Regulation, PCX, dated January 13, 1998; from Adam W. Gurwitz, Vice President Legal and Corporate Secretary, CSE, dated January 22, 1998; from Richard Ketchum, Chief Operating Officer and Executive Vice President, NASD, dated January 23, 1998 (''NASD letter''); from Arthur B. Reinstein, Assistant General Counsel, CBOE, dated January 23, 1998.

The NASD's policy statement expired on December 31, 1997. The Commission, however, has received both oral and written representations from the NASD that it will continue to follow, upon request by the Commission, a trading halt during the triggering of the intermarket circuit breakers. *See* NASD letter, *supra.* The Commission notes that it has a standing request with the NASD to halt trading as quickly as practicable whenever the

their respective trading halts rules with regard to the timing and duration of trading halts. Under the proposal, if the first circuit breaker (down 350 points) is reached prior to 3:00 p.m.,[8] trading would be halted for one-half hour. If the first circuit breaker is reached at or after 3:00 p.m., trading on the Exchange would continue uninterrupted until the second circuit breaker (down 550 points) is reached. If the second circuit breaker is reached prior to 2:00 p.m., trading on the Exchange would halt for one hour. If the second circuit breaker is reached at or after 2:00 p.m. but before 3:00 p.m., trading on the Exchange would halt for 30 minutes instead of one hour. If the second circuit breaker is reached at or after 3:00 p.m., trading on the Exchange would halt for the remainder of the trading day.[9] The Exchanges seek to effect these changes on a pilot basis until April 30, 1998. The futures exchanges trading stock index futures have proposed analogous circuit breaker proposals with the Commodity Futures Trading Commission (''CFTC'') to halt trading in such contracts.[10]

2. Statutory Basis

The basis under the Act for the proposed rule changes is the requirement under Section 6(b)(5)[11] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule changes are consistent with Section 6(b)(5) of the Act in that they are designed to promote just and equitable principles of trade. The Exchanges believe that modifying the timing and duration of the circuit breakers, as well as extending the circuit breaker pilot program is consistent with these objectives in that the proposed rules provide a balance between the need to halt trading temporarily during periods of extraordinary market volatility with the need to provide an open marketplace for trading securities.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that any burden will be placed on competition as a result of the proposed rule changes.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges request that the Commission finds good cause pursuant to Section 19(b)(2) of the Act for approving these modifications and extensions to the circuit breaker rules prior to the 30th day after publication of the proposed rule changes in the **Federal Register**.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

After careful review of the Exchanges' proposed amendments to the circuit breaker rules and for the reasons discussed below, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6(b).[12] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[13]

In 1988, the Commission approved the Exchanges' circuit breaker proposals, along with the NASD's circuit breaker policy statement, because the Commission believed that the proposed circuit breaker rules would help promote stability in the equity and equity-related markets by providing for an enhanced opportunity for market participants to assess information during times of extreme market movements.[14] The proposals, in part, were in response to the events of October 19, 1987, when the DJIA declined 22.6%. The Commission believed that the circuit breaker proposals would provide market participants with an opportunity during a severe market decline to reestablish an equilibrium between buying and selling interest in a more orderly fashion. The futures exchanges also adopted analogous trading halts to provide coordinated means to address potentially destabilizing market volatility.[15]

On October 27, 1997, the DJIA experienced a decline of 554 points, or 7.2%. The first circuit breaker of one-half hour was trigger at 2:35 p.m. when the DJIA declined 350 points from the previous day's closing value. After the market reopened at 3:05 p.m., the DJIA continued to decline another 200 points, triggering the second circuit breaker at 3:30 p.m. Because the second circuit breaker was triggered at 3:30, within the last hour of trading, the market was closed for the remainder of the day. The triggering of the circuit breakers when the markets were operating smoothly, the rapid decline of the market that followed the reopening after the first circuit breaker was activated, and the early close of trading that occurred as a result of the second circuit breaker being triggered after 3:00, have prompted the markets to re-evaluate the operation of circuit breakers. While the markets determine how to modify the trigger levels to return them to levels consistent with their original design, they propose to extend the existing breakers, at the 350 and 550 point level, for three months. In addition, the current proposal reflects the Exchanges' consensus as to a circuit breaker timing mechanism that is preferable to the

NYSE and other equity markets have suspended trading. The Exchanges' proposed rule changes do not affect the Commission's standing request.

[8] All time references are to Eastern time.

[9] The NYSE has requested that the Commission extend the ''safe harbor'' provisions of Rule 10b–18 under the Exchange Act to cover corporate repurchases effected at the reopening on the day of the halt, during the last half-hour prior to the scheduled close of trading on the day of the halt, and at the next day's opening if the market-wide halt is in effect at the scheduled close of trading, provided that the other restrictions in Rule 10b–18 are met in the execution of any repurchase order. *See* letter to Jonathan Katz, Secretary, Commission, from James E. Buck, Senior Vice President and Secretary, NYSE, dated January 8, 1998.

[10] *See* letters to Jean A. Webb, Secretary, CFTC, from Richard J. McDonald, Vice President, Research, Chicago Mercantile Exchange (''CME''), dated January 8, 1998; from Paul J. Draths, Vice President and Secretary, Chicago Board of Trade (''CBOT''), dated January 9, 1998; from June Furlan, Vice President and Chief Economist, New York Futures Exchange, Inc. (''NYFE''), dated January 12, 1998; and from Jeff C. Borchardt, Senior Vice President, Kansas City Board of Trade, Inc. (''KCBT''), dated January 13, 1998.

[11] 15 U.S.C. § 78f(b)(5).

[12] 15 U.S.C. 78f(b).

[13] In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* Exchange Act Release No. 26198, *supra* note 4.

[15] *See* letters to Jean A. Webb, Secretary, CFTC, from Todd E. Petzel, Vice President, Financial Research, CME, dated September 1, 1988; from Paul J. Draths, Vice President and Secretary, CBOT, dated July 29, 1988; from Milton M. Stein, Vice President, Regulation and Surveillance, NYFE, dated September 2, 1988; and Michael Braude, President, KCBT, dated August 10, 1988.

current procedure for circuit breakers that trigger at 350 and 550 points late in the trading day. The Commission notes that the Exchanges' proposal will operate only until April 30, 1998, requiring the Exchanges to revise circuit breaker procedures by then to return them to their original design.

The Commission believes that the extension of the current levels for a brief period is reasonable in order to provide sufficient time for the markets to amend their circuit breakers to trigger only during a severe market decline of historic proportions. The revisions to the current procedures are appropriate to prevent the markets from closing for the day at a decline of only 4.55%, represented by 350 points.[16]

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication to the notice thereof in the **Federal Register** because the current pilot program will expire on January 31, 1998, and accelerated approval will enable the pilot to continue on an uninterrupted basis. The Commission realizes that under normal circumstances the proposed modifications would be published for notice and comment in the **Federal Register**. Give the near expiration of the pilot, however, the Commission believes that accelerated approval is appropriated to keep circuit breakers in place until the markets have finished their re-evaluation of the broader circuit breaker issues. This should be done very quickly. Hence, the Commission is approving on a pilot basis the continuation of the current circuit breaker levels and the adoption of the timing and duration modifications only until April 30, 1998. The Commission believes that approving the Exchanges' continuation of circuit breaker rules on a pilot basis (with certain changes for late in the day halts) will facilitate further discussion on modifying circuit breaker levels, thus giving the Exchanges' adequate time to resolve this issue in the upcoming months. Accordingly, the Commission finds that it is consistent with Sections 6(b) and 19(b)(2) of the Act to approve these proposed rule changes on an accelerated basis.

The Commission also believes that the circuit breaker mechanisms must be coordinated across the U.S. equity, futures and options markets to be effective in times of extreme market volatility.[17] Therefore, to ensure continued market coordination, the Exchanges' proposal will become effective simultaneously, upon the termination of the current pilot program, and will take effect on February 1, 1998.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of each Exchange. All submissions should refer to File No. SR–NYSE–98–01, SR–AMEX–98–03, SR–BSE–98–01, SR–CHX–98–02, and SR–Phlx–98–02, and should be submitted by February 23, 1998.

VI. Conclusion

For the foregoing reasons, the Commission believes the proposal by the Exchanges to revise their trading halt provisions are consistent with section 6(b)(5) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule changes (SR–NYSE–98–01, SR–Amex–98–03, SR–BSE–98–01, SR–CHX–98–02, and SR–Phlx–98–02) are approved and effective on February 1, 1998 until April 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2459 Filed 1–30–98; 8:45 am]

BILLING CODE 8010–01–M

[16] This percentage is based on the DJIA close on January 23, 1998.

[17] The Exchanges' proposals are contingent on other markets adopting similar proposals. In this regard, the Commission notes that all of the existing U.S. stock and options exchanges, as well as the NASD, have either submitted revised circuit breaker pilot programs or have agreed to comply with the provisions of such programs. The futures exchanges are also adopting analogous trading halts procedures to maintain the existing coordinated means to address potentially destabilizing market volatility. Thus, the Commission believes the contingency is satisfied.

[18] 15 U.S.C. § 78s(b)(2).

[19] 17 CFR 200.3–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Interagency Committee on Aircraft Noise Meeting Agenda

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public forum.

SUMMARY: The FAA is issuing this notice to advise the public of a forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to discuss aircraft noise issues.

DATES: The forum will be held on March 18, 1998, from 9:30 a.m. to 4:00 p.m.

ADDRESSES: The forum will be held at the Federal Aviation Administration Headquarters, 800 Independence Avenue, SW, Washington, DC 20591, in Auditorium FOB–10A.

FOR FURTHER INFORMATION CONTACT: James R. Littleton Jr., Analysis and Evaluation Branch (AEE–120), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, fax (202) 267–5594.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to be held on March 18, 1998.

On March 16, 1993, representatives of the agencies that participated on the Federal Interagency Committee on Noise (FICON) met and agreed to establish a standing committee to be known as FICAN. The standing interagency committee will provide a permanent aviation noise research and development (R&D) forum, which will assist agencies in providing adequate forums for discussion of public and private proposals, identify needed research, and encourage R&D efforts in these areas. FICAN held its last public forum on May 13, 1997 in Minneapolis, Minnesota. The public forum consisted of presentations by the FICAN members on current and future aircraft noise research projects, followed by an open comment and discussion period.

The agenda for the upcoming meeting will include:

- Presentation of current and future aircraft noise research projects that are funded by the Federal members of FICAN.
- Public concern/discussion and comment period.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by March 6, 1998 to present oral statements at the forum. Arrangements may be

made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the forum. Written comments should be addressed to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Comments must be received on or before April 3, 1998.

James R. Littleton Jr.,

Analysis and Evaluation Branch, Office of Environment and Energy.

[FR Doc. 98–2452 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to present recommendations for voting member's action, to discuss rotorcraft issues, to discuss current rulemaking actions, and to discuss future activities and plans.

DATES: The meeting will be held at the Anaheim Marriott, Orange County Ballroom #3, 700 West Convention Way, Anaheim, CA 92802, telephone (714) 750–8000.

ADDRESSES: The meeting will be held at the Anaheim Marriott, Orange County Ballroom #3, 700 West Convention Way, Anaheim, CA 92802, telephone (714) 750–8000.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9681.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

1. Presentation of documents for ARAC approval by each of the following Working Groups:
   a. Rotocraft External Load Combination Safety Requirements.
   b. Normal Category Gross Weight and Passenger Issues.
   c. Critical Parts.
2. Presentation of a status report by the Performance and Handling Qualities Working Group.

Attendance is open to the pubic but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements for obtaining copies of the documents that will be presented for approval and sign and oral interpretation requests may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 27, 1998.

Joseph Hawkins,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–2406 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Forecast Conference and Special Public Session

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Forecast Conference and Special Public Session.

SUMMARY: The first national FAA Commercial Space Transportation Forecast Conference, Commercial Space Transportation in the 21st Century: Technology and Environment, 2001–2025, will be held on February 10–11, 1998, at the Key Bridge Marriott Hotel, Arlington, Virginia. The conference will bring together industry leaders, government officials, members of academia and other interested parties to explore the future of this rapidly growing industry and developments which may be expected, both domestically and internationally. Participants will share their visions on technology development, international competitiveness and cooperation, business opportunities and government oversight requirements. It will provide the FAA essential guidance on what resources and capabilities that will be required to successfully accomplish its oversight and regulatory responsibilities for the commercial space launch industry and inform future policy decisions.

The conference incorporates, a special session at 2:00 p.m., February 11th, to gather public views and information on ''Flight Safety in a Commercial Environment.'' Topics we hope to hear about from the public include flight safety considerations that may affect new vehicle development and commercial launch site operations. Participation in the special session is free and open to the public. A conference fee is required to attend all other conference sessions.

FOR FURTHER INFORMATION CONTACT: Brenda Parker, *Phone:* (202) 267–8308 in the office of the Associate Administrator for Commercial Space Transportation, 800 Independence Avenue SW (AST–200), Washington, DC 20591. Conference information is also available on the AST web site: ast.faa.gov.

Dated: January 26, 1998.

Patricia G. Smith,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 98–2405 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Covington, Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Holscher, Director of Aviation of the Cincinnati/Northern Kentucky International Airport at the following address: Kenton County Airport Board, Second Floor, Terminal 1, Cincinnati/Northern Kentucky International Airport, 2939 Terminal Drive, Hebron, Kentucky 41048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kenton County Airport Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; (901) 544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 26, 1998, FAA determined that the application to impose and use the revenue from a PFC submitted by the Kenton County Airport Board 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 April 30, 1998.

The following is a brief overview of the application.

PFC Application No.: 98––03–C–00–CVG.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1998.

Proposed charge expiration date: April 1, 1999.

Total estimated PFC revenue: $21,097,000.

Brief description of proposed project(s): Impose and Use Funds are for reimbursement of airport owner's cost for the following completed projects. Replacement of an aircraft rescue and firefighting rapid response vehicle; Reconstruction of portion of taxiway K and construction of exit taxiways; Extend Taxiway S; Purchase snow removal equipment; Construction of deicing containment system; Construction of crossfield taxiway; Construction, lighting and replacement of ILS for 2,200 foot runway extension to Runway 9–27. The following are new projects or are projects underway. Relocate field lighting cabling to new air traffic control tower; Extend taxiway S and tunnel for Tower Drive; Fund Environmental Impact Statement; Conduct Noise Compatibility Study; Rehabilitate Taxiway M.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

1. FAR Part 121 Supplemental Operators which operate at the airport without an operating agreement with the Board and enplane less than 1,500 passengers per year.

2. FAR Part 135 on-demand air taxi/commercial operators, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cincinnati/Northern Kentucky International Airport.

Issued in Memphis, Tennessee, on January 26, 1998.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 98–2451 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jefferson County Airport, Beaumont, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Nocie of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Byron Broussard, Manager of Jefferson County Airport at the following address: Byron Broussard, Airport Manager, Jefferson County Airport, 2748 Viterbo Road, Box 9, Beaumont, Texas 77706.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 21, 1998 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport 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 20, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1998.

Proposed charge expiration date: November 1, 2000.

Total estimated PFC revenue: $667,020.

PFC application number: 98–03–C–00–BPT.

Brief description of proposed projects: Projects to impose and use PFC's. Airfield Safety Improvements, Airport Entrance Signs, Widen Taxiway D, Aircraft Rescue and Firefighting (ARFF) Facility, Ground Level Covered Passenger Walkway, and PFC Application and Administrative Costs.

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

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, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Jefferson County Airport.

Issued in Fort Worth, Texas on January 21, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–2398 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Juneau International Airport, Anchorage, Alaska

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments to be received on or before March 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ronnie V. Simpson, Manager, Alaskan Region Airports Division, 222 West 7th, Box 14, Anchorage, AK 99513.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to David C. Miller, Airport Manager, at the following address: Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Juneau International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Programming Specialist, Alaskan Region Airports Division, Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK, 99513, 907 271–5443. 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 (#98–01–C–00–JNU) to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 15, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by City and Borough of Juneau, Juneau International Airport, Juneau, Alaska, 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 April 15, 1998.

The following is a brief overview of the application.

Application number: 98–01–C—00–JNU.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1998.

Proposed charge expiration date: March 31, 2000.

Total estimated PFC revenue: $1,120,909.

Brief description of proposed project(s):

Impose Only

Develop east end general aviation area

Impose and Use

Acquire snow removal equipment; Acquire security radio communication equipment; Acquire refurbished airport beacon; Acquire airport rescue fire fighting vehicle; Reconstruct taxiway A intersection with runway 8/26; Improve (pave) airfield access roads; Reconstruct airfield access roads; Acquire airport security equipment; Reconstruct taxiway B; Improve (pave) float plane pond access road; Improve (pave) west general aviation apron; Pave west end access road; Design general aviation and air carrier ramp; Update airport layout plan; Install airport guidance sign system; Prepare Duck Creek relocation environmental assessment; Acquire airport command vehicle; Improve terminal; replace runway lights; Planning for airport development; Rehabilitate blast pads, Hardstands and chip seal of main ramp & taxiway; Install airport perimeter fencing; PFC preparation cost; Rehabilitate runway 8/26 design; Renovate north terminal heating; Replace taxiway lighting; Rehabilitate runway 8/26; Rehabilitate terminal wall & ceiling; Rehabilitate north terminal building access; Design snow removal equipment building; Install security fencing—15,000 linear feet; Prepare environmental for float pond and remote transmitter/receiver areas.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air carriers enplaning 1,000 or less passengers annually from Juneau as published in the most current Air Carrier Activity Information System (ACAIS) Database; All air carriers while operating on essential air service (EAS) routes from Juneau that do not receive essential air service compensation.

Note: All carriers receiving essential air service compensation on designated essential air service routes are exempt by section 158.9A of Part 158.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** located at the FAA, Alaskan Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Juneau International Airport.

Issued in Anchorage, Alaska on January 23, 1998.

Ronnie V. Simpson,

Manager, Airports Division, Alaskan Region.

[FR Doc. 98–2400 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 97–03–C–00–SGF To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Springfield-Branson Regional Airport, Springfield, Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Springfield-Branson Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert D. Hancik, A.A.E., Director of Aviation, at the following address: Springfield-Branson Regional airport, Route 6, Box 364–15, Springfield, Missouri 65803.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Springfield, Springfield-Branson Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Springfield-Branson Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 25, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Springfield, Missouri, was not substantially complete within the requirements of section 158.25 of Part 158. The City of Springfield submitted supplemental information on December 16, 1997, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than April 15, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July, 1998.

Proposed charge expiration date: September, 1998.

Total estimated PFC revenue: $8,435,114.

Brief description of proposed project(s): Conduct a terminal area master plan study; install a flight information display system; acquire snow removal equipment; acquire a leasehold, roadway improvements and expand baggage claim facility and ground transportation areas; install commuter walkways; and PFC administrative costs.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield-Branson Regional Airport.

Issued in Kansas City, Missouri on January 16, 1998.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 98–2453 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards and Research and Development Programs Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Industry Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on March 17, 1998, beginning at 9:45 a.m. and ending at approximately 12:30 p.m. Questions relating to the vehicle regulatory program must be submitted in writing by February 23, 1998, to the address shown below. If sufficient time is available, questions received after February 23 may be answered at the meeting. The individual, group or company submitting a questions(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by February 23, 1998, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by March 13, 1998, and will be available at the meeting. Also, the agency will hold a second public meeting the same day March 17, at 1:30 p.m. devoted exclusively to a presentation of research and development programs. That meeting is described more fully in a separate announcement. The next NHTSA vehicle regulatory program meeting will take place on Tuesday, June 16, 1998 at the Clarion Inn Hotel, Wickham Road, in Romulus, MI.

ADDRESSES: Questions for the March 17, NHTSA Technical Industry Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329. The meeting will be held at the Clarion Inn Hotel, 9191 Wickham Road, in Romulus, MI.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standard Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m. We would appreciate the questions you send us to be organized by categories to help us to process the questions in agenda form more efficiently. Same format as follows:

I. Rulemaking
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person

desiring assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB February 13, 1998.

Issued: January 27, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2454 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–3343; Notice 1]

Mercedes-Benz U.S. International, Inc.; Application for Temporary Exemption From Five Federal Motor Vehicle Safety Standards

Mercedes-Benz U.S. International, Inc., of Vance, Alabama, has applied for a temporary exemption from five Federal motor vehicle safety standards on behalf of the Mercedes-Benz M Class vehicle. The basis of the application is that, in the absence of an exemption, the manufacturer would be prevented from selling a motor vehicle whose overall level of safety equals or exceeds that of a non-exempted vehicle. The exemption is sought for two years.

Notice of receipt of the application is published in accordance with agency regulations on the subject and does not represent any agency judgment on the merits of the application.

Under the authority of 49 U.S.C. 30113(b)(3)(iv), as implemented by 49 CFR 555.6(d), the NHTSA Administrator may exempt, on a temporary basis of up to two years, motor vehicles from compliance with a Federal motor vehicle safety standard upon a finding that ''(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles'' (The Administrator must also find that the exemption is in the public interest and consistent with objectives of traffic safety). The exemption covers up to 2,500 vehicles for any 12-month period that it is in effect.

Mercedes-Benz U.S. International, Inc. (''MBUSI'') manufactures the Mercedes-Benz M Class sport utility vehicle. It has developed a version of the M Class for export which is manufactured to European specifications. It proposes to sell a limited number of these vehicles to ''European citizens'' who ''are either visiting or temporarily assigned to work in the United States.'' This program is similar to those in which a vehicle conforming to U.S. specifications is sold to Americans from various factories in Europe. MBUSI relates that its planned program is similar to one established by General Motors for which NHTSA granted GM's petition on August 18, 1988 (53 FR 31411).

Although not required by 49 CFR Part 555, ''MBUSI is currently developing procedures that will ensure that the vehicles will, in fact, be exported within a one year time frame, or at the conclusion of a diplomatic assignment, whichever is applicable.''

In MBUSI's view, it requires partial exemptions from five Federal motor vehicle safety standards if it is not to be prevented from selling the M Class. These are discussed below.

1. *Standard No. 101, Controls and Displays.* The European specification M Class brake indicator warning light depicts the ISO brake symbol, rather than the word ''BRAKE'' as required by Table II of Standard No. 101 (this is also a requirement imposed by Standard No. 105 *Hydraulic Brake Systems.*

MBUSI does not believe that this noncompliance degrades the safety of the vehicle. The ISO symbol is well known to the Europeans who will own and drive the M Class. On the other hand, the word ''BRAKE'' could be confusing to operators with a limited command of English.

2. *Standard No. 108, Lamps, Reflective Devices and Associated Equipment.* Table II of Standard No. 108 requires vehicles such as the M Class to be equipped with front and rear side marker lamps and reflectors. These will be lacking. In addition, the headlamps are designed to meet the European photometric specifications of ECE R8 rather than those of Standard No. 108.

Although the M Class vehicles will lack side marker lamps and reflectors, they will be equipped with other lighting equipment not required by Standard No. 108, such as side turn signal repeaters. In addition, they will be equipped with front and rear fog lamps. Vehicles destined for Scandinavian countries will be equipped with daytime running lamps. In summary, the combined addition of these devices will, in MBUSI's opinion, add to the visibility of exempted vehicles.

With respect to headlamp photometrics, the exempted M Class would not meet the minimum candela prescribed by Standard No. 108 for the upper beam. This affects eight test points. At these points, only 20 percent to 44.9 percent of the minimum required would be reached. With respect to the lower beam, there are two test points that fail to reach the minimum, one achieving 20.2 percent of the required figure and the other 71 percent. At test point 10U–90U, the maximum candela established by Standard No. 108 is exceeded by 270.4 percent.

MBUSI relates that the ''continental European low beam pattern puts less light into the eyes of oncoming drivers * * * thereby reducing the glare experienced by oncoming drivers.'' Although the headlamps do not project as much light down the road as U.S. headlamps, there are differing opinions ''as to which set of photometric requirements offers the optimum compromise in satisfying competing safety objectives.'' Some countries permit both European and U.S. specification headlamps, but there are no data from these countries suggesting that one type is over or under represented in crashes.

With respect to the upper beam, MBUSI states that the lamps do meet the minimum for test point HV, but not the minima at 9 degrees right and left and 12 degrees right and left. Because the European owners will be accustomed to the forward illumination characteristics of European beam patterns, ''the lighting on these vehicles should provide 'equivalent safety' for these drivers. * * *''

3. *Standard No. 111, Rear View Mirrors.* The passenger side convex rear view mirror will not contain the warning required by S5.4.2 for American-market cars that ''Objects in Mirror Are Closer Than They Appear.''

According to the applicant, the European drivers will be familiar with outside convex mirrors because they are used throughout Europe without a legend affixed. No safety value is added by requiring the legend to be etched into the mirror.

4. *Standard No. 120, Tires for Vehicles Other Than Passenger Cars.* The M Class exempted vehicles will not carry a tire information label as required by S5.3 of Standard No. 120.

However, there will be a European tire pressure information label adjacent to the fuel filler opening, the location for many European vehicles. Since Europeans are accustomed to that location for the tire information label, there is no safety value added by placing the label in the locations required under the standard. In addition, the tire information label must

contain the information required by European standards.

5. *Standard No. 209, Seat Belt Assemblies.* The seat belts in the exempted M Class vehicles will not carry the marking required by S4.1(j) of the standard (name or trademark of the manufacturer, distributor, or importer; year of manufacture, model).

They will, however, meet ECE R16 and bear the required approval mark. This is a technical noncompliance and, as with the tire information label, it is information based. MBUSI believes that the purpose of this information is to allow the belts to be tracked in a recall campaign occurring in the United States. In this case, the vehicles will be shipped to Europe, and the respective European label is more appropriate for these vehicles.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 4, 1998.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued: January 20, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2485 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3355; Notice 1]

Red River Manufacturing, Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

Red River Manufacturing, Inc., of West Fargo, North Dakota, has petitioned for a three-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection.* The basis of the petition is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

The applicant manufactures and sells horizontal discharge trailers. One type is used in the road construction industry to deliver asphalt and other road building materials to the construction site, and the other type to haul feed, seed, and agricultural products such as sugar beets and potatoes, from the fields to hoppers for storage or processing. Both are known by the name ''Live Bottom.''

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Live Bottom trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* The applicant, which manufactured 265 Live Bottom trailers in 1996 has asked for an exemption of three years in order to develop a rear impact guard that conforms to Standard No. 223 and can be installed in compliance with Standard No. 224, while retaining its functionality and price-competitiveness. In the absence of an exemption, it believes that approximately 50 percent of its work force would have to be laid off. Its gross revenues would decrease by $4,000,000 to $5,000,000 (these have averaged $13,049,311 over its 1994, 1995, and 1996 fiscal years).

Present studies show that the placement of a retractable rear impact guard would likely catch excess asphalt and agricultural products as they were discharged into hoppers. Further, the increased cost of the Live Bottom, were it required to comply immediately, would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the increased weight of a retractable rear impact guard would significantly decrease the payload of the Live Bottom.

In mid 1996, the applicant's design staff began exploring options for compliance with Standard No. 224. Through a business partner in Denmark, the company reviewed the European rear impact protection systems. Because these designs must be manually operated by ground personnel, they would not be acceptable to the applicant's American customers. Later in 1996, Red River decided to investigate powered retractable rear impact guards. The initial design could not meet the energy absorption requirements of Standard No. 223. The company is now investigating another design for retractable rear impact guards, which ''is being refined and analyzed.

The applicant believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Live Bottom ''can be used safely where it would be hazardous or impractical to use end dump trailers, such as on uneven terrain or in places with low overhead clearances.'' These trailers are ''valuable to the agricultural sector'' because of the advantages they offer in the handling of relatively fragile cargo. An exemption ''would have no adverse effect on the safety of the general public'' because the Live Bottom spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Live Bottom is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 23, 1998.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: January 28, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2486 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on January 27, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	NEW EXEMPTION APPLICATIONS		
10581–N	Luxfer UK Limited, Nottingham, England	4	02/27/1998
11232–N	State of Alaska Department of Transportation, Juneau, AK	4	02/27/1998
11511–N	Brenner Tank Inc., Fond du Lac, WI	4	02/27/1998
11523–N	Bio-Lab, Inc., Conyers, GA	4	02/27/1998
11537–N	Babson Bros. Co., Romeoville, IL	4	02/27/1998
11540–N	Convenience Products, Fenton, MO	1	02/27/1998
11561–N	Solkatronic Chemicals, Fairfield, NJ	4	02/27/1998
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	02/27/1998
11597–N	Zeneca, Inc., Wilmington, DE	4	02/27/1998
11646–N	Barton Solvents Inc., Des Moines, IO	4	02/27/1998
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	02/27/1998
11687–N	Tri Tank Corp., Syracuse, NY	4	02/27/1998
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	02/27/1998
11722–N	Citergaz S.A., 86400 Civray, FR	1	02/27/1998
11735–N	R.D. Offutt Co., Park Rapids, MN	4	02/27/1998
11740–N	Morton International, Inc., Ogden, UT	4	02/27/1998
11751–N	Delta Resigns & Refractories, Detroit, MI	4	02/27/1998
11759–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	02/27/1998
11761–N	Vulcan Chemicals, Birmingham, AL	4	02/27/1998
11762–N	Owens Fabricators, Inc., Baton Rouge, LA	4	03/31/1998
11765–N	Laidlaw Environmental Services Inc., Columbia, SC	4	03/31/1998
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	03/31/1998
11769–N	Great Western Chemical Co., Portland, OR	4	03/31/1998
11772–N	Kleespie Tank & Petroleum Equipment, Morris, MN	4	03/31/1998
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	03/31/1998
11782–N	Aeronex, Inc., San Diego, CA	4	03/31/1998
11783–N	Peoples Natural Gas, Rosemount, MN	4	03/31/1998
11797–N	Cryodyne Technologies, Radnor, PA	4	03/31/1998
11798–N	Air Products & Chemicals, Inc., Allentown, PA	4	03/31/1998
11809–N	Laidlaw Environmental Services Inc., Columbia, SC	4	03/31/1998
11815–N	Union Pacific Railroad Co. et al, Omaha, NE	4	03/31/1998
11817–N	FIBA Technologies, Inc., Westboro, MA	4	03/31/1998
11821–N	Wyoming Department of Transportation, Cheyenne, WY	4	03/31/1998
11841–N	Stepan Co., Northfield, IL	4	03/31/1998
11862–N	The BOC Group, Murray Hill, NJ	4	03/31/1998
11863–N	Carrier Corp. d/b/a United Technologies Carrier, Syracuse, NY	4	03/31/1998
11882–N	FMC Corporation, Philadelphia, PA	4	03/31/1998
11883–N	Brownie Tank Mfg., Co., Minneapolis, MN	4	04/15/1998
11884–N	Degussa Corp., Ridgefield Park, NJ	4	04/15/1998
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	04/15/1998
11899–N	Carleton Technologies Inc., Orchard Park, NY	4	04/15/1998
11905–N	Russell-Stanley Corp., Red Bank, NJ	4	04/15/1998
11911–N	Transfer Flow, Inc., Chico, Ca	4	04/15/1998
11913–N	Wheatland Tube Company, Wheatland, PA	4	04/15/1998
11914–N	Glowmaster Corp., Garfield, NJ	4	04/15/1998
11915–N	Lockheed Martin Aeronautical Systems, Marietta, GA	4	04/15/1998
11916–N	CP Industries, Inc., McKeesport, PA	4	04/15/1998
11917–N	Sexton Can Co., Martinsburg, WV	4	04/15/1998

Application No.	Applicant	Reason for delay	Estimated date of completion
11918–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	04/15/1998
11923–N	Hoover Materials Handling Group	4	04/15/1998
11925–N	Concorde Battery Corp., West Covina, CA	4	04/15/1998
11927–N	Alaska Marine Lines, Seattle, WA	4	04/15/1998
11930–N	Boeing North American, Inc., Downey, CA	4	02/15/1998
11934–N	UtiliCorp United, Inc., Omaha, NE	4	05/29/1998
11938–N	Steel Shipping Container Institute, Washington, DC	4	05/29/1998
MODIFICATIONS TO EXEMPTIONS			
970–M	Callery Chemical Corp., Pittsburgh, PA	4	02/27/1998
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	02/27/1998
6610–M	ARCO Chemical Co., Newtown Square, PA	4	02/15/1998
7026–M	Walter Kidde Aerospace, Wilson, NC	4	02/27/1998
7879–M	Halliburton Energy Services, Duncan, OK	4	02/27/1998
8230–M	Olin Corporation, Norwalk, CT	4	02/27/1988
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	02/27/1988
9064–M	Propack, Inc., Essington, PA	4	02/27/1988
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY	4	02/27/1988
9266–M	ERMEWA, Inc., Houston, TX	4	02/27/1988
9413–M	EM Science, Cincinnati, OH	4	02/27/1988
9706–M	Taylor-Wharton, Harrisburg, PA	4	02/27/1988
198819–M	Halliburton Energy Services, Duncan, OK	4	03/15/1988
10138–M	BetzDearborn Inc., Trevose, PA	4	03/15/1988
10429–M	Baker Performance Chemicals, Inc., Houston, TX	4	03/15/1988
10677–M	Primus AB, S–71 26 Solna, SW	4	03/15/1988
11005–M	Pressure Technology, Inc., Hanover, MD	4	03/15/1988
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	03/15/1988
11167–M	Eco-Pak Specialty Packaging, Elizabethton, TN	4	03/15/1988
11378–M	Astrotech Space Operations, Inc., Titusville, FL	4	03/15/1988
11506–M	OEA, Inc., Denver, CO	4	03/15/1988

[FR Doc. 98–2502 Filed 1–30–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–459 (Sub–No. 2X)]

Central Railroad Company of Indiana—Abandonment Exemption—in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN

On January 14, 1998, Central Railroad Company of Indiana (CIND) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Shelbyville Line, extending from approximately railroad milepost 23.0, near Thatcher station and the town of Greendale, to approximately railroad milepost 81.0, near Shelbyville, a distance of approximately 58 miles, in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN. The line traverses U.S. Postal Service Zip Codes 47025, 47022, 47550, 47041, 47033, 47006, 47263, 47240, 47272, 46182, and 46176. The line includes the stations of Sunman, IN (milepost 39.9), Morris, IN (milepost 45.5), Batesville, IN (milepost 48.0), New Point, IN (milepost 54.0), Greensburg, IN (milepost 63.0), Adams, IN (milepost 68.0), Saint Paul, IN (milepost 73.0), and Waldron, IN (milepost 75.2).

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 4, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 23, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

An original and 10 copies of all filings in response to this notice must refer to STB Docket No. AB–459 (Sub-No. 2X) and must be sent to: the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street N.W., Washington, DC 20423–0001. In addition, one copy must be served on petitioner's representative: Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, N.W., Washington, DC 20005–4797.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS).

EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: January 27, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–2550 Filed 1–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–7: OTS No. 0308]

Columbia Federal Savings Bank, Ft. Mitchell, Kentucky; Approval of Conversion Application

Notice is hereby given that on January 23, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Columbia Federal Savings Bank, Ft. Mitchell, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: January 28, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–2501 Filed 1–30–98; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting at The Doral Resort Hotel, 4400 NW 87th Avenue, Miami, Florida on Thursday, February 5, 1998, at 1:00 p.m. The intended agenda is listed below.

Advisory Board for Cuba Broadcasting Meeting Thursday, February 5, 1998

AGENDA

PART ONE—Closed to the Public

I. Technical Operations Update
  A. Status Report of UHF
  B. Aerostat
II. Approval of Minutes

PART TWO—Open to the Public

I. Radio Marti Update
  A. Funding Needs
  B. Relocation
  C. Programming
II. T.V. Marti Update
III. Congressional Update
IV. Old Business
V. New Business

Members of the public interested in attending the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (305) 994–1715.

Determination to Close a Portion of the Advisory Board Meeting of February 5, 1998

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 1:00 p.m. to 1:30 p.m. portion of this meeting should be closed to the public.

The Advisory Board has requested that part one of the February 5, 1998, meeting be closed to the public. Part one will involve information the premature disclosure of which would likely frustrate implementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Part one of the agenda consists of a discussion of technical matters, which include TV Marti transmissions, frequencies, alternate channels and new technologies for Radio Marti.

Dated: January 27, 1998.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 98–2464 Filed 1–30–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held February 19 and 20, 1998. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting on both days will be held at The American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m.

The agenda for February 19, will begin with a review of Committee special projects and pending reports. The agenda will also cover a review of the Readjustment Counseling Service Vet Centers, an update on the transition of the Veterans Health Administration (VHA) to a outpatient managed health care system, and a discussion of VA special emphasis programs in relation to managed health care principles.

On February 20, the Committee will review the programs and activities of VHA's medical center-based post-traumatic stress disorder and substance abuse programs, review access to care problems for minority and other high risk veterans, and issues related to compensation and pension for PTSD. The agenda will also consist of a planning meeting to formulate specific objectives for the remainder of the year.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting should contact Alfonso R. Batres, Ph.D., M.S.W., Director, Readjustment Counseling Service, Department of Veterans Affairs (telephone number: 202–273–8967)

Dated: January 26, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–2411 Filed 1–30–98; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
February 2, 1998

Part II

Department of Housing and Urban Development

24 CFR Part 200

Use of Materials Bulletins Used in the HUD Building Product Standards and Certification Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4137–F–02]

RIN 2502–AG84

Use of Materials Bulletins Used in the HUD Building Product Standards and Certification Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a HUD Building Product Standards and Certification Program proposed rule and adopts the following Use of Materials Bulletins: 38j Grademarking of Lumber, 60a Construction Adhesives for Wood Floor Systems, 70b Particleboard Interior Stair Treads, and 111 Fenestration Products (Windows and Doors). It also references related national voluntary consensus standards, provides a labeling and third party certification procedure to assure that the building products used in HUD programs meet the appropriate national voluntary consensus standards, supplements the HUD Building Product Standards and Certification Program by requiring that additional information be included on the label, tag, or mark that each manufacturer would affix to a certified product, and specifies the frequency with which products must be tested in order to be acceptable to HUD. The final rule also allows the use of American Society for Quality Control (ASQC/ISO) 9000 series standards to be used as voluntary guidelines in any quality review.

DATES: Effective March 4, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street S.W., Room 9156, Washington, D.C. 20410–8000; telephone: voice (202) 708–6423; TTY, (202) 708–4594 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On May 19, 1997, the Department published in the **Federal Register** at 62 FR 27486 a rule which proposed to adopt the following Use of Materials Bulletins (UMs):

UM 73b Plastic Plumbing Fixtures at § 200.937.
UM 44e Carpet and Carpet with Attached Cushion at § 200.942.
UM 38j Grademarking of Lumber at § 200.943.
UM 40c Plywood and Other Wood-Based Structural-Use Panels at § 200.944.
UM 72b Carpet Cushion at § 200.948.
UM 105 Elastomeric Joint Sealants at § 200.951.
UM 70b Particleboard Interior Stair Treads at § 200.952.
UM 110 Sprayed Polyurethane Foam Roof Insulation at § 200.953.
UM 60a Construction Adhesives for Wood Floor Systems at § 200.954.
UM 111 Fenestration Products (Windows and Doors) at § 200.955.

Of the UMs included in the proposed rule, this rule adopts the following Use of Materials Bulletins: 38j Grademarking of Lumber, 60a Construction Adhesives for Wood Floor Systems, 70b Particleboard Interior Stair Treads, and 111 Fenestration Products (Windows and Doors). The other proposed UMs will be updated to reference current relevant standards and will be issued once more in a proposed rule for comment.

The May 19, 1997 rule also proposed to update the reference in § 900.929(b)(2) to cite the 1994 edition of the MPS compilation; to provide the current HUD address, in § 200.931, for public examination of the MPS; to amend § 200.935(d)(4)(ii) to allow the use of American Society for Quality Control (ASQC/ISO) 9000 series standards to be used as voluntary guidelines in any quality review; and to remove §§ 200.938, 200.939, and 200.941. No comments were received on any of these proposed amendments and they are adopted here without change.

II. Discussion of Public Comments

Five comments were received regarding UM 105, and one comment was received concerning UM 110. No comments were received regarding UMs 38j, 40c, 44e, 60a, 70b, 72b, 73b, or 111. Since the only UMs that received any public comment are being reissued in another proposed rule for additional comment, this rule adopts without change four UMs as noted in section I. of this preamble, above.

The text of the UMs is not being reproduced in the final rule, because the new sections of 24 CFR part 200 set forth below incorporate the substance of the standards. However, copies are available for public inspection during regular business hours in the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street S.W., Room 9156, Washington, D.C. 20410 and in the Office of the Rules Docket Clerk, Office of General Counsel, 451 Seventh Street S.W., Washington, D.C. 20410.

III. Findings and Certifications

Impact on Small Entities

The Secretary, in approving this rule for publication, certifies in accordance with 5 U.S.C. 605(b), the Regulatory Flexibility Act, that this rule would not have a significant economic impact on a substantial number of small entities. These UMs would adopt standards that are nationally recognized throughout the affected industry, and their adoption will not create a burden on manufacturers, which are currently meeting these standards. The rule will have no adverse or disproportionate economic impact on small businesses.

Paperwork Reduction Act

The information collection requirements for these UM's under HUD's Building Product Standards and Certification Programs have been approved by the Office of Management and Budget, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), and assigned OMB control number 2502–0313. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

At the time of publication of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial Finding of No Significant Impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this rule does not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule only adopts standards that are already nationally recognized throughout the affected industry.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk on children.

Incorporation by Reference

These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standards may be obtained from the American National Standards Institute, Inc. (ANSI), 11 West 42nd St., New York, N.Y. 10036, the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428 or from the organizations specifically mentioned in the referenced section.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 200 is amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. In § 200.929, paragraph (b)(2) is revised to read as follows:

§ 200.929 Description and identification of minimum property standards.

* * * * *

(b) * * *

(2) MPS for Housing 4910.1, 1994 edition. This volume applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing, and to care-type housing insured under the National Housing Act. It also includes, in Appendix K, a reprint of the MPS for One and Two Family Dwellings identified in paragraph (b)(1) of this section.

3. Section 200.931 is revised to read as follows:

§ 200.931 Statement of availability.

(a) Updated copies of the Minimum Property Standards and Use of Materials Bulletins are available for public examination in the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, room 9156, 451 Seventh St. SW., Washington, D.C. 20410–8000. In addition, copies of volumes 1, 2, and 3 of the Minimum Property Standards may be purchased from the U.S. Government Printing Office, Washington, D.C. 20402.

(b) Publications approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C.

4. In § 200.935, paragraph (d)(4)(ii) is revised to read as follows:

§ 200.935 Administrator qualifications and procedures for HUD building products certification programs.

* * * * *

(d) * * *

(4) * * *

(ii) *Quality assurance system review.* (A) Each administrator shall examine a participating manufacturer's facilities and quality assurance system procedures to determine that they are adequate to assure continuing production of the product that complies with the applicable standard. These quality assurance system procedures shall be documented in the administrator's and the manufacturer's files. If a manufacturer's quality assurance system is not satisfactory to the administrator, validation of the manufacturer's declaration of certification shall be withheld. The following American Society for Quality Control (ASQC) standards, which are incorporated by reference, may be used as guidelines in any quality assurance review:

(*1*) ASQC Q9000–1–1994 Quality Management and Quality Assurance Standards Guidelines for Selection and Use;

(*2*) ASQC Q9001–1994 Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing;

(*3*) ASQC Q9002–1994 Quality Systems—Model for Quality Assurance in Production, Installation, and Servicing;

(*4*) ASQC Q9003–1994 Quality Systems—Model for Quality Assurance in Final Inspection and Test;

(*5*) ASQC Q9004–1–1994 Quality Management and Quality System Elements-Guidelines.

(B) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Society for Quality Control (ASQC), 611 East Wisconsin Avenue, Milwaukee, WI 53202.

* * * * *

§§ 200.938, 200.939, and 200.941 [Removed]

5. Sections 200.938, 200.939, and 200.941 are removed.

6. Section 200.943 is revised to read as follows:

§ 200.943 Supplementary specific requirements under the HUD building product standards and certification program for the grademarking of lumber.

(a) *Applicable standard.* (1) In accordance with UM 38j, lumber shall be grademarked in compliance with the U.S. Department of Commerce Voluntary Product Standard PS 20–94 American Softwood Lumber Standard.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It is available from the U.S. Department of Commerce, NIST, Office of Voluntary Product Standards, Gaithersburg, MD 20899.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required on the certification label issued by the administrator to the manufacturer. However, in the case of grademarking of lumber, the following information shall be included on the certification label or mark:

(1) The registered symbol which identifies the grading agency;

(2) Species or species combination;

(3) Grade;

(4) Identification of the applicable grading rules when not indicated by the species identification or agency symbol;

(5) Mill or grader;

(6) For members which are less than 5 inches in nominal thickness, indication that the lumber was green or dry at the time of dressing;

(7) Indication that the lumber was finger jointed; and

(8) The certification mark shall be affixed to each piece of lumber.

(c) *Periodic tests and quality assurance.* Periodic tests and quality assurance inspections shall be carried out by the American Lumber Standard Committee as defined in PS 20–94.

7. A new § 200.952 is added to subpart S to read as follows:

§ 200.952 Supplementary specific requirements under the HUD building product standards and certification program for particleboard interior stair treads.

(a) *Applicable standards.* (1) All interior particleboard stair treads shall be designed, manufactured, and tested in compliance with ANSI A208.1–1993 Particleboard, Grade M–3.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American National Standards Institute, Inc., 11 West 42nd Street, New York, NY 10036.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each interior particleboard stair tread shall include the manufacturer's statement of conformance to UM 70b, a statement that this product is for interior use only, and the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of interior particleboard stair treads, testing and inspection shall be conducted as follows:

(1) At least once every three months, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

8. A new § 200.954 is added to subpart S to read as follows:

§ 200.954 Supplementary specific requirements under the HUD building product standard and certification program for construction adhesives for wood floor systems.

(a) *Applicable standards.* (1) All construction adhesives for field glued wood floor systems shall be designed, manufactured, and tested in compliance with the following American Society for Testing and Materials (ASTM) standard: D 3498–93 Standard Specification for Adhesives for Field-Gluing Plywood to Lumber Framing for Floor Systems except that the mold and bacteria resistance tests shall not be included.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American Society for Testing & Materials Inc., 100 Barr Harbor Drive, West Conshohocken, PA. 19428.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each container shall be marked as being in compliance with UM 60a. The label shall also include the manufacturer's name, plant location, and shelf life.

(c) *Periodic tests and quality assurance.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of construction adhesives for field glued wood floor systems, testing and inspection shall be conducted as follows:

(1) At least every six months, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

9. A new § 200.955 is added to subpart S to read as follows:

§ 200.955 Supplementary specific requirements under the HUD building product standard and certification program for fenestration products (windows and doors).

(a) *Applicable standards.* (1) All windows and doors shall be designed, manufactured, and tested in compliance with American Architectural Manufacturers Association (AAMA) standard, AAMA/NWWDA 101/I.S.2–97 Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 104, Schaumburg, IL 60173.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each window or glass door shall include the manufacturer's name, plant location, and statement of compliance with UM 111.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of windows and glass doors, testing and inspection shall be conducted as follows:

(1) At least once every four years, the administrator shall visit the manufacturer's facility to select a commercial sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

Dated: January 23, 1998.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–2391 Filed 1–30–98; 8:45 am]

BILLING CODE 4210–27–P

federal register

Monday
February 2, 1998

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA39

Federal Government Participation in the Automated Clearing House

Editorial Note: Proposed rule document 98–2042 was originally published at 63 FR 5426–5445 in the issue of Monday, February 2, 1998. That publications contained a typographical error. For the convenience of the user, this reprint includes the correction to be published on Thursday, February 5, 1998.

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury, Financial Management Service, proposes to revise its regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. Part 210 defines the rights and liabilities of Federal agencies, Federal Reserve Banks, financial institutions, and the public, in connection with ACH credit entries, debit entries, and entry data originated or received by a Federal agency through the ACH system. As a result of the enactment of recent legislation, the Service expects to introduce up to 600 million new transactions into the ACH system by January 1, 1999. The Service anticipates that the ACH system will provide the dominant, though not exclusive, EFT system used by Federal agencies. Part 210 will provide the regulatory foundation for use of the ACH system by Federal agencies.

DATES: Comments must be received no later than May 4, 1998.

ADDRESSES: Comments should be addressed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street, S.W., Washington, DC 20227. A copy of the proposed rule is available at the Service's web site at: http://www.fms.treas.gov/ach. Comments on the proposed rule will be available for public inspection and downloading on the Internet and for public inspection and copying at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. To make an appointment to inspect comments and transcripts, please call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Diana Shevlin, Financial Program Specialist, at (202) 874–7032; Donna Wilson, Financial Program Specialist, at (202) 874–6799; Christine Ricci, Senior Analyst, or Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Natalie H. Diana, Attorney-Advisor, at (202) 874–6827.

SUPPLEMENTARY INFORMATION:

I. Background

As the Federal Government's financial manager, the Financial Management Service (the Service) provides leadership and assistance to Federal agencies in cash management, payment policy, debt collection, and financial systems. The Service also collects and disburses funds for most Federal agencies. In fiscal year 1997, the Service issued over 856 million payments, totaling in excess of $1.1 trillion, and collected over $1 trillion on behalf of Federal agencies, representing a variety of taxes, duties, fees, and fines.

In fiscal year 1997, approximately 58% percent of Treasury payments were made through the Automated Clearing House (ACH) system. In addition, a growing number of transactions involving the collection of funds by Federal agencies are being made through the ACH system. The ACH system is a nationwide electronic funds transfer (EFT) system which provides for the interbank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. The Federal Government is the largest single user of the ACH system, originating and receiving millions of transactions each month. In fiscal year 1997, the Service made 489 million payments through the ACH system. In addition, in fiscal year 1997, the Service collected over $711 billion in taxes and more than $28 billion in non-tax collections using the ACH system.

Federal agencies primarily use the ACH system to make recurring payments, such as salary payments. Federal agencies also use the ACH system to make non-recurring payments, such as travel reimbursements and tax refunds, as well as payments to vendors and to grant and program recipients. The ACH system also is used for non-tax collections, international funds settlement and for cash concentration from Treasury's more than 3,500 depositaries. The Service adopted a policy of accepting ACH credits to Treasury's General Account (TGA) in order to enable Federal agencies to collect payments such as fines, fees, and loan payments from the public by EFT.

In addition to transactions that are used by the Federal Government as well as the private sector, Federal agencies have worked with financial institutions and the National Automated Clearing House Association (NACHA), the rulemaking body for the ACH system, to develop two new ACH entries and formats specifically designed to meet the needs of Federal agencies: The Automated Enrollment Entry (ENR) replaces the paper form used for enrollment in the Direct Deposit program. The Death Notification Entry (DNE) allows a Federal agency, such as the Social Security Administration (SSA), to notify a financial institution promptly of the death of a Social Security recipient. The DNE has reduced significantly the total dollar amount of post-death payments that SSA seeks to recover annually from financial institutions.

Two recently enacted laws are increasing substantially the use of the ACH system by Federal agencies. Provisions in the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. No. 103–182, sec. 523 (codified at 26 U.S.C. 6302(h)), and provisions in the Debt Collection Improvement Act of 1996 (DCIA), Chapter 10 of the Omnibus Consolidated Rescission and Appropriations Act of 1996, Pub. L. 104–134, mandate the use of EFT for the collection of certain Federal taxes and for Federal payments other than payments under the Internal Revenue Code of 1986. The DCIA defines EFT as ''any movement of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.'' DCIA, section 31001(x). EFT includes ACH, Fedwire, and transfers made at automated teller machines (ATMs) and point-of-sale (POS) terminals.

To meet the NAFTA requirements, the Service, in conjunction with the Internal Revenue Service and Federal Reserve Banks, implemented the Electronic Federal Tax Payment System (EFTPS) which enables taxpayers to pay Federal taxes by EFT. The Service will soon issue final amendments to 31 CFR part 203—Treasury Tax and Loan Depositaries. Part 203 addresses the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS.

Section 31001(x) of the DCIA amends 31 U.S.C. 3332 to require Federal agencies to convert from checks to EFT in two phases. During phase one, which began on July 26, 1996, all recipients of Federal payments (other than payments under the Internal Revenue Code of 1986) who become eligible to receive those payments on or after July 26, 1996, must receive them electronically unless the recipient certifies that the recipient does not have an account at a

financial institution or an authorized payment agent.

Phase two covers the conversion from checks to EFT for all Federal payments, except payments under the Internal Revenue Code of 1986. The DCIA provides that, subject to the Secretary of the Treasury's authority to grant waivers, all such payments made after January 1, 1999, must be made by EFT.

On July 26, 1996, the Service promulgated an interim rule, 31 CFR part 208, to implement those provisions of the DCIA that took effect on that date. 61 FR 39254. On September 16, 1997, the Service published for comment a proposed rule implementing the phase two requirements of the DCIA. 62 FR 48714.

As a result of the enactment of the DCIA and NAFTA, the Service expects to introduce up to 600 million new transactions into the ACH system by January 1, 1999. The Service anticipates that the ACH system will provide the dominant, though not exclusive, EFT system used by Federal agencies. Part 210 will provide the regulatory foundation for use of the ACH system by Federal agencies.

II. The 1994 Notice of Proposed Rulemaking

On September 30, 1994, the Service published a Notice of Proposed Rulemaking (NPRM) with respect to Part 210; that document is referred to herein as the 1994 NPRM. The purpose of the 1994 NPRM was ''to provide a regulatory basis for the broader use of the ACH system to meet the future payment, collection and information flow needs of the Government.'' 59 FR 50112.

The Service received fifty-one comments from Federal agencies, financial institutions, NACHA and its regional affiliates, and private sector organizations. All commenters expressed strong support of the Service's efforts to provide a regulatory basis for broader use of the ACH system and to make the regulations more consistent with financial industry rules. Specific comments on the NPRM are discussed in the section-by-section analysis below.

III. This Notice of Proposed Rulemaking

A. Introduction

After considering the comments received on the 1994 NPRM, and taking into account developments since the 1994 NPRM was issued, in particular the enactment of the DCIA and NAFTA, the Service believes it is appropriate to issue a new NPRM. While the organization and wording of this proposed rule is significantly different from the 1994 NPRM, the Service has not deviated from its determination, expressed in the 1994 NPRM, that the ACH Rules, which apply to private entries made through the ACH system, also should apply to credit and debit entries and entry data originated or received by Federal agencies (Government entries), subject to certain exceptions necessary to protect the interests of the Treasury, other Federal agencies, and the public. The use of private industry rules reduces the regulatory burden on financial institutions which otherwise might have to comply with conflicting or duplicative requirements.

Several commenters indicated that the 1994 NPRM did not explain clearly the relationship between the ACH Rules and Federal law or identify with sufficient clarity the ACH Rules which the Service was preempting with respect to Government entries. This NPRM clarifies that the Service proposes to adopt the ACH Rules as the rules governing all Government entries, with twelve exceptions discussed below, for which the Service proposes to establish special rules as a matter of Federal law.

Under Federal law, Treasury has the authority and the duty to disburse and collect funds on behalf of executive Federal agencies. *See* 31 U.S.C. §§ 321(b)(1), 3301, 3321, 3327 and 3335. Treasury consistently has taken the position that state law, such as the Uniform Commercial Code, is inapplicable to Federal payments and collections and that Federal law applies whenever Treasury engages in its sovereign function of collecting and disbursing public funds, regardless of the method used to carry out the function. The Supreme Court affirmed this position in *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 366 (1943). In *Clearfield Trust*, the Supreme Court found that the rights and duties of the United States with respect to commercial paper that it issues are governed by Federal law, not state law. Treasury has defended successfully the *Clearfield Trust* doctrine in a number of cases. *See, e.g., Alnor Check Cashing Co.* v. *Katz*, 821 F. Supp. 307, 311 (E.D. Pa. 1993), *aff'd* 11 F.3d 27 (3rd Cir. 1993); *Alaska National Bank of the North* v. *Federal Reserve Bank of San Francisco*, No. A87–156, slip op. at 10 (D. Alaska, Aug. 10, 1987).

In 1942, when the *Clearfield* case was decided, the Federal Government disbursed funds primarily in the form of Treasury checks. However, the use of an electronic funds transfer system, such as the ACH system, instead of paper checks, does not change the legal principle that the rights and duties of the United States are governed by Federal law.

Part 210, which relies upon and implements Treasury's statutory responsibility to collect and disburse public funds, regulates the rights and duties of parties to transactions originated or received by Federal agencies through the ACH system, just as other Treasury rules regulate the rights of parties to Treasury checks.[1]

The ACH Rules, which are developed and updated by NACHA, allocate rights and liabilities among participants to an ACH transaction. Financial institutions agree to be bound by the ACH Rules when they join an ACH association. The ACH Rules are structured upon the premise that five entities participate in the ACH system. They are: (1) The originator, which is the person or entity that agrees to initiate ACH entries in accordance with an arrangement with a receiver; (2) the originating depository financial institution (ODFI), which is the institution that receives payment instructions from the originator and forwards the entries to an ACH Operator; (3) the ACH Operator, which is a central clearing facility, operated by a Federal Reserve Bank or a private organization, that receives entries from ODFIs, distributes the entries to appropriate receiving depository financial institutions and performs the settlement function for the affected financial institutions; (4) the receiving depository financial institution (RDFI), which is the institution that receives ACH entries from the ACH Operator and posts them to the accounts of its depositors; and (5) the receiver, which is a natural person or organization that has authorized an originator to initiate an ACH entry to the receiver's account with the RDFI.

In initiating and receiving Government entries, Federal agencies, Federal Reserve Banks and the Service operate in unique capacities that differ from the roles contemplated by the ACH Rules. These differences are a result of the statutory authorities that govern Federal Government payments and collections and that distinguish Federal Government payments from commercial payments involving private parties and financial institutions.

Because the ACH Rules employ terminology that is based upon private industry financial institution-customer relationships, the definitions used in the ACH Rules do not address the roles of Federal agencies, the Service and the Federal Reserve Banks with respect to

[1] 31 CFR part 240.

the origination or receipt of an ACH entry. Due to the bifurcation of function between certifying and disbursing Federal agencies, Federal Government operations do not conform to the definitions in the ACH Rules. From a functional perspective, the Federal agency that certifies an ACH entry to the Service performs a function that is analogous to that of the originator of the entry for purposes of the ACH Rules. In disbursing the payment, the Service is acting as the ODFI and the Federal Reserve Bank is the originating ACH Operator with respect to the entry. Similarly, a Federal agency that receives a payment through the ACH system, functions as the receiver, while the Service functions as the RDFI, and the Federal Reserve Bank functions as the receiving ACH Operator for the entry.

The ACH Rules generally require ODFIs and RDFIs to assume responsibility for entries originated and received by their customers. ODFIs and RDFIs must make certain warranties with respect to entries originated and received by their customers and are liable to other participants in the ACH system for breach of those warranties. The ACH Rules do not impose direct liability upon originators and receivers; any losses resulting from an act or omission by an originator or receiver are imposed on the ODFI or RDFI. The ODFI or RDFI can seek recourse against the originator or receiver if it has the right to do so under the contract between the parties and/or applicable state law.

The Service does not believe that it is appropriate to assume liability arising from the acts and omissions of Federal agencies originating and receiving ACH entries. Accordingly, although it is the Service's view that Federal agencies operate as originators and receivers and the Service operates as an ODFI and RDFI from a functional perspective, the Service believes it is appropriate to impose upon Federal agencies that originate or receive ACH entries the obligations and liabilities imposed on ODFIs and RDFIs, respectively, for purposes of the ACH Rules. Proposed part 210 therefore is structured on the premise that Federal agencies are subject to all of the obligations and liabilities imposed on ODFIs and RDFIs under the ACH Rules, except as otherwise provided in part 210.

The Service has reviewed the ACH Rules and determined that, given the special nature of Government entries, and the importance of protecting public funds, it is in the best interest of the public for the Service to preempt in part or in whole twelve provisions of the ACH Rules. The twelve provisions that the Service proposes to preempt in part or in whole are described briefly below, and are discussed in more detail in the section-by-section analysis. There are five provisions of the ACH Rules that the Service proposes to preempt completely. The following five ACH Rules are preempted entirely and are excluded specifically from part 210's definition of ''applicable ACH Rules'' (see proposed § 210.2(d)):

1. ACH members. Proposed part 210 preempts the limitation on the applicability of the ACH Rules to members of an ACH association.

2. Compensation. Proposed part 210 preempts the compensation rules set forth in the ACH Rules.

3. Arbitration. Proposed part 210 preempts the requirement under the ACH Rules that disputes among participants be settled by arbitration procedures set forth in the ACH Rules.

4. Reclamation. The reclamation provisions of Subpart B preempt all ACH Rules related to the reclamation of entries and the liability of participants that otherwise would apply to benefit payments.

5. Timing of Origination. Proposed part 210 preempts the requirement set forth in the ACH Rules that a credit entry be originated no more than two banking days before the settlement date of the entry.

In addition to the foregoing five provisions of the ACH Rules which proposed part 210 entirely preempts through the definition of ''applicable ACH Rules,'' seven other provisions of the ACH Rules are preempted in part by operation of specific sections of proposed part 210. Those provisions are:

1. Verification of identity of recipient (see proposed §§ 210.4(a), 210.8(c)(2)). Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI thus bears the ultimate liability for any loss resulting from a forged authorization under the ACH Rules. Proposed part 210 imposes a different rule for Government entries. Specifically, under proposed § 210.4(a), a financial institution that accepts an authorization from a recipient must verify the identity of the recipient. The financial institution is liable to the Federal Government for all entries made in reliance on a forged authorization that the institution has accepted. Thus, proposed part 210 preempts the ODFI warranty and liability provisions of the ACH Rules by allocating liability to the RDFI if it accepts a forged authorization.

2. Authorization for debit entries to Federal agencies (see proposed §§ 210.4(a)(2), 210.8(c)(1)). Proposed part 210 preempts the ACH Rules with respect to the form of authorization required to initiate debit entries to a Federal agency. The ACH Rules require that every entry be authorized by the receiver, but only require that the authorization be in writing in the case of debit entries to a consumer account. Under proposed § 210.4(a), no person or entity (including any financial institution) may initiate or transmit a debit entry to a Federal agency unless the agency has expressly authorized in writing (or through a similarly authenticated authorization) the origination of the entry by that particular originator. An ODFI transmitting an entry in violation of this requirement would be liable for the amount of the transaction, plus interest, under proposed § 210.8(c)(1).

3. Prenotifications (see proposed §§ 210.6(b), 210.8(a)). The Service is proposing to preempt the ACH Rules in two respects in connection with prenotifications. In order to reduce the potential for misdirected entries, proposed § 210.8(a) requires a financial institution that receives a prenotification relating to Government entries to verify the account number and at least one other identifying data element in the prenotification. This requirement supersedes the ACH Rules which specifically permit financial institutions to rely on the account number alone in posting payment to an account.

Second, the origination of a prenotification is optional for all entries under the ACH Rules. Proposed § 210.6(b) preempts the ACH Rules by requiring that a Federal agency originate a prenotification before initiating a debit entry to a recipient's account. Prenotification is optional for all credit entries.

4. Liability of the Federal Government. (a) Amount of damages (see proposed § 210.6). In general, the ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities or claims incurred by another depository financial institution (DFI), ACH Operator or Association as a result of the RDFI's or ODFI's breach of any warranty. Thus, under the ACH Rules, a Federal agency that originates payments, would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules. Similarly, a Federal agency that receives payments, would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules.

Proposed § 210.6 limits a Federal agency's liability to the amount of the

entry whether it is originating or receiving ACH entries. Therefore, a Federal agency would not be liable to a DFI, ACH Operator or an ACH association for interest, attorneys' fees, or other consequential damages. In addition, in certain circumstances, a Federal agency's liability may be reduced further by the amount of the loss caused by the financial institution's negligence.

(b) Liability of Federal Reserve Banks (see proposed § 210.7(a)). Proposed part 210 preempts article 11.5 of the ACH Rules, which provides that a Federal Reserve Bank is not the agent of an RDFI or ODFI. Proposed part 210 provides that Federal Reserve Banks are Fiscal Agents of the Treasury and are not liable to any party other than the Treasury for their actions under part 210.

5. Liability of financial institutions (see proposed § 210.8(c)). Proposed part 210 preempts the provisions of the ACH Rules that would operate to make a financial institution liable to the Federal Government for any loss, liability or claim relating to an entry in an amount exceeding the entry. As previously indicated, the ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities or claims incurred by another DFI, ACH Operator or Association as a result of the RDFI's or ODFI's breach of any warranty. Under proposed part 210, a financial institution would not be liable to the Federal Government for interest, attorneys' fees, or other consequential damages, except in the case of an unauthorized debit to a Federal agency, as discussed above.

6. Reversals (see proposed § 210.6(g). Proposed part 210 requires Federal agencies initiating reversals to certify that the reversal does not violate applicable law or regulations. This requirement is not imposed under the ACH Rules. In addition, proposed part 210 applies to the Federal Government the ACH Rules relating to indemnification, but limits the extent of the indemnification to the amount of the individual entry(ies) being reversed.

7. Account requirements for benefit payments (see proposed § 210.5). Proposed part 210 imposes a requirement with respect to ACH credit entries representing benefit payments that is not imposed under the ACH Rules, i.e., that such payments be deposited to an account at a financial institution ''in the name of'' the recipient, with two exceptions discussed in the section-by-section analysis. The term ''account'' for purposes of proposed § 210.5 is intended to mean a deposit account and not a loan account or general ledger account. The Service is aware that NACHA has approved a change to the ACH Rules, which will become effective in March 1999, to permit the crediting of ACH credits to a financial institution general ledger account or to a loan account. The Service does not intend to accept this ACH Rule with respect to certain benefit payments.

In addition to preempting the provisions of the ACH Rules listed above, Part 210 also establishes, as a matter of Federal law, certain rights and obligations that are not addressed in the ACH Rules. For example, the ACH Rules generally do not address the rights and liabilities between receivers and originators, nor do the ACH Rules address rights and liabilities between ODFIs and originators, or between RDFIs and receivers. Under the ACH Rules, an ODFI is responsible for entries originated by its customers. The ODFI must make certain warranties with respect to any entry originated by its customer, and is liable for breach of those warranties. The ODFI's ability to seek recourse against the originator in the event of a loss for which the ODFI is liable under the ACH Rules is beyond the purview of the ACH Rules and would be governed by the contract between the ODFI and originator and applicable state law.

The Service is proposing to establish some of these rights in part 210 with respect to Federal agencies vis-a-vis originators or receivers of Government entries. For example, proposed Part 210 provides that a Federal agency will be liable to a recipient for any loss sustained by the recipient as a result of the Federal agency's failure to originate a credit or debit entry in accordance with part 210, and limits that liability to the amount of the entry. Neither the basis nor the extent of an originator's liability to a receiver is addressed in the ACH Rules. In addition, the ACH Rules do not address the circumstances in which an entry, in fact, is ''authorized.'' The determination of whether a valid authorization exists ordinarily would depend on the contract between the parties and applicable state law. Proposed part 210 establishes certain circumstances in which an entry shall be deemed to be unauthorized.

B. Vendor Payments, Enrollment, and Relationship to Other Regulations

In this NPRM, the Service is soliciting comment on two issues of general interest: vendor payments and enrollment.

Although the Service has encouraged companies doing business with Federal agencies to receive payment through the ACH system, participation by vendors has been low. Of the 16 million vendor payments disbursed by Treasury in fiscal year 1997, only 27% were made by EFT.

The Service understands that the primary reason vendors do not use EFT is the non-receipt of remittance data with their payments, i.e., payments are credited to the vendor's deposit account without information indicating the purpose of the payment. Absent identifying information, it is difficult for vendors to reconcile their accounts receivable. The Service seeks public comment on this matter and on what actions could be taken, in particular by the financial industry, to make improvements. Specifically, the Service seeks comment on the following:

- What factors contribute to the non-receipt of remittance data (e.g., customer demand, costs)?
- What are the key reasons why electronic data interchange (EDI) has not been adopted widely by the financial industry?
- Does the approved amendment to the NACHA ACH Rules (effective September 18, 1998), which requires the RDFI to provide remittance information upon request, adequately address vendors' concerns?
- What alternative approaches/solutions are there to remedy this problem?

With respect to enrollments, the Federal Government actively is promoting the use of automated enrollment for all payments. The Service has received many comments on how to improve the current process for enrolling vendors in EFT. The Service seeks public comment on how to expand the use of automated enrollment and what steps the Federal Government could take to improve the process.

C. Future Changes to Subpart B

As discussed in greater detail in the section-by-section analysis below, the Service proposes in this NPRM to reorganize and rewrite Subpart B in order to allow for the increasing use of automated processes to effect reclamations, rather than requiring reclamations to be conducted on the basis of paper-driven procedures. The Service also is seeking to clarify in this NPRM the obligations and liabilities imposed on financial institutions under current subpart B. The Service is not proposing to change significantly those obligations and liabilities at this time. However, the Service is actively considering ways in which the reclamation process might be restructured in the future to operate more efficiently as a fully automated process. Because the Service recognizes

that many Federal agencies are not in a position to move to an automated reclamation process at this time, proposed Subpart B preserves the basic structure of the current paper-oriented process.

The current reclamation process is a cumbersome and labor-intensive manual process involving a complicated formula for the allocation of liability. As the volume of Federal benefit payments made through the ACH system increases, the number of reclamations also will increase, significantly increasing the processing burden on both the Federal Government and financial institutions. The Service believes it would be in the best interests of the Federal Government and financial institutions to develop a more cost-effective and efficient reclamation process by simplifying the formula for allocating liability and eliminating the manual processing requirements upon which the current reclamation process is based.

In order to begin formulating a preliminary approach to implementing an automated reclamation process, the Service is soliciting comment on the considerations which financial institutions and Federal agencies believe are important with respect to reclamations. For example, because the average number of payments involved in a reclamation is 1.5, the Service questions whether the protection afforded to financial institutions by the limited liability provisions of Subpart B is outweighed by the processing costs of handling reclamations. The Service thus is interested in comment on an approach in which an RDFI would be liable for the amount of any post-death entries received, regardless of whether the RDFI had actual or constructive knowledge of the death. This liability structure would make it possible to streamline the reclamation process by eliminating the certification and informational requirements, thereby eliminating the need for the Federal Government and financial institutions to research and verify the circumstances of each reclamation. In addition, the Service welcomes comments on other possible ways in which the current reclamation process could be simplified.

D. Section-by-Section Analysis

The Service proposes to change the title of this Part to ''Federal Government Participation in the Automated Clearing House'' to reflect the broadened scope of the regulation to cover all types of activities that are handled, or may in the future be handled, over the ACH system.

This proposal contains two subparts. Subpart A sets forth rules applicable to all ACH credit and debit entries and entry data originated or received by a Federal agency which are defined in the proposed rule as ''Government entries.'' Subpart B contains the rules for the reclamation of benefit payments. Current part 210 contains an additional subpart, subpart C, dealing with discretionary salary allotments. In addition, the 1994 NPRM proposed to add a new subpart D dealing with savings allotments. The Service has determined that subparts C and D are unnecessary because they are redundant of rules that appear elsewhere. For example, regulations issued by the Office of Personnel Management, at 5 CFR part 550, address the circumstances under which salary and savings allotments may be made. Under 31 CFR part 208, Federal agencies are required to make all Federal payments, including allotments, by EFT. Subpart A of Part 210 sets forth the rules governing all ACH credit entries made by a Federal agency, including savings and salary allotment payments. Therefore, subparts C and D are deleted from proposed part 210.

Section 210.1—Scope; Relation to Other Regulations

Current part 210 covers only ACH payments made by the Federal Government. In the 1994 NPRM, the Service proposed to broaden the scope of part 210 to cover all entries and entry data originated or received by a Federal agency through the ACH system. Entry data includes prenotifications, returned entries, adjustment entries, notifications of change and other notices or data transmitted through the ACH system. Thus, part 210 would apply to collections and the information entries which can now be handled through the ACH system, as well as to Federal payments made through the ACH system.

Proposed part 210 establishes the general legal and operational framework applicable to all ''Government entries'' as defined in the proposed rule. Federal tax payments made by ACH debit or credit are governed by part 203, which sets forth the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS. ACH credits and debits originated by the Bureau of Public Debt to pay principal or interest on, and to collect payment for the purchase of, United States securities are governed by 31 CFR part 370.

Both part 203 and part 370 impose certain requirements with respect to the payments subject to those regulations that are inconsistent with the provisions of proposed part 210. For example, under proposed part 210 a Federal agency is required to originate a prenotification before originating an ACH debit entry to an account; in contrast, under part 370, a prenotification need not be originated before originating an ACH debit entry to an account. In this example, as a result of the operation of proposed § 210.1, a prenotification would not be required before the Federal Government originates an ACH debit entry to an account for the purpose of collecting payment for the purchase of a United States security.

Section 210.1 of the 1994 NPRM referenced the relationship of part 210 to the savings allotment provisions of 31 CFR part 209. Effective January 27, 1997, the Service deleted part 209 because it was obsolete. 61 FR 68155. Therefore, the reference to part 209 has been deleted from proposed part 210.

Section 210.2—Definitions

The Service proposes to revise this section to explain that any term not defined in part 210 shall have the meaning given to that term in the ACH Rules. In addition, for clarity and simplification, the Service proposes to add, remove, or redesignate certain other terms, as indicated below.

The Service proposes to delete certain definitions that appear in current part 210 and in the 1994 NPRM because proposed part 210 uses these terms in the same way as the ACH Rules. Thus, the definitions of the terms ''banking day,'' ''business day,'' ''erroneous payment,'' ''prenotification'' and ''receiver'' have been deleted.

Other terms defined in current part 210 have been deleted because they are not used in proposed part 210. The terms ''allotment'' and ''allotter,'' which are defined both in current part 210 and the 1994 NPRM, and the terms ''discretionary allotment'' and ''employee'' in current part 210, have been removed because the terms are used only in Subparts C or D. The terms ''payment'' and ''payment date'' in current part 210 have been replaced by the ACH terms ''entry'' or ''credit'' (rather than ''payment'') and ''settlement date'' (rather than ''payment date''). The term ''payment instruction'' has been deleted as unnecessary in proposed part 210.

The definition of ''Federal Reserve Bank'' in current part 210 and the definition of ''Government'' in the 1994 NPRM also are deleted as unnecessary.

The Service proposes to add a definition of ''ACH Rules'' in proposed § 210.2(a). This definition explains that the ACH Rules consist of the NACHA

Operating Rules and the NACHA Operating Guidelines.

The Service also proposes to add a definition of ''actual or constructive knowledge'' at proposed § 210.2(b). This phrase is used in subpart B in connection with determining a financial institution's liability for post-death and post-legal incapacity payments. The addition of this definition is intended to clarify that in reference to the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary, the RDFI is deemed to have actual knowledge of the death or legal incapacity upon the receipt by whatever means of any information of the death or legal incapacity. Moreover, if the RDFI would have discovered the death or legal incapacity if it had followed commercially reasonable business practices, the RDFI will be deemed to have constructive knowledge of the death or legal incapacity. For example, an RDFI would have actual knowledge of a death or legal incapacity through a communication with an executor of the deceased recipient's or beneficiary's estate, a family member, another third party, or the Federal agency issuing the benefit payment. On the other hand, if an RDFI misplaced a letter sent through the mail containing notice of death or legal incapacity, or failed to open or read the letter, the RDFI would be deemed to have constructive knowledge of the death even though it did not have actual knowledge.

Neither current part 210 nor the 1994 NPRM contain a definition of ''actual or constructive knowledge,'' but the reclamation provisions of subpart B of current part 210 provide that a financial institution is deemed to have knowledge of the death or legal incapacity of a recipient or the death of a beneficiary if the financial institution would have discovered the death or legal incapacity if it had exercised due diligence. The Service does not intend to change that standard in this NPRM, but proposes to add this definition to clarify that the basis for determining whether a financial institution has constructive knowledge of the death or legal incapacity is whether commercially reasonable business practices would have resulted in discovery of the information.

The Service proposes to add a definition of ''agency'' in § 210.2(c) to mean any department, agency, or instrumentality of the Federal Government, or a corporation owned or controlled by the Federal Government. Current part 210 uses the term ''program agency.'' The proposed change is not intended to alter the scope of current part 210. The proposed definition is identical to the definition of agency in part 208, which sets forth rules governing the mandatory use of EFT by agencies, except that the definition of agency for purposes of part 210 does not include a Federal Reserve Bank.

For purposes of subpart B, which governs reclamations, ''agency'' means the agency that certified the benefit payment(s) being reclaimed.

Section 210.2(d) of proposed part 210 defines the term ''applicable ACH Rules'' to mean the ''1997 ACH Rules,'' including all rule changes published therein with an effective date on or before September 19, 1997, which are made applicable to ''Government entries'' pursuant to proposed § 210.3. Proposed part 210 completely preempts those ACH Rules that: govern claims for compensation, arbitration, or reclamation of benefit payments; limit the applicability of the ACH Rules to members of an ACH association; or require that a credit entry be originated no more than two banking days before the settlement date of the entry. Therefore, these ACH Rules have been excluded from the term ''applicable ACH Rules.'' As discussed above in the Introduction to this NPRM, proposed part 210 also preempts certain other provisions of the ACH Rules through operation of particular sections of part 210.

It should be noted that any technical or timing requirements imposed upon DFIs under the ACH Rules constitute applicable ACH Rules, and will be binding on agencies and financial institutions, unless preempted. Thus, for example, agencies will be subject to the timing requirements for notifications of change and returns. Agencies would not be subject to the requirement that credit entries be originated no more than two banking days before the settlement date of the entry, since this requirement is excluded from the definition of applicable ACH Rules.

The Service proposes to add a definition of ''authorized payment agent'' at § 210.2(e) in connection with the account requirements for benefit payments set forth at proposed § 210.5. The definition is identical to the definition of ''authorized payment agent'' for purposes of part 208. In the case of a beneficiary who is physically or mentally incapable of managing his or her payments, proposed § 210.5 would permit an authorized payment agent to receive the payments on behalf of the beneficiary.

The Social Security Act, Veterans' Benefits Act, and the Railroad Retirement Act contain provisions permitting a benefit payment to be made to an individual or organization other than the beneficiary when doing so is in the best interest of the beneficiary.[2] SSA and the Railroad Retirement Board use the term ''representative payee'' to refer to individuals and organizations that have been selected to receive benefits on behalf of a beneficiary who is ''legally incompetent or mentally incapable of managing benefit payments.'' The Department of Veterans Affairs uses the term ''fiduciary'' to refer to individuals or organizations appointed to serve in similar circumstances. The definition of the term ''recipient'' in current § 210.2 refers to representative payees and fiduciaries.

Other agencies also may provide for payment to representative payees and fiduciaries. While not specifically mentioned by name, the phrase ''or other agency'' in the proposed definition is intended to refer to such agencies.

In fiscal year 1997, approximately 10 percent of Social Security benefit payments (61 million payments) were made to approximately five million representative payees. SSA, the Railroad Retirement Board, and the Department of Veterans Affairs have issued detailed regulations addressing the qualifications and duties of representative payees and fiduciaries.[3] The rules governing these representational relationships are longstanding and well established. Therefore, the Service believes that it is appropriate to rely on existing agency regulations in defining the term ''authorized payment agent.''

The Service proposes to add a definition of ''Automated Clearing House or ACH'' in § 210.2(f) to make it clear that the electronic fund transfers that are subject to part 210 are limited to those effected through an electronic fund transfer system that has adopted the ACH Rules.

The proposed definition of ''beneficiary'' in § 210.2(g) has been reworded slightly from the definition in current part 210 to reflect the addition of a definition of benefit payment, but substantively is unchanged from the definition in current part 210. Although the 1994 NPRM did not define specifically a beneficiary as a person other than a recipient, the term beneficiary was used in the 1994 NPRM as meaning a party other than a recipient.

The definition of ''benefit payment'' in proposed § 210.2(h) is similar to the definition in current part 210. In the

[2] *See* 42 U.S.C. 1383(a)(2)(A)(ii)(I); 38 U.S.C. 5502(a)(1); 45 U.S.C. 231k, respectively.

[3] *See* 20 CFR Parts 404, 410, 416, 266, and 348; and 38 CFR Part 13, respectively.

1994 NPRM, the Service had proposed to move the specific classes of benefit payments enumerated in the definition to the Green Book. Several commenters objected to this proposed change and requested that the specific classes of benefit payments continue to be enumerated in the regulation itself. In light of these comments, the Service proposes to retain in the regulation a listing of several types of benefit payments for purposes of convenience and illustration. It should be noted, however, that the term ''benefit payment'' includes, but is not limited to, the specific examples set forth at proposed § 210.2(h).

The Service proposes to add to part 210 a definition of ''Federal payment.'' The proposed definition in § 210.2(i) is identical to the definition of that term in part 208 except that the definition of Federal payment in part 208 excludes payments under the Internal Revenue Code of 1986, whereas the term ''Federal payment'' in proposed § 210.2(i) includes those payments. Payments under the Internal Revenue Code of 1986 are excluded in part 208 because the DCIA expressly provides that payments under the Internal Revenue Code of 1986 are not subject to the DCIA's mandatory EFT requirements. However, payments that the Internal Revenue Service elects to make using the ACH system would be subject to part 210 and thus are included within the definition of Federal payment at proposed § 210.2(i).

The proposed definition of ''financial institution'' in § 210.2(j) is identical to the definition contained in Part 208 except that the Service proposes to add a sentence noting that, in proposed part 210, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) or a Receiving Depository Financial Institution (RDFI), depending on whether it is originating or receiving entries to or from its ACH Operator.

The proposed rule defines ''financial institution'' to mean a depository institution as defined in 12 U.S.C. 461(b)(1)(A), excluding subparagraphs (v) and (vii), and an agency or branch of a foreign bank as defined in 12 U.S.C. 3101. Under this definition, banks, savings banks, credit unions, savings associations, and United States-based foreign bank branches would be considered ''financial institutions.'' This definition has been designed to reflect the class of entities that can participate directly in the ACH system, i.e., financial institutions that are authorized by law to accept deposits.

The term ''Government entry'' is defined in § 210.2(k) as an ACH credit or debit entry or entry data originated or received by an agency. As noted above, current Part 210 applies only to credit entries originated by an agency for the purpose of making payments. Proposed Part 210 has a broader scope; it applies to all entries originated or received by an agency, whether made for the purpose of payments, collections or for information purposes.

The Service proposes to add a definition of the Green Book in § 210.2(l) to clarify that financial institutions that originate or receive Government entries are subject to the procedures and guidelines which are published in the Green Book, as provided at proposed § 210.3(c).

The Service proposes to define the term ''notice of reclamation'' at proposed § 210.2(m) to mean a notice issued by the Federal Government in a paper, electronic, or other form in order to initiate a reclamation. This definition clarifies that the Federal Government is not limited to a paper-based means of communication and opens the way for an automated reclamation procedure. The definition of notice of reclamation is moved to the definition section of proposed part 210 from § 210.13(a) of current Part 210.

The Service proposes to preserve the definition of ''outstanding total'' in current Part 210 without substantive change.

The proposed definition of ''recipient'' in § 210.2(o) is substantially similar to the corresponding definition in Part 208. The term would include an authorized payment agent that receives a payment on behalf of a beneficiary.

The Service proposes to add the term ''Service'' to mean the Financial Management Service, Department of the Treasury.

The Service proposes to add a definition of the Treasury Financial Manual in § 210.2(q) to clarify that the Service may publish procedures and guidelines applicable to Government entries in the Treasury Financial Manual. The Treasury Financial Manual contains procedures to be observed by all agencies with respect to central accounting, financial reporting, and other Federal Government-wide fiscal responsibilities of the Treasury. The proposed definition is substantially unchanged from the definition set forth in the 1994 NPRM.

Section 210.3—Governing Law

Proposed § 210.3(a) provides that the rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries are governed by Part 210, which has the force and effect of Federal law. As discussed above, this approach is consistent with cases such as *Clearfield Trust Co.* v. *United States*, 318 U.S. 363 (1943), and its progeny.

Proposed § 210.3(b) provides that Part 210 incorporates by reference the applicable ACH Rules in effect on September 19, 1997, as modified by this part. Since the publication of the 1994 NPRM, a number of amendments to the ACH Rules have been adopted. The Service will be bound by all amendments adopted since the publication of the 1994 NPRM up to and including those which took effect on September 19, 1997, except the rule that makes prenotifications optional for all payment types, which the Service is proposing to modify. In addition, as noted above, NACHA has approved an amendment to the ACH Rules that, effective March 19, 1999, will permit the crediting of entries to non-deposit accounts. The Service does not intend to accept this amendment for benefit payments subject to proposed § 210.5.

Proposed § 210.3(b)(2) describes how subsequent amendments to the ACH Rules will be handled. The 1994 NPRM stated that Government entries would be governed by any amendment to the ACH Rules that became effective after a specified date only if the Service accepted the amendment by publishing notice to that effect. Twenty-six members of one ACH association were among the thirty-six commenters who urged the Service to change this position. Several financial institutions also recommended that the Service provide that amendments to the ACH Rules are deemed accepted unless the Service expressly rejects the amendment by publishing notice to that effect in the **Federal Register**. In contrast, one agency commented that ''* * * Federal agencies should be prohibited from implementing NACHA proposed amendments until specifically sanctioned by the Treasury Department for agency use.''

Although the Service recognizes that its proposed policy may impose some additional burden on financial institutions that must track the status of ACH Rule amendments, the Service believes that the interests of the Federal Government outweigh these concerns. Amendments to the ACH Rules could have a significant effect on individual agencies and on the Federal Government as a whole. The Service believes that in order to assess the impact of an amendment on agencies, the Federal Government, and the public, the Service must review the amendments and consult with other agencies. Moreover, Federal regulations require that any changes to a

publication incorporated by reference in a **Federal Register**.[4]

For the above reasons, proposed part 210 states that amendments effective after September 19, 1997, will not apply to Government entries unless the Service expressly accepts such amendments by publishing notice of acceptance in the **Federal Register**. In addition, proposed § 210.3(b)(2) provides that with respect to any future amendment that the Service determines to accept, the date of applicability of the amendment to Government entries will be the effective date of the rulemaking specified by the Service in the **Federal Register** document that expressly accepts the amendment.

The Service proposes to clarify at § 210.3(c) of proposed part 210 that any person or entity that originates or receives a Government entry must comply with the instructions and procedures issued by the Service, including the Treasury Financial Manual and the Green Book. As indicated in various places in this NPRM, the Service is proposing to remove to the Green Book and the Treasury Financial Manual certain requirements that currently are set forth in the regulation itself. Particularly in light of the proposed relocation of these provisions, the Service believes it is important to make explicit in the regulation the Service's longstanding policy that the requirements set forth in the Green Book and the Treasury Financial Manual are binding upon financial institutions and agencies to the same extent as the regulation itself.

Some commenters on the 1994 NPRM were concerned that the Service would alter the substantive rights of parties to a Government entry through amendments to the Treasury Financial Manual, the Green Book and other operating guidelines. The commenters requested that such changes be made through amendments to part 210 and be published for public comment. The Treasury Financial Manual and the Green Book, as well as other operating guidelines published by the Service, provide specific operational directions and procedures that implement the regulatory requirements of part 210. The requirements set forth in the Green Book and the Treasury Financial Manual, including those provisions that the Service is proposing to relocate from the regulation to the Green Book or Treasury Financial Manual, are procedural, rather than substantive, in nature. Changes to the substantive rights and liabilities of parties to a Government entry will be made through amendments to part 210 itself in accordance with administrative rulemaking requirements. However, as discussed above, agencies and financial institutions should be aware that the Service has the authority to issue binding procedures and guidance to implement part 210 and that the Service will enforce the requirements set forth in the Treasury Financial Manual and the Green Book in the same manner that it enforces regulations.

Section 210.4—Authorizations and Revocations of Authorizations

Proposed § 210.4(a) provides that each debit and credit entry subject to proposed part 210 must be authorized in accordance with the applicable ACH Rules and the additional requirements set forth in this section. The liability of a financial institution for failing to comply with the authorization requirements is set forth at proposed § 210.8(c)(2).

Proposed § 210.4(a)(1) provides that the agency or RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization that bears the recipient's signature, the validity of the signature. Traditionally, recipients of benefit payments such as Social Security and Veterans benefits enrolled in Direct Deposit by completing a Form 1199A with the assistance of their financial institution. In order to encourage recipients to use Direct Deposit, in recent years, SSA and other agencies have become directly involved in the enrollment process by accepting Direct Deposit authorizations over the phone with the assistance of trained customer service representatives. Proposed part 210 acknowledges that the enrollment process may be completed by the recipient's financial institution or by the agency. In addition, proposed § 210.4(a) encourages automated enrollments by removing the requirement that the financial institution sign the authorization form. Proposed § 210.4(a) recognizes that signature verification may not be possible or practical in an automated enrollment.

The 1994 NPRM required that financial institutions exercise due diligence in verifying the identity of recipients. Commenters requested clarification of this standard. The Service proposes to delete the requirement that financial institutions exercise due diligence to verify the recipient's identity. Instead, proposed part 210 imposes an absolute requirement that the RDFI or agency accepting the authorization verify the recipient's identity and, where appropriate, the recipient's signature. The Service proposes to leave to the discretion of the financial institution or agency accepting an authorization the steps it will take to verify the recipient's identity. The Service continues to believe that the authorization process represents an opportunity to reduce fraud which could otherwise result in significant losses to the Federal Government. Because the party that accepts the authorization is in the best position to detect potential fraud, the Service believes it is appropriate to hold that party strictly liable for the identity of the recipient.

Under proposed § 210.4(a)(2), which is substantially similar to § 210.3(a)(6) of the 1994 NPRM, an originator and an ODFI would be prohibited from initiating a debit entry to an agency without the express permission, in writing or similarly authenticated, of the agency. The Service has conducted pilot programs to test the initiation of debit entries to the Federal Government. These pilots indicate that the use of debit entries to the Federal Government is a cost-efficient payment mechanism that benefits both the Federal Government and the payee-recipient. However, in order to protect the interests of the Federal Government, the Service believes that it is appropriate to require the prior written (or similarly authenticated) authorization, just as the ACH Rules require prior written authorization in the case of debits to a consumer account. In the case of recurring entries, the agency would give authorization only once, prior to the first entry.

Proposed § 210.4(b), which is based on § 210.3(b) of the 1994 NPRM and § 210.4(b) of current part 210, specifies the terms to which a recipient agrees by executing an authorization for an agency to initiate an ACH entry. Under § 210.4(b)(1), a recipient agrees to be bound by part 210 and, under § 210.4(b)(2), the recipient agrees to provide accurate information.

Proposed § 210.4(b)(3) provides that the recipient agrees to verify the recipient's identity to the satisfaction of the party that accepts the authorization, whether this is the RDFI or the agency. The imposition of this requirement on recipients complements the duty of the party accepting the authorization to verify the recipient's identity.

Proposed § 210.4(b)(4) provides that a new authorization supersedes any already existing authorization that is inconsistent with the new authorization. This provision is reworded, but substantively unchanged, from § 210.3(b)(4) of the 1994 NPRM.

[4] See 1 CFR § 51.11.

Under proposed § 210.4(b)(5), the recipient agrees that the Federal Government may reverse any duplicate or erroneous entry as provided in § 210.6(g).

The 1994 NPRM proposed that an authorization would be revoked in the event the RDFI was unable to process an item properly because of incorrect transaction instructions. The Service proposes to delete this provision in light of comments received indicating that the common practice by RDFIs that receive an item that cannot be processed is to return the item. This affords the ODFI an opportunity to correct erroneous information and resubmit the item. The Service agrees that the return and resubmission process is an appropriate mechanism to deal with such items.

The Service also proposes to eliminate the provision contained in the 1994 NPRM that an authorization was revoked upon a determination by the Federal Government that the conditions of authorization have changed. Several commenters questioned the breadth and vagueness of this provision. The Service agrees that this provision is not necessary.

In addition, the Service proposes to delete the provision in § 210.4(e) of current part 210 and § 210.3(d) of the 1994 NPRM that states that, except as authorized by law or other regulations, part 210 shall not be used to effect an assignment of a payment. The Service believes that a prohibition against assignments is not appropriate in part 210. Other Federal laws, such as the Social Security Act, govern the assignment of benefits.

The Service also proposes to delete the provision in the 1994 NPRM that an authorization would terminate upon a failure by the recipient to meet any of the conditions specified in the terms of the authorization. This provision was intended to address circumstances in which a recipient failed to comply with a duty imposed on the recipient in the authorization under any applicable agency regulation, guideline, or agreement. Upon further consideration, the Service does not believe that this issue needs to be addressed in part 210, because the circumstances in which a recipient's right to receive benefit payments terminates as a result of violation of agency requirements are appropriately addressed by the agency regulations governing benefit payments.

Proposed § 210.4(c)(1) corresponds to § 210.4(c)(2) of current part 210. This section provides that, in the case of benefit payments, a change in the ownership of the account results in the termination of the authorization. This provision is an extension to the authorization requirements relating to account ownership for recipients of benefit payments. The purpose of this provision is to ensure that payments are not deposited to an account to which a recipient no longer has access or in which the recipient's ownership interest has changed.

Under proposed § 210.4(c)(2), as under current part 210, the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary results in the termination of the authorization.

Proposed § 210.4(c)(3), which corresponds to §§ 210.4(c)(4) and 210.7(c) of current part 210, provides that the closing of the recipient's account at the RDFI results in termination of the authorization. In addition, this section requires the RDFI to provide 30 days written notice to the recipient prior to closing the account except in cases of fraud. Some financial institutions commented that the thirty day notice requirement was an improper interference with their customer relationships. However, the Service believes that the notice requirement protects recipients from being deprived of timely access to their funds as a result of an account being closed without sufficient notice to allow the recipient to make other arrangements to receive the funds.

In order to eliminate any unnecessary interruptions in ACH services to recipients when any of the events described in proposed § 210.4(c)(4) occurs, the Service proposes to add a provision that states that an authorization will not terminate upon the insolvency or closure of the RDFI, provided that a successor is named for the institution. If no successor is named, the Federal Government may transfer temporarily the authorization to a consenting financial institution for a period of no longer than 120 days. Proposed § 210.4(c)(4) is largely identical to § 210.3(c)(9) of the 1994 NPRM except that the Service proposes to add the term ''consenting'' to clarify that it will transfer authorizations only to an RDFI that consents to the transfer.

Section 210.5—Account requirements for Benefit Payments

Proposed § 210.5 imposes restrictions on the type of account to which benefit payments may be deposited. Proposed § 210.5(a) sets forth a general rule that benefit payments must be deposited to an account at a financial institution in the name of the recipient. As explained above in connection with the definition of ''benefit payment,'' Federal retirement payments would not constitute benefit payments for purposes of the requirements of proposed § 210.5. The reason for excluding Federal retirement payments from the requirement of proposed § 210.5(a) is that in some circumstances these types of payments are made to accounts owned by someone other than the person authorized to receive the Federal retirement payment, such as a spouse.

For purposes of proposed § 210.5, the phrase ''account at a financial institution'' is intended to mean a deposit account. Proposed § 210.5 would not prohibit the use of a joint account between the recipient and a spouse or other member of the recipient's family.

Proposed § 210.5(b) provides two exceptions from the general rule set forth at proposed § 210.5(a) for situations that involve an authorized payment agent or an investment account established through a registered securities broker or dealer. Proposed § 210.5(b)(1) addresses cases in which an authorized payment agent has been selected or designated. The term ''authorized payment agent'' is narrowly defined for purposes of this NPRM to mean a person or entity selected under certain agency regulations to act on behalf of a beneficiary. In such cases, the account may be titled in any manner that satisfies the regulations of the appropriate agency.

Proposed § 210.5(b)(2) permits an ACH credit entry representing a benefit payment to be deposited into an investment account in the name of a broker or dealer registered under the Securities Act of 1934, provided that the account and related records are structured so that the beneficiary's interest is protected under Federal or state deposit insurance regulations. The deposit of a benefit payment into an account owned by a third party raises concerns about the protection of the beneficiary's interests. The requirement that the account and related records be structured so that the beneficiary's interest is protected under Federal or state deposit insurance regulation is intended to address this concern.

The phrase ''notwithstanding the applicable ACH Rules'' indicates that proposed § 210.5 imposes a requirement not imposed under the applicable ACH Rules, i.e., that the account be ''in the name of'' the recipient, with the two exceptions noted above. This requirement is based on § 210.4(a) of current part 210 and § 210.3(a) of the 1994 NPRM. Like those provisions, this proposed section is designed to ensure that benefit payments reach the intended recipient by requiring that

such payments be deposited into an account in which the recipient has an ownership interest. Proposed § 210.5(a) is limited to benefit payments, however, because the Service is aware that under current commercial practices many vendors designate an account in a general corporate name to receive payments in the name of a subsidiary or designate a bank account in the name of an accountant or other service provider for the receipt of payments. In light of these business practices, the Service does not believe that it is appropriate to require that non-benefit payments be deposited into an account in which the recipient has an ownership interest.

The ACH system in the past has not supported the transmission of ACH credit entries to a non-deposit account. The Service is aware that NACHA has approved an amendment to the ACH Rules (effective March 19, 1999), which permits the crediting of entries to general ledger accounts and loan accounts. The Service does not intend to accept the amendment with respect to certain benefit payments.

Current part 210 provides that the title of the account designated by the recipient must include the recipient's name. However, in response to inquiries, the Service has interpreted current Part 210 as permitting a master/subaccount arrangement in which the benefit payments are deposited into a master account established, for example, by a nursing home that is providing care for a number of Social Security recipients. Proposed § 210.5 is consistent with this approach, but also allows benefit payments to be deposited into an investment account established by a registered securities broker or dealer, provided the recipient's name and ownership interest are indicated on the deposit account records.

Section 210.6—Agencies

The title of this section has been changed from ''Federal Government'' to ''Agencies.'' Proposed § 210.6 sets forth a number of obligations and liabilities to which agencies that initiate or receive Government entries are subject. These obligations and liabilities are in addition to, or different from, the obligations and liabilities that otherwise would be imposed under the applicable ACH Rules. For example, the authorization, prenotification, and reversal requirements of proposed § 210.6(a), (b), and (g) constitute additional obligations. The liability provisions of § 210.6(c), (d), (e), and (g) both expand and limit the liability that an agency would otherwise be subject to under the applicable ACH Rules. Specifically, an agency's liability is broader than it would be under the applicable ACH Rules because an agency is liable for a failure to act ''in accordance with this part [210].'' However, the extent of an agency's potential liability is capped by the amount of the entry(ies), which is a limitation on the liability generally provided for under the applicable ACH Rules.

Proposed § 210.6(a) is based on § 210.6(e)(2) and § 210.4(b) of the 1994 NPRM and requires an agency to obtain prior written authorization from the Service in order to receive ACH credit or debit entries. The Service requires this process in order to make software and operational changes to permit the receipt of entries by the agency. The Service proposes to delete the language from the 1994 NPRM directing the Federal Reserve Bank to take ''appropriate action'' because this language refers to operational matters between the Service and the Federal Reserve Bank, and is not needed in the regulation. Proposed § 210.6(a) is not intended to reduce or change the liability of originators or ODFIs for the initiation of an unauthorized entry to an agency; rather, it is an operational requirement imposed by the Service on agencies.

Proposed § 210.6(b) addresses prenotifications. A prenotification is a non-value informational entry sent through the ACH system that contains the same information that will be carried on subsequent entries (with the exception of the dollar amount and transaction code). The purpose of a prenotification is to verify the accuracy of the account information to ensure that when a live entry is received, it can be posted to the correct account.

Proposed § 210.6(b) is based on current § 210.8(b) and deals with an agency's responsibilities for prenotifications in the context of both debits and credits. The duties of a financial institution with respect to prenotifications are addressed in § 210.8(a).

Under the ACH Rules, prenotifications are optional for all entries. Both the 1994 NPRM and proposed part 210 make prenotification optional for credit entries, but modify the ACH Rules by requiring prenotification for debit entries initiated by an agency. The Service believes that, in the case of debits initiated by the Federal Government, added precautions need to be taken to ensure that the debit is applied against the correct account at the intended financial institution.

In response to questions raised by commenters, it should be noted that an agency must follow all operational requirements relating to prenotifications required under the ACH Rules when the agency initiates or receives a prenotification.

Proposed § 210.6(c)–(e) set forth an agency's liability to various parties in connection with Government entries. The 1994 NPRM proposed to limit generally the extent of an agency's liability to the amount of the entry(ies) at issue, but to permit an agency to agree to be bound by the compensation and arbitration procedures found in the ACH Rules, subject to the requirement that the agency fund any additional amount of liability and any arbitration costs. The Service has determined that it is not in the interest of the Federal Government to permit agencies to vary the liability of the Federal Government on a case-by-case basis. In order to preserve a uniform set of rules and liabilities for all Government entries, the Service has deleted from proposed part 210 the provision permitting agencies to opt into the ACH compensation and arbitration rules.

Proposed § 210.6(c) is based on current § 210.10(a) and provides that an agency will be liable to the recipient for any loss sustained as a result of the agency's failure to originate a credit or debit entry in accordance with part 210. This section further provides that the agency's liability will be limited to the amount of the entry.

The ACH Rules do not address the basis for, or the extent of, the liability of an originator or ODFI to a receiver. A receiver's rights against an originator or ODFI for failing to properly originate an entry ordinarily would be governed by contract and state law. Proposed § 210.6(c) establishes a recipient's rights against an agency in these circumstances as a matter of Federal law: an agency will be liable for any loss sustained by a recipient, up to the amount of the entry, as a result of the agency's failure to originate a credit or debit entry in accordance with part 210.

Proposed § 210.6(d) is new. It establishes that an agency may be liable to an originator or an ODFI for any loss sustained by the originator or ODFI resulting from the agency's failure to credit an ACH entry to the agency's account in accordance with part 210. The agency's liability would be limited to the amount of the entry(ies). The ACH Rules do not address the liability of an RDFI to an originator. Under the ACH Rules, if an RDFI fails to properly credit an ACH entry to the designated account within the applicable time limitations, the RDFI will have breached a warranty to the ACH Operator, Association, and ODFI, and may be liable to one of those parties for any

losses resulting from the RDFI's breach. Whether the originator has any recourse in such a situation depends on its contract with its ODFI and state law.

Proposed § 210.6(d) would preempt the ACH Rules with respect to the extent of an agency's liability to an ODFI by limiting that liability to the amount of the entry(ies). In addition, proposed § 210.6(d) establishes, as a matter of Federal law, that an agency may be liable directly to an originator in an amount not exceeding the amount of the entry(ies).

Proposed § 210.6(e) provides that an agency's liability to an RDFI for losses sustained by the RDFI in processing a duplicate or erroneous entry will be limited to the amount of the entry(ies). The phrase ''[e]xcept as otherwise provided in this part 210'' is intended to preserve the allocation to the RDFI of liability in connection with the RDFI's failure to comply with, for example, the authorization and prenotification verification requirements. Under current part 210 and the 1994 NPRM, an agency bears responsibility for processing errors; however, the Service believes that neither current part 210 nor the 1994 NPRM are clear in describing the type of errors or the nature of the losses for which an agency would be liable. For this reason, this proposal refers specifically to duplicate and erroneous entries, which are defined in the ACH Rules.

Under the ACH Rules, an ODFI is liable for losses caused by its origination of duplicate or erroneous entries. This proposed rule would subject agencies to the liability for originating erroneous and duplicate entries imposed on ODFIs under the ACH Rules, but would preempt the ACH Rules in three respects. First, under the proposal, an agency would not be liable for all costs incurred by the RDFI, such as attorneys fees, but would be liable only up to the amount of the entry. Second, the proposal uses comparative negligence and reduces an agency's liability to the extent the loss results from the financial institution's failure to follow standard commercial practices and exercise due diligence. Third, proposed § 210.6(e) excludes credit entries received by an RDFI after the death of a recipient of benefit payments or the death or legal incapacity of a beneficiary. It should be noted that liability in connection with any benefit payment to a deceased recipient would not be covered under proposed § 210.6(e), but would be governed solely by subpart B.

Proposed § 210.6(f) is substantially unchanged from § 210.10(c) of current part 210 and § 210.4(i) the 1994 NPRM.

The Service proposes to add a new § 210.6(g) to address the Federal Government's initiation of reversals. As discussed in the analysis of proposed § 210.4(b) above, a recipient who executes an authorization agrees, among other things, that the Federal Government may reverse duplicate or erroneous entries or files, as provided in proposed § 210.6(g).

The ACH Rules permit an originator to reverse duplicate or erroneous entries and permit an ODFI, originator, or originating ACH Operator to reverse duplicate or erroneous files within five banking days of the settlement date of the duplicate or erroneous file or entry. For purposes of the ACH Rules, and as used herein, a duplicate entry is an entry that is a duplicate of an entry previously initiated by the originator or ODFI and an erroneous entry is an entry that orders payment to or from a receiver not intended to be credited or debited by the originator or that orders payment in a dollar amount different that what was intended by the originator.

Under the ACH Rules, the ODFI and/or originating ACH Operator must indemnify the RDFI against any losses the RDFI incurs as a result of effecting a reversal. Consequently, in the event that the RDFI reverses an entry or file initiated by the ODFI, but the RDFI cannot recover the amount of the entry from the receiver (because, for example, the receiver has withdrawn the funds and closed the account), it is the ODFI or originator who bears the loss.

The Social Security Administration (SSA) suffers annual losses of between one and two million dollars due to misdirected payments. SSA has expressed concern that, as the number of Direct Deposit payments dramatically increases, additional millions could be misdirected as a result of data entry errors. The ability to effect reversals is an important way in which the Federal Government can reduce losses resulting from overpayments and misdirected entries. If a reversal is effected expeditiously, in many cases the receiver may not be aware that the erroneous or duplicate entry occurred, and thus the funds may be available in the account for recovery by the RDFI and, ultimately, the Federal Government.

With respect to certain types of payments, however, the Federal Government's ability to reverse a duplicate payment or overpayment to a recipient may be constrained due to the existence of various Federal statutory provisions governing the manner in which the Federal Government may recover overpayments. For example, in the context of Federal benefit payments, the Federal Government may be required to provide a notice and hearing prior to taking action to recover payments, or may be limited in the amount, timing or manner in which an overpayment is recovered. The Service is not proposing to address the operation of these requirements in Part 210 because the applicable requirements may vary depending on the type of the payment. It is the agency's responsibility to determine before certifying a reversal that the reversal will not violate any applicable laws or regulations.

The 1994 NPRM addressed reversals in the context of recipient authorizations: By executing an authorization, a recipient agreed that the Federal Government reserved the right to use reversal entries in the event that it originated duplicate files or entries in error. Several commenters on the 1994 NPRM requested clarification as to whether the Federal Government, when initiating reversals, would be bound by any ACH Rule requirements that generally apply with respect to reversals, such as the five (5) day reversal deadline. It is the intention of the Service that all ACH Rule requirements would apply to Federal Government-initiated reversals except that the extent of the Federal Government's indemnification would be limited to the amount of the entry(ies). The proposed rule has been amended to clarify this point.

Section 210.7—Federal Reserve Banks

The Service proposes to reorganize and expand § 210.6 of current part 210 as § 210.7 of proposed part 210 to more clearly present the role and responsibilities of the Federal Reserve Banks. As discussed below, most of proposed § 210.7 either was previously proposed at § 210.5 of the 1994 NPRM or is unchanged from current § 210.6. However, one change from both the 1994 NPRM and current part 210 relates to the timing of settlement and funds availability. In the 1994 NPRM, the Service had proposed to combine subsections 210.6(c) and 210.6(e) of current part 210 and to substitute the ACH term ''settlement date'' for ''payment date,'' to reflect that for credit entries initiated by an agency, entry information and funds were to be made available by the Federal Reserve Bank no later than the opening of business on the settlement date.

The settlement of ACH entries is determined by the ACH Operator which, in the case of Government entries, is a Federal Reserve Bank. The Service now proposes to delete as unnecessary the

provisions from both part 210 and the 1994 NPRM relating to funds availability since those requirements are addressed under the Federal Reserve Bank Uniform Operating Circular on ACH items.

It should be noted that some commenters on the 1994 NPRM were concerned about the substitution of the term ''settlement date'' for the term ''payment date'' in current part 210. These commenters argued that the substitution of the term ''settlement date'' for ''payment date'' could result in delaying some payments beyond the statutorily required day on which payment must be made. The commenters further argued that payees who receive payments electronically would be disadvantaged as compared with check recipients. For example, Federal statutes require that certain annuity payments made by the Railroad Retirement Board or the Office of Personnel Management must be made on the first day of the month. These agencies pointed out that when the first day of the month falls on a Saturday, checks are dated for the first date of the month and delivered on Saturday. The commenters did not indicate what happens when the first of the month falls on a Sunday. The commenters pointed out that recipients who receive their payments by EFT will be at a disadvantage as compared with check recipients because check recipients will receive their payment on Saturday whereas other recipients will not receive payment until the ''settlement date'', which would be Monday.

Because the mandatory EFT provisions of the DCIA require all payments made by an agency, except tax refunds, to be made electronically, the equity issues raised by commenters in 1994 should be largely moot. Moreover, the substitution of the term ''settlement date'' for ''payment date'' will not change the date on which payment will be available under current part 210. Current part 210 defines the payment date as the date upon which funds are to be available for withdrawal by the recipient, and on which the funds are to be made available to the financial institution by the Federal Reserve Bank. Current Part 210 provides that ''if the payment date is not a business day for the financial institution receiving a payment, or for the Federal Reserve Bank from which it received such payment, then the next succeeding business day for both shall be deemed to be the payment date.'' Thus, under the example cited above, where the first of the months falls on a Saturday, payment currently would not be made until Monday. Therefore, this issue is not related to the use of the term ''settlement date'' as opposed to ''payment date;'' rather, this issue is related to the nature of electronic payments and the banking industry generally.

The Service recognizes that this issue will need to be addressed by those agencies subject to such constraints, and solicits comment on ways in which this issue could be addressed. For example, the Service solicits comment on the feasibility of initiating certain payments one or two days early in order to ensure that the recipient receives the funds on the day preceding the statutorily prescribed payment date, rather than one or two days later.

The Service proposes to move current § 210.6(a) and § 210.6(f) to proposed § 210.7(a). In addition, the Service proposes to specify in proposed § 210.7(a) that each Federal Reserve Bank, as the Fiscal Agent of the Service, serves as the Federal Government's ACH Operator for Government entries. This language was previously proposed at § 210.5(a) of the 1994 NPRM. Proposed § 210.7(a) also incorporates the exclusion from liability set forth at § 210.5(e) of the 1994 NPRM. The phrase ''notwithstanding the applicable ACH Rules'' has been added to clarify that the Service is preempting the ACH Rule that provides that a Federal Reserve Bank is not an agent of an RDFI or ODFI.

The Service proposes to add § 210.7(b) to ensure that the Service is aware of new ACH applications at an agency so that proper accounting can take place and correct credit can be given in the Treasury investment program as an agency receives ACH transactions. This provision was previously proposed by the Service at § 210.5(b) of the 1994 NPRM.

Section 210.8—Financial Institutions

Proposed § 210.8 addresses the obligations of financial institutions with respect to Government entries, which are set forth at current § 210.7. The Service proposes to remove as unnecessary many of the provisions of § 210.7 of current part 210 because they are addressed in the ACH Rules. For example, current § 210.7(e) has been deleted since the ACH Rules adequately cover the inability of an RDFI to credit an account indicated in an entry. In addition, § 210.7(f), (f)(1), (f)(2), and (f)(4) of current Part 210 have been deleted since the ACH Rules address these provisions.

Proposed § 210.8(a) addresses an RDFI's obligations with respect to prenotifications. A prenotification, as described in the ACH Rules, is a non-dollar entry, sent through the ACH system, which contains the same information (with the exception of the dollar amount and Standard Entry Class Code) that will be carried on subsequent entries. The purpose of a prenotification is to verify the accuracy of the account data. Proposed § 210.8(a) specifies that if an agency initiates a prenotification entry, the RDFI has certain obligations associated with that entry; specifically, the RDFI must verify that the account number and one other item of information in a prenotification entry both relate to the same account. This requirement is not imposed on RDFIs under the ACH Rules, as reflected by the phrase ''[n]otwithstanding the applicable ACH Rules.'' Therefore, the obligation imposed in this section, and the corresponding liability to which a financial institution would be subject under § 210.8(c) if it failed to verify a prenotification, would supersede the ACH Rules with respect to agency-initiated prenotifications.

The Service proposed to add this requirement to part 210 in the 1994 NPRM. The 1994 NPRM proposed to require RDFIs to verify, in the prenotification, the recipient's account number and at least one other identifying data element. The 1994 NPRM gave the authorizing recipient's name as an example of an identifying data element. A number of financial institutions objected to this requirement on the basis that automated systems now in place at many large financial institutions cannot perform this verification and that financial institutions rely on account numbers only. Five commenters expressed specific concern over the recipient's name being used as an example of another identifying data element. Financial institution commenters pointed out that manual processing would be required to verify the recipient's name. Conversely, the Social Security Administration (SSA) suffers annual losses of between one and two million dollars due to misdirected payments. SSA has expressed concern that, as the number of Direct Deposit payments dramatically increases, additional millions could be misdirected as a result of data entry errors.

The Service recognizes that the automated payments processing systems currently utilized by some financial institutions may not have the operational capability to verify recipients' names. However, the Service understands that some financial institutions are working toward implementing systems changes that will permit verification of recipients' names. The Service believes that the reduction

in misdirected entries that could be achieved by requiring verification of prenotifications is significant enough to warrant the requirement. Therefore, this proposal retains the additional ''identifying data element'' requirement.

The Service proposes to redesignate § 210.7(g) of current part 210 as proposed § 210.8(b) without making any substantive change.

The Service proposes to add a new § 210.8(c) to provide that financial institutions shall be subject to liability for failing to handle an entry in accordance with part 210 and that the amount of that liability will be limited to the amount of the entry, except as otherwise specifically provided in subsections 210.8(c)(1) and (2). The phrase ''[n]otwithstanding the applicable ACH Rules'' indicates the liabilities imposed on financial institutions under this section may be in addition to, or different from, the liabilities that otherwise would be imposed under the applicable ACH Rules. To the extent that part 210 imposes duties on a financial institution not imposed under the applicable ACH Rules, proposed § 210.8(c) correspondingly imposes liabilities on a financial institution not imposed under the applicable ACH Rules. However, the extent of the liability to which a financial institution would be subject under the applicable ACH Rules would not exceed the amount of the entry (except in the case of unauthorized debits).

The ACH Rules generally provide that an RDFI or ODFI is liable for all claims, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from the breach by the RDFI or ODFI of its obligations. Under Article 4A of the Uniform Commercial Code, which would apply to credit entries to non-consumer accounts, the liability of financial institutions which fail to handle entries properly generally does not extend to all resulting losses, but does include imputed interest in certain circumstances. Because the Service, as a general matter, is proposing to limit the Federal Government's liability under part 210 to the amount of an entry, the Service believes that as a matter of equity the liability of financial institutions similarly should be limited. Accordingly, proposed § 210.8(c) would preempt the extent of the liability to which financial institutions are subject under both the ACH Rules and Article 4A by limiting that liability to the amount of the entry. Thus, for example, if an agency originated a credit entry to a corporate vendor and the RDFI failed to credit the entry to the vendor's account in a timely manner, § 210.8(c) would limit the RDFI's liability to the Federal Government to the amount of the entry, thereby preempting the Article 4A rule that imposes liability on the financial institution for imputed interest for the period of the delay. Proposed § 210.8(c) is not intended to affect a financial institution's liability under subpart B.

Proposed § 210.8(c) represents a change from the 1994 NPRM, which provided that a financial institution would be liable for losses sustained by the Federal Government ''if the Government has correctly handled the entry(ies).'' Several commenters pointed out that the language proposed in the 1994 NPRM could have the effect of imposing liability on a financial institution even where the financial institution had complied with its obligations under part 210. It is not the intention of the Service to impose liability on a financial institution under this section unless the financial institution has failed to meet an obligation to which it is subject. Rather, for any obligation imposed on financial institutions under part 210, proposed § 210.8(c) would impose liability on a financial institution for a loss to the Federal Government resulting from the financial institution's failure to meet that obligation. For example, § 210.6(f) of this NPRM provides that an agency generally will be liable to an RDFI for erroneous or duplicate entries originated by the agency. However, § 210.8(a) of this NPRM requires that if the Federal Government initiates a prenotification, the RDFI must verify an entry item in addition to the account number. Thus, if the Federal Government initiated an erroneous entry and the RDFI failed to verify the prenotification, the RDFI would be liable for any loss to the Federal Government, up to the amount of the entry(ies), if the error would have been detected by verifying the prenotification.

The Service proposes to add a new § 210.8(c)(1) to make it absolutely clear that a financial institution may not originate or transmit a debit entry to an agency without the prior written authorization of the Service. As previously discussed, debit entries to the Treasury General Account (TGA) represent a significant security concern for the Service. By expanding the use of the ACH system to allow for Federal Government payments by a debit to the TGA, the possibility of unauthorized debits to the TGA arises. In carrying out its responsibility of protecting the public trust, the Service believes it is necessary to take precautions to ensure that such debits do not occur. Therefore the Service proposes to require special security measures not imposed under the ACH Rules.

The ACH Rules provide that a receiver must have authorized the initiation of an entry to the receiver's account before the entry is originated and that the ODFI must warrant that the authorization is valid. Proposed § 210.8(c)(1) goes beyond the ACH Rules by requiring that an agency authorize the debit entry, and that the authorization be in writing or similarly authenticated.

Under the general rule that the Service is proposing, a financial institution would be liable for any unauthorized debit entries initiated to an agency in violation of this requirement. However, the Federal Government also must be able to recover the interest that it would have derived from the use of the debited funds had they remained in the TGA. Therefore, a financial institution's liability for unauthorized debit entries to the TGA would include imputed interest under proposed § 210.8(c)(1). This provision is an exception to the general limitation of a financial institution's liability to the amount of an entry.

Commenters on the 1994 NPRM objected to the proposal to permit the Service, in the case of unauthorized debits, to instruct the Federal Reserve Bank to debit the account used by the financial institution. Such action, if necessary, represents a last step in recovering funds that have not otherwise been recovered. Nevertheless, the right to debit through the Federal Reserve Bank is a right that needs to be retained by Treasury. This NPRM retains this provision because it is in the best interest of the Federal Government and it is protective of public funds.

Section 210.8(c)(2) of this NPRM restates the third and fourth sentences of current § 210.11(b). The Service proposes to expand this section to address fraud for authorizations of both debits and credits. Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI or the originator thus bears the ultimate liability for any loss resulting from a forged or invalid authorization. Similarly, under Article 4A, the ODFI or originator generally bears the risk of loss if an entry is originated to a receiver not entitled to the payment. Proposed § 210.8(c)(2) operates to preempt these ACH and Article 4A rules in situations where a financial institution accepts the recipient's authorization and fails to verify the identity of the recipient. If the

financial institution accepts a forged authorization, the financial institution rather than the Federal Government will be liable for the entries effected in reliance on the forged authorization.

Proposed § 210.8(d) sets forth the conditions under which a financial institution's obligation for the amount of an entry is acquitted, and is unchanged from § 210.4(i) of the 1994 NPRM.

Subpart B—Reclamation of Benefit Payments

The Service proposes to restructure Subpart B of current Part 210 by adding a new § 210.9—Parties to the reclamation. The other five sections comprising proposed Subpart B (§§ 210.10 through 210.14) are a reorganization of the four existing sections on reclamations in current Part 210. As discussed above, the reclamation provisions of Subpart B completely preempt the reclamation provisions of the ACH Rules with respect to benefit payments received by an RDFI after the death or legal incapacity of a recipient or the death of a beneficiary. Any provisions of the ACH Rules dealing with reclamation of benefit payments are not applicable ACH Rules as defined in proposed § 210.2.

In the 1994 NPRM, the Service proposed to revise Subpart B in order to provide a framework for paperless processing of reclamations. This NPRM is intended to make Subpart B more flexible by deleting references that would tend to limit the reclamation process to paper reclamations, as the Service intends to move toward a more automated environment for reclamations. In addition, however, in this NPRM the Service has reorganized and rewritten current Subpart B in an attempt to clarify the obligations and liabilities imposed on financial institutions under current Subpart B. The Service is not proposing to change significantly these obligations and liabilities at this time.

In order to simplify the regulation and enhance its flexibility with respect to automating reclamations, the Service proposes to move procedure-oriented provisions from Subpart B to the Service's Green Book. Commenters on the 1994 NPRM requested that any reclamation procedures differing from ACH Rules be implemented through amendments to Part 210 itself rather than by amending the Green Book. As discussed above with respect to Subpart A, the Green Book does not introduce new rights and obligations that are not contained in the Code of Federal Regulations. Instead, the Green Book provides specific operational directions and procedures which put the regulatory requirements into practice. Therefore, the Service proposes in this NPRM to remove certain procedures and guidelines currently set forth in Part 210 to the Green Book or Treasury Financial Manual, as proposed in the 1994 NPRM. All regulatory amendments would be promulgated for public comment in the **Federal Register**. It should be noted that the Service has the authority to enforce the requirements set forth in the Green Book and the Treasury Financial Manual in the same manner that it enforces regulations.

Section 210.9—Parties to the Reclamation

The Service proposes to add this new section to delineate the differing roles of the financial institution, the Service, and the agency that certified the benefit payments in question.

Proposed § 210.9(a) restates provisions of § 210.7(a) and § 210.14(d) of current Part 210, which provide that by accepting and handling benefit payments, a financial institution agrees to the provisions of Subpart B, including the reclamation actions and the debiting of the financial institution's Federal Reserve Bank account for any reclamation amount for which it is liable.

The Service proposes to add a new § 210.9(b) to clarify that the Service performs only disbursing and collection functions on behalf of agencies and does not make decisions as to the underlying obligations themselves. For example, if a financial institution or recipient has a question about the amount of a reclamation, the Service will respond that the amount was determined by the appropriate agency. In addition, if a financial institution or recipient disputes the facts underlying a death or date of death, that party should discuss the dispute with the appropriate agency. After resolution, the Service will carry out the reclamation in accordance with the direction of the agency that certified the payment or directed the Service to reclaim the funds in question.

Section 210.10—RDFI Liability

In this section the Service proposes to define more clearly the liability of RDFIs for benefit payments received after the death or legal incapacity of the recipient or death of the beneficiary, and to limit the extent of that liability.

Proposed § 210.10(a) restates the rule set forth at § 210.12(a) of current part 210, but moves the limited liability provisions to the next section to make it clear that an RDFI is presumed liable for all benefit payments received after the death or legal incapacity of the recipient or death of the beneficiary unless the RDFI meets the qualifications for limited liability set forth in § 210.11. An RDFI has no right to limit its liability with respect to benefit payments received after it knows of the death or incapacity of the recipient or death of the beneficiary. Accordingly, the RDFI is instructed to return all benefit payments received after it learns of the death or legal incapacity of the recipient or death of the beneficiary. This obligation applies whether the RDFI has received a notice of reclamation or learned of the death or legal incapacity on its own.

The Service proposes to restate the provisions of § 210.13(c) of current part 210 at proposed §§ 210.10(b) and 210.10(c). Current § 210.13(c) contains provisions governing both an RDFI's responsibilities upon its discovery, or imputed knowledge of, the death or legal incapacity of a recipient or death of a beneficiary and an RDFI's responsibilities upon receipt of a notice of reclamation. Dividing these provisions into two separate subsections provides a clearer delineation of an RDFI's responsibilities.

In the 1994 NPRM, the Service proposed a six-year limitation on an RDFI's liability for post-death and post-incapacity payments in order to provide RDFIs with relief from otherwise potentially unlimited liability in situations where an agency is unaware of the death or legal incapacity of the recipient or the death of a beneficiary and continues to make payments to the account for a number of years. Cases in which such payments continue for more than six years are infrequent and therefore the proposed six-year limitation, while providing protection to RDFIs in these relatively rare circumstances, likely will have a minimal impact on the overall recovery of funds by the Federal Government. Financial institutions that commented on the 1994 NPRM generally supported the six-year limitation also supported requiring financial institutions to cooperate with the Federal Government's reclamation efforts after the expiration of any applicable time limitation.

The six-year limitation has been reworded in proposed § 210.10(d) of this NPRM to clarify that it is the most recent six years of payments (rather than the six years of payments immediately following the death or incapacity) that is relevant to determining the amount that an agency can reclaim. In addition, the Service is proposing to provide an exception to the six-year limitation where the amount in the account at the time the RDFI receives the notice of

reclamation exceeds the six-year amount for which the RDFI otherwise would be liable. In such a case, the RDFI would be liable for the total amount of all post-death or post-incapacity payments, up to the amount in the account. For example, if payments had been made for twenty years following the death of a recipient, and the amount in the account was equal to or exceeded the total amount of the payments made during the twenty years, the RDFI would be liable for the full amount of all payments made over the twenty-year period. In the foregoing example, if the amount in the account when the RDFI received the notice of reclamation was equal to the most recent ten years of payments (less than the full twenty years of payments but more than the six-year amount), the RDFI would be liable for an amount equal to the amount in the account, i.e., the most recent ten years of payments.

Proposed § 210.10(d) also incorporates a requirement proposed in the 1994 NPRM that an agency must initiate a reclamation within a certain period of time after learning of the death or incapacity of the recipient or death of the beneficiary. Section 210.10(g) of the 1994 NPRM proposed a 12-month period following knowledge of the death or incapcity for initiation of the reclamation. The Service proposes in this NPRM to shorten that period to 120 days after the date that the agency receives notice of the death or incapacity of the recipient or death of the beneficiary. This provision is intended to encourage Federal agencies to act in a timely manner in initiating reclamations, and to protect RDFIs from liability in the event an agency does not act expeditiously.

Proposed § 210.10(e) restates a rule of reclamations set forth at § 210.13 (c) and (d) of current part 210: the Federal Government has the right to debit the RDFI's reserve account at its Federal Reserve Bank for the full amount of all post-death or post-incapacity benefit payments owed to an agency or for a lesser amount as a result of the RDFI's ability to limit its liability. Such action, if necessary, represents a last step in reclaiming funds that have not otherwise been recovered.

The 60-day time period for an RDFI to return funds, which is set forth at current § 210.13(c), is a procedural item that may change with the automation of reclamations. Therefore, the Service proposes to relocate this requirement to the Green Book.

Section 210.11—Limited Liability

The Service does not propose to change the criteria which an RDFI must meet in order to limit its liability under Subpart b. The Service does propose to reword the provisions setting forth the criteria to achieve greater clarity.

Proposed § 210.11(a) provides the basis for calculating an RDFI's liability if it is eligible to limit its liability because it did not have actual or constructive knowledge of the death or incapacity of a recipient or the death of a beneficiary. The formula is taken from § 210.12(b) of current part 210 and, although reworded, does not change significantly the substantive operation of the current formula.

Section 210.12(d) of current part 210 sets forth rules addressing the circumstances in which an RDFI is ''deemed to have knowledge'' of the death or incapacity using a standard of ''due diligence.'' The Service believes that the description of due diligence is confusing and difficult to apply. Therefore, the Service proposes to utilize the definition of ''actual or constructive knowledge'' set forth at proposed § 210.2.

Under current part 210, one of the factors relevant to determining the extent of an RDFI's limited liability is the amount in the account. Current § 210.13(b)(2)(i) defines the ''amount in the account'' to mean the balance in the account when the RDFI has received a notice of reclamation and has had a reasonable time to take action based on its receipts, plus any additions to the account balance made before the RDFI returns the notice of reclamation to the Federal Government. Current part 210 provides that a reasonable time to take action is not later than the close of business on the day following the receipt of the notice of reclamation. In § 210.10(i)(2)(ii) of the 1994 NPRM, the Service proposed to add that the amount in the account would not be reduced for debit card withdrawals, automated withdrawals, pre-authorized debits, non-Federal Government reclamations, and forged checks or other comparable instruments made after the RDFI had knowledge of the death or incapacity of the recipient or death of the beneficiary. Some commenters on the 1994 NPRM objected to the proposed change on the basis that it would shift the risk of liability to the RDFI for all debits, both legitimate and fraudulent, made during this period.

The Service has experienced many instances in which the ''amount in the account'' for reclamation purposes has been reduced by ATM withdrawals and the RDFI cannot provide information regarding the identity of the withdrawer. Without this information, the Service cannot pursue recovery from the withdrawer(s). The Service therefore believes that the funds recovered through the reclamation process can be increased if the Service does not allow ATM withdrawals and other debits to reduce the calculation of the amount in the account. Under proposed Subpart B, the amount in the account is the account balance at the time the RDFI receives the notice of reclamation. The ''reasonable time to take action'' language in current § 210.13(b)(2)(i) has been eliminated; therefore, any withdrawals subsequent to the RDFI's receipt of the notice of reclamation will not reduce the ''amount in the account.'' RDFIs can take whatever steps may be permitted under their account agreements and applicable law to reduce their exposure, such as blocking debits to an account upon receipt of a notice of reclamation.

Proposed § 210.11(b) sets forth the steps an RDFI must take in order to qualify for limited liability. By requiring an RDFI to certify the information required in proposed § 210.11(b)(1) and (2), the burden of demonstrating qualification for limited liability is placed on the RDFI. Failure to meet this burden results in the full liability of the RDFI under proposed § 210.10.

Proposed § 210.11(b)(1) is taken from § 210.13(b)(2) of current part 210. Proposed § 210.11(b)(2) incorporates the last sentence of current § 210.13(b)(1), and adds the requirement that the RDFI certify the date the RDFI first had information of the death or legal incapacity of the recipient or death of the beneficiary even if such information was obtained first through notice received from the agency. Requiring these certifications, in combination with the authority of the Federal Government to debit the RDFI's reserve account as provided in proposed § 210.10(e), underscores that the burden is on the RDFI to demonstrate its qualification for limited liability.

Section 210.13(b)(2)(ii) of current Part 210 has been relocated to proposed § 210.11(b)(3).

Section 210.11(c) provides the payment and collection procedures which apply if an RDFI qualifies for limited liability. After an RDFI returns the amount specified in proposed § 210.11(a)(1), if the agency is unable to collect the remaining amount of the outstanding total, the Federal Government will debit the RDFI's reserve account at its Federal Reserve Bank (or the correspondent account utilized by the RDFI) for the amount specified in proposed § 210.11(a)(2).

Proposed § 210.11(d) incorporates the current § 210.12(e) and broadens the scope of an RDFI's forfeiture of its rights to limit its liability if the RDFI fails to

comply with any provision of Subpart B. 210.12—RDFI's rights of recovery

Proposed § 210.12(a) restates the principle set forth in current § 210.14(c) and in § 210.10(d) of the 1994 NPRM that in reclaiming funds from an RDFI, the Federal Government is not directing or authorizing the RDFI to debit the recipient's account. Any rights that an RDFI may have to recover the amount of reclaimed funds from a recipient are a matter of applicable state law and the contract between the RDFI and the recipient. Subpart B neither limits nor expands those rights.

Proposed § 210.12(b) restates without substantive change § 210.14(d) of current Part 210, which was set forth at § 210.10(h) of the 1994 NPRM.

Section 210.13—Notice to Account Owners

Proposed § 210.13 is based on § 210.14(a) of current Part 210, but has been changed slightly to provide for the possibility of an automated reclamation process by the addition of the phrase ''or otherwise provide to the account owner(s)'' to the existing requirement that notice be mailed. In addition, the phrase ''any notice required by the Service to be provided to account owners as specified in the Green Book'' has been substituted for the specific reference to the ''Notice to Account Owners'' to allow for more flexibility in changing the format of the required notice. The Service proposed in the 1994 NPRM to add language to the regulation indicating that the Federal Government might require proof that the RDFI had mailed written notice and that such proof might include (but would not be limited to) a file copy of the notice, a certified mail receipt, or documentation pertaining to the standard operating procedure of the RDFI that such a notice is sent routinely. The reference to a mailed written notice and the types of proof that might be appropriate in connection with such a notice have been deleted in this NPRM in keeping with the Service's effort to eliminate paper-oriented requirements from Subpart B.

Section 210.14(b) of current Part 210 requires that RDFIs notify account owners of any actions to be taken by the RDFI with respect to the account in connection with a reclamation action. The Service believes that this requirement intrudes unnecessarily into the relationship between the RDFI and its customer and conflicts with the principle that reclamations are actions between the Federal Government and the RDFI, and not between the Federal Government and the recipient. Actions taken by an RDFI with respect to a customer account, and any notice to the customer in connection with those actions, are a matter of State law or contract, not Federal law.

Section 210.14—Erroneous Death Information

This proposed section is based upon § 210.15 of current part 210, with certain additions and deletions. Much of current § 210.15 is procedural information which the Service proposes to move to the Green Book, where it is more appropriately located. In particular, the Service proposes to relocate to the Green Book the procedures that RDFIs are to follow in correcting erroneous death information (codified in current § 210.15(a)(1) and (2) and § 210.15(c)). The Service proposes to eliminate from the regulation and move to the Green Book the 60-day time limit for the RDFI to return the completed notice of reclamation to the Federal Government in order for the RDFI to limit its liability for the payments made after the death or legal incapacity of the recipient or death of the beneficiary. This 60-day limit is a requirement for the paper-based reclamation procedure. The Service is not eliminating this requirement as part of the paper reclamation process, but rather is placing it with other procedures and operational guidelines in the Green Book. Any automated reclamation procedures developed or used by the Federal Government would not be bound by the same time limit as the paper process since an automated procedure theoretically could be completed in less time.

The provisions at proposed § 210.14(b) that the Service proposes to add to this section seek to direct questions and disputes to the agency issuing directions on reclamations. These provisions clarify that the Service only performs disbursing and collection functions on behalf of the Federal agencies and does not make decisions as to the underlying obligations.

Subpart C—Discretionary Salary Allotments

The Service proposes in this NPRM to remove subpart C from part 210. Subpart C of current part 210 provides that discretionary allotments from Federal employees' wage and salary payments permitted by the issuing agency may be made through the ACH system and shall be subject to Part 210. The Service determined that subpart C is redundant since the substance of Subpart C is covered in other regulations. For example, regulations issued by the Office of Personnel Management, at 5 CFR part 550, address the circumstances under which discretionary allotments may be made. Under Part 208, Federal agencies are required to make all Federal payments, including allotments, by EFT. Subpart A of Part 210 sets forth the rules governing all ACH credit entries made by an agency, including any savings and salary allotment payments. For these reasons, specific provisions for the use of the ACH system to allow for discretionary allotments in Part 210 are unnecessary.

Rulemaking Analysis

Treasury has determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small business entities. The proposed rule does not require any actions on the part of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, Incorporation by reference

Authority and Issuance

For the reasons set out in the preamble, 31 CFR part 210 is proposed to be revised to read as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

Sec.
210.1 Scope; relation to other regulations.
210.2 Definitions.
210.3 Governing law.

Subpart A—General

210.4 Authorizations and revocations of authorizations.
210.5 Account requirements for benefit payments.
210.6 Agencies.
210.7 Federal Reserve Banks.
210.8 Financial institutions.

Subpart B—Reclamation of Benefit Payments

210.9 Parties to the reclamation.
210.10 RDFI liability.
210.11 Limited liability.
210.12 RDFI's rights of recovery.
210.13 Notice to account owners.
210.14 Erroneous death information.

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

§ 210.1 Scope; relation to other regulations.

This part governs all entries and entry data originated or received by an agency

through the Automated Clearing House (ACH) network, except as provided in paragraphs (a) and (b) of this section. This part also governs reclamations of benefit payments.

(a) Federal tax payments received by the Federal Government through the ACH system that are governed by part 203 of this title shall not be subject to any provision of this part that is inconsistent with part 203.

(b) ACH credit or debit entries for the purchase of, or payment of principal and interest on, United States securities that are governed by part 370 of this title shall not be subject to any provision of this part that is inconsistent with part 370.

§ 210.2 Definitions.

For purposes of this part, the following definitions apply. Any term that is not defined in this part shall have the meaning set forth in the ACH Rules.

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by the National Automated Clearing House Association (NACHA), a national association of regional member clearing house associations, ACH Operators and participating financial institutions located in the United States.

(b) *Actual or constructive knowledge,* when used in reference to an RDFI's knowledge of the death or legal incapacity of a recipient or death of a beneficiary, means that the RDFI received information, by whatever means, of the death or incapacity or that the RDFI would have discovered the death or incapacity if it had followed commercially reasonable business practices.

(c) *Agency* means any department, agency, or instrumentality of the Federal Government, or a corporation owned or controlled by the Federal Government. The term agency does not include a Federal Reserve Bank.

(d) *Applicable ACH Rules* means the ACH Rules published in the ''1997 ACH Rules,'' including all rule changes published therein with an effective date on or before September 19, 1997, except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.3 (governing the arbitration of disputes);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of ''Effective Entry Date'' in Appendix Two).

(e) *Authorized payment agent* means any natural person or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Railroad Retirement Board, the Social Security Administration, the Department of Veterans Affairs, or other agency making benefit payments, to act on behalf of a beneficiary.

(f) *Automated Clearing House or ACH* means a funds transfer system governed by the ACH Rules which provides for the interbank clearing of electronic entries for participating financial institutions.

(g) *Beneficiary* means a natural person other than a recipient who is entitled to receive the benefit of all or part of a benefit payment.

(h) *Benefit payment* is a payment for a Federal entitlement program or for an annuity, including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Civil Service Retirement, Railroad Retirement Board Retirement and Annuity, Department of Veterans Affairs Compensation and Pension, and Worker's Compensation. For purposes of § 210.5 of this part, the term ''benefit payment'' shall not include a Federal retirement payment.

(i) *Federal payment* means any payment made by an agency. The term includes, but is not limited to:

(1) Federal wage, salary and retirement payments;

(2) Vendor and expense reimbursement payments;

(3) Benefit payments; and

(4) Miscellaneous payments, including but not limited to, interagency payments; grants; loans; fees; principal, interest, and other payments related to United States marketable and nonmarketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(j)(1) *Financial institution* means:

(i) An entity described in section 19(b)(1)(A), excluding subparagraphs (v) and (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act and for purposes of this part only, the term ''depository institution'' means:

(A) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(B) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(C) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(D) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to apply to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781); or

(E) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution as defined in such Act (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(ii) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

(2) In this part, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) if it transmits entries to its ACH Operator for transmittal to a Receiving Depository Financial Institution (RDFI), or it may be referred to as an RDFI if it receives entries from its ACH Operator for debit or credit to the accounts of its customers.

(k) *Government entry* means an ACH credit or debit entry or entry data originated or received by an agency.

(l) *Green Book* means the manual issued by the Service which provides financial institutions with procedures and guidelines for processing Government entries. The Green Book is available for downloading at the Service's web site at http://www.fms.treas.gov/ or by calling (202) 874–6540, or writing the Product Promotion Division, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Room 309, Washington, D.C. 20227.

(m) *Notice of reclamation* means notice sent by electronic, paper or other means by the Federal Government to an RDFI which identifies the benefit payments that should have been returned by the RDFI because of the death or legal incapacity of the recipient or death of the beneficiary.

(n) *Outstanding total* means the sum of all benefit payments received by an RDFI from an agency after the death or legal incapacity of a recipient or the death of a beneficiary, minus any

amount returned to, or recovered by, the Federal Government.

(o) *Recipient* means a natural person, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

(p) *Service* means the Financial Management Service, Department of the Treasury.

(q) *Treasury Financial Manual* (TFM) means the manual issued by the Service containing procedures to be observed by all agencies and Federal Reserve Banks with respect to central accounting, financial reporting, and other Federal Government-wide fiscal responsibilities of the Department of the Treasury. The TFM is available for downloading at the Service's web site at http://www.fms.treas.gov/ or by calling (202) 874–9940, or writing the Directives Management Branch, Financial Management Service, Department of the Treasury, 3700 East West Highway, Room 500C, Hyattsville, MD 20782.

§ 210.3 Governing Law.

(a) *Federal Law.* The rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries, and the rights of any person or recipient against the United States and the Federal Reserve Banks in connection with any Government entry, are governed by this part, which has the force and effect of Federal law.

(b) *Incorporation by reference—applicable ACH Rules.* (1) This part incorporates by reference the applicable ACH Rules published in the ''1997 ACH Rules,'' including all rule changes published therein with an effective date on or before September 19, 1997. Copies of the ''1997 ACH Rules'' are available from the National Automated Clearing House Association, 607 Herndon parkway, Suite 200, Herndon, Virginia 20170. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20001.

(2) Any amendment to the applicable ACH Rules that takes effect after September 19, 1997, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** document expressly accepting such amendment.

(c) *Application of this part.* Any person or entity that originates or receives a Government entry agrees to be bound by this part and to comply with all instructions and procedures issued by the Service under this part, including the Treasury Financial Manual and the Green Book.

Subpart A—General

§ 210.4 Authorizations and revocations of authorizations.

(a) *Requirements for authorization.* Each debit and credit entry subject to this part shall be authorized in accordance with the applicable ACH Rules and the following additional requirements:

(1) The agency or the RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization requiring the recipient's signature, the validity of the recipient's signature.

(2) Unless authorized in writing by an agency or similarly authenticated, no person or entity shall initiate or transmit a debit entry to that agency.

(b) *Terms of authorizations.* By executing an authorization for an agency to initiate entries, a recipient agrees:

(1) To the provisions of this part;

(2) To provide accurate information;

(3) To verify the recipient's identity to the satisfaction of the RDFI or agency, whichever has accepted the authorization;

(4) That any new authorization inconsistent with a previous authorization shall supersede the previous authorization; and

(5) That the Federal Government may reverse any duplicate or erroneous entry or file as provided in § 210.6(g) of this part.

(c) *Termination and revocation of authorizations.* An authorization shall remain valid until it is terminated or revoked by:

(1) With respect to a recipient of benefit payments, a change in the ownership of a deposit account as reflected in the deposit account records, including the removal or addition of the name of a recipient, the addition of a power of attorney, or any action which alters the interest of the recipient;

(2) The death or legal incapacity of a recipient of benefit payments or the death of a beneficiary;

(3) The closing of the recipient's account at the RDFI by the recipient or by the RDFI. If an RDFI closes an account, it shall provide 30 calendar days' written notice to the recipient prior to closing the account, except in cases of fraud; or

(4) The RDFI's insolvency, closure by any state or Federal regulatory authority or by corporate action, or the appointment of a receiver, conservator, or liquidator for the RDFI. In any such event, the authorization shall remain valid if a successor is named. The Federal Government may temporarily transfer authorizations to a consenting RDFI. The transfer is valid until either a new authorization is executed by the recipient, or 120 calendar days have elapsed since the insolvency, closure or appointment, whichever occurs first.

§ 210.5 Account requirements for benefit payments.

(a) Notwithstanding ACH Rule 2.1.2, an ACH credit entry representing a benefit payment shall be deposited into an account at a financial institution and, except as provided in paragraph (b) of this section, such account shall be in the name of the recipient.

(b)(1) Where an authorized payment agent has been selected, the benefit payment shall be deposited into an account titled in accordance with the regulations governing the authorized payment agent.

(2) Where a benefit payment is to be deposited into an investment account established through a securities broker or dealer registered under the Securities Act of 1934, such payment may be deposited into an account in the name of the broker or dealer, provided the account and all associated records are structured so that the beneficiary's interest is protected under applicable Federal or state deposit insurance regulations.

§ 210.6 Agencies.

Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Prenotifications.* An agency, at its discretion, may send a prenotification prior to origination of the first credit entry to a recipient. An agency shall send a prenotification prior to origination of the first debit entry to an account.

(c) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(d) *Liability to an originator.* An agency will be liable to an originator or an ODFI for any loss sustained by the

originator or ODFI as a result of the agency's failure to credit an ACH entry to the agency's account in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(e) *Liability to an RDFI or ACH Association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency's liability shall be limited to the amount of the entry(ies), and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by subpart B. An agency shall not be liable to any ACH association.

(f) *Acquittance of the agency.* The crediting of the amount of an entry to a recipient's account shall constitute full acquittance of the Federal Government.

(g) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section shall comply with the time limitations set forth in the applicable ACH Rules.

§ 210.7 Federal Reserve Banks.

(a) *Fiscal Agents.* Each Federal Reserve Bank serves as Fiscal Agent of the Treasury in carrying out its duties as the Federal Government's ACH Operator under this part. As Fiscal Agent, each Federal Reserve Bank shall be responsible only to the Treasury and not to any other party for any loss resulting from the Federal Reserve Bank's action, notwithstanding ACH Rule 11.5 and Article 8 of the ACH Rules. Each Federal Reserve Bank may issue operating circulars not inconsistent with this part which shall be binding on financial institutions.

(b) *Routing Numbers.* All routing numbers issued by a Federal Reserve Bank to an agency require the prior approval of the Service.

§ 210.8 Financial institutions.

(a) *Prenotifications.* Notwithstanding ACH Rules 2.3 and 4.1.4, upon receipt of a prenotification originated by an agency, an RDFI shall verify the recipient's account number and at least one other identifying data element contained in the entry.

(b) *Status as a Treasury depositary.* The origination or receipt of an entry subject to this part does not render an RDFI a Treasury depositary. An RDFI shall not advertise itself as a Treasury depositary on such basis.

(c) *Liability.* Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section.

(1) An ODFI that transmits a debit entry to an agency without the prior written or similarly authenticated authorization of the agency, shall be liable to the Federal Government for the amount of the transaction, plus interest. The Service may collect such funds using procedures established in the applicable ACH Rules or by instructing a Federal Reserve Bank to debit the ODFI's reserve account at the Federal Reserve Bank or the account of its designated correspondent. The interest charge shall be at a rate equal to the Federal funds rate plus two percent, and shall be assessed for each calendar day, from the day the Treasury General Account (TGA) was debited to the day the TGA is recredited with the full amount due.

(2) An RDFI that accepts an authorization in violation of § 210.4(a) shall be liable to the Federal Government for all credits or debits made in reliance on the authorization.

(d) *Acquittance of the financial institution.* The crediting of the correct amount of an entry received and processed by the Federal Reserve Bank and posted to the TGA shall constitute full acquittance of the ODFI for the amount of the entry. Full acquittance of the ODFI shall not occur if the entries do not balance, are incomplete, are clearly incorrect, or are incapable of being processed.

Subpart B—Reclamation of Benefit Payments

§ 210.9 Parties to the reclamation.

(a) *Agreement of RDFI.* An RDFI's acceptance of a benefit payment pursuant to this part shall constitute its agreement to this subpart. By accepting a benefit payment subject to this part, the RDFI authorizes the debiting of the Federal Reserve Bank account utilized by the RDFI in accordance with the provisions of § 210.10(e).

(b) *The Federal Government.* In processing reclamations pursuant to this subpart, the Service shall act pursuant to the direction of the agency that certified the benefit payment(s) being reclaimed.

§ 210.10 RDFI liability.

(a) *Full liability.* An RDFI shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of a recipient or the death of a beneficiary unless the RDFI has the right to limit its liability under § 210.11 of this part. An RDFI shall return any benefit payments received after the RDFI learns of the death or legal incapacity of a recipient or the death of the beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary other than from the agency, the RDFI shall immediately notify the agency of the death or incapacity.

(b) *Notice of Reclamation.* Upon receipt of a notice of reclamation, an RDFI shall provide the information required by the notice of reclamation and return the amount specified in the notice of reclamation in a timely manner.

(c) *Exception to liability rule.* An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(d) *Time limits.* An agency may initiate a reclamation within 120 calendar days after the date that the agency receives notice of the death or legal incapacity of a recipient or death of a beneficiary. An agency shall not reclaim any post-death or post-incapacity payment(s) made more than six years prior to the most recent payment made by the agency to the recipient's account; provided, however, that if the amount in the account at the

time the RDFI receives the notice of reclamation exceeds the total amount of all payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation.

(e) *Debit of RDFI's account.* If an RDFI does not return the full amount of the outstanding total or any other amount for which the RDFI is liable under this subpart in a timely manner, the Federal Government will collect the amount outstanding by instructing the appropriate Federal Reserve Bank to debit the reserve account utilized by the RDFI. The Federal Reserve Bank will provide advice of the debit to the RDFI.

§ 210.11 Limited liability.

(a) *Right to limit its liability.* If an RDFI does not have actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary at the time it receives one or more benefit payments on behalf of the recipient, the RDFI's liability to the agency for those payments shall be limited to:

(1) An amount equal to:

(i) The amount in the account at the time the RDFI receives the notice of reclamation, plus any additional benefit payments made to the account by the agency before the RDFI responds in full to the notice of reclamation, or

(ii) the outstanding total, whichever is less; plus

(2) If the agency is unable to collect the entire outstanding total, an additional amount equal to:

(i) The benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or

(ii) The balance of the outstanding total, whichever is less.

(b) *Qualification for limited liability.* In order to limit its liability as provided in this section, an RDFI shall:

(1) Certify that at the time the benefit payments were credited to or withdrawn from the account, the RDFI had no actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary;

(2) Certify the date the RDFI first had information of the death or legal incapacity of the recipient or death of the beneficiary, even if such information was obtained first through notice received from the agency;

(3)(i) Provide the name, address and any other relevant information of the following person(s):

(A) Co-owner(s) of the recipient's account;

(B) Other person(s) authorized to withdraw funds from the recipient's account; and

(C) Person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

(ii) If persons are not identified for any of these subcategories, the RDFI must certify that no such information is available and why no such information is available; and

(4) fully complete all certifications on the notice of reclamation and comply with the requirements of this part.

(c) *Payment of limited liability amount.* If the RDFI qualifies for limited liability under this subpart, it shall immediately return to the Federal Government the amount specified in § 210.11(a)(1). The agency will then attempt to collect the amount of the outstanding total not returned by the RDFI. If the agency is unable to collect that amount, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the reserve account utilized by the RDFI at that Federal Reserve Bank for the amount specified in § 210.11(a)(2).

(d) *Forfeiture of rights.* An RDFI that fails to comply with any provision of this subpart in a timely and accurate manner, including but not limited to the certification requirements at § 210.11(b) and the notice requirements at § 210.13, shall be deemed to have forfeited its right to limit its liability under this subpart and shall be liable to the agency for the amount of the benefit payments at issue.

§ 210.12 RDFI's rights of recovery.

(a) *Matters between the RDFI and its customer.* This subpart does not authorize or direct an RDFI to debit or otherwise affect the account of a recipient. Nothing in this subpart shall be construed to affect the right an RDFI has under state law or the RDFI's contract with a recipient to recover any amount from the recipient's account.

(b) *Liability unaffected.* The liability of the RDFI under this subpart is not affected by actions taken by the RDFI to recover any portion of the outstanding total from any party.

§ 210.13 Notice to account owners.

Provision of notice by RDFI. Upon receipt by an RDFI of a notice of reclamation, the RDFI immediately shall mail to the last known address of the account owner(s) or otherwise provide to the account owner(s) a copy of any notice required by the Service to be provided to account owners as specified in the Green Book. Proof that this notice was sent may be required by the Service.

§ 210.14 Erroneous death information.

(a) *Notification of error to the agency.* If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and directed the Service to reclaim of the funds in dispute.

(b) *Resolution of dispute.* The agency that certified the underlying payment(s) and directed the Service to reclaim the funds will attempt to resolve the dispute with the RDFI in a timely manner. If the agency determines that the reclamation was improper, in whole or in part, the agency shall notify the RDFI and shall return the amount of the improperly reclaimed funds to the RDFI. Upon certification by the agency of an improper reclamation, the Service may instruct the appropriate Federal Reserve Bank to credit the reserve account utilized by the RDFI at the Federal Reserve Bank in the amount of the improperly reclaimed funds.

Dated: January 23, 1998.

Richard L. Gregg,

Acting Commissioner.

Editorial Note: Proposed rule document 98–2042 was originally published at 63 FR 5426–5445 in the issue of Monday, February 2, 1998. That publications contained a typographical error. For the convenience of the user, this reprint includes the correction to be published on Thursday, February 5, 1998.

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

5223–5446 2

CFR PARTS AFFECTED DURING FEBRUARY

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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 FEBRUARY 2, 1998

AGRICULTURE DEPARTMENT

Foreign Agricultural Service

Import quotas:

Tariff-rate import quota licensing ; cheeses from Hungary; published 2-2-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Marine mammals:

Incidental taking—

On-ice seismic activities; ringed seals; published 2-2-98

COMMODITY FUTURES TRADING COMMISSION

Organization, functions, and authority delegations:

Enforcement Division Director; authority to conduct investigations in assistance of foreign futures authorities; published 2-2-98

DEFENSE DEPARTMENT

Defense environmental restoration activities; technical assistance for public participation (TAPP):

Restoration Advisory Boards and Technical Review Committees local community members; published 2-2-98

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Fuels and fuel additives—

Northern Mariana Islands; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition; published 12-3-97

Air quality implementation plans; approval and promulgation; various States:

Louisiana; published 12-2-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Texas; published 1-5-98

TRANSPORTATION DEPARTMENT

Computer reservation systems, carrier-owned:

Fair displays of airline services; published 12-3-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 1-16-98

Cessna; published 12-19-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:

Tobacco; comments due by 2-13-98; published 2-2-98

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Pathogen reduction; hazard analysis and critical control point(HACCP) systems

Fresh pork sausage; salmonella performance standard; comments due by 2-11-98; published 1-12-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 2-12-98; published 12-29-97

International fisheries regulations:

Halibut catch sharing plan; regulatory areas 4A and 4B removed; comments due by 2-11-98; published 1-12-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Travel reimbursement; comments due by 2-9-98; published 12-9-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Pesticide active ingredient production; comments due by 2-9-98; published 12-17-97

Air pollution; standards of performance for new stationary sources:

Test methods and performance specifications; editorial changes and technical corrections; comments due by 2-13-98; published 1-14-98

Volitale organic compound (VOC) emissions—

Automobile refinish coatings; comments due by 2-13-98; published 12-30-97

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Utah; comments due by 2-13-98; published 1-14-98

Air quality implementation plans; approval and promulgation; various States:

Delaware; comments due by 2-11-98; published 1-12-98

Indiana; comments due by 2-13-98; published 1-14-98

Kentucky; comments due by 2-12-98; published 1-13-98

Ohio; comments due by 2-9-98; published 1-8-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Chlorothalonil; comments due by 2-10-98; published 12-12-97

Cyromazine; comments due by 2-9-98; published 12-10-97

Imidacloprid; comments due by 2-10-98; published 12-12-97

Myclobutanil; comments due by 2-10-98; published 12-12-97

Toxic substances:

Testing requirements—

Biphenyl, etc.; comments due by 2-9-98; published 12-24-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Communications Assistance for Law Enforcement Act; implementation; comments due by 2-11-98; published 1-13-98

Uniform system of accounts; interconnection; comments due by 2-9-98; published 12-10-97

Radio stations; table of assignments:

Oregon and Washington; comments due by 2-9-98; published 1-5-98

Texas; comments due by 2-9-98; published 1-5-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Travel reimbursement; comments due by 2-9-98; published 12-9-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

State product liability claims preemption by Federal law; comments due by 2-10-98; published 12-12-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Health care programs; fraud and abuse:

Health Insurance Portability and Accountability Act—

Safe harbor provisions and special fraud alerts development; comments request; comments due by 2-9-98; published 12-10-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Single family mortgagee's original approval agreement; termination; comments due by 2-9-98; published 12-10-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Topeka shiner; comments due by 2-9-98; published 12-24-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Arkansas; comments due by 2-9-98; published 1-9-98

LABOR DEPARTMENT

Mine Safety and Health Administration

Metal and nonmetal mine and coal mine safety and health:

Underground mines—
Roof-bolting machines use; safety standards; comments due by 2-9-98; published 12-9-97

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards:
Tuberculosis, occupational exposure to
Extension of comment period; comments due by 2-13-98; published 12-12-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Travel reimbursement; comments due by 2-9-98; published 12-9-97

NUCLEAR REGULATORY COMMISSION

Practice rules:
Domestic licensing proceedings—
High-level radioactive waste disposal at geologic repository; comments due by 2-11-98; published 11-13-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 2-9-98; published 1-8-98
Boeing; comments due by 2-10-98; published 12-12-97
British Aerospace; comments due by 2-9-98; published 1-8-98
Eurocopter Deutschland; comments due by 2-9-98; published 12-11-97
Eurocopter France; comments due by 2-9-98; published 12-9-97
Fokker; comments due by 2-12-98; published 1-13-98
Israel Aircraft Industries, Ltd.; comments due by 2-12-98; published 1-13-98
McDonnell Douglas; comments due by 2-9-98; published 1-8-98

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad safety:
Florida overland express high speed rail system; safety standards; comments due by 2-10-98; published 12-12-97

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Hazardous materials transportation—
Oxidizers as cargo in passenger aircraft; prohibition; public meeting; comments due by 2-13-98; published 11-28-97
Radioactive materials transportation; radiation protection program requirement; comments due by 2-13-98; published 12-22-97

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:
Appeals regulations and rules of practice—
Attorney fee matters; comments due by 2-9-98; published 12-9-97

LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
3 (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
4	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
1–699	(869–032–00004–2)	34.00	Jan. 1, 1997
700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
1200–1499	(869–032–00016–6)	33.00	Jan. 1, 1997
1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
2000–End	(869–032–00021–2)	20.00	Jan. 1, 1997
8	(869–032–00022–1)	30.00	Jan. 1, 1997
9 Parts:			
1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
200–End	(869–032–00024–7)	33.00	Jan. 1, 1997
10 Parts:			
0–50	(869–032–00025–5)	39.00	Jan. 1, 1997
51–199	(869–032–00026–3)	31.00	Jan. 1, 1997
200–499	(869–032–00027–1)	30.00	Jan. 1, 1997
500–End	(869–032–00028–0)	42.00	Jan. 1, 1997
11	(869–032–00029–8)	20.00	Jan. 1, 1997
12 Parts:			
1–199	(869–032–00030–1)	16.00	Jan. 1, 1997
200–219	(869–032–00031–0)	20.00	Jan. 1, 1997
220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
300–499	(869–032–00033–6)	27.00	Jan. 1, 1997
500–599	(869–032–00034–4)	24.00	Jan. 1, 1997
600–End	(869–032–00035–2)	40.00	Jan. 1, 1997
13	(869–032–00036–1)	23.00	Jan. 1, 1997
14 Parts:			
1–59	(869–032–00037–9)	44.00	Jan. 1, 1997
60–139	(869–032–00038–7)	38.00	Jan. 1, 1997
140–199	(869–032–00039–5)	16.00	Jan. 1, 1997
200–1199	(869–032–00040–9)	30.00	Jan. 1, 1997
1200–End	(869–032–00041–7)	21.00	Jan. 1, 1997
15 Parts:			
0–299	(869–032–00042–5)	21.00	Jan. 1, 1997
300–799	(869–032–00043–3)	32.00	Jan. 1, 1997
800–End	(869–032–00044–1)	22.00	Jan. 1, 1997
16 Parts:			
0–999	(869–032–00045–0)	30.00	Jan. 1, 1997
1000–End	(869–032–00046–8)	34.00	Jan. 1, 1997
17 Parts:			
1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
18 Parts:			
1–399	(869–032–00051–4)	46.00	Apr. 1, 1997
400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
19 Parts:			
1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
21 Parts:			
1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
23	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
0–199	(869–032–00071–9)	32.00	Apr. 1, 1997
200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
25	(869–032–00076–0)	42.00	Apr. 1, 1997
26 Parts:			
§§ 1.0-1–1.60	(869–032–00077–8)	21.00	Apr. 1, 1997
§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
§§ 1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
§§ 1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990
600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
200–End	(869–032–00097–2)	17.00	Apr. 1, 1997
28 Parts:			
1-42	(869–032–00098–1)	36.00	July 1, 1997
43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
0–99	(869–032–00100–5)	27.00	July 1, 1997
100–499	(869–032–00101–4)	12.00	July 1, 1997
500–899	(869–032–00102–2)	41.00	July 1, 1997
900–1899	(869–032–00103–1)	21.00	July 1, 1997
1900–1910 (§§ 1900 to 1910.999)	(869–032–00104–9)	43.00	July 1, 1997
1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
1911–1925	(869–032–00106–5)	19.00	July 1, 1997
1926	(869–032–00107–3)	31.00	July 1, 1997
1927–End	(869–032–00108–1)	40.00	July 1, 1997
30 Parts:			
1–199	(869–032–00109–0)	33.00	July 1, 1997
200–699	(869–032–00110–3)	28.00	July 1, 1997
700–End	(869–032–00111–1)	32.00	July 1, 1997
31 Parts:			
0–199	(869–032–00112–0)	20.00	July 1, 1997
200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–032–00114–6)	42.00	July 1, 1997
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–032–00116–2)	33.00	July 1, 1997
630–699	(869–032–00117–1)	22.00	July 1, 1997
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–032–00122–7)	31.00	July 1, 1997
34 Parts:			
1–299	(869–032–00123–5)	28.00	July 1, 1997
300–399	(869–032–00124–3)	27.00	July 1, 1997
400–End	(869–032–00125–1)	44.00	July 1, 1997
35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
1–199	(869–032–00127–8)	20.00	July 1, 1997
200–299	(869–032–00128–6)	21.00	July 1, 1997
300–End	(869–032–00129–4)	34.00	July 1, 1997
37	(869–032–00130–8)	27.00	July 1, 1997
38 Parts:			
0–17	(869–032–00131–6)	34.00	July 1, 1997
18–End	(869–032–00132–4)	38.00	July 1, 1997
39	(869–032–00133–2)	23.00	July 1, 1997
40 Parts:			
1–49	(869–032–00134–1)	31.00	July 1, 1997
50–51	(869–032–00135–9)	23.00	July 1, 1997
52 (52.01–52.1018)	(869–032–00136–7)	27.00	July 1, 1997
52 (52.1019–End)	(869–032–00137–5)	32.00	July 1, 1997
53–59	(869–032–00138–3)	14.00	July 1, 1997
60	(869–032–00139–1)	52.00	July 1, 1997
61–62	(869–032–00140–5)	19.00	July 1, 1997
63–71	(869–032–00141–3)	57.00	July 1, 1997
72–80	(869–032–00142–1)	35.00	July 1, 1997
81–85	(869–032–00143–0)	32.00	July 1, 1997
86	(869–032–00144–8)	50.00	July 1, 1997
87-135	(869–032–00145–6)	40.00	July 1, 1997
136–149	(869–032–00146–4)	35.00	July 1, 1997
150–189	(869–032–00147–2)	32.00	July 1, 1997
190–259	(869–032–00148–1)	22.00	July 1, 1997
260–265	(869–032–00149–9)	29.00	July 1, 1997
266–299	(869–032–00150–2)	24.00	July 1, 1997
300–399	(869–032–00151–1)	27.00	July 1, 1997
400–424	(869–032–00152–9)	33.00	[5] July 1, 1996
425–699	(869–032–00153–7)	40.00	July 1, 1997
700–789	(869–032–00154–5)	38.00	July 1, 1997
790–End	(869–032–00155–3)	19.00	July 1, 1997
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–032–00156–1)	14.00	July 1, 1997
101	(869–032–00157–0)	36.00	July 1, 1997
102–200	(869–032–00158–8)	17.00	July 1, 1997
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
*1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
*140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
*40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
70–79	(869–032–00182–1)	33.00	Oct. 1, 1997
80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
48 Chapters:			
1 (Parts 1–51)	(869–028–00187–4)	45.00	Oct. 1, 1996
1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
1–99	(869–032–00191–0)	31.00	Oct. 1, 1997
100–185	(869–028–00196–3)	50.00	Oct. 1, 1996
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
*200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
600–End	(869–028–00204–8)	26.00	Oct. 1, 1996
CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997

Title	Stock Number	Price	Revision Date
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1998

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
February 2	February 17	March 4	March 19	April 3	May 4
February 3	February 18	March 5	March 20	April 6	May 4
February 4	February 19	March 6	March 23	April 6	May 5
February 5	February 20	March 9	March 23	April 6	May 6
February 6	February 23	March 9	March 23	April 7	May 7
February 9	February 24	March 11	March 26	April 10	May 11
February 10	February 25	March 12	March 27	April 13	May 11
February 11	February 26	March 13	March 30	April 13	May 12
February 12	February 27	March 16	March 30	April 13	May 13
February 13	March 2	March 16	March 30	April 14	May 14
February 17	March 4	March 19	April 3	April 20	May 18
February 18	March 5	March 20	April 6	April 20	May 19
February 19	March 6	March 23	April 6	April 20	May 20
February 20	March 9	March 23	April 6	April 21	May 21
February 23	March 10	March 25	April 9	April 24	May 26
February 24	March 11	March 26	April 10	April 27	May 26
February 25	March 12	March 27	April 13	April 27	May 26
February 26	March 13	March 30	April 13	April 27	May 27
February 27	March 16	March 30	April 13	April 28	May 28