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Monday
August 24, 1998

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM150; Special Conditions No. 25–140–SC]

Special Conditions: Bombardier Inc., Model BD–700–1A10 Global Express; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Bombardier Model BD–700–1A10 airplanes manufactured by Bombardier. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 14, 1998. Comments must be received on or before September 23, 1998.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Regulations Branch, ANM–114, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; Attn: Docket No. NM150, or delivered in duplicate to the same address. Comments may be inspected in the Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM150.'' The postcard will be date stamped and returned to the commenter.

Background

On January 27, 1994, Bombardier Inc., submitted an application to Transport Canada for FAA type certification (TC) of the Bombardier Inc. Model BD–700–1A10 Global Express airplane. The BD–700–1A10 is a long range, transport category airplane powered by two BMW/Rolls Royce BR710 turbo-fan engines. The airplane's basic use is as a business jet with two-pilot cockpit, a rest area for a third pilot and flight attendant, and interior/seating arrangements for up to nineteen passengers, for a total occupancy of twenty-three persons. The overall length of the BD–700–1A10 is 99 feet, the height is 24 feet, and the wing span is 92 feet. The airplane has a maximum takeoff weight of 91,250 pounds, a maximum landing weight of 78,600 pounds, a maximum operating altitude of 51,000 feet, and a design range of 6500 nautical miles at Mach 0.8 or 6330 nautical miles at Mach 0.85.

Type Certification Basis

Under the provisions of 14 CFR § 21.17, Bombardier must show that the BD–700–1A10 Global Express meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–79. Subsequent to the January 27, 1994, date of application for type certification, Bombardier elected to comply with those sections of part 25 amended by Amendments 25–80 through 86, 25–88, 25–90, 25–91, and other sections that are not relevant to these special conditions. In addition, the certification basis for the BD–700–1A10 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. These special conditions will form an additional part of the type certification basis. The certification basis may also include other special conditions and exemptions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the BD–700–1A10 Global Express because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

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

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

Novel or Unusual Design Features

The Bombardier BD–700–1A10 airplane will utilize electrical and electronic systems, such as electronic displays (Honeywell Primus 2000) and

Full Authority Digital Engine Controls (Rosec) that perform critical functions. The disruption of signals to these systems could result in loss of critical flight systems or misleading information being presented to the pilot.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high intensity radiated fields (HIRF). Increased power levels from ground-based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Bombardier BD–700–1A10, which require that new electrical and electronic systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 KHz—100 KHz	50	50
100 KHz—500 KHz	60	60
500 KHz—2 MHz	70	70
2 MHz—30 MHz	200	200
30 MHz—100 MHz	30	30
100 MHz—200 MHz	150	33
200 MHz—400 MHz	70	70
400 MHz—700 MHz	4020	935
700 MHz—1 GHz	1700	170
1 GHz—2 GHz	5000	990
2 GHz—4 GHz	6680	840
4 GHz—6 GHz	6850	310
6 GHz—8 GHz	3600	670
8 GHz—12 GHz	3500	1270
12 GHz—18 GHz	3500	360
18 GHz—40 GHz	2100	750

The threat levels identified in the above table differ in some minor respects from those published previously for other airplanes. They are considered appropriate, however, for the Bombardier BD–700–1A10 in view of its intended use.

Applicability

As discussed above, these special conditions are applicable to BD–700–1A10 airplanes manufactured by Bombardier. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on Bombardier BD–700–1A10 airplanes manufactured by Bombardier. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Bombardier BD–700–1A10 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier BD–700–1A10 airplanes manufactured by Bombardier.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on August 14, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service, ANM–100.

[FR Doc. 98–22642 Filed 8–21–98; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM98–15–000]

Annual Update of Filing Fees

August 17, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Payroll Utilization Reporting System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 1997.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kelly Williams, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 888 First Street, NE, Room 42–65, Washington, DC 20426, 202–219–2896.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Annual Update of Filing Fees in Part 381

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to § 381.104 of the Commission's regulations, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 1997 costs. The adjusted fees announced in this notice are effective September 23, 1998.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act:	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). [18 CFR 381.403]	$7,140
Fees Applicable to General Activities:	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). [18 CFR 381.302(a)]	14,360
2. Review of a Department of Energy remedial order:.	
Amount in controversy:	
$0–9,999. [18 CFR 381.303(b)]	100
$10,000–29,999. [18 CFR 381.303(b)]	600
$30,000 or more. [18 CFR 381.303(a)]	20,960
3. Review of a Department of Energy denial of adjustment:	
Amount in controversy:	
$0–9,999. [18 CFR 381.304(b)]	100
$10,000–29,999. [18 CFR 381.304(b)]	600
$30,000 or more. [18 CFR 381.304(a)]	10,990
4. Written legal interpretations by the Office of General Counsel. [18 CFR 381.305(a)]	4,120
Fees Applicable to Natural Gas Pipelines:	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. [18 CFR 381.207(b)]	1,000
Fees Applicable to Cogenerators and Small Power Producers:	
1. Certification of qualifying status as a small power production facility. [18 CFR 381.505(a)]	12,340
2. Certification of qualifying status as a cogeneration facility. [18 CFR 381.505(a)]	13,970
3. Applications for exempt wholesale generator status. [18 CFR 381.801]	1,620

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

2. In § 381.302, paragraph (a) is amended by removing ''$ 13,910'' and inserting ''$ 14,360'' in its place.

§ 381.303 [Amended]

3. In § 381.303, paragraph (a) is amended by removing ''$ 20,300'' and inserting ''$ 20,960'' in its place.

§ 381.304 [Amended]

4. In § 381.304, paragraph (a) is amended by removing ''$ 10,640'' and inserting ''$ 10,990'' in its place.

§ 381.305 [Amended]

5. In § 381.305, paragraph (a) is amended by removing ''$ 3,990'' and inserting ''$ 4,120'' in its place.

§ 381.403 [Amended]

6. Section 381.403 is amended by removing ''$ 6,920'' and inserting ''$ 7,140'' in its place.

§ 381.505 [Amended]

7. In § 381.505, paragraph (a) is amended by removing ''$ 11,960'' and inserting ''$ 12,340'' in its place and by removing ''$ 13,540'' and inserting ''$ 13,970'' in its place.

§ 381.801 [Amended]

8. Section 381.801 is amended by removing ''$ 1,560'' and inserting ''$ 1,620'' in its place.

[FR Doc. 98–22582 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 98N–0636]

RIN 0910–AA01

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule stating that certain ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this final rule after considering the reports and recommendations of various OTC drug advisory review panels and public comments on proposed agency regulations, which were issued in the form of a tentative final monograph (proposed rule). Based on the absence of any submissions on these ingredients to the panels, as well as the failure of interested parties to submit new data or information to FDA under the proposed regulations, the agency has determined that the presence of these ingredients in an OTC drug product would result in that drug product not being generally recognized as safe and effective for its intended use or would result in misbranding. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published under § 330.10(a)(7)(ii) (21 CFR 330.10(a)(7)(ii)) a final rule on the status of certain OTC drug Category II and III active ingredients. That final rule declared as not generally recognized as safe and effective certain active ingredients that had been proposed as nonmonograph (Category II or Category III) under the agency's OTC drug review. The periods for submission of comments and new data following the publication of a notice of proposed rulemaking (NPRM) had closed and no significant comments or new data had been submitted to upgrade the status of these ingredients. In each instance, a final rule for the class of ingredients involved had not been published to date.

In the **Federal Register** of May 10, 1993 (58 FR 27636), FDA published a final rule establishing that certain additional active ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. That final rule included active ingredients from a number of OTC drug rulemakings that were not covered by the November 7, 1990, final rule (see Table I of the May 10, 1993, final rule (58 FR 27636 at 27639 to 27641) for a list of OTC drug rulemakings and active ingredients covered by that final rule). The final rule included a number of active ingredients found in OTC internal analgesic and orally administered menstrual drug products. Those ingredients are listed in § 310.545(a)(23) and (a)(24) (21 CFR 310.545(a)(23) and (a)(24)), respectively.

The ingredients listed in these sections do not include ephedrine, ephedrine salts (ephedrine hydrochloride, ephedrine sulfate, racephedrine hydrochloride), atropine, or atropine salts (atropine sulfate). The agency is aware of several combination drug products marketed for OTC internal analgesic or menstrual use that include ephedrine sulfate and atropine sulfate among their ingredients, in addition to aspirin or acetaminophen (Ref. 1). No submissions of data supporting the use of ephedrine or atropine singly or in combination were made to the advisory review panels that reviewed these classes of OTC drug products. No information was provided following publication of the tentative final monographs for OTC orally administered menstrual drug products or internal analgesic, antipyretic, and antirheumatic drug products on November 16, 1988 (53 FR 46194 and 46204, respectively). A final rule has not been published to date for either of these classes of OTC drug products.

FDA is not aware of any information that supports the use of ephedrine or atropine as active ingredients in OTC orally administered menstrual or internal analgesic, antipyretic, and antirheumatic drug products. Accordingly, these active ingredients will not be included in the relevant final monographs because they have not been shown to be generally recognized as safe and effective for their intended use(s). These ingredients should be eliminated from OTC drug products 180 days after the date of publication in the **Federal Register** of this final rule, regardless of whether further testing is undertaken to justify future use.

Publication of a final rule under this proceeding does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a new drug application (NDA) that may provide for prescription or OTC marketing status (see part 314 (21 CFR part 314)). As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend a monograph (see § 10.30 (21 CFR 10.30)).

II. The Agency's Final Conclusions on Certain OTC Drug Category II and III Ingredients

The agency notes that no comments or data have been submitted to the OTC drug review to support any ephedrine or atropine ingredient as being generally recognized as safe and effective for any OTC uses in orally administered menstrual or internal analgesic, antipyretic, and antirheumatic drug products. The agency has determined that these ingredients should be deemed not generally recognized as safe and effective for OTC use before a final monograph for each respective drug category is established. Accordingly, any drug product containing any of these ingredients and labeled for OTC

oral menstrual or internal analgesic, antipyretic, and antirheumatic use will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend the appropriate monograph to include any of these ingredients in OTC drug products (see § 10.30). Any OTC drug product containing any of these ingredients and labeled for the uses discussed in this document that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule and that is not the subject of an approved application will be in violation of sections 502 and 505 of the act and, therefore, subject to regulatory action. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the rule would be required to be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

III. Reference

(1) American Pharmaceutical Association, *Handbook of Nonprescription Drugs*, 10th ed., pp. 646, 648, and 667, 1993.

IV. 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; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this final rule is to act on the nonmonograph status of certain ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC drug review. There are a limited number of products currently marketed that will be affected by this rule. The agency is aware of at least three products, although there may be more. These products are marketed by three different manufacturers, all of which are considered small entities, using the U.S. Small Business Administration designation for this industry (750 employees).

Manufacturers of these products will no longer be able to market products containing the ephedrine or atropine ingredients included in this final rule after its effective date. However, the manufacturers will be able to reformulate these products and continue to market them with proposed monograph ingredients. The cost of reformulation and relabeling to any one manufacturer should be minimal as only one product per manufacturer appears to be affected. Total costs should be minimal ($500,000 to $1 million) as only a limited number of products appear to be affected. The lost sales from the products containing nonmonograph ingredients may be offset by sales of the substitute products containing monograph ingredients. In addition, manufacturers have been aware of the status of these products since 1988 and have not submitted any safety and effectiveness data to the agency.

The agency considered but rejected not acting on these ingredients in advance of the finalization of other monograph conditions. The final monographs for OTC orally administered menstrual and internal analgesic, antipyretic, and antirheumatic drug products are not expected to be completed for a period of time. The agency also considered publishing an additional notice alerting manufacturers that the ingredients in this final rule would be removed earlier. However, safety and effectiveness have not been established for these ingredients and manufacturers have not submitted the necessary data. Based on past experience, FDA has found that manufacturers do not submit the necessary data after a proposed rule is published when no data or petitions have been submitted in response to prior requests. In addition, consumers will benefit from the early removal from the marketplace of products containing ingredients for which safety and effectiveness have not been established. Consumers can then purchase products containing only ingredients proposed for monograph status. Manufacturers who choose to reformulate or replace affected products will be able to use alternative ingredients that are proposed as monograph conditions without incurring any additional expense of clinical testing for those ingredients.

While this final rule may cause manufacturers to discontinue marketing or to reformulate some products prior to issuance of the applicable final monograph, these manufacturers have known for some time that if adequate data were not submitted to support safety and effectiveness, cessation of marketing of the current products would be required, in any event, when the final monographs are published. Because this rule imposes no additional reporting or recordkeeping requirements, no additional professional skills are necessary to comply.

The analysis shows that this final rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. Based on the above analysis, the agency does not believe that the few affected manufacturers will incur a significant economic impact, although there may be some reformulation costs or inventory losses. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the final rule because it would not result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

V. Paperwork Reduction Act of 1995

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

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that is categorically excluded from the preparation of an environmental assessment because these actions, as a

class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by redesignating the text of paragraphs (a)(23) and (a)(24) as paragraphs (a)(23)(i) and (a)(24)(i), respectively; by adding paragraphs (a)(23)(i) and (a)(24)(i) headings, by adding paragraphs (a)(23)(ii), (a)(24)(ii), and (d)(26); and by revising paragraph (d)(11) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(23) *Internal analgesic drug products*—(i) *Approved as of November 10, 1993*. * * *

(ii) *Approved as of* February 22, 1999.

Any atropine ingredient

Any ephedrine ingredient

(24) *Orally administered menstrual drug products*—(i) *Approved as of November 10, 1993*. * * *

(ii) *Approved as of* February 22, 1999.

Any atropine ingredient

Any ephedrine ingredient

* * * * *

(d) * * *

(11) November 10, 1993, for products subject to paragraphs (a)(8)(ii), (a)(10)(v) through (a)(10)(vii), (a)(18)(ii) (except products that contain ferric subsulfate) through (a)(18)(vi), (a)(22)(ii), (a)(23)(i), (a)(24)(i), and (a)(25) of this section.

* * * * *

(26) February 22, 1999, for products subject to paragraphs (a)(23)(ii) and (a)(24)(ii) of this section.

Dated: August 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–22568 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 96N–0320]

Radiology Devices; Classifications for Five Medical Image Management Devices; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of April 29, 1998 (63 FR 23385). The document classified, along with other devices, the medical image storage device and medical image communications device. These devices were classified into Class I and were exempted from the requirement of premarket notification when they do not use irreversible data compression. The document was published with an incomplete device identification and description of the conditions for exemption from premarket notification. This document corrects those errors.

EFFECTIVE DATE: August 24, 1998.

FOR FURTHER INFORMATION CONTACT: Loren A. Zaremba, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 29, 1998 (63 FR 23385), FDA published a final rule classifying certain medical image management devices. Under the final rule, the medical image storage device and medical image communications device were classified into Class I and exempted from the requirement of premarket notification when they do not use irreversible data compression. Although the preamble of the final rule, as well as the proposal upon which the final rule is based, correctly identifies the devices and describes the limitation of the exemption from premarket notification, an editorial change was mistakenly made in the regulatory language of the final rule. As it currently reads, the device identification, not the exemption provision, is limited to those devices that do not perform irreversible data compression. This has the effect of leaving unclassified the medical image storage device and medical image communications device that do not perform irreversible data compression. This document corrects the error by removing the limiting language form the device identification paragraph and reinserting the appropriate language in the classification paragraph.

Furthermore, the agency also notes that in response to the comments in the preamble of the April 29, 1998, final rule, the agency erroneously stated that ''* * * the class I devices will be exempt from the design controls requirement in accordance with § 820.30 (21 CFR 820.30). FDA believes that design controls are not necessary for class I devices in this rule.'' However, under § 820.30(a)(2)(i), devices automated with computer software are specifically identified as devices which are subject to design controls. Because the medical image storage device and medical image communications device described by the classification regulation are digital, they are by definition, ''automated with computer software.'' The agency is therefore clarifying that these devices are subject to design controls.

In FR Doc. 98–11317 appearing on page 23385 in the **Federal Register** of April 29, 1998, the following corrections are made:

§ 892.2010 [Corrected]

1. On page 23387, in the first column, in § 892.2010 *Medical image storage device*, paragraph (a) is corrected by removing the phrase ''without irreversible data compression'' and paragraph (b) is corrected by adding the phrase ''only when the device stores images without performing irreversible data compression'' at the end of the paragraph.

§ 892.2020 [Corrected]

2. On the same page, in the same column, in § 892.2020 *Medical image communications device*, paragraph (a) is corrected by removing the phrase ''without irreversible data compression'' and paragraph (b) is corrected by adding the phrase ''only when the device transfers images without performing irreversible data compression'' at the end of the paragraph.

Dated: August 7, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–22571 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[T.D. ATF–400; Ref: Notice No. 841]

RIN 1512–AB55

Commerce in Explosives (95R–036P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations to clarify the meanings of terms, increase license and permit fees, eliminate duplication in licensing, relax the licensing requirements for on-site manufacturers, implement a storage notification requirement for manufacturers and other storers of explosives, update the theft/loss hotline number for reporting thefts or losses of explosives, and make minor modifications to regulations on storage.

DATES: This final rule is effective December 22, 1998.

FOR FURTHER INFORMATION CONTACT: Mark D. Waller, ATF Specialist, Arson and Explosives Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ARF) is concerned with the safety of emergency personnel responding to fires on sites where explosives are stored. ATF is amending the regulations in 27 CFR Part 55 to require any person who stores explosive materials to notify local fire departments of the locations where explosives are stored. The regulations are also being amended to clarify the meaning of terms; modify the American Table of Distances to conform with the Institute of Makers of Explosives (IME) latest revisions; update and incorporate references and definitions to reflect current government and industry standards; facilitate transition to the United Nations explosives classification codes; allow on-site manufacturers to operate under one manufacturer's license; and extend the term for original and renewal licenses and permits from one year to three years.

Notice of Proposed Rulemaking

On October 15, 1996, ATF published in the **Federal Register** a notice of proposed rulemaking (Notice No. 841, 61 FR 53688), with a 90-day comment period. The comment period closed on January 13, 1997. This notice proposed the following amendments to the regulations:

(1) Require anyone storing explosive materials to notify local law enforcement officials and fire departments of the type, magazine capacity, and location of each site where explosive materials are stored.

(2) Increase the license and permit fees to $200 and $100 and renewals to $100 and $50, respectively.

(3) Eliminate the manufacturer-limited license.

(4) Amend the definitions of ''fireworks,'' ''highway,'' and ''salute,'' and change the names of ''common fireworks'' to ''consumer fireworks'' and ''special fireworks'' to ''display fireworks'' and amend their definitions.

(5) Amend the definition of ''fireworks nonprocess building'' to eliminate the unnecessary reference to fireworks plant warehouse.

(6) Substantially adopt the American Table of Distances as revised by the Institute of Makers of Explosives.

(7) Update the ATF hotline for reporting thefts or losses of explosive materials.

ATF received 426 written comments in response to Notice No. 841. Comments were submitted by several major model rocketry industry groups such as the National Association of Rocketry (NAR) and Tripoli Rocketry Association (Tripoli), and their members. Comments were also submitted by fireworks hobbyists, small display fireworks operators, major explosives industry safety associations and professional organizations such as the Institute of Makers of Explosives (IME), the American Pyrotechnic Association (APA), the National Fire Protection Association (NFPA), and the International Association of Fire Fighters (IAFF). Comments were also received from concerned citizens.

Discussion of Comments—Final Rule

Subpart B—Definitions

ATF received three comments relating to proposals to amend the definitions in 27 CFR 55.11. Notice No. 841 proposed defining the term ''highway'' as ''any public street, public alley, or public road.'' With regard to the definition of ''highway,'' a number of commenters emphasized the importance of defining highway as any *public* road, *public* street, or *public* alley, and stressed that such roads should not include private roads on mine property, manufacturing sites, or construction projects. The commenters stated that the tables of distances set forth in the regulations are intended to apply only to roads financed, constructed, or maintained by government entities. Other comments also strongly urged ATF to clarify that the definition of ''highway'' includes a public funding element, so as to avoid posing undue burden on the explosives industry in placing magazines at minimum separation distances from private roads.

In the interest of ATF's statutory obligation to consider public safety, if a privately financed, constructed, or maintained road is regularly and openly traveled by the general public, ATF may determine that the road is ''public'' so that it is subject to the table of distance requirements. This interpretation allows ATF to maintain the flexibility to determine on a case-by-case basis whether a private road is used by the general public in a manner that warrants protection by the table of distance requirements. Accordingly, ATF is revising the definition of ''highway'' proposed in Notice No. 841 to include this interpretation.

ATF received two comments in response to proposals to amend various fireworks definitions. One commenter recommends that ATF eliminate confusion as to which table of distances, if any, applies to fireworks plant warehouses and fireworks and nonprocess buildings. The commenter recommends that the definition of fireworks plant warehouse be amended to state that no work of any kind shall be performed in the warehouse except for the placement in or removal of fireworks items from storage. The commenter also recommends that the definition of ''fireworks nonprocess building'' be amended to eliminate ''fireworks plant warehouse'' from its definition. Such warehouse would, therefore, not be subject to the separation distances in sections 55.222 and 55.223. The final rule adopts both these comments.

The commenter also urges ATF to consider incorporating NFPA 1124, Code for the Manufacture, Transportation, and Storage of Fireworks into 27 CFR Part 55, by reference. Further, the NFPA, which represents over 65,000 individuals and 115 national organizations including individuals from fire departments, health care facilities, and Federal, State, and local governments, makes the same suggestion. The NFPA recommends that ATF adopt a variety of its codes and standards by reference where applicable, such as NFPA 495, Explosives Materials Code, NFPA 498, Safe Havens and Interchange Lots, NFPA 1123, Code for Fireworks Display, NFPA 1125, Code for the Manufacture

of Model and High Power Rocket Motors, NFPA 1126, Standard for the Use of Pyrotechnics before a Proximate Audience, and NFPA 1127, Code for High Power Rocketry.

Since the standards set forth in these industry codes were not part of the proposals set forth in Notice No. 841, ATF is not adopting this comment at this time. However, ATF will consider including these standards in a separate notice of proposed rulemaking to be published at a future date.

AFT received one comment on its proposals to amend the definitions of ''common'' and ''special'' fireworks by using specific United Nations Organization (UN) identification numbers. The commenter feels that the incorporation of UN numbers in conjunction with references to U.S. Consumer Product Safety Commission (CPSC) and U.S. Department of Transportation (DOT) offers little improvement over the current definitions.

As an alternative, the commenter recommends that ATF consider definitions and classifications based on amounts and what stage the compositions, components, and semi-finished fireworks are in as they move through the manufacturing process. The commenter recommends that ATF provide examples distinguishing size, construction, composition, effect, and labeling for purposes of defining applicability of the regulations. ATF will not be adopting this suggestion at this time as it would not enhance the effective administration of the Federal explosives regulations.

It has also been recommended that AFT adopt the American Pyrotechnic Association's (APA) Standard 87–1 with respect to defining and classifying fireworks for licensing and storage determinations, in addition to the appropriate NFPA standards and codes. ATF will consider incorporating these standards into the regulations in a separate notice of proposed rulemaking.

In the course of examining the U.S. Department of Transportation (DOT) regulations, ATF determined that certain items do not fall within the DOT definition of consumer fireworks in terms of their suitability for use by the general public. Certain items present a minor explosion hazard and are regulated by DOT in the same manner as consumer fireworks. DOT classifies these articles as ''articles, pyrotechnic for technical purposes.'' Although it is clear that these items should be exempt from ATF licensing, storage, and recordkeeping requirements, they are intended to be used by professional pyrotechnics operators only, and not the general public. In Notice No. 841, ATF proposed that articles pyrotechnic (UN0431 and UN0432) be included in the definition of ''consumer fireworks.''

In the interest of public safety, ATF has determined that a separate definition is needed for articles pyrotechnic, to prevent the general public from considering these items as suitable for other than professional use only. Accordingly, ATF has amended the regulations to clarify that the manufacture of articles pyrotechnic is regulated by ATF. However, finished articles pyrotechnic, though not suitable for general consumer use, are not subject to ATF importation, licensing, storage, or recordkeeping requirements. This final rule amends regulations in 27 CFR 55.141 to provide this exemption.

Information regarding fused setpieces is being added to the definitions of ''consumer fireworks'' and ''special fireworks'' to help clarify their classification.

Subpart D—Licenses and Permits

Four hundred and seventeen commenters, representing 98 percent of the total comments received, strongly opposed the licensing fee increase. ATF proposed to raise the Federal explosives users permit fee from $20 to 100. The majority of this group of commenters were affiliated with one or more of the major model rocketry associations such as NAR or Tripoli, whose members typically hold a Type 34 permit, users of low explosives.

As an alternative to the fee increase, this group proposed that ATF designate a special type of hobby permit for exclusive use by high power model rocket hobbyists which would have a lower fee than that proposed by Notice No. 841. In response to these and other similar comments, ATF will propose in a separate notice of proposed rulemaking to create a separate definition and a lower permit fee for all ''hobbyists'' who receive, transport or ship low explosive materials in the pursuit of recreational or sporting activities.

No other comments were received in opposition to the proposal to raise license and permit fees. Statutory authority allows ATF to set fees up to $200 for a license or permit. Accordingly, upon the effective date of this final rule, the fee to engage in the business of importing, manufacturing, or dealing in explosive materials increases from $50 to $200; from $20 to $100 for a users permit; and from $2 to $75 for a user-limited permit.

In addition, in conjunction with the fee increases, this final rule increases the term of the original license or permit from one year to three years.

Two commenters expressed opposition to the proposal to eliminate the category of ''manufacturer-limited'' license. ATF bases its elimination of this license on the fact that no such licenses have been issued in the last 4 years and that the activities covered under the manufacturers-limited license are generally of an ongoing nature and thus would require a regular manufacturer's license. Accordingly, this final rule eliminates the manufacturer-limited license, as proposed in Notice No. 841.

Subpart K—Storage

Notification of the ''Authority Having Jurisdiction for Fire Safety'' of Explosives Storage Sites

Overall, commenters favored a notification requirement to the appropriate local authority regarding the location of sites where explosives are stored. However, approximately 200 commenters opposed a sweeping requirement to notify all local law enforcement officials of storage. These commenters suggest that notification be limited to local emergency response personnel only, as the term ''local law enforcement official'' could be interpreted broadly enough to include individuals who may not necessarily have a need to know of such storage. This final rule clarifies that notification shall be made specifically to the ''authority having jurisdiction for fire safety,'' defined as the fire department having jurisdiction for the area in which explosive materials are to be manufactured or stored. ATF will make available a listing of all State Fire Marshals to assist the industry in determining the Authority Having Jurisdiction for Fire Safety for a particular area. The list will also be posted on the ATF web page at *www.atf.treas.gov*.

ATF received one comment opposing the revision of section 55.218 by reducing the table of distances for the storage of explosive materials from 2 pounds to 0 pounds on the basis that it would require persons handling less than 2 pounds of fireworks to conform with overly strict separation distances. The commenter proposes that ATF should instead distinguish section 55.218, Table of distances for the storage of explosive materials, from section 55.219, Table of distances for storage of low explosives, more clearly to show that section 55.218 covers high explosives and section 55.219 covers low explosives only.

ATF believes that section 55.206 adequately clarifies which table of distances to use for the storage of explosive materials, including when to use the table found at section 55.224 for the storage of display fireworks. Accordingly, we are not adopting this comment.

ATF is amending the table of distances in §§ 55.222 and 55.223 to make it clear that, while consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

Miscellaneous

One commenter addressed a note to section 55.224, the table of distances for the storage of display fireworks. Note 3 of the table of distances in section 55.224 allows the distances in the table to be halved for magazines which were in use prior to March 7, 1990, if properly barricaded. The commenter requests that ATF clarify that distances between grandfathered magazines may also be halved if properly barricaded.

ATF concurs that Note 3 in the table of distances in section 55.224 was also intended to apply to the distances between magazines which were in use prior to March 7, 1990. Accordingly, this final rule amends section 55.224 to apply Note No. 3 to the separation distances between magazines.

A technical amendment is being made to §§ 55.45(b) and 55.46(b) to specify the application used for user-limited special fireworks permits, ATF Form 5400.21. In addition, a technical amendment to § 55.63 renames the section as ''Magazines acquired or constructed after permit or license is issued.'' This change is necessary to clarify the intent of this section which is to account for explosives storage facilities constructed or otherwise acquired after the license or permit is issued.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These final regulations provide clarification and consistency with industry terminology. In addition, the increases in license and permit fees are within the maximum amounts provided by the statute. Further, the burden placed on licensees and permittees for the collection and disclosure of explosives manufacture and storage information to the local authority having jurisdiction for explosives or fire safety is minimal.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512–0536. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. The collection of information in this regulation is in 27 CFR 55.201(f). This information is required to inform fire departments having jurisdiction over sites where explosives are stored or manufactured so that they can protect emergency response personnel called to fire scenes where explosives may be stored. The likely respondents are Federal licensees and permittees who store or manufacture explosive materials. The estimated total annual reporting burden per respondent is 90 minutes. The estimated number of respondents is 10,057. The estimated annual frequency of responses is 2.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, D.C., 20226.

Disclosure

Copies of the notice of proposed rulemaking, the written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is Mark D. Waller, Arson and Explosives Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Part 55 as follows:

PART 55—COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR Part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 55.11 is amended by removing the definitions for the terms ''Common fireworks,'' ''Licensed manufacturer-limited,'' ''Manufacturer limited,'' and ''Special fireworks;'' by revising the definitions for the terms ''Bulk salutes,'' ''Fireworks,'' ''Fireworks nonprocess building,'' ''Fireworks plant warehouse,'' ''Fireworks shipping building,'' ''Highway,'' and ''Salute;'' and by adding new definitions for the terms ''Articles pyrotechnic,'' ''Authority having jurisdiction for fire safety,'' ''Consumer fireworks,'' and ''Display fireworks'' to read as follows:

§ 55.11 Meaning of terms.

* * * * *

Articles pyrotechnic. Pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Such articles meeting the weight limits for consumer fireworks but not labeled as such and classified by U.S. Department of Transportation regulations in 49 CFR 172.101 as UN0431 or UN0432.

* * * * *

Authority having jurisdiction for fire safety. The fire department having jurisdiction over sites where explosives are manufactured or stored.

* * * * *

Bulk salutes. Salute components prior to final assembly into aerial shells, and finished salute shells held separately prior to being packed with other types of display fireworks.

* * * * *

Consumer fireworks. Any small firework device designed to produce

visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in title 16, Code of Federal Regulations, parts 1500 and 1507. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Consumer fireworks are classified as fireworks UN0336, and UN0337 by the U.S. Department of Transportation at 49 CFR 172.101. This term does not include fused setpieces containing components which together exceed 50 mg of salute powder.

* * * * *

Display fireworks. Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as ''consumer fireworks.'' Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder.

* * * * *

Fireworks. Any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of ''consumer fireworks'' or ''display fireworks'' as defined by this section.

* * * * *

Fireworks nonprocess building. Any office building or other building or area in a fireworks plant where no fireworks, pyrotechnic compositions or explosive materials are processed or stored.

* * * * *

Fireworks plant warehouse. Any building or structure used exclusively for the storage of materials which are neither explosive materials nor pyrotechnic compositions used to manufacture or assemble fireworks.

* * * * *

Fireworks shipping building. A building used for the packing of assorted display fireworks into shipping cartons for individual public displays and for the loading of packaged displays for shipment to purchasers.

* * * * *

Highway. Any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.

* * * * *

Salute. An aerial shell, classified as a display firework, that contains a charge of flash powder and is designed to produce a flash of light and a loud report as the pyrotechnic effect.

* * * * *

Par. 3. Section 55.30 is amended by removing ''800–424–9555'' in paragraphs (a), (b), and the introductory text of paragraph (d) and adding in its place ''1–800–800–3855'' and by revising paragraphs (c)(4) and (d)(3) to read as follows:

§ 55.30 Reporting theft or loss of explosive materials.

* * * * *

(c) * * *

(4) Description (dynamite, blasting agents, detonators, etc.) and United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D, as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

(d) * * *

(3) Description (United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D) as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

Par. 4. Section 55.41(b)(2) is revised to read as follows:

§ 55.41 General.

* * * * *

(b) * * *

(2) A separate license shall not be required of a licensed manufacturer with respect to his on-site manufacturing.

* * * * *

Par. 5. Section 55.42 is revised to read as follows:

§ 55.42 License fees.

(a) Each applicant shall pay a fee for obtaining a three year license, a separate fee being required for each business premises, as follows:

(1) Manufacturer—$200.

(2) Importer—$200.

(3) Dealer—$200.

(b) Each applicant for a renewal of a license shall pay a fee for a three year license as follows:

(1) Manufacturer—$100.

(2) Importer—$100.

(3) Dealer—$100.

Par. 6. Section 55.43 is revised to read as follows:

§ 55.43 Permit fees.

(a) Each applicant shall pay a fee for obtaining a permit as follows:

(1) User—$100 for a three year permit.

(2) User-limited (nonrenewable)—$75.

(b) Each applicant for renewal of a user permit shall pay a fee of $50 for a three year permit.

§ 55.45 [Amended]

Par. 7. Section 55.45(b) is amended by adding ''or Permit, User Limited Special Fireworks, ATF F 5400.21'' after ''ATF F 5400.16'' in the first sentence and by adding ''and ATF F 5400.21'' after ''ATF F 5400.16'' in the last sentence.

Par. 8. Section 55.46(b) is revised to read as follows:

§ 55.46 Renewal of license or permit.

* * * * *

(b) A user-limited permit is not renewable and is valid for a single purchase transaction. Applications for all user-limited permits must be filed on ATF F 5400.16 or ATF F 5400.21, as required by § 55.45.

Par. 9. Section 55.51 is revised to read as follows:

§ 55.51 Duration of license or permit.

An original license or permit is issued for a period of three years. A renewal license or permit is issued for a period of three years. However, a user-limited permit is valid only for a single purchase transaction.

Par. 10. Section 55.63 is amended by revising the heading of paragraph (d) to read as follows:

§ 55.63 Explosives magazine changes.

* * * * *

(d) *Magazines acquired or constructed after permit or license is issued.* * * *

Par. 11. Section 55.102 is revised to read as follows:

§ 55.102 Authorized operations by permittees.

(a) *In general.* A permit issued under this part does not authorize the permittee to engage in the business of manufacturing, importing, or dealing in explosive materials. Accordingly, if a permittee's operations bring him within the definition of manufacturer, importer, or dealer under this part, he shall qualify for the appropriate license.

(b) *Distributions of surplus stocks.* Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance

with § 55.103, and to nonlicensees or to nonpermittees in accordance with § 55.105(d).

Par. 12. Section 55.103 (a)(1) and (2) is revised to read as follows:

§ 55.103 Transactions among licensees/permittees.

(a) *General.* (1) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to a licensee or another permittee) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

(2) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to another licensee or permittee) shall verify the license or permit status of the distributee prior to the release of explosive materials ordered, as required by this section.

* * * * *

Par. 13. Section 55.105(d) is revised to read as follows:

§ 55.105 Distributions to nonlicenses and nonpermittees.

* * * * *

(d) A permittee may dispose of surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the permittee's place of business or operations are located, and if the requirements of paragraphs (b), (c), (e) and (f) of this section are fully met.

* * * * *

§ 55.122 [Amended]

Par. 14. Section 55.122 is amended by removing ''special fireworks'' wherever it appears in paragraphs (b)(4), (b)(5), (c)(4), and (c)(5) and adding in its place ''display fireworks'', and by removing ''(sf)'' in paragraphs (b)(5) and (c)(5) and adding in its place ''(df)''.

§ 55.123 [Amended]

Par. 15. Section 55.123 is amended by removing ''special fireworks'' wherever it appears in paragraphs (b)(3), (b)(4), (c)(4), (c)(5), and (d)(3), and adding in its place ''display fireworks'', and by removing ''(sf)'' in paragraphs (b)(4), (c)(5), and (d)(3) and adding in its place ''(df)''.

§ 55.124 [Amended]

Par. 16. Section 55.124 is amended by removing ''special fireworks'' wherever it appears in paragraphs (b)(4), (b)(5), (c)(4), and (c)(5) and adding in its place ''display fireworks'', and by removing ''(sf)'' in paragraphs (b)(5) and (c)(5) and adding in its place ''(df)''.

Par. 17. Section 55.125 is amended by revising the section heading and the introductory text of paragraph (a); by removing ''license or'' in paragraph (a)(1) and ''licensee or'' in the third sentence of paragraph (a); by removing paragraph (b) and redesignating paragraphs (c), (d), (e), and (f) as (b), (c), (d), and (e); and by revising redesignated paragraphs (b)(4) and (b)(5) to read as follows:

§ 55.125 Records maintained by permittees.

(a) Each permittee shall take true and accurate physical inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee shall take a special inventory * * *

(b) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), (etc.) and size (length and diameter or diameter only of display fireworks)).

* * * * *

Par. 18. Section 55.127 is amended by revising the first sentence and by removing ''special fireworks'' wherever it appears and adding in its place ''display fireworks'' to read as follows:

§ 55.127 Daily summary of magazine transactions.

In taking the inventory required by § § 55.122, 55.123, 55.124, and 55.125, a licensee or permittee shall enter the inventory in a record of daily summary transactions to be kept at each magazine of an approved storage facility; however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. * * *

Par. 19. Section 55.141(a)(7) is revised to read as follows:

§ 55.141 Exemptions.

(a) * * *

(7) The importation, distribution, and storage of fireworks classified as UN0336, UN0337, UN0431, or UN0432 explosives by the U.S. Department of Transportation at 49 CFR 172.101 and generally known as ''consumer fireworks'' or ''articles pyrotechnic.''

* * * * *

§ 55.163 [Amended]

Par. 20. Section 55.163 is amended by removing ''licensed manufacturer-limited,''.

Par. 21. Section 55.201 is amended by revising paragraph (d), by adding paragraph (f), and by adding a parenthetical text at the end of the section to read as follows:

§ 55.201 General.

* * * * *

(d) The regulations set forth in § § 55.221 through 55.224 pertain to the storage of display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks and articles pyrotechnic.

* * * * *

(f) Any person who stores explosive materials shall notify the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, magazine capacity, and location of each site where such explosive materials are stored. Such notification shall be made orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced.

(Paragraph (f) approved by the Office of Management and Budget under control number 1512–0536)

Par. 22. Section 55.202(b) is revised to read as follows:

§ 55.202 Classes of explosive materials.

* * * * *

(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined (for example, black powder, safety fuses, igniters, igniter cords, fuse lighters, and ''display fireworks'' classified as UN0333, UN0334, or UN0335 by the U.S. Department of Transportation regulations at 49 CFR 172.101, except for bulk salutes).

* * * * *

§ 55.206 [Amended]

Par. 23. Section 55.206(b) is amended by removing ''special fireworks'' and adding in its place ''display fireworks''.

Par. 24. Section 55.218 is amended by removing ''Public highways glass A to D'' where it appears in the table heading, and adding in its place ''Public highways with traffic volume 3000 or less vehicles/day''; by removing the

number ''2'' where it appears as the first entry in the column titled ''Pounds over'' and adding in its place the number ''0;'' and by revising the source citation at the end of the table to read as follows:

§ 55.218 Table of distances for storage of explosive materials.

* * * * *

Table: American Table of Distances for Storage of Explosives (December 1910), as Revised and Approved by the Institute of Makers of Explosives-July, 1991.

Par. 25. Section 55.221 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 55.221 Requirements for display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks or articles pyrotechnic.

(a) Display fireworks, pyrotechnic compositions, and explosive materials used to assemble fireworks and articles pyrotechnic shall be stored at all times as required by this Subpart unless they are in the process of manufacture, assembly, packaging, or are being transported.

* * * * *

(d) All dry explosive powders and mixtures, partially assembled display fireworks, and finished display fireworks shall be removed from fireworks process buildings at the conclusion of a day's operations and placed in approved magazines.

Par. 26. Section 55.222 is amended by removing ''special fireworks'' wherever it appears and adding in its place ''display fireworks''; by removing ''common fireworks'' wherever it appears and adding in its place ''consumer fireworks''; and by revising footnote 3 at the end of the table to read as follows:

§ 55.222 Table of distances between fireworks process buildings and between fireworks process and fireworks nonprocess buildings.

* * * * *

[3] While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

* * * * *

Par. 27. Section 55.223 is amended by revising the title heading of the table; by removing ''special fireworks'' in the table heading and adding in its place ''display fireworks''; by removing ''common fireworks'' in the table heading and adding in its place ''consumer fireworks''; by revising footnote 2 and adding a new footnote 5 at the end of the table to read as follows:

§ 55.223 Table of distances between fireworks process buildings and other specified areas.

Distance from Passenger Railways, Public Highways, Fireworks Plant Buildings used to Store Consumer Fireworks and Articles Pyrotechnic, Magazines and Fireworks Shipping Buildings, and Inhabited Buildings. [3 4 5]

* * * * *

[2] While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

[3] This table does not apply to the separation distances between fireworks process buildings (see § 55.222) and between magazines (§§ 55.218 and 55.224).

[4] The distances in this table apply with or without artificial or natural barricades or screen barricades. However, the use of barricades is highly recommended.

[5] No work of any kind, except to place or move items other than explosive materials from storage, shall be conducted in any building designated as a warehouse. A fireworks plant warehouse is not subject to § 55.222 or this section, tables of distances.

§ 55.224 [Amended]

Par. 28. Section 55.224 is amended by removing ''special fireworks'' wherever it appears and adding in its place ''display fireworks'', and by adding footnote reference ''3'' after ''2'' in the title heading for the third column of the table.

Signed: May 28, 1998.

John W. Magaw,

Director.

Approved: July 14, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 98–21867 Filed 8–21–98; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ04

Additional Disability or Death Due to Hospital Care, Medical or Surgical Treatment, Examination, or Training and Rehabilitation Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning awards of compensation or dependency and indemnity compensation for additional disability or death due to VA hospital care, medical or surgical treatment, examination, or training and rehabilitation services. Under this final rule, benefits are payable for additional disability or death caused by VA hospital care, medical or surgical treatment, or examination only if VA fault or ''an event not reasonably foreseeable'' proximately caused the disability or death. Benefits are also payable for additional disability or death proximately caused by VA's provision of training and rehabilitation services. This final rule is necessary to reflect Congress' recent amendment of 38 U.S.C. 1151, the statutory authority for such benefits.

DATES: Effective Date: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 1151 of 38 U.S.C. previously authorized the award of compensation or dependency and indemnity compensation for any additional disability or death of a veteran which did not result from the veteran's own willful misconduct but which did result from an injury or aggravation of an injury suffered as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation awarded under any of the laws administered by VA or as a result of having submitted to an examination under any such law. 38 CFR 3.358 and 3.800 contain the regulatory provisions implementing those statutory provisions.

Effective for claims filed on or after October 1, 1997, section 422(a) of Pub. L. 104–204, 110 Stat. 2874, 2926 (1996), amended 38 U.S.C. 1151 to authorize an award of compensation or dependency and indemnity compensation for a veteran's ''qualifying additional disability'' or ''qualifying death.'' Under 38 U.S.C. 1151, as amended, an additional disability or death qualifies for compensation or dependency and indemnity compensation if it (1) was not the result of the veteran's willful misconduct; (2) was caused by hospital care, medical or surgical treatment, or examination furnished the veteran under any law administered by VA, either by a VA employee or in a VA facility; and (3) was proximately caused

by carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on VA's part in furnishing the care, treatment, or examination or by an event not reasonably foreseeable. An additional disability or death also qualifies for benefits if it was not the result of the veteran's willful misconduct and was proximately caused by VA's provision of training and rehabilitation services as part of an approved rehabilitation program under 38 U.S.C. chapter 31. This document adds new 38 CFR 3.361 to implement 38 U.S.C 1151 as amended, new 38 CFR 3.362 to codify rules concerning the offset of benefits awarded under 38 U.S.C. 1151 if the beneficiary has also recovered damages under the Federal Tort Claims Act, and new 38 CFR 3.363 to consolidate regulatory provisions previously contained in §§ 3.358 and 3.800.

Section 422(b)(2) of Pub. L. 104–204, 110 Stat. 2874, 2927, provides that 38 U.S.C. 1151, as amended, shall govern all administrative determinations of eligibility for benefits under 38 U.S.C. 1151 made for claims filed on or after the effective date set forth in section 422(b)(1), which is October 1, 1996. However, section 422(c) of Pub. L. 104–204, 110 Stat. 2874, 2927, provides that, notwithstanding section 422(b)(1) or any other provision of the act, the amendments shall not take effect until October 1, 1997, unless Congress enacts legislation other than Pub. L. 104–204 to provide an earlier effective date. Congress has not enacted such legislation. Therefore, we apply new §§ 3.361 through 3.363 only to claims received by VA on or after October 1, 1997, and continue to apply §§ 3.358 and 3.800 to claims received by VA before October 1, 1997. These applicability rules are reflected in new §§ 3.358(a), 3.361(a), 3.362(a), 3.363(a), and 3.800(a).

New § 3.361(b), concerning additional disability, is derived from § 3.358(b)(1) with appropriate changes made to reflect the amendments made by section 422 of Pub. L. 104–204 and editorial changes made to improve clarity. Similarly, proposed § 3.361(c), concerning cause, is derived from § 3.358(b)(2) and (c)(1).

As amended by section 422 of Pub. L. 104–204, 38 U.S.C. 1151(a)(1) requires for entitlement that a veteran's additional disability or death be proximately caused either by ''an event not reasonably foreseeable'' or by ''carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault'' on VA's part in furnishing the hospital care, medical or surgical treatment, or examination that caused the additional disability or death. We believe that Congress, by listing several synonymous terms relating to negligence, intended not to provide alternative standards of liability, but rather to establish a single standard which would trigger entitlement to 38 U.S.C. 1151 benefits if not met in VA's furnishing of hospital care, medical or surgical treatment, or examination. We further believe that the single standard Congress intended to establish is tort-variety negligence. We recognize that there is not a single standard of liability governing tort claims under the Federal Tort Claims Act, but rather that the standard applied may vary from state to state. However, we also believe that Congress did not intend entitlement to a veterans' benefit to depend on a claimant's state of residence. Accordingly, we apply a uniform standard in the adjudication of claims under 38 U.S.C. 1151. Therefore, in new § 3.361(d)(1)(i), we interpret 38 U.S.C. 1151 as providing entitlement to benefits if VA, in furnishing hospital care, medical or surgical treatment, or examination, fails to exercise the degree of care that would be expected of a reasonable health care provider in furnishing hospital care, medical or surgical treatment, or examination.

New § 3.361(d)(1)(ii), concerning consent to care, treatment, or examination, is derived from § 3.358(c)(3). However, we include a requirement that consent be informed, in accordance with 38 CFR 17.32. As reflected in new § 3.361(d)(2), we leave to the factfinder in each claim the determination as to whether the proximate cause of a veteran's additional disability or death was an event not reasonably foreseeable, and for the factfinder, in making that determination, to apply the standard of what a reasonable health care provider would have foreseen. New § 3.361(d)(3), concerning proximate cause by the provision of rehabilitation and training services, is derived from § 3.358(c)(5) with appropriate changes made to reflect the amendments made by section 422 of Pub. L. 104–204 and editorial changes made to improve clarity.

The definition of ''Department employee'' in new § 3.361(e)(1) is derived from 5 U.S.C. 2105(a), which defines ''employee'' for title 5 (Government Organization and Employees) purposes, modified to refer only to VA employees who are engaged in the furnishing of health care services. The definition of ''Department facility'' in new § 3.361(e)(2) reflects a provision of 38 U.S.C. 1151(a) as amended by section 422 of Pub. L. 104–204. 38 U.S.C. 1151(a)(1) refers to ''a Department facility as defined in section 1701(3)(A)'' of title 38, United States Code. Section 1701(3)(A) defines ''facilities of the Department'' as facilities over which the Secretary has direct jurisdiction. We therefore define ''Department facility'' in the same way.

New § 3.361(f)(1) excludes hospital care or medical services furnished pursuant to a contract made under 38 U.S.C. 1703 because, under section 1703's terms, such care or services are furnished in a non-Department facility, and the day-to-day operations of such a facility's employees are not subject to the Secretary's supervision. The exclusion in new § 3.361(f)(2) of nursing home care furnished under 38 U.S.C. 1720 is derived from § 3.358(c)(6). New § 3.361(f)(3) excludes hospital care or medical services provided under 38 U.S.C. 8153 in a facility over which the Secretary does not have direct jurisdiction because care or services under section 8153 are not provided by VA employees, but may or may not be furnished in a VA facility. New § 3.361(f)(3) excludes only such care and services in fact not provided in a VA facility. New § 3.361(g) is derived from § 3.800(b).

New § 3.362(b), concerning the amount of a tort recovery to be offset from a veteran's compensation awarded under 38 U.S.C. 1151(a), is derived from § 3.800(a)(2). New § 3.362(c), concerning the amount of a tort recovery to be offset from a survivor's dependency and indemnity compensation (DIC) awarded under 38 U.S.C. 1151(a), is derived from § 3.800(a)(2) and the Office of the General Counsel precedent opinion (VAOPGCPREC) 79–90. That opinion held that the amount to be offset from a DIC award under 38 U.S.C. 1151 depends on the nature of the damages recovered by the claimant under the Federal Tort Claims Act. Amounts recovered by a claimant as damages under a typical ''wrongful-death statute'' may be offset from a DIC award under 38 U.S.C. 1151, even if the damages are paid to a nominal party as trustee for the veteran's survivors. Each survivor receiving such damages is subject to offset of DIC under 38 U.S.C. 1151 to the extent of sums included in the tort claim's judgment, settlement, or compromise to compensate for harm suffered by that survivor. On the other hand, amounts recovered by a claimant, acting as personal representative of a decedent veteran's estate, as damages under a ''survival statute'' may not be offset from a DIC award under 38 U.S.C. 1151.

New § 3.362(d), concerning offset of structured settlements, is derived from the principles espoused in

VAOPGCPREC 79–90. Structured settlements are settlements or compromises in which the Government, rather than simply paying to a plaintiff a sum, in settlement or compromise of a claim under the Federal Tort Claims Act, buys an annuity or otherwise funds payments, which may differ in total amount from the amount expended by the Government, to be made to the plaintiff at some future time. We will offset from a compensation or DIC award only the veteran's or survivor's proportional share of the Government's cost of such a settlement, including the veteran's or survivor's proportional share of attorney fees. Furthermore, the offset begins as soon as compensation or DIC payments are made after the settlement becomes final, not when the settlement payments are actually made to the beneficiary.

New § 3.362, concerning a bar to benefits due to alternative recoveries before December 1, 1962, is derived from § 3.800(a)(3).

This final rule merely restates and interprets statutory provisions. Pursuant to 5 U.S.C. 553, we are dispensing with notice and comment and with a 30-day delay of the effective date.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, 5 U.S.C. 601–612. Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act since it only concerns individuals.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 11, 1998.

Togo D. West, Jr.,

GPA Secretary.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.358, the section heading and paragraph (a) are revised to read as follows:

§ 3.358 Compensation for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

(a) *General.* This section applies to claims received by VA before October 1, 1997. If VA determines that a veteran has an additional disability resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical treatment, or examination, it will pay compensation for such additional disability. For claims received by VA on or after October 1, 1997, see § 3.361.

* * * * *

3. Section 3.361 is added to read as follows:

§ 3.361 Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, or training and rehabilitation services.

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen, revise, reconsider, or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors. For claims received by VA before October 1, 1997, see § 3.358.

(b) *Determining whether a veteran has an additional disability.* To determine whether a veteran has an additional disability, VA compares the veteran's condition immediately before the beginning of the hospital care, medical or surgical treatment, examination, or training and rehabilitation services upon which the claim is based to the veteran's condition after such care, treatment, examination, or services have stopped. VA considers each involved body part or system separately.

(c) *Establishing the cause of additional disability or death. (1) Actual causation required.* To establish causation, the evidence must show that the hospital care, medical or surgical treatment, or examination resulted in the veteran's additional disability or death. Merely showing that a veteran received care, treatment, or examination and that the veteran has an additional disability or died is not sufficient to establish cause.

(2) *Continuance or natural progress of a disease or injury.* Hospital care, medical or surgical treatment, or examination cannot cause the continuance or natural progress of a disease or injury for which the care, treatment, or examination was furnished unless VA's failure to timely diagnose and properly treat the disease or injury proximately caused the continuance or natural progress. The provision of training and rehabilitation services cannot cause the continuance or natural progress of a disease or injury for which the services were provided.

(3) *Veteran's failure to follow medical instructions.* Additional disability or death caused by a veteran's failure to follow properly given medical instructions is not caused by hospital care, medical or surgical treatment, or examination.

(d) *Establishing the proximate cause of additional disability or death. (1) Care, treatment, or examination.* To establish that carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on VA's part in furnishing hospital care, medical or surgical treatment, or examination proximately caused a veteran's additional disability or death, the evidence must show that the hospital care, medical or surgical treatment, or examination caused the veteran's additional disability or death (as explained in paragraph (c) of this section); and

(i) VA failed to exercise the degree of care that would be expected of a reasonable health care provider; or

(ii) VA furnished the hospital care, medical or surgical treatment, or examination without the veteran's or, in appropriate cases, the veteran's representative's informed consent. To determine whether there was informed consent, VA will consider whether the health care providers complied with the requirements of § 17.32 of this chapter. Consent may be express (i.e., given orally or in writing) or implied (i.e., suggested by all the pertinent facts).

(2) *Events not reasonably foreseeable.* Whether the proximate cause of a veteran's additional disability or death was an event not reasonably foreseeable is to be determined in each claim based on what a reasonable health care provider would have foreseen.

(3) *Training and rehabilitation services.* To establish that the provision of training and rehabilitation services proximately caused a veteran's additional disability or death, the evidence must show that the veteran's participation in an essential activity or function of the training or services provided or authorized by VA, as part of an approved rehabilitation program under 38 U.S.C. chapter 31, proximately caused the disability or death. It need not show that VA approved that specific activity or function, as long as the activity or function is generally accepted as being a necessary

component of the training or services VA provided or authorized.

(e) *Department employees and facilities.* (1) A *Department employee* is an individual—

(i) Who is appointed by the Department in the civil service under title 38, United States Code, or title 5, United States Code, as an employee as defined in 5 U.S.C. 2105;

(ii) Who is engaged in furnishing hospital care, medical or surgical treatment, or examinations under authority of law; and

(iii) Whose day-to-day activities are subject to supervision by the Secretary of Veterans Affairs.

(2) A *Department facility* is a facility over which the Secretary of Veterans Affairs has direct jurisdiction.

(f) *Activities which are not hospital care, medical or surgical treatment, or examination furnished by a Department employee or in a Department facility.* The following are not hospital care, medical or surgical treatment, or examination furnished by a Department employee or in a Department facility within the meaning of 38 U.S.C. 1151(a):

(1) Hospital care or medical services furnished under a contract made under 38 U.S.C. 1703.

(2) Nursing home care furnished under 38 U.S.C. 1720.

(3) Hospital care or medical services, including examination, provided under 38 U.S.C. 8153 in a facility over which the Secretary does not have direct jurisdiction.

(g) *Benefits payable under 38 U.S.C. 1151 for a veteran's death.* (1) *Death before January 1, 1957.* The benefit payable under 38 U.S.C. 1151(a) to an eligible survivor for a veteran's death occurring before January 1, 1957, is death compensation. See §§ 3.5(b)(2) and 3.702 for the right to elect dependency and indemnity compensation.

(2) *Death after December 31, 1956.* The benefit payable under 38 U.S.C. 1151(a) to an eligible survivor for a veteran's death occurring after December 31, 1956, is dependency and indemnity compensation.

(Authority: 38 U.S.C. 1151)

4. Section 3.362 is added to read as follows:

§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen, revise, reconsider, or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.

(b) *Offset of veterans' awards of compensation.* If a veteran's disability is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any compensation awarded under 38 U.S.C. 1151(a) is the entire amount of the veteran's share of the judgment, settlement, or compromise, including the veteran's proportional share of attorney fees.

(c) *Offset of survivors' awards of dependency and indemnity compensation.* If a veteran's death is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any dependency and indemnity compensation awarded under 38 U.S.C. 1151(a) to a survivor is only the amount of the judgment, settlement, or compromise representing damages for the veteran's death the survivor receives in an individual capacity or as distribution from the decedent veteran's estate of sums included in the judgment, settlement, or compromise to compensate for harm suffered by the survivor, plus the survivor's proportional share of attorney fees.

(d) *Offset of structured settlements.* This paragraph applies if a veteran's disability or death is the basis of a structured settlement or structured compromise under 28 U.S.C. 2672 or 2677 entered on or after December 1, 1962.

(1) *The amount to be offset.* The amount to be offset under 38 U.S.C. 1151(b) from benefits awarded under 38 U.S.C. 1151(a) is the veteran's or survivor's proportional share of the cost of the settlement or compromise to the United States, including the veteran's or survivor's proportional share of attorney fees.

(2) *When the offset begins.* The offset of benefits awarded under 38 U.S.C. 1151(a) begins the first month after the structured settlement or structured compromise has become final that such benefits would otherwise be paid.

(Authority: 38 U.S.C. 1151)

5. Section 3.363 is added to read as follows:

§ 3.363 Bar to benefits under 38 U.S.C. 1151.

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen, revise, reconsider, or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.

(b) *Administrative awards, compromises, or settlements, or judgments that bar benefits under 38 U.S.C. 1151.* If a veteran's disability or death was the basis of an administrative award under 28 U.S.C. 1346(b) made, or a settlement or compromise under 28 U.S.C. 2672 or 2677 finalized, before December 1, 1962, VA may not award benefits under 38 U.S.C. 1151 for any period after such award, settlement, or compromise was made or became final. If a veteran's disability or death was the basis of a judgment that became final before December 1, 1962, VA may award benefits under 38 U.S.C. 1151 for the disability or death unless the terms of the judgment provide otherwise.

(Authority: 38 U.S.C. 1151)

6. Section 3.800 is amended by adding introductory text to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

This section applies to claims received by VA before October 1, 1997. For claims received by VA on or after October 1, 1997, see §§ 3.362 and 3.363.

* * * * *

[FR Doc. 98–22486 Filed 8–21–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6145–6]

RIN 2060–AE04

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule: amendments to rule.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for new and existing secondary lead smelters. Changes to the NESHAP are being made to address comments received following promulgation of the final rule. Four changes are being made. Two are minor typographical corrections, while two are substantive corrections. The EPA is making these amendments as a direct final rule without prior proposal because the Agency views this as a noncontroversial

amendment and anticipates no significant adverse comments. The EPA is also proposing these amendments in the Proposed Rules section of this **Federal Register**. This rule will become effective without further notice unless the Agency receives relevant adverse comment on the parallel notice of proposed rulemaking within 30 days of today's document. Should the Agency receive such comments, it will publish a document informing the public that this rule did not take effect. The EPA will not institute a second comment period on the proposal. Any parties interested in commenting on the amendments should do so at this time.

DATES: *Effective Date.* This action will be effective October 13, 1998 unless significant adverse comments on this action are received by September 23, 1998. If significant adverse comments are received, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–92–43, containing information considered by the EPA in development of this action, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Comments. Written comments should be submitted to: Docket A–92–43, U.S. EPA, Air & Radiation Docket & Information Center, 401 M Street, SW., Room 1500, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–2364.

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

I. Background
II. Summary of Changes
III. Rationale for Changes
A. Dryer Transition Pieces
B. Blast Furnace Charging Hood THC Emission Limit
IV. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Unfunded Mandates Act
D. Paperwork Reduction Act
E. Regulatory Flexibility Act
F. Submission to Congress and the General Accounting Office
G. National Technology Transfer and Advancement Act
H. Protection of Children from Environmental Health Risks and Safety Risk Under Executive Order 13045
I. Enhancing the Intergovernmental Partnership Under Executive Order 12875

I. Background

The NESHAP for secondary lead smelting (40 CFR part 63, subpart X) was proposed in the **Federal Register** on June 9, 1994 (59 FR 29750). The EPA received 31 letters commenting on the proposed rule and proposed area source listing. After considering fully the comments received, the EPA promulgated this NESHAP in the **Federal Register** on June 23, 1995 (60 FR 32587).

Following publication of the final rule, the EPA received three petitions for reconsideration pursuant to section 307(d)(7)(B) of the act from secondary lead smelter owners and operators, and the Association of Battery Recyclers, an industry trade association that represents the majority of the secondary lead smelters in the United States. The EPA concurred with several of the objections, and revised the final rule. The revised rule was published in the **Federal Register** on June 13, 1997 (62 FR 32209). In addition, the EPA extended the compliance date and the dates for the submittal of standard operating procedures (SOP) manuals for fugitive dust control and baghouse inspection and maintenance by 6 months, in order to allow affected sources time to address the changes being made to the final rule. The extension was published in the **Federal Register** on December 12, 1996 (61 FR 65334).

Following publication of the final rule revision, the EPA became aware of two typographical errors in the revised rule. This amendment corrects those errors. In addition, two secondary lead smelter operators have contacted the EPA regarding two aspects of the final rule. The East Penn Company which operates a smelter in Reading, Pennsylvania, submitted a request on October 6, 1997, for permission to operate under an alternative emission standard for dryer transition pieces, as provided for in section 63.6(g) of the General Provisions. The GNB Company which operates a smelter in Frisco, Texas, reported that it was unable to meet the emission rate emission limit for total hydrocarbons from a blast furnace charging hood, and requested that the EPA amend the emission standard from a mass rate limit to a concentration limit. This amendment addresses the comments received from the two companies.

II. Summary of Changes

Two typographical corrections are being made. The EPA is correcting the reference to (a)(9) in § 63.548(e) to (c)(9) as follows:

''(e) The bag leak detection system required by paragraph (c)(9) of this section, * * *''

The EPA is correcting § 63.546(a) to read as revised in the extension published in the **Federal Register** on December 12, 1996 (61 FR 65334):

''(a) Each owner or operator of an existing secondary lead smelter shall achieve compliance with the requirements of this subpart no later than December 23, 1997. Existing sources wishing to apply for an extension of compliance pursuant to § 63.6(i) of this part must do so no later than June 23, 1997.''

The more substantive changes are as follows. The EPA is proposing to revise § 63.544 to allow for pressurized seals on dryer transition pieces as an alternative to enclosure hoods and ventilation. Alternative monitoring requirements specific to pressurized seals are also being proposed.

The EPA is also proposing to revise the total hydrocarbon (THC) emission limit for blast furnace charging hoods, § 63.543(g). The existing THC emission limit is 0.20 kilograms per hour (0.44 pounds per hour) as propane. The EPA is proposing to revise the THC emission limit to a concentration of 20 parts per million by volume on a dry basis (ppmvd) as propane.

III. Rationale for Changes

A. Dryer Transition Pieces

Most secondary lead smelters use a rotary dryer to dry feed material prior to charging to a reverberatory furnace. A dryer transition piece is the junction between a dryer and the charge hopper or conveyor, or the junction between the dryer and the smelting furnace feed chute or hopper located at the ends of the dryer. Gaps at these transition points can release gases containing HAP emissions to the atmosphere.

Subpart X as codified sets equipment and operational standards for the control of HAP emissions from dryer transition pieces. Section 63.544(b) requires that dryer transition pieces be equipped with an enclosure hood and ventilated to achieve a minimum face velocity of 110 meters per minute (360 feet per minute). Section 63.544(c) requires that the enclosure hood be ventilated to a control device, and that the controlled exhaust not contain more than 2.0 milligrams per dry standard cubic meter (mg/dscm) of lead. While greatly reducing HAP emissions, the equipment and operational standards specified in the final rule do not totally eliminate HAP emissions from dryer transition pieces.

The East Penn facility has what is believed to be a unique pressurized breeching seal system installed on the transition pieces of their dryer. A fixed cylindrical seal support keeps two cylindrical rubber seals in contact with the dryer shell at both the feed and the discharge ends of the dryer. The resultant annulus at each dryer end is sealed to the breeching around the feed and the discharged openings. A blower supplies air to both the feed and the discharge breeching to pressurize the seals. The blower provides positive pressure to ensure that no dryer exhaust gases leak through the breeching seals. As a result, no air emissions are generated at these locations.

The East Penn Company submitted a request to the EPA on October 6, 1997 (Docket ID No. IV–D–54), for permission to operate under an alternative emission standard for dryer transition pieces, as provided for in section 63.6(b) of the General Provisions. Section 63.6(g) specifies that if ''* * * an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant * * * at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or combination thereof, established under this part * * * the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative emission standard * * *''

Since the pressurized breeching seal precludes emissions from the dryer transition piece it achieves as much or more HAP emission reduction than the equipment and operational standards specified in the final rule. Therefore, the EPA is adding pressurized breeching seals as an alternative emission standard for dryer transition pieces. The EPA is also adding monitoring requirements for pressurized breeching seals to ensure their proper operation. Specifically, the owner or operator of a secondary lead smelter who uses pressurized dryer breeching seals shall equip each seal with an alarm that will be set off if the pressurized dryer breaching seal malfunctions.

B. Blast Furnace Charging Hood THC Emission Limit

Under the current rule, if a facility with a blast furnace does not combine the blast furnace charging hood exhaust with the blast furnace process emissions (main exhaust), section 63.543(g) limits THC emissions from the blast furnace charging hood to 0.20 kilograms per hour (0.44 pounds per hour).

The EPA added the blast furnace charging hood emission limit after testing on a secondary lead blast furnace indicated substantial amounts of THC and possibly organic HAP could be emitted from the blast furnace charging hood (Docket ID No. IV–A–11). Based on the emissions data collected, average THC emissions from the blast furnace charging hood were estimated at 200–300 ppm, corresponding to approximately 30 kilograms per hour (70 pounds per hour) of THC as propane. The blast furnace was equipped with a unique rotary charging drum that was intended to prevent the furnace exhaust from escaping through the charging hood. However, based on visual observations, the seal was not effective at preventing leakage. Significant amounts of smoke could be seen passing through the charging location, and into the charging hood. Plant personnel also indicated that the main blast furnace exhaust duct was partially plugged resulting in insufficient furnace draft.

The EPA's intent was to set the THC emission limit at a level which would force facilities to either demonstrate that they operate their furnace at an adequate draft to prevent leakage to furnace exhaust into the blast furnace charging hood, or combine the blast furnace charge hood exhaust with the furnace exhaust prior to treatment. The EPA set the current emission limit based on emission testing performed on the blast furnace charge hood at the GNB secondary lead smelter located in Columbus, Georgia (Docket ID No. II–A–6). THC measurements at the GNB-Columbus smelter found THC concentrations ranging from 9 to 16 parts per million by volume on a dry basis (ppmvd) as propane, corresponding to emission rates between 0.1 and 0.2 kilograms per hour (0.23 and 0.44 pound per hour) of THC as propane. The blast furnace charging hood THC emission limit was set at 0.20 kilograms per hour (0.44 pounds per hour) based on these results.

GNB contacted the EPA (Docket ID No. IV–D–53) and requested that the emission standard for THC from blast furnace charging hoods be changed from a mass rate emission limit to a concentration based emission limit. Through emissions testing, GNB determined that the GNB smelter in Frisco, Texas would not be able to comply with the existing mass rate limit. Test data obtained showed an average concentration of 4.4 ppm as propane, equivalent to approximately 0.7 kilograms per hour (1.5 pounds per hour).

In their comment, GNB points out that the GNB-Frisco facility has an ongoing operational program to ensure adequate furnace draft is maintained. Once per shift, an inspection and any necessary maintenance is conducted on the primary potential plugging point (an exhaust stream ''upcomer''). Weekly inspection and maintenance of other potential plug points is also conducted. In addition, a TV camera monitors the top of the blast furnace. The display monitor alerts the operator to any ''puffing'' from the charging location. Such puffing could indicate back pressure or plugging in the primary exhaust. If the operator observes puffing, he/she would then inspect for plugging and perform any necessary maintenance. Based on the information provided by GNB, the EPA believes that the GNB-Frisco facility charging system is representative of the technology used as the basis for the MACT emission limit and that GNB is operating the equipment properly. As such, the EPA is concerned that the current emission limit may not be achievable in all cases.

In GNB's request for the EPA to revise the emission limit, they questioned the representativeness of the GNB-Columbus blast furnace and the appropriateness of a mass rate emission limit. GNB pointed out that the GNB-Frisco blast furnace is much larger than the GNB-Columbus blast furnace (90 tons of lead per day versus 38 tons per day). The EPA in most cases sets emission limits in a format that takes into account facility size. A larger facility generally emits more than a smaller facility. The EPA concurs that a mass rate emission limit is inappropriate since it does not take into account facility size.

Based on the discussion above, the EPA concurs that the current emission limit should be revised. In addition, the EPA concurs that a concentration based emission limit should be set since a concentration based emission limit will account for facility size. Based on the

available data, THC emissions from the blast furnace charging hoods with proper furnace draft can range from 1 to 20 ppmv. The EPA is amending the emission limit for THC emissions from blast furnace charging hoods to 20 ppmv based on the available data.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docket system is intended to allow members of the public and affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the background information documents (BIDs) and preambles to the proposed and promulgated standards, the contents of the docket will serve as the official record in case of judicial review (section 307(d)(7)(A) of the Act).

B. Executive Order 12866

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

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

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

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

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

It has been determined that this amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of significantly less than $100 million in any 1 year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This amendment to the rule will not impose any new information collection requirements.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have a significant economic impact on a substantial number of small entities. This amendment will not have a significant economic impact on a substantial number of small entities.

F. Submission to Congress and the General Accounting Office

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

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. This action does not involve the proposal of any new technical standards, or incorporate by reference existing technical standards.

H. Protection of Children From Environmental Health Risks and Safety Risk Under Executive Order 13045

The Executive Order 13045 applies to any rule that (1) OMB determines is ''economically significant'' as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety

aspects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This action is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

I. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under the executive order EPA must consult with representatives of affected State, local, and Tribal governments. The EPA consulted with State and local governments at the time of promulgation of subpart X (60 FR 32587), and no tribal governments are believed to be affected by this action. Today's changes are minor and will not impose costs on governments entities or the private sector. Consequently, the EPA has not consulted with State, local, and Tribal governments on this amendment.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: August 11, 1998.

Carol M. Browner,

Administrator.

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

PART 63—[AMENDED]

1. Section 63.542 is amended by adding a definition for pressurized dryer breaching seal as follows:

§ 63.542 Definitions.

* * * * *

Pressurized dryer breaching seal means a seal system connecting the dryer transition pieces which is maintained at a higher pressure than the inside of the dryer.

* * * * *

2. Section 63.543 is amended by revising paragraph (g) as follows:

§ 63.543 Standards for process sources.

* * * * *

(g) If the owner or operator of a blast furnace or a collocated blast furnace and reverberatory furnace does not combine the blast furnace charging process fugitive emissions with the blast furnace process emissions and discharges such emissions to the atmosphere through separate emission points, then exhaust shall not contain total hydrocarbons in excess of 20 parts per million by volume, expressed as propane.

* * * * *

3. Section 63.544 is amended by redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g) as follows:

§ 63.544 Standards for process fugitive sources.

* * * * *

(g) As an alternative to paragraph (a)(5) of this section, an owner or operator may elect to control the process fugitive emissions from dryer transition pieces by installing and operating pressurized dryer breaching seals at each transition piece.

* * * * *

4. Section 63.546 is amended by revising paragraph (a) as follows:

§ 63.546 Compliance dates.

(a) Each owner or operator of an existing secondary lead smelter shall achieve compliance with the requirements of this subpart no later than June 23, 1998.

* * * * *

5. Section 63.547 is amended by revising paragraph (b) as follows:

§ 63.547 Test methods.

* * * * *

(b) The following tests methods in appendix A of part 60 listed in paragraphs (b)(1) through (b)(4) of this section shall be used, as specified, to determine compliance with the emission standards for total hydrocarbons § 63.543(c), (d), (e), and (g).

(1) Method 1 shall be used to select the sampling port location to determine compliance under § 63.543(c), (d), (e), and (g).

(2) The Single Point Integrated Sampling and Analytical Procedure of Method 3B shall be used to measure the carbon dioxide content of the stack gases to determine compliance under § 63.543(c), (d), and (e).

(3) Method 4 shall be used to measure moisture content of the stack gases to determine compliance under § 63.543(c), (d), (e), and (g).

(4) Method 25A shall be used to measure total hydrocarbon emissions to determine compliance under § 63.543(c), (d), (e), and (g). The minimum sampling time shall be 1 hour for each run. A minimum of three runs shall be performed. A 1-hour average total hydrocarbon concentration shall be determined for each run and the average of the three 1-hour averages shall be used to determine compliance. The total hydrocarbon emissions concentrations for determining compliance under § 63.543(c), (d), and (e) shall be expressed as propane and shall be corrected to 4 percent carbon dioxide, as described in paragraph (c) of this section.

* * * * *

6. Section 63.548 is amended by revising paragraph (e) introductory text and adding paragraph (k) as follows:

§ 63.548 Monitoring requirements.

* * * * *

(e) The bag leak detection system required by paragraph (c)(9) of this section, shall meet the specification and requirements of paragraphs (e)(1) through (e)(8) of this section.

* * * * *

(k) The owner or operator of a secondary lead smelter who uses pressurized dryer breaching seals in order to comply with the requirements of § 63.544(g) shall equip each seal with an alarm that will ''sound'' or ''go off'' if the pressurized dryer breaching seal malfunctions.

[FR Doc. 98–22648 Filed 8–21–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–155; RM–8468 and RM–8802]

Radio Broadcasting Services; Big Pine Key, Clewiston, Ft. Myers Villas, Indiantown, Jupiter, Key Colony Beach, Naples and Tice, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 276C1 for Channel 276C2 at Indiantown, Florida, Station WPBZ, at coordinates 26–56–22 and 80–07–04; substitutes Channel 284C3 for Channel 276C3 at Naples, Florida, Station WSGL, at coordinates 26–07–33 and 81–43–17; substitutes Channel 281C1 for Channel 284C at Big Pine Key, Florida, Station WWUS, at coordinates 24–39–38 and 81–25–10; substitutes Channel 267C2 for Channel 280C2 at Key Colony Beach, Florida, Station WKKB, at coordinates 24–42–25 and 81–06–67; substitutes Channel 292C2 for Channel 292A at Ft. Myers Villas, Florida, Station WROC, at

coordinates 26–30–18 and 81–51–14; substitutes Channel 258C3 for Channel 292A at Clewiston, Florida, Station WAFC, at coordinates 26–41–00 and 80–46–00; substitutes Channel 292C3 for Channel 258A at Jupiter, Florida, Station WJBW, at coordinates 26–51–30 and 80–06–00; and substitutes Channel 275C2 for Channel 229A at Tice, Florida, Station WAAD, at coordinates 26–29–09 and 82–00–24. This action is taken in response to a petition filed by Gulf Communications Partnership. *See* 60 FR 90, January 3, 1995. With this action this proceeding is terminated.

EFFECTIVE DATE: September 28, 1998.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 94–155, adopted August 5, 1998, and released August 14, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 276C1 and adding Channel 276C2 at Indiantown, by removing Channel 276C3 and adding Channel 284C3 at Naples, by removing Channel 284C and adding Channel 281C1 at Big Pine Key, by removing Channel 280C2 and adding Channel 267C2 at Key Colony Beach, by removing Channel 292A and adding Channel 292C2 at Ft. Myers Villas, by removing Channel 292A and adding Channel 258C3 at Clewiston, by removing Channel 258A and adding Channel 292C3 at Jupiter, and by removing Channel 229A and adding Channel 275C2 at Tice.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–22516 Filed 8–21–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–189, RM–9135]

Radio Broadcasting Services; Nassawadox, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document grants the petition for reconsideration filed by Ken Robol against our action in the *Report and Order,* 63 FR 10345 (March 3, 1998) which dismissed Robol's proposal to allot Channel 252A to Nassawadox, Virginia for failure to file a statement of continuing interest. Action in this document also allots Channel 252A to Nassawadox. Separation requirements without the imposition of a site restriction. The coordinates for Channel 252A at Nassawadox are North Latitude 37–28–24 and West Latitude 75–51–30. With this action this proceeding is terminated. A filing window for Channel 252A at Nassawadox, Virginia will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 97–189, adopted August 4, 1998 and released August 14, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3805 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–22600 Filed 8–21–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 163
Monday, August 24, 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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2421, 2423, and 2429

Meaning of Terms as Used in This Subchapter; Unfair Labor Practice Proceedings; Miscellaneous and General Requirements

AGENCY: Office of the General Counsel, Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking; notice of meeting.

SUMMARY: The General Counsel of the Federal Labor Relations Authority (FLRA) proposes to revise the regulations regarding the prevention, resolution, and investigation of unfair labor practice (ULP) disputes (part 2423, subpart A). The purpose of the proposed revisions is to facilitate dispute resolution and to simplify, clarify, and improve the processing of ULP charges. Implementation of the proposed changes will enhance the purposes and policies of the Federal Service Labor-Management Relations Statute (Statute) by preventing ULP disputes, resolving disputes that arise, and fully investigating and taking determinative action in disputes that are not resolved. The proposed revisions implement the FLRA's agency-wide collaboration and alternative dispute resolution initiative to assist labor and management parties in developing collaborative relationships, and to provide dispute resolution services in ULP, representation, negotiability, impasses, and arbitration cases pending before the Office of the General Counsel, the three Authority Members, and the Federal Service Impasses Panel. In addition, two definitions of terms used only in subpart A of part 2423 are proposed in part 2421, and it is proposed that one section in part 2429 be clarified in light of the proposed revisions to subpart A of part 2423.

DATES: Comments must be received on or before October 19, 1998. See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Mail or deliver written comments to the Office of the General Counsel, Federal Labor Relations Authority, 607 14th Street, NW, Suite 210, Washington, DC 20424–0001. See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: *Regulatory Information:* David L. Feder, Deputy General Counsel, at the address for the Office of the General Counsel or by telephone # (202) 482–6680 ext. 203, facsimile # (202) 482–6608. See **SUPPLEMENTARY INFORMATION** for persons to contact for meeting registration.

SUPPLEMENTARY INFORMATION: The Office of the General Counsel (OGC) of the FLRA proposes modifications to the existing rules and regulations in subpart A of part 2423 of title 5 of the Code of Federal Regulations regarding the prevention of ULPs. These proposed revisions are part of the FLRA's initiative to facilitate dispute resolution and to simplify, clarify, and improve the processing of ULP charges. On July 31, 1997, the Authority Members published final regulations (62 FR 40911), which became effective on October 1, 1997, on the processing of ULP complaints from the issuance of a complaint through the transfer of the case to the Authority Members after the issuance of a decision and recommended order of an Administrative Law Judge. These proposed revisions concern the prevention of ULP disputes and the investigation, resolution, and disposition of ULP charges.

Subpart A of the regulations has not been reexamined in its entirety since the regulations were enacted in 1980. Since that time, the OGC has established internal policies to assist parties in preventing and resolving ULP disputes and in investigating ULP charges. Recent examples of these policies concern Settlement; Prosecutorial Discretion; Injunctions; Scope of Investigations; Intervention; Quality in ULP Investigations; and Facilitation, Intervention, Training, and Education. In November 1997, the FLRA undertook a comprehensive Customer Service Survey. The General Counsel also has held over 30 Town Hall Meetings throughout the country, open to all parties, to discuss the manner in which the OGC: (1) prevents ULPs by assisting parties in avoiding ULP disputes and resolving those disputes which precipitate the filing of a ULP charge; and (2) investigates and takes disposition on the merits in those disputes which are not resolved. Many of the proposed revisions are driven by the discussions during those Town Hall meetings and the preliminary results of the Customer Service Survey. These proposed revisions provide parties with alternative dispute resolution (ADR) processes to avoid ULP disputes as well as to resolve any ULP disputes that materialize prior to the filing of a ULP charge and prior to issuance of a complaint.

To obtain additional input from our customers, meetings to discuss these proposed revisions will be held in each of the seven Regional Office cities and at OGC Headquarters at the following locations, dates and times:

Office	Location of meeting	Date	Time
Boston	Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, 1st Floor Auditorium, Boston, MA.	Sept. 17, 1998	9:30 a.m.
Washington, DC	1730 M Street, NW, Suite 300, Conference Room, Washington, DC	Sept. 17, 1998	9:30 a.m.
Atlanta	Summit Building, 401 West Peachtree Street, 31st Floor, Atlanta, GA	Sept. 17, 1998	9:30 a.m.
Chicago	Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd., Room 328, Chicago, IL.	Oct. 6, 1998	9:00 a.m.
Dallas	A. Maceo Smith Federal Building, 525 Griffin Street, Room 502, Dallas, TX.	Sept. 17, 1998	9:30 a.m.
Denver	1244 Speer Blvd., Room 700, Denver, CO	Sept. 17, 1998	9:30 a.m.
San Francisco	Oakland Federal Building, 1301 Clay Street, North Tower, 2nd Floor, Conference Rooms A and B, Oakland, CA.	Oct. 8, 1998	9:00 a.m.

Office	Location of meeting	Date	Time
OGC HQ, Washington, DC	607 14th Street, NW, 2nd Floor Agenda Room, Washington, DC	Sept. 17, 1998	9:30 a.m.

Persons interested in attending any of these Regional Office City meetings on this proposed rulemaking should write or call the following persons at the addresses and telephone numbers listed to confirm attendance at the selected site: Gary J. Lieberman, Boston Regional Office, 99 Summer Street, Suite 1500, Boston, MA 02110–1200, telephone # (617) 424–5731 ext. 20, facsimile # (617) 424–5743; Barbara S. Liggett, Washington Regional Office, 1255 22nd Street, NW, Suite 400, Washington, DC 20037–1206, telephone # (202) 653–8502 ext. 23, facsimile # (202) 653–5091; Gail R. Hitchcock, Atlanta Regional Office, Marquis Two Tower, Suite 701, 285 Peachtree Center Ave., Atlanta, GA 30303–1270, telephone # (404) 331–5212 ext. 17, facsimile # (404) 331–5280; Philip T. Roberts, Chicago Regional Office, 55 West Monroe Street, Suite 1150, Chicago, IL 60603–9727, telephone # (312) 886–3465 ext. 20, facsimile # (312) 866–5977; Billie Jean Faulks, Dallas Regional Office, 525 South Griffin Street, Suite 926, LB 107, Dallas, TX 75202–5093, telephone # (214) 767–6266 ext. 10, facsimile # (214) 767–0156; Timothy J. Sullivan, Denver Regional Office, 1244 Speer Blvd., Suite 100, Denver, CO 80204–3581, telephone # (303) 844–5226 ext. 12, facsimile # (303) 844–2774; Lisa C. Vandenberg, San Francisco Regional Office, 901 Market St., Suite 220, San Francisco, CA 94103–1791, telephone # (415) 356–5002 ext. 18, facsimile # (415) 356–5017; and Nancy Speight, Office of the General Counsel, 607 14th Street, NW, Suite 210, Washington, DC 20424–0001, telephone # (202) 482–6680 ext. 205, facsimile # (202) 482–6608.

Copies of all written comments will be available for inspection and photocopying between 8:00 a.m. and 5:00 p.m., Monday through Friday, at the Office of General Counsel, Suite 210, 607 14th St., NW, Washington, DC 20424–0001.

Sectional analyses of the proposed amendments to Part 2421—Meaning of Terms As Used in This Subchapter, Part 2423—ULP Proceedings, and Part 2429—Miscellaneous and General Requirements are as follows:

Part 2421—Meaning of Terms as Used in This Subchapter

Section 2421.23

The term Charging Party, which appears only in subpart A of part 2423, is not defined in the current regulations. This section now defines *Charging Party*.

Section 2421.24

The term *Charged Party*, which appears only in subpart A of part 2423, is not defined in the current regulations. This section now defines *Charged Party*.

Part 2423—Unfair Labor Practice Proceedings

Section 2423.1

ULP charges filed on or after January 11, 1979, have been processed under this part. Since there are no charges pending that were filed before that date, this section is no longer required to serve as a transitional guide and is therefore proposed to be deleted.

It is proposed that current § 2423.2 be renumbered as 2423.1. The current section encourages the parties to meet and resolve ULP disputes prior to filing ULP charges. The proposed revisions continue to encourage and further support such dispute resolution activities by clarifying that the parties may jointly request or agree to have the OGC assist them in this endeavor. This proposed revision is consistent with a revision made to the processing of representation petitions in 1995 (60 FR 67288) (Dec. 29, 1995). The proposed revision also highlights that Regional Office representatives may assist parties in informally resolving their ULP dispute as part of the investigation.

Since Regional Office representatives are available to assist parties in resolving ULP disputes both prior to the filing of a charge and during the course of the investigation, there is no longer a need to require a 15-day delay before a Regional Office begins processing a charge. Accordingly, it is proposed that paragraph (c) be deleted.

Section 2423.2

Since the enactment of the Statute, the OGC has assisted employees, labor organizations, and agencies in avoiding and resolving labor-management disputes and enhancing labor-management relationships as governed by the Statute. The use of a problem-solving approach and the provision of facilitation, intervention, training, and education services to the parties provide the participants in the Federal sector labor-management relations program with an alternative to adversarial litigation.

The preliminary results of the Customer Service Survey reveal that improved relationships between labor and management result in the filing of fewer ULP charges. The provision of ADR services to parties promotes the purposes and policies of the Statute by: improving and enhancing parties' labor-management relationships, enabling parties to avoid ULP disputes, and assisting the parties in resolving ULP disputes among themselves.

This proposed new section sets forth the purpose for providing ADR services and the types of services that are available to the parties. Parties may request assistance or a Region may suggest that the parties may benefit from such ADR programs. In either situation, ADR programs under this section are voluntary and undertaken only upon agreement by both parties.

Section 2423.3

This section, which identifies who may file a ULP charge, is substantially unchanged.

Section 2423.4

This section, describing the content of a ULP charge, is substantially unchanged. Sometimes, the individual signing a charge, or the individual upon whom a charge is served, is not the point of contact for the Charging or Charged Party, respectively. To avoid any delay in commencement of the investigation, this section clarifies that a charge also identifies the points of contact for both parties. This section also requires facsimile numbers, when such equipment is available, to be supplied on the charge form. The section continues to require that the charge contain a clear and concise statement of the facts alleged to constitute a ULP. However, it is proposed that a party filing a charge need not be required to specifically cite what subsection(s) of 5 U.S.C. 7116(a) or (b) are being alleged. Sometimes parties filing charges are uncertain which subsection to allege and thus list all or inapplicable subsections, which only confuses the parties and delays the investigation. The section clarifies that a charge is a self-contained document which describes the alleged ULP without the need to refer to other documents. This section also provides further guidance to parties filing charges as to what constitutes the supporting evidence and documents which are submitted to the Region when filing a charge.

Section 2423.5

The current section, which provides for initial selection of the ULP procedure or the negotiability procedure when the same issue is involved, is identical to the provision in part 2424, section 2424.5. The Chair and Members of the Authority published a **Federal Register** notice (63 FR 19413, 19414) (Apr. 20, 1998), stating their intent to review, and where appropriate, implement mechanisms to improve the manner in which negotiability appeals are processed, and to revise the regulations governing review of these appeals. One issue the Authority requested comments on concerns the relationship between issues arising under the negotiability appeals process and the ULP process. Accordingly, since the substance of section 2423.5 is currently under review, this section is proposed to be removed and reserved.

Section 2423.6

This section continues to describe the requirements for filing and serving ULP charges and is substantially unchanged. One proposed change is to allow filing of a charge with a Regional Office by facsimile transmission. It is proposed that supporting evidence and documents will continue to be required to be submitted by mail or delivered in person, not by facsimile transmission. When a charge is filed by facsimile transmission, an original of the charge need not also be sent to the Region. Charges also may be served on Charged Parties by facsimile transmission, if that equipment is available.

Section 2423.7

This proposed new section establishes an alternative case processing procedure to attempt to resolve the allegations in the charge after it is filed. This procedure is voluntary and may be undertaken only upon agreement by both parties. When utilized, the Region undertakes a problem-solving approach to assist the parties in resolving the dispute underlying the charge in lieu of initially investigating the particular facts and determining the merits of the charge. This alternative case processing procedure allows the parties to attempt to resolve their underlying dispute prior to the Region taking evidence. Thus, the Region does not gather any testimonial or documentary evidence or positions on the merits of the charge during the alternative case processing procedure. Should the parties be unable to resolve their dispute, an agent of the Region who was not involved in the alternative case processing procedure conducts an investigation.

Preliminary results of the Customer Service Survey confirm that a majority of charges are resolved during the investigatory process. This alternative case processing procedure allows the parties to agree to attempt to resolve their dispute prior to attempting to prove their allegations or defenses. The use of this procedure will assist the parties in resolving disputes earlier in the process, even if a charge is filed.

Section 2423.8

This section, similar to proposed § 2423.1, deletes the requirement to delay an investigation for 15 days since Regional Office representatives are available to assist parties in resolving ULP disputes both prior to the filing of a charge and during the course of the investigation. This section continues the requirement that all persons are expected to fully cooperate with the Regional Director in the investigation of charges. The term ''fully cooperate'' is not currently defined in the regulations. The proposed regulation delineates what is included within the requirement to cooperate. The cooperation requirement is identical for all parties, whether a Charging Party or a Charged Party. The section provides that cooperation includes, as deemed appropriate by the Regional Director: (1) making union officials, employees, and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation; (2) producing documentary evidence pertinent to the matters under investigation; and (3) providing statements of position in the matters under investigation. This is the same standard of cooperation that always has been applied to Charging Parties and that always has been expected of Charged Parties. In addition, the preliminary results of the Customer Service Survey reveal that a significant majority of agency and labor organization respondents and individual respondents believes that parties should be required to cooperate during an investigation. A party is only required to cooperate to that degree deemed appropriate by the Regional Director, as determined on a case-by-case basis. However, any party may submit evidence to the Region during an investigation even if that evidence was not requested by the Region. In those situations where a Charging Party fails or refuses to cooperate and such cooperation has been deemed appropriate by the Regional Director, the Region may dismiss the charge. In those situations where a Charged Party fails or refuses to cooperate and such cooperation has been deemed appropriate by the Regional Director, the General Counsel may, in appropriate circumstances, exercise existing authority to issue an investigative subpoena under 5 U.S.C. 7132(a) of the Statute and enforce an investigative subpoena in an appropriate United States district court under 5 U.S.C. 7132(b).

This section also continues the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of assuring the General Counsel's continuing ability to obtain all relevant information. The section also notes the new prehearing disclosure requirement in § 2423.23 that requires parties, after issuance of complaint but before a ULP hearing, to exchange identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing.

Section 2423.9

This section, providing for the amendment of charges, is unchanged.

Section 2423.10

This section, describing the actions that can be taken by a Regional Director on a charge and the processing of requests for appropriate temporary relief under 5 U.S.C. 7123(d), remains unchanged except for editorial modifications.

Section 2423.11

This section describes the process for appealing Regional Director decisions not to issue a complaint. Aside from editorial modifications, the section deletes the requirement that a Charging Party serve notice of an appeal or a request for an extension of time on the other party(ies). The current section provides that the failure to fulfill this service requirement does not affect the validity of the appeal. Since the OGC notifies the Charged Party of an appeal and a request for extension of time when confirming receipt of an appeal, there is no need to continue this service requirement. In addition, a new subsection (e) is added which sets forth the grounds upon which an appeal may be granted by the General Counsel. The General Counsel may grant an appeal if a party establishes that one of the following five grounds exists:

1. The Regional Director's decision did not consider material facts that would have resulted in issuance of a complaint;

2. The Regional Director's decision is based on a material fact that is clearly erroneous;

3. The Regional Director's decision is based on an incorrect statement of the applicable rule of law;

4. There is no Authority precedent on the legal issue in the case; or

5. The manner in which the Region conducted the investigation has resulted in prejudicial error.

These standards, which were first announced in 1996, set forth a fair and consistent approach to the decisional analysis that is conducted in each appeal case. Their publication as part of the regulations puts all persons on notice of the standards needed to be established to sustain an appeal. In an effort to further promote the parties' application of the appeals standards in fashioning their appeal, every dismissal letter issued by a Regional Director routinely will include an attachment which provides an explanation of the appeals process and the manner in which each of the standards for review can be established. The proposed regulation also adds a subsection to codify the current practice with respect to motions to reconsider decisions on appeal. Motions are granted only if extraordinary circumstances are established in the moving papers.

Section 2423.12

This section describes the settlement of ULP charges after a Regional Director determination to issue a complaint but prior to the actual issuance of a complaint. This section differs from proposed § 2423.1 which concerns resolving ULP disputes both before and after a charge is filed, but in any event before the Regional Director makes a determination to issue a complaint. This section, which provides for both unilateral and bilateral settlement agreements, remains unchanged except for editorial modifications.

Part 2429—Miscellaneous and General Requirements

Section 2429.24

Paragraph (e) of this section, which generally concerns the manner in which parties may file documents, is revised to reference that ULP charges are filed pursuant to § 2423.6, and that supporting evidence and documents may not be submitted to the Region by facsimile transmission.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the General Counsel of the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities, because this rule applies to federal employees, federal agencies, and labor organizations representing federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one 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

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 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

The amended regulations contain no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2421, 2423, and 2429

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons discussed in the preamble, the General Counsel of the Federal Labor Relations Authority proposes to amend 5 CFR Parts 2421, 2423, and 2429 as follows:

PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

1. The authority citation for part 2421 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. Part 2421 is amended by adding §§ 2421.23 and 2421.24 to read as follows:

§ 2421.23 Charging Party.

Charging Party means the individual, labor organization, activity or agency filing an unfair labor practice charge with a Regional Director under part 2423 of this subchapter.

§ 2421.24 Charged Party.

Charged Party means the activity, agency or labor organization charged with allegedly having engaged in, or engaging in, an unfair labor practice under part 2423 of this subchapter.

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

3. The authority citation for part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

3a. Section 2423.1 is removed.

4. Subpart A of part 2423 is revised to read as follows:

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Sec.
2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination to issue a complaint.
2423.2 Alternative Dispute Resolution (ADR) services.
2423.3 Who may file charges.
2423.4 Contents of the charge; supporting evidence and documents.
2423.5 [Reserved]
2423.6 Filing and service of copies.
2423.7 Alternative case processing procedure.
2423.8 Investigation of charges.
2423.9 Amendment of charges.
2423.10 Action by the Regional Director.
2423.11 Determination not to issue complaint; review of action by the Regional Director.
2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.
2423.13–2423.19 [Reserved]

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

§ 2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination to issue a complaint.

(a) *Resolving unfair labor practice disputes prior to filing a charge.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the collaborative efforts of all persons covered by that law. The General Counsel encourages all persons to meet and, in good faith, attempt to resolve unfair labor practice disputes prior to filing unfair labor practice charges. If requested or agreed to by both parties, a representative of the Regional Office, in appropriate circumstances, may participate in these meetings to assist the parties in identifying the issue and their interests and in resolving the dispute.

(b) *Resolving unfair labor practice disputes after filing a charge.* The General Counsel encourages the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by a Regional Director. A representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute.

§ 2423.2 Alternative Dispute Resolution (ADR) services.

(a) *Purpose of ADR services.* The Office of the General Counsel furthers its mission by promoting stable and productive labor-management relationships governed by the Federal Service Labor-Management Relations Statute and by providing services which assist labor organizations and agencies, on a voluntary basis: to develop collaborative labor-management relationships; to avoid unfair labor practice disputes; and to resolve any unfair labor practice disputes informally.

(b) *Types of ADR Services.* Agencies and labor organizations may request the Office of the General Counsel to provide any of the following services:

(1) *Facilitation.* Assisting the parties in improving their labor-management relationship as governed by the Federal Service Labor-Management Relations Statute;

(2) *Intervention.* Intervening when parties are experiencing or expect significant unfair labor practice disputes;

(3) *Training.* Training labor organization officials and agency representatives on their rights and responsibilities under the Federal Service Labor-Management Relations Statute and how to avoid litigation over those rights and responsibilities, and on utilizing problem solving and ADR skills, techniques, and strategies to resolve informally unfair labor practice disputes; and

(4) *Education.* Working with the parties to recognize the benefits of, and establish processes for, avoiding unfair labor practice disputes, and resolving any unfair labor practice disputes that arise by consensual, rather than adversarial, methods.

(c) *ADR services after initiation of an investigation.* As part of processing an unfair labor practice charge, the Office of the General Counsel may suggest to the parties, as appropriate, that they may benefit from these ADR services.

§ 2423.3 Who may file charges.

Any person may charge an activity, agency or labor organization with having engaged in, or engaging in, any unfair labor practice prohibited under 5 U.S.C. 7116.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) *What to file.* The Charging Party may file a charge alleging a violation of 5 U.S.C. 7116 by completing a form prescribed by the General Counsel, or on a substantially similar form, that contains the following information:

(1) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party;

(2) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party;

(3) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party's point of contact;

(4) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party's point of contact;

(5) A clear and concise statement of the facts alleged to constitute an unfair labor practice including the date and place of occurrence of the particular acts; and

(6) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge:

(i) Has been raised previously in a grievance procedure;

(ii) Has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, or the Office of the Special Counsel for consideration or action; or

(iii) Involves a negotiability issue raised by the Charging Party in a petition pending before the Authority pursuant to part 2424 of this subchapter.

(b) *Declaration of truth and statement of service.* A charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief. A charge shall also contain a statement that the Charging Party served the charge on the Charged Party, and shall list the person's name, title, location, date of service and method of service.

(c) *Self-contained document.* A charge shall be a self-contained document describing the alleged unfair labor practice without a need to refer to other documents.

(d) *Supporting evidence and documents and potential witnesses.* When filing a charge, the Charging Party shall submit to the Regional Director any supporting evidence and documents, including, but not limited to, correspondence and memoranda, records, reports, applicable collective bargaining agreement clauses, memoranda of understanding, minutes of meetings, applicable regulations, statements of position and other documentary evidence. The Charging Party also shall identify potential witnesses and shall provide a brief synopsis of their expected testimony.

§ 2423.5 [Reserved]

§ 2423.6 Filing and service of copies.

(a) *Where to file.* A Charging Party shall file the charge with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director in any of those regions.

(b) *Filing date.* A charge is deemed filed when it is received by a Regional Director.

(c) *Method of filing.* A Charging Party may file a charge with a Regional Office in person or by commercial delivery, first-class mail, or certified mail. A Charging Party also may file a charge by facsimile transmission if the charge does not exceed 5 pages. If filing by facsimile transmission, the Charging Party is not required to file an original copy of the charge with the Region. Supporting evidence and documents may not be submitted by facsimile transmission.

(d) *Service of the charge.* The Charging Party shall serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, the charge may be served by facsimile transmission in accordance with paragraph (c) of this section. The Region routinely serves a copy of the charge on the Charged Party, but the Charging Party remains responsible for serving the charge in accordance with this paragraph.

§ 2423.7 Alternative case processing procedure.

(a) *Alternative case processing procedure.* The Region may utilize an alternative case processing procedure to assist the parties in resolving their unfair labor practice dispute, if the parties agree, by facilitating a problem-solving approach, rather than initially investigating the particular facts and determining the merits of the charge.

(b) *No evidence is taken.* The purpose of the alternative case processing procedure is to resolve the underlying unfair labor practice dispute without determining the merits of the charge. The role of the agent is to assist the parties in that endeavor by facilitating a solution rather than conducting an investigation. No testimonial or documentary evidence or position on the merits of the charge may be gathered during the alternative case processing procedure or entered into the case file.

(c) *Investigation is not waived.* If the parties are unable to resolve the dispute, the Region conducts an investigation on the merits of the charge. The agent who is involved in the alternative case processing procedure may not be involved in any subsequent investigation on the merits of the charge.

§ 2423.8 Investigation of charges.

(a) *Investigation.* The Regional Director, on behalf of the General Counsel, conducts such investigation of the charge as the Regional Director deems necessary. During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director.

(b) *Cooperation.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the timely submission of all potentially relevant information from all potential sources during the course of the investigation. All persons are expected to cooperate fully with the Regional Director in the investigation of charges. Cooperation includes any of the following actions, when deemed appropriate by the Regional Director:

(1) Making union officials, employees and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation;

(2) Producing documentary evidence pertinent to the matters under investigation; and

(3) Providing statements of position on the matters under investigation.

(c) *Confidentiality.* It is the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of assuring the General Counsel's continuing ability to obtain all relevant information. After issuance of a complaint and in preparation for a hearing, however, identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements in § 2423.23.

§ 2423.9 Amendment of charges.

Prior to the issuance of a complaint, the Charging Party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.10 Action by the Regional Director.

(a) *Regional Director action.* The Regional Director may take action which may consist of the following, as appropriate:

(1) Approving a request to withdraw a charge;

(2) Refusing to issue a complaint;

(3) Approving a written settlement agreement in accordance with the provisions of § 2423.12;

(4) Issuing a complaint; or

(5) Withdrawing a complaint.

(b) *Request for appropriate temporary relief.* Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel may initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority to seek such temporary relief is final and may not be appealed to the Authority.

(c) *General Counsel requests to the Authority.* When a complaint issues and the Authority approves the General Counsel's request to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the General Counsel may make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Temporary relief will be sought if the record establishes probable cause that an unfair labor practice is being committed. Temporary relief will not be sought if it will interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel informs the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.

(a) *Opportunity to withdraw a charge.* If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the Charging Party to withdraw the charge.

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director may dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of complaint;

(2) The Regional Director's decision is based on a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's refusal to issue a complaint, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds for denying or granting the appeal and is served on all the parties. The decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary

circumstances in its moving papers. The motion shall be filed within 10 days after service of the General Counsel's final decision. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations.

§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to an informal settlement agreement which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the agreement may be between the Charged Party and the Regional Director. The Regional Director issues a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel takes action on the appeal as set forth in § 2423.11(f) and (g).

§§ 2423.13–2423.19 [Reserved]

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

5. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134.

6. Section 2429.24 is amended by revising paragraph (e) to read as follows:

§ 2429.24 Place and method of filing; acknowledgment.

* * * * *

(e) All documents filed pursuant to this section shall be filed in person, by commercial delivery, by first-class mail, or by certified mail; except for unfair labor practice charges filed in accordance with § 2423.6 of this subchapter. Provided, however, that where facsimile equipment is available, motions; information pertaining to prehearing disclosure, conferences, orders, or hearing dates, times, and locations; information pertaining to subpoenas; and other similar matters; except for supporting evidence and documents submitted pursuant to §§ 2423.4 and 2423.6 of this subchapter, may be filed by facsimile transmission, provided that the entire individual filing by the party does not exceed 10 pages in total length, with normal margins and font sizes.

* * * * *

Dated: August 19, 1998.

Joseph Swerdzewski,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 98–22645 Filed 8–21–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106177–97]

RIN 1545–AV18

Qualified State Tuition Programs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to qualified State tuition programs (QSTPs). These proposed regulations reflect changes to the law made by the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997. The proposed regulations affect QSTPs established and maintained by a State or agency or instrumentality of a State, and individuals receiving distributions from QSTPs. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 23, 1998. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, January 6, 1999, at 10 a.m. must be received by December 16, 1998.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–106177–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–106177–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Monice Rosenbaum, (202) 622–6070; concerning the proposed estate and gift tax regulations, Susan Hurwitz (202) 622–3090; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by October 23, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the *Internal Revenue Service,* including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase or services to provide information.

The collection of information in this proposed regulation is in §§ 1.529–

2(e)(4), 1.529–2(f) and (i), 1.529–4, and 1.529–5(b)(2). This information is required by the IRS to verify compliance with sections 529(b)(3), (4), (7) and (d). This information will be used by the IRS and individuals receiving distributions from QSTPs to determine that the taxable amount of the distribution has been computed correctly. The collection of information is required to obtain the benefit of being a QSTP described in section 529. The likely respondents and/or recordkeepers are state governments and distributees who receive distributions under the programs. The burden for reporting distributions is reflected in the burden for Form 1099–G, Certain Government Payments. The burden for electing to take certain contributions to a QSTP into account ratably over a five year period in determining the amount of gifts made during the calendar year is reflected in the burden for Form 709, Federal Gift Tax Return.

Estimated total annual reporting/recordkeeping burden: 705,000 hours.

Estimated average annual burden per respondent/recordkeeper: 35 hours, 10 minutes.

Estimated number of respondents/recordkeepers: 20,051.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to qualified State tuition programs described in section 529. Section 529 was added to the Internal Revenue Code by section 1806 of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1895. Section 529 was modified by sections 211 and 1601(h) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 810 and 1092.

Section 529 provides tax-exempt status to qualified State tuition programs (QSTPs) established and maintained by a State (or agency or instrumentality thereof) under which persons may (1) purchase tuition credits or certificates on behalf of a designated beneficiary entitling the beneficiary to a waiver or payment of qualified higher education expenses, or (2) contribute to an account established exclusively for the purpose of meeting qualified higher education expenses of the designated beneficiary. Qualified higher education expenses, for purposes of section 529, are tuition, fees, books, supplies, and equipment required for enrollment or attendance at an eligible educational institution, as well as certain room and board expenses for students who attend an eligible educational institution at least half-time. An eligible educational institution is an accredited post-secondary educational institution offering credit toward a bachelor's degree, an associate's degree, a graduate-level or professional degree, or another recognized post-secondary credential. The institution must be eligible to participate in Department of Education student aid programs.

QSTPs established and maintained by a State (or agency or instrumentality thereof) must require all contributions to the program be made only in cash. Neither contributors nor designated beneficiaries may direct the investment of any contributions or any earnings on contributions. No interest in the program may be pledged as security for a loan. A separate accounting must be provided to each designated beneficiary in the program. A program must impose a more than de minimis penalty on refunds that are not used for qualified higher education expenses, not made on account of death or disability of the designated beneficiary, or not made on account of a scholarship or certain other educational allowances. A program must provide adequate safeguards to prevent contributions in excess of those necessary to provide for the qualified higher education expenses of the beneficiary. A specified individual must be designated as the beneficiary at the commencement of participation in a QSTP, unless the interests in the program are purchased by a State or local government or a tax-exempt organization described in section 501(c)(3) as part of a scholarship program operated by such government or organization under which beneficiaries to be named in the future will receive the interests as scholarships.

Distributions under a QSTP are includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision. Distributions include in-kind benefits furnished to a designated beneficiary under a QSTP. Any distribution, or portion of a distribution, that is transferred within 60 days under a QSTP to the credit of a new designated beneficiary who is a member of the family of the old designated beneficiary shall not be treated as a distribution. A change in the designated beneficiary of an interest in a QSTP shall not be treated as a distribution if the new beneficiary is a member of the family of the old beneficiary. A member of the family means the spouse of the designated beneficiary or an individual who is related to the designated beneficiary as described in section 152(a)(1) through (8) or is the spouse of any of these individuals.

Section 529, as added to the Code by the Small Business Job Protection Act of 1996 (1996 Act), contained provisions addressing the estate, gift, and generation-skipping transfer tax. The provisions were significantly revised, effective prospectively, by the Taxpayer Relief Act of 1997 (1997 Act).

A contribution on behalf of a designated beneficiary to a QSTP which is made after August 20, 1996, and before August 6, 1997, is not treated as a taxable gift. Rather, the subsequent waiver (or payment) of qualified higher education expenses of a designated beneficiary by (or to) an educational institution under the QSTP is treated as a qualified transfer under section 2503(e) and is not treated as a transfer of property by gift for purposes of section 2501. As such, the contribution is not subject to the generation-skipping transfer tax imposed by section 2601.

In contrast, under section 529 as amended by the 1997 Act, a contribution on behalf of a designated beneficiary to a QSTP after August 5, 1997, is a completed gift of a present interest in property under section 2503(b) from the contributor to the designated beneficiary and is not a qualified transfer within themeaning of section 2503(e). The portion of a contribution excludible from taxable gifts under section 2503(b) also satisfies the requirements of section 2642(c)(2) and, therefore, is also excludible for purposes of the generation-skipping transfer tax imposed under section 2601. For purposes of the annual exclusion, a contributor may elect to take certain contributions to a QSTP into account ratably over a five-year period in determining the amount of gifts made during the calendar year. Under section 529 as amended by the 1997 Act, a transfer which occurs by reason of a change in the designated beneficiary of a QSTP, or a rollover from the account of one beneficiary to the account of another beneficiary in a

QSTP, is not a taxable gift if the new beneficiary is a member of the family, as defined in section 529(e)(2), of the old beneficiary, and is assigned to the same generation, as defined in section 2651, as the old beneficiary. If the new beneficiary is assigned to a lower generation than the old beneficiary, the transfer is a taxable gift from the old beneficiary to the new beneficiary regardless of whether the new beneficiary is a member of the family of the old beneficiary. In addition, the transfer will be subject to the generation-skipping transfer tax if the new beneficiary is assigned to a generation which is two or more levels lower than the generation assignment of the old beneficiary. The five-year averaging election for purposes of the gift tax annual exclusion may be applied to the transfer.

Regarding the application of the estate tax, the value of any interest in any QSTP which is attributable to contributions made by a decedent who died after August 20, 1996, and before June 9, 1997, is includible in the decedent's gross estate. In contrast, pursuant to the 1997 Act amendments to section 529, the value of such an interest is not includible in the gross estate of a decedent who dies after June 8, 1997, unless the decedent had elected the five-year averaging rule for purposes of the gift tax annual exclusion and died before the close of the five-year period. In that case, the portion of the contribution allocable to calendar years beginning after the decedent's date of death is includible in his gross estate.

Also, pursuant to the 1997 Act amendments to section 529, the value of any interest in a QSTP held for a designated beneficiary who dies after June 8, 1997, is includible in the designated beneficiary's gross estate.

The Federal estate and gift tax treatment of QSTP interests has no effect on the actual rights and obligations of the parties pursuant to the terms of the contracts under State law. In addition, the estate and gift tax treatment of contributions to a QSTP and interests in a QSTP is generally different from the treatment that would otherwise apply under generally applicable estate and gift tax principles. For example, under most contracts, the contributor may retain the right to change the designated beneficiary of an account, to designate any person other than the designated beneficiary to whom funds may be paid from the account, or to receive distributions from the account if no such other person is designated. Such rights would ordinarily cause the transfer to the account to fail to be a completed gift and mandate inclusion of the value of the undistributed interest in the QSTP in the gross estate of the contributor under sections 2036 and/or 2038. However, under section 529, the gross estate of a contributor who dies after June 8, 1997, does not include the value of any interest in a QSTP attributable to contributions from the contributor (except amounts attributable to calendar years after death where the five-year averaging rule has been elected). Also, because a contribution after August 5, 1997, is a completed gift from the contributor to the designated beneficiary, any subsequent transfer which occurs by reason of a change in the designated beneficiary or a rollover from the account of the original designated beneficiary to the account of another beneficiary is treated, to the extent it is subject to the gift and/or generation-skipping transfer tax, as a transfer from the original designated beneficiary to the new beneficiary. This is the result even though the change in beneficiary or the rollover is made at the direction of the contributor under the terms of the contract.

Comments From Notice 96–58

In Notice 96–58, 1996–2 C.B. 226, the Internal Revenue Service invited comments on section 529 including the requirements for reporting distributions by QSTPs, the requirements for qualification and operation of programs, and the treatment of distributions made by programs for federal tax purposes. Eighteen comments were received. The comments addressed a broad range of issues, including but not limited to, those outlined by Notice 96–58, the concept of account ownership and gift tax rules, enforcement of penalties, accounting and recordkeeping, and transition relief for programs in existence on August 20, 1996. The summary below is not intended to be a complete discussion of the comments. However, all matters presented in the comments were considered in the drafting of this notice of proposed rulemaking.

One commenter discussed in detail the requirements that a QSTP be ''established and maintained'' by a State or agency or instrumentality of a State. The commenter recommended a list of factors to be considered in determining whether a State maintains the program. This commenter and others urged that the use of outside contractors or the holding of program deposits at a private financial institution selected by the State not be determinative of whether the program was maintained by the State.

One commenter was endorsed by several others for suggesting two specific safe harbors to satisfy the requirement that a program impose more than a de minimis penalty on refunds. The first safe harbor was a 5 percent of earnings penalty on refunds of earnings prior to the designated beneficiary matriculating, reduced to at least a 1 percent penalty on refunds of earnings only after the age of matriculation. The second safe harbor was a fixed-rate safe harbor equal to the lesser of $50 or 1 percent of the assets distributed. Another commenter suggested an additional safe harbor based on the return of Series EE savings bonds. That commenter also suggested that safe harbors are not necessarily the minimum acceptable penalties and that all facts and circumstances should be taken into account in determining the adequacy of penalties that are less than the safe harbor penalties.

Commenters urged that regulations limit or avoid rules requiring programs to enforce penalties or require substantiation to ensure that disbursements are used to pay for qualified higher education expenses. Recognizing however that there may be some misuse in this area, commenters recommended that checks from QSTPs be marked with a special endorsement or be payable to both the educational institution and the designated beneficiary.

Commenters suggested that the prohibition on investment direction not include a choice between a prepaid tuition program and a savings program (established and maintained in one State), a choice among options in a prepaid tuition program, a choice among options for the initial contribution to the program, or an opportunity to change investment strategies. One commenter suggested that the prohibition on investment direction not apply to prevent participation in the program by program board and staff members.

Commenters suggested several approaches for satisfying the prohibition on excess contributions. Two safe harbors were proposed; one was based upon eight times the average annual undergraduate tuition and required fees at private four-year universities; the other was based upon five years of tuition, fees, books, supplies, and equipment at the highest cost institution allowed by the State's program. Other approaches proposed allowing the provision of adequate safeguards to prevent excess contributions to be left to the discretion of the program or allowing the contributor to certify that

no attempt would be made to overfund the account.

Commenters made suggestions and raised concerns regarding: separate accounting rules including, but not limited to, the valuation and tracking of tuition units; the operating rules treating all programs in which an individual is a designated beneficiary as one program, and treating all distributions during a taxable year as one distribution; the application of section 72 to calculate distributions; and, income tax consequences relating to account ownership, penalties, and withholding.

The modifications made to section 529 by the Taxpayer Relief Act of 1997 have addressed, in large part, the issues raised by commenters concerning transition relief for programs in existence on August 20, 1996, estate and gift tax consequences for contributors and designated beneficiaries, and definitions pertaining to family members and eligible educational institutions.

Explanation of Provisions

Qualification as Qualified State Tuition Program (QSTP): Unrelated Business Income Tax and Filing Requirements

The proposed regulations provide guidance on the requirements a program must satisfy in order to be a QSTP described in section 529. A program that meets these requirements generally is exempt from income taxation. However, a QSTP is subject to the taxes imposed by section 511 relating to imposition of tax on unrelated business income. For purposes of section 529 and these regulations, an interest in a QSTP shall not be treated as debt for purposes of section 514; consequently, investment income earned on contributions to the program by purchasers will not constitute debt-financed income subject to the unrelated business income tax. However, investment income of the QSTP shall be subject to the unrelated business income tax to the extent the program incurs indebtedness when acquiring or improving income-producing property. Earnings forfeited on educational contracts or savings, amounts collected as penalties on refunds or excess contributions, and certain administrative and other fees are not unrelated business income to the QSTP. A QSTP is not required to file Form 990, Return of Organization Exempt From Income Tax, however, this does not affect the obligation of a QSTP to file Form 990–T, Exempt Organization Business Income Tax Return.

Established and Maintained

The proposed regulations provide that a program is established by a State or agency or instrumentality of the State if the program is initiated by State statute or regulation, or by an act of a State official or agency with the authority to act on behalf of the State. A program is maintained by a State or agency or instrumentality of a State if all the terms and conditions of the program are set by the State or agency or instrumentality and the State or agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising all decisions relating to the investment of assets contributed to the program. The proposed regulations set forth factors that are relevant in determining whether a State, agency or instrumentality is actively involved in the administration of the program. Included in the factors is the manner and extent to which it is permissible for the program to contract out for professional and financial services.

Penalties and Substantiation—Safe Harbors

As required by section 529(b)(3), a more than de minimis penalty must be imposed on the earnings portion of any distribution from the program that is not used for the qualified higher education expenses of the designated beneficiary, not made on account of the death or disability of the designated beneficiary, or not made on account of a scholarship or certain other payments described in sections 135(d)(1)(B) and (C) that are received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment. The penalty shall also not apply to rollover distributions described in section 529(c)(3)(C) which are discussed in the section titled *Income Tax Treatment of Distributees*, below. The proposed regulations provide that a penalty is more than de minimis if it is consistent with a program intended to assist individuals in saving exclusively for qualified higher education expenses. Whether any penalty is more than de minimis will depend upon the facts and circumstance of the particular program, including the extent to which the penalty offsets the federal income tax benefit from having deferred income tax liability on the earnings portion of any distribution. The proposed regulations provide a safe harbor penalty that a program may adopt for satisfying this requirement. For purposes of the safe harbor, a penalty imposed on the earnings portion of a distribution is more than de minimis if it is equal to or greater than 10 percent of the earnings.

To be treated as imposing a more than de minimis penalty as required by section 529(b)(3) a program must implement practices and procedures for identifying whether a distribution is subject to a penalty and collecting any penalty that is due. The proposed regulations, in the form of a safe harbor, set forth practices and procedures that may be implemented by a program. The safe harbor provides that distributions are treated as payments of qualified higher education expenses if the distribution is made directly to an eligible educational institution; the distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution; the distribution is made after the designated beneficiary submits substantiation showing that the qualified higher education expenses were paid and the program reviews the substantiation; or the designated beneficiary certifies prior to distribution the amount to be used for qualified higher education expenses and the program requires substantiation of payment within 30 days of making the distribution, the program reviews the substantiation, and the program retains an amount necessary to collect the penalty owed on the distribution if valid substantiation is not produced.

The safe harbor procedure provides that a penalty be collected on all other distributions except where prior to distribution the program receives written third party confirmation that the designated beneficiary has died or become disabled or has received a scholarship or allowance or payment described in section 135(d)(1) (B) or (C). Alternatively, distributions may be made upon the certification of the account owner that the designated beneficiary has died or become disabled or has received a scholarship or allowance or payment described above, if the program withholds a portion of the distribution as a penalty. The penalty may be refunded after receipt of third party confirmation of the certification made by the account owner.

The safe harbor procedure provides that a program may document amounts refunded from eligible educational institutions that were not used for qualified higher education expenses by requiring a signed written statement from the distributee identifying the amount of any refund received from an eligible educational institution at the end of each year in which distributions for qualified higher education expenses

were made and of the next year. A program must also have procedures to collect the penalty either by retaining a sufficient balance in the account to pay the penalty, withholding an amount equal to the penalty from a distribution, or collecting the penalty on a State income tax return.

Other Requirements for QSTP Qualification

As described in section 529(b)(1)(A), the proposed regulations provide that contributions to the program can be placed into either a prepaid educational arrangement or contract, or an educational savings account, or both, but cannot be placed into any other type of account. Contributions may be made only in cash and not in property as provided in section 529(b)(2), however, the proposed regulations provide that a program may accept payment in cash, or by check, money order, credit card, or similar methods.

Section 529(b)(4) requires that a program provide separate accounting for each designated beneficiary. Separate accounting requires that contributions for the benefit of a designated beneficiary and earning attributable to those contributions are allocated to the appropriate account. The proposed regulations provide that if a program does not ordinarily provide each account owner an annual account statement showing the transactions related to the account, the program must give this information to the account owner or designated beneficiary upon request.

Section 529(b)(5) states that a program shall not be treated as a QSTP unless it provides that any contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contributions to the program or any earnings thereon. A program will not violate the requirement of this paragraph if it permits a person who establishes an account to select between a prepaid educational services account and an educational savings account, or to select among different investment strategies designed exclusively by the program, at the time that an educational savings account is established. However, the proposed regulations clarify that a program will violate this requirement if, after an account with the program initially is established, the account owner, a contributor, or the designated beneficiary subsequently is permitted to select among different investment options or strategies. A program will not violate this requirement merely because it permits its board members, its employees, or the board members or employees of a contractor it hires to perform administrative services to purchase tuition credits or certificates or make contributions.

Section 529(b)(6) provides that a program may not allow any interest in the program, or any portion of an interest in the program, to be used as security for a loan. The proposed regulations clarify that this restriction includes, but is not limited to, a prohibition on the use of any interest in the program as security for a loan used to purchase the interest in the program.

Section 529(b)(7) requires a program to establish adequate safeguards to prevent contributions for the benefit of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the designated beneficiary. The proposed regulations provide a safe harbor that permits a program to satisfy this requirement if the program will bar any additional contributions to an account as soon as the account reaches a specified limit applicable to all accounts of designated beneficiaries with the same expected year of enrollment. The total contributions may not exceed the amount determined by actuarial estimates that is necessary to pay tuition, required fees, and room and board expenses of the designated beneficiary for five years of undergraduate enrollment at the highest cost institution allowed by the program. The safe harbor in the proposed regulations applies only to the program. Despite the fact that a program has met the safe harbor, a particular account established under the program may have a balance that exceeds the amount actually needed to cover the particular designated beneficiary's qualified higher education expenses. Distributions made that are not used for qualified higher education expenses of the designated beneficiary are subject to the penalty provisions of section 529(b)(3).

Income Tax Treatment of Distributees

In accordance with section 529(c)(3), the proposed regulations provide that distributions made by a QSTP, including any benefit furnished in-kind, must be included in the gross income of the distributee to the extent that the distribution consists of earnings. The proposed regulations clarify that term ''distributee'' refers to the designated beneficiary or the account owner who receives or is treated as receiving a distribution from a QSTP. As required by section 529(c)(3)(A), distributions under a QSTP must be included in income in the manner as provided under section 72. Therefore, deposits or contributions made into an account under a QSTP are recovered ratably over the period of time distributions are made. The amount of taxable earnings shall be determined by applying an earnings ratio, generally the earnings allocable to the account as of the close of the calendar year divided by the total account balance as of the close of the calendar year, to the distribution. In the case of a prepaid educational services account, this method of calculating taxable earnings utilizes an average value for each unit of education (e.g., credit, hour, semester, or other unit of education) that is distributed rather than the recovery of the cost of any particular unit of education.

In accordance with section 529(c)(3)(C), the proposed regulations permit nontaxable rollover distributions. A rollover consists of a distribution or transfer from an account of a designated beneficiary that is transferred to or deposited within 60 days of the distribution into an account of another individual who is a member of the family of the designated beneficiary. A distribution is not a rollover distribution unless there is a change in beneficiary. The new designated beneficiary's account may be in a QSTP established or maintained by the same State or by another State. A transfer from the designated beneficiary to himself or herself, regardless of whether the transfer is to an account within the same QSTP or another QSTP in the same or another State, is not a rollover distribution and is taxable under the general rule. The Internal Revenue Service is concerned about the use of multiple rollovers to circumvent the restriction on investment direction. In particular, the Internal Revenue Service requests comments on this issue, including whether limits should be placed on the number of rollovers permitted within a certain time period or rollovers back to the original designated beneficiary. No taxable distribution will result from a change in designated beneficiary of an interest in a QSTP purchased by a State or local government or an organization described in section 501(c)(3) as part of a scholarship program.

Reporting Requirements

The proposed regulations set forth recordkeeping and reporting requirements. A QSTP must maintain records that enable the program to produce an annual account balance for each account. See, requirements related to section 529(b)(4) above. A QSTP must report taxable earnings on Form 1099–G, Certain Government Payments, to distributees. Any reporting

requirements promulgated under section 529(d) apply in lieu of any other reporting requirement for a program that may apply with respect to information returns or payee statements or distributions. The proposed regulations contain more detail on how the information must be reported.

Estate and Gift Tax

The proposed regulations provide guidance on the gift and generation-skipping transfer tax consequences of contributions to a QSTP, a change in the designated beneficiary of a QSTP, and a rollover from the account of one beneficiary to the account of another beneficiary under a QSTP. The proposed regulations also provide guidance on whether and to what extent the value of an interest in a QSTP is includible in the gross estate of a contributor to a QSTP or the gross estate of a designated beneficiary of a QSTP. Because of the amendments to section 529 made by the Taxpayer Relief Act of 1997, different gift tax rules apply to contributions made after August 20, 1996, and before August 6, 1997, than apply to contributions made after August 5, 1997. Also, estates of decedents dying after August 20, 1996, and before June 9, 1997, are treated differently from estates of decedents dying after June 8, 1997. Comments are requested specifically on whether there is a need for more detailed guidance with respect to the estate, gift, and generation-skipping transfer tax provisions.

Transition Rules

In accordance with section 1806(c) of the Small Business Job Protection Act of 1996 and section 1601(h) of the Taxpayer Relief Act of 1997, special transition rules apply to programs in existence on August 20, 1996. The proposed regulations provide that no income tax liability will be asserted against a QSTP for any period before the program meets the requirements of section 529 and these regulations if the program qualifies for the transition relief. A program shall be treated as meeting the transition rule if it conforms to the requirements of section 529 and these regulations by the date of final regulations.

The proposed regulations provide transition rules that grandfather certain provisions in contracts issued and accounts opened before August 20, 1996. These contracts may be honored without regard to the definitions of ''member of the family'' and ''eligible educational institution'' used in section 529(e) (2) and (3), and without regard to section 529(b)(6) which prohibits the pledging of a QSTP interest as security for a loan. However, regardless of the terms of any agreement executed before August 20, 1996, distributions made by the QSTP are subject to tax according to the rules of § 1.529–3 and subject to the reporting requirements of § 1.529–4.

Proposed Effective Date

These regulations are proposed to be effective on the date they are published in the **Federal Register** as final regulations. Taxpayers may, however, rely on the proposed regulations for taxable years ending after August 20, 1996. Programs that were in existence on August 20, 1996, may also rely upon the transition rules provided.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, January 6, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 16, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Monice Rosenbaum, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) and Susan Hurwitz, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. An undesignated centerheading and §§ 1.529–0 through 1.529–6 are added to read as follows:

Qualified State Tuition Programs

§ 1.529–0 Table of contents.

This section lists the following captions contained in §§ 1.529–1 through 1.529–6:

§ 1.529–1 Qualified State tuition program, unrelated business income tax and definitions.

(a) In general.
(b) Unrelated business income tax rules.
(1) Application of section 514.
(2) Penalties and forfeitures.
(3) Administrative and other fees.
(c) Definitions.

§ 1.529–2 Qualified State tuition program described.

(a) In general.
(b) Established and maintained by a State or agency or instrumentality of a State.
(1) Established.
(2) Maintained.
(3) Actively involved.
(c) Permissible uses of contributions.
(d) Cash contributions.
(e) Penalties on refunds.
(1) General rule.
(2) More than de minimis penalty.
(i) In general.
(ii) Safe harbor.

(3) Separate distributions.
(4) Procedures for verifying use of distributions and imposing and collecting penalties.
(i) In general.
(ii) Safe harbor.
(A) Distributions treated as payments of qualified higher education expenses.
(B) Treatment of all other distributions.
(C) Refunds of penalties.
(D) Documentation of amounts refunded and not used for qualified higher education expenses.
(E) Procedures to collect penalty.
(f) Separate accounting.
(g) No investment direction.
(h) No pledging of interest as security.
(i) Prohibition on excess contributions.
(1) In general.
(2) Safe harbor.

§ 1.529–3 Income tax treatment of distributees.

(a) Taxation of distributions.
(1) In general.
(2) Rollover distributions.
(b) Computing taxable earnings.
(1) Amount of taxable earnings in a distribution.
(i) Educational savings account.
(ii) Prepaid educational services account.
(2) Adjustment for programs that treated distributions and earnings in a different manner for years beginning before January 1, 1999.
(3) Examples.
(c) Change in designated beneficiaries.
(1) General rule.
(2) Scholarship program.
(d) Aggregation of accounts.

§ 1.529–4 Time, form, and manner of reporting distributions from QSTPs and backup withholding.

(a) Taxable distributions.
(b) Requirement to file return.
(1) Form of return.
(2) Payor.
(3) Information included on return.
(4) Time and place for filing return.
(5) Returns required on magnetic media.
(6) Extension of time to file return.
(c) Requirement to furnish statement to the distributee.
(1) In general.
(2) Information included on statement.
(3) Time for furnishing statement.
(4) Extension of time to furnish statement.
(d) Backup withholding.
(e) Effective date.

§ 1.529–5 Estate, gift, and generation-skipping transfer tax rules relating to qualified State tuition programs.

(a) Gift and generation-skipping transfer tax treatment of contributions after August 20, 1996, and before August 6, 1997.
(b) Gift and generation-skipping transfer tax treatment of contributions after August 5, 1997.
(1) In general.
(2) Contributions that exceed the annual exclusion amount.
(3) Change of designated beneficiary or rollover.
(c) Estate tax treatment for estates of decedents dying after August 20, 1996, and before June 9, 1997.
(d) Estate tax treatment for estates of decedents dying after June 8, 1997.
(1) In general.
(2) Excess contributions.
(3) Designated beneficiary decedents.

§ 1.529–6 Transition rules.

(a) Effective date.
(b) Programs maintained on August 20, 1996.
(c) Retroactive effect.
(d) Contracts entered into and accounts opened before August 20, 1996.
(1) In general.
(2) Interest in program pledged as security for a loan.
(3) Member of the family.
(4) Eligible educational institution.

§ 1.529–1 Qualified State tuition program, unrelated business income tax and definitions.

(a) *In general.* A qualified State tuition program (QSTP) described in section 529 is exempt from income tax, except for the tax imposed under section 511 on the QSTP's unrelated business taxable income. A QSTP is not required to file Form 990, Return of Organization Exempt From Income Tax, Form 1041, U.S. Income Tax Return for Estates and Trusts, or Form 1120, U.S. Corporation Income Tax Return. A QSTP may be required to file Form 990–T, Exempt Organization Business Income Tax Return. See §§ 1.6012–2(e) and 1.6012–3(a)(5) for requirements for filing Form 990–T.

(b) *Unrelated business income tax rules.* For purposes of section 529, this section and §§ 1.529–2 through 1.529–6:

(1) *Application of section 514.* An interest in a QSTP shall not be treated as debt for purposes of section 514. Consequently, a QSTP's investment income will not constitute debt-financed income subject to the unrelated business income tax merely because the program accepts contributions and is obligated to pay out or refund such contributions and certain earnings attributable thereto to designated beneficiaries or to account owners. However, investment income of a QSTP shall be subject to the unrelated business income tax as debt-financed income to the extent the program incurs indebtedness when acquiring or improving income-producing property.

(2) *Penalties and forfeitures.* Earnings forfeited on prepaid educational arrangements or contracts and educational savings accounts and retained by a QSTP, or amounts collected by a QSTP as penalties on refunds or excess contributions are not unrelated business income to the QSTP.

(3) *Administrative and other fees.* Amounts paid, in order to open or maintain prepaid educational arrangements or contracts and educational savings accounts, as administrative or maintenance fees, and other similar fees including late fees, service charges, and finance charges, are not unrelated business income to the QSTP.

(c) *Definitions.* For purposes of section 529, this section and §§ 1.529–2 through 1.529–6:

Account means the formal record of transactions relating to a particular designated beneficiary when it is used alone without further modification in these regulations. The term includes prepaid educational arrangements or contracts described in section 529(b)(1)(A)(i) and educational savings accounts described in section 529(b)(1)(A)(ii).

Account owner means the person who, under the terms of the QSTP or any contract setting forth the terms under which contributions may be made to an account for the benefit of a designated beneficiary, is entitled to select or change the designated beneficiary of an account, to designate any person other than the designated beneficiary to whom funds may be paid from the account, or to receive distributions from the account if no such other person is designated.

Contribution means any payment directly allocated to an account for the benefit of a designated beneficiary or used to pay late fees or administrative fees associated with the account. In the case of a tax-free *rollover,* within the meaning of this paragraph (c), into a QSTP account, only the portion of the rollover amount that constituted *investment in the account,* within the meaning of this paragraph (c), is treated as a contribution to the account as required by § 1.529–3(a)(2).

Designated beneficiary means—

(1) The individual designated as the beneficiary of the account at the time an account is established with the QSTP;

(2) The individual who is designated as the new beneficiary when beneficiaries are changed; and

(3) The individual receiving the benefits accumulated in the account as a scholarship in the case of a QSTP account established by a State or local government or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization.

Distributee means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from a QSTP. For example, if a QSTP makes a distribution directly

to an eligible educational institution to pay tuition and fees for a designated beneficiary or a QSTP makes a distribution in the form of a check payable to both a designated beneficiary and an eligible educational institution, the distribution shall be treated as having been made in full to the designated beneficiary.

Distribution means any disbursement, whether in cash or in-kind, from a QSTP. Distributions include, but are not limited to, tuition credits or certificates, payment vouchers, tuition waivers or other similar items. Distributions also include, but are not limited to, a refund to the account owner, the designated beneficiary or the designated beneficiary's estate.

Earnings attributable to an account are the total account balance on a particular date minus the investment in the account as of that date.

Earnings ratio means the amount of earnings allocable to the account on the last day of the calendar year divided by the total account balance on the last day of that calendar year. The earnings ratio is applied to any distribution made during the calendar year. For purposes of computing the earnings ratio, the earnings allocable to the account on the last day of the calendar year and the total account balance on the last day of the calendar year include all distributions made during the calendar year and any amounts that have been forfeited from the account during the calendar year.

Eligible educational institution means an institution which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C 1088) as in effect on August 5, 1997, and which is eligible to participate in a program under title IV of such Act. Such institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, a graduate level or professional degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible institutions. The institution must be eligible to participate in Department of Education student aid programs.

Final distribution means the distribution from a QSTP account that reduces the total account balance to zero.

Forfeit means that earnings and contributions allocable to a QSTP account are withdrawn by the QSTP from the account or deducted by the QSTP from a distribution to pay a penalty as required by § 1.529–2(e).

Investment in the account means the sum of all contributions made to the account on or before a particular date less the aggregate amount of contributions included in distributions, if any, made from the account on or before that date.

Member of the family means an individual who is related to the designated beneficiary as described in paragraphs (1) through (9) of this definition. For purposes of determining who is a member of the family, a legally adopted child of an individual shall be treated as the child of such individual by blood. The terms brother and sister include a brother or sister by the halfblood. Member of the family means—

(1) A son or daughter, or a descendant of either;

(2) A stepson or stepdaughter;

(3) A brother, sister, stepbrother, or stepsister;

(4) The father or mother, or an ancestor of either;

(5) A stepfather or stepmother;

(6) A son or daughter of a brother or sister;

(7) A brother or sister of the father or mother;

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or

(9) The spouse of the designated beneficiary or the spouse of any individual described in paragraphs (1) through (8) of this definition.

Person has the same meaning as under section 7701(a)(1).

Qualified higher education expenses means—

(1) Tuition, fees, and the costs of books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution; and

(2) The costs of room and board (as limited by paragraph (2)(i) of this definition) of a designated beneficiary (who meets requirements of paragraph (2)(ii) of this definition) incurred while attending an eligible educational institution:

(i) The amount of room and board treated as qualified higher education expenses shall not exceed the minimum room and board allowance determined in calculating costs of attendance for Federal financial aid programs under section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711) as in effect on August 5, 1997. For purposes of these regulations, room and board costs shall not exceed $1,500 per academic year for a designated beneficiary residing at home with parents or guardians. For a designated beneficiary residing in institutionally owned or operated housing, room and board costs shall not exceed the amount normally assessed most residents for room and board at the institution. For all other designated beneficiaries the amount shall not exceed $2,500 per academic year. For this purpose the term academic year has the same meaning as that term is given in 20 U.S.C. 1088(d) as in effect on August 5, 1997.

(ii) Room and board shall be treated as qualified higher education expenses for a designated beneficiary if they are incurred during any academic period during which the designated beneficiary is enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible educational institution) that leads to a recognized educational credential awarded by an eligible educational institution. In addition, the designated beneficiary must be enrolled at least half-time. A student will be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic workload for the course of study the student is pursuing as determined under the standards of the institution where the student is enrolled. The institution's standard for a full-time workload must equal or exceed the standard established by the Department of Education under the Higher Education Act and set forth in 34 CFR 674.2(b).

Rollover distribution means a distribution or transfer from an account of a designated beneficiary that is transferred to or deposited within 60 days of the distribution into an account of another individual who is a member of the family of the designated beneficiary. A distribution is not a rollover distribution unless there is a change in beneficiary. The new designated beneficiary's account may be in a QSTP in either the same State or a QSTP in another State.

Total account balance means the total amount or the total fair market value of tuition credits or certificates or similar benefits allocable to the account on a particular date. For purposes of computing the *earnings ratio,* the total account balance is adjusted as described in this paragraph (c).

§ 1.529–2 Qualified State tuition program described.

(a) *In general.* To be a QSTP, a program must satisfy the requirements described in paragraphs (a) through (i) of this section. A QSTP is a program established and maintained by a State or an agency or instrumentality of a State under which a person—

(1) May purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary; or

(2) May make contributions to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

(b) *Established and maintained by a State or agency or instrumentality of a State*—(1) *Established.* A program is established by a State or an agency or instrumentality of a State if the program is initiated by State statute or regulation, or by an act of a State official or agency with the authority to act on behalf of the State.

(2) *Maintained.* A program is maintained by a State or an agency or instrumentality of a State if—

(i) The State or agency or instrumentality sets all of the terms and conditions of the program, including but not limited to who may contribute to the program, who may be a designated beneficiary of the program, what benefits the program may provide, when penalties will apply to refunds and what those penalties will be; and

(ii) The State or agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising all decisions relating to the investment of assets contributed to the program.

(3) *Actively involved.* Factors that are relevant in determining whether a State, agency or instrumentality is actively involved include, but are not limited to: whether the State provides services or benefits (such as tax, student aid or other financial benefits) to account owners or designated beneficiaries that are not provided to persons who are not account owners or designated beneficiaries; whether the State or agency or instrumentality establishes detailed operating rules for administering the program; whether officials of the State or agency or instrumentality play a substantial role in the operation of the program, including selecting, supervising, monitoring, auditing, and terminating any private contractors that provide services under the program; whether the State or agency or instrumentality holds the private contractors that provide services under the program to the same standards and requirements that apply when private contractors handle funds that belong to the State or provide services to the State; whether the State provides funding for the program; and, whether the State or agency or instrumentality acts as trustee or holds program assets directly or for the benefit of the account owners or designated beneficiaries. If the State or an agency or instrumentality thereof exercises the same authority over the funds invested in the program as it does over the investments in or pool of funds of a State employees' defined benefit pension plan, then the State or agency or instrumentality will be considered actively involved on an ongoing basis in the administration of the program.

(c) *Permissible uses of contributions.* Contributions to a QSTP can be placed into either a prepaid educational arrangement or contract described in section 529(b)(1)(A)(i) or an educational savings account described in section 529(b)(1)(A)(ii), or both, but cannot be placed into any other type of account.

(1) A prepaid educational services arrangement or contract is an account through which tuition credits or certificates or other rights are acquired that entitle the designated beneficiary of the account to the waiver or payment of qualified higher education expenses.

(2) An educational savings account is an account that is established exclusively for the purpose of meeting the qualified higher education expenses of a designated beneficiary.

(d) *Cash contributions.* A program shall not be treated as a QSTP unless it provides that contributions may be made only in cash and not in property. A QSTP may accept payment, however, in cash, or by check, money order, credit card, or similar methods.

(e) *Penalties on refunds*—(1) *General rule.* A program shall not be treated as a QSTP unless it imposes a more than de minimis penalty on the earnings portion of any distribution from the program that is not—

(i) Used exclusively for qualified higher education expenses of the designated beneficiary;

(ii) Made on account of the death or disability of the designated beneficiary;

(iii) Made on account of the receipt of a scholarship (or allowance or payment described in section 135(d)(1) (B) or (C)) by the designated beneficiary to the extent the amount of the distribution does not exceed the amount of the scholarship, allowance, or payment; or

(iv) A rollover distribution.

(2) *More than de minimis penalty*—(i) *In general.* A penalty is more than de minimis if it is consistent with a program intended to assist individuals in saving exclusively for qualified higher education expenses. Except as provided in paragraph (e)(2)(ii) of this section, whether any particular penalty is more than de minimis depends on the facts and circumstances of the particular program, including the extent to which the penalty offsets the federal income tax benefit from having deferred income tax liability on the earnings portion of any distribution.

(ii) *Safe harbor.* A penalty imposed on the earnings portion of a distribution is more than de minimis if it is equal to or greater than 10 percent of the earnings.

(3) *Separate distributions.* For purposes of applying the penalty, any single distribution described in paragraph (e)(1) of this section will be treated as a separate distribution and not part of a single aggregated annual distribution by the program, notwithstanding the rules under § 1.529–3 and § 1.529–4.

(4) *Procedures for verifying use of distributions and imposing and collecting penalties*—(i) *In general.* To be treated as imposing a more than de minimis penalty as required in paragraph (e)(1) of this section, a program must implement practices and procedures to identify whether a distribution is subject to a penalty and collect any penalty that is due.

(ii) *Safe harbor.* A program that falls within the safe harbor described in paragraphs (e)(4)(ii) (A) through (E) of this section will be treated as implementing practices and procedures to identify whether a more than de minimis penalty must be imposed as required in paragraph (e)(1) of this section.

(A) *Distributions treated as payments of qualified higher education expenses.* The program treats distributions as being used to pay for qualified higher education expenses only if—

(*1*) The distribution is made directly to an eligible educational institution;

(*2*) The distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution;

(*3*) The distribution is made after the designated beneficiary submits substantiation to show that the distribution is a reimbursement for qualified higher education expenses that the designated beneficiary has already paid and the program has a process for reviewing the validity of the substantiation prior to the distribution; or

(*4*) The designated beneficiary certifies prior to the distribution that the distribution will be expended for his or her qualified higher education expenses within a reasonable time after the distribution; the program requires the designated beneficiary to provide substantiation of payment of qualified higher education expenses within 30 days after making the distribution and has a process for reviewing the

substantiation; and the program retains an account balance that is large enough to collect any penalty owed on the distribution if valid substantiation is not produced.

(B) *Treatment of all other distributions.* The program collects a penalty on all distributions not treated as made to pay qualified higher education expenses except where—

(*1*) Prior to the distribution the program receives written third party confirmation that the designated beneficiary has died or become disabled or has received a scholarship (or allowance or payment described in section 135(d)(1) (B) or (C)) in an amount equal to the distribution; or

(*2*) Prior to the distribution the program receives a certification from the account owner that the distribution is being made because the designated beneficiary has died or become disabled or has received a scholarship (or allowance or payment described in section 135(d)(1) (B) or (C)) received by the designated beneficiary (and the distribution is equal to the amount of the scholarship, allowance, or payment) and the program withholds and reserves a portion of the distribution as a penalty. Any penalty withheld by the program may be refunded after the program receives third party confirmation that the designated beneficiary has died or become disabled or has received a scholarship or allowance (or payment described in section 135(d)(1) (B) or (C)).

(C) *Refunds of penalties.* The program will refund a penalty collected on a distribution only after the designated beneficiary substantiates that he or she had qualified higher education expenses greater than or equal to the distribution, and the program has reviewed the substantiation.

(D) *Documentation of amounts refunded and not used for qualified higher education expenses.* The program requires the distributee, defined in § 1.529–1(c), to provide a signed statement identifying the amount of any refunds received from eligible educational institutions at the end of each year in which distributions for qualified higher education expenses were made and of the next year.

(E) *Procedures to collect penalty.* The program collects required penalties by retaining a sufficient balance in the account to pay the amount of penalty, withholding an amount equal to the penalty from a distribution, or collecting the penalty on a State income tax return.

(f) *Separate accounting.* A program shall not be treated as a QSTP unless it provides separate accounting for each designated beneficiary. Separate accounting requires that contributions for the benefit of a designated beneficiary and any earnings attributable thereto must be allocated to the appropriate account. If a program does not ordinarily provide each account owner an annual account statement showing the total account balance, the investment in the account, earnings, and distributions from the account, the program must give this information to the account owner or designated beneficiary upon request. In the case of a prepaid educational arrangement or contract described in section 529(b)(1)(A)(i) the total account balance may be shown as credits or units of benefits instead of fair market value.

(g) *No investment direction.* A program shall not be treated as a QSTP unless it provides that any account owner in, or contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contribution to the program or directly or indirectly direct the investment of any earnings attributable to contributions. A program does not violate this requirement if a person who establishes an account with the program is permitted to select among different investment strategies designed exclusively by the program, only at the time the initial contribution is made establishing the account. A program will not violate the requirement of this paragraph (g) if it permits a person who establishes an account to select between a prepaid educational services account and an educational savings account. A program also will not violate the requirement of this paragraph (g) merely because it permits its board members, its employees, or the board members or employees of a contractor it hires to perform administrative services to purchase tuition credits or certificates or make contributions as described in paragraph (c) of this section.

(h) *No pledging of interest as security.* A program shall not be treated as a QSTP unless the terms of the program or a state statute or regulation that governs the program prohibit any interest in the program or any portion thereof from being used as security for a loan. This restriction includes, but is not limited to, a prohibition on the use of any interest in the program as security for a loan used to purchase such interest in the program.

(i) *Prohibition on excess contributions*—(1) *In general.* A program shall not be treated as a QSTP unless it provides adequate safeguards to prevent contributions for the benefit of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the designated beneficiary.

(2) *Safe harbor.* A program satisfies this requirement if it will bar any additional contributions to an account as soon as the account reaches a specified account balance limit applicable to all accounts of designated beneficiaries with the same expected year of enrollment. The total contributions may not exceed the amount determined by actuarial estimates that is necessary to pay tuition, required fees, and room and board expenses of the designated beneficiary for five years of undergraduate enrollment at the highest cost institution allowed by the program.

§ 1.529–3 Income tax treatment of distributees.

(a) *Taxation of distributions*—(1) *In general.* Any distribution, other than a rollover distribution, from a QSTP account must be included in the gross income of the distributee to the extent of the earnings portion of the distribution and to the extent not excluded from gross income under any other provision of chapter 1 of the Internal Revenue Code. If any amount of a distribution is forfeited under a QSTP as required by § 1.529–2(e), this amount is neither included in the gross income of the distributee nor deductible by the distributee.

(2) *Rollover distributions.* No part of a rollover distribution is included in the income of the distributee. Following the rollover distribution, that portion of the rollover amount that constituted investment in the account, defined in § 1.529–1(c), of the account from which the distribution was made is added to the investment in the account of the account that received the distribution. That portion of the rollover amount that constituted earnings of the account that made the distribution is added to the earnings of the account that received the distribution.

(b) *Computing taxable earnings*—(1) *Amount of taxable earnings in a distribution*—(i) *Educational savings account.* In the case of an educational savings account, the earnings portion of a distribution is equal to the product of the amount of the distribution and the earnings ratio, defined in § 1.529–1(c). The return of investment portion of the distribution is equal to the amount of the distribution minus the earnings portion of the distribution.

(ii) *Prepaid educational services account.* In the case of a prepaid educational services account, the earnings portion of a distribution is equal to the value of the credits, hours,

or other units of education distributed at the time of distribution minus the return of investment portion of the distribution. The value of the credits, hours, or other units of education may be based on the tuition waived or the cash distributed. The return of investment portion of the distribution is determined by dividing the investment in the account at the end of the year in which the distribution is made by the number of credits, hours, or other units of education in the account at the end of the calendar year (including all credits, hours, or other units of education distributed during the calendar year), and multiplying that amount by the number of credits, hours, or other units of education distributed during the current calendar year.

(2) *Adjustment for programs that treated distributions and earnings in a different manner for years beginning before January 1, 1999.* For calendar years beginning after December 31, 1998, a QSTP must treat taxpayers as recovering investment in the account and earnings ratably with each distribution. Prior to January 1, 1999, a program may have treated distributions in a different manner and reported them to taxpayers accordingly. In order to adjust to the method described in this section, if distributions were treated as coming first from the investment in the account, the QSTP must adjust the investment in the account by subtracting the amount of the investment in the account previously treated as distributed. If distributions were treated as coming first from earnings, the QSTP must adjust the earnings portion of the account by subtracting the amount of earnings previously treated as distributed. After the adjustment is made, the investment in the account is recovered ratably in accordance with this section. If no previous distribution was made but earnings were treated as taxable to the taxpayer in the year they were allocated to the account, the earnings treated as already taxable are treated as additional contributions and added to the investment in the account.

(3) *Examples.* The application of this paragraph (b) is illustrated by the following examples. The rounding convention used (rounding to three decimal places) in these examples is for purposes of illustration only. A QSTP may use another rounding convention as long as it consistently applies the convention. The examples are as follows:

Example 1. (i) In 1998, an individual, A, opens a prepaid educational services account with a QSTP on behalf of a designated beneficiary. Through the account A purchases units of education equivalent to eight semesters of tuition for full-time attendance at a public four-year university covered by the QSTP. A contributes $16,000 that includes payment of processing fees to the QSTP. In 2011 the designated beneficiary enrolls at a public four-year university. The QSTP makes distributions on behalf of the designated beneficiary to the university in August for the fall semester and in December for the spring semester. Tuition for full-time attendance at the university is $7,500 per academic year in 2011 and 2012, $7,875 for the academic year in 2013, and $8,200 for the academic year in 2014. The only expense covered by the QSTP distribution is tuition for four academic years. The calculations are as follows:

2011		
Investment in the account as of 12/31/2011	=	$16,000
Units in account	=	8
Per unit investment	=	$2,000
Units distributed in 2011	=	2
Investment portion of distribution in 2011 ($2,000 per unit × 2 units)	=	$4,000
Current value of two units distributed in 2011	=	$7,500
Earnings portion of distribution in 2011 ($7,500–$4,000)	=	$3,500
2012		
Investment in the account as of 12/31/2012 ($16,000–$4,000)	=	$12,000
Units in account	=	6
Per unit investment	=	$2,000
Units distributed in 2012	=	2
Investment portion of distribution in 2012 ($2,000 per unit × 2 units)	=	$4,000
Current value of two units distributed in 2012	=	$7,500
Earnings portion of distribution in 2012 ($7,500–$4,000)	=	$3,500
2013		
Investment in the account as of 12/31/2013 ($12,000–$4000)	=	$8,000
Units in account	=	4
Per unit investment	=	$2,000
Units distributed in 2013	=	2
Investment portion of distribution in 2013 ($2,000 per unit × 2 units)	=	$4,000
Current value of two units distributed in 2013	=	$7,875
Earnings portion of distribution in 2013 ($7,875–$4,000)	=	$3,875
2014		
Investment in the account as of 12/31/2014 ($8,000–$4000)	=	$4,000
Units in account	=	2
Per unit investment	=	$2,000
Units distributed in 2014	=	2
Investment portion of distribution in 2014 ($4,000 per unit × 2 units)	=	$4,000
Current value of two units distributed in 2014	=	$8,200
Earnings portion of distribution in 2014 ($8,200–$4,000)	=	$4,200
12/31/2014 (after distributions)		
Investment in the account as of 12/31/2014 ($4,000–$4000)	=	0

(ii) In each year the designated beneficiary includes in his or her gross income the earnings portion of the distribution for tuition.

Example 2. (i) In 1998, an individual, B, opens a college savings account with a QSTP on behalf of a designated beneficiary. B contributes $18,000 to the account that includes payment of processing fees to the QSTP. On December 31, 2011, the total balance in the account for the benefit of the designated beneficiary is $30,000 (including

distributions made during the year 2011). In 2011 the designated beneficiary enrolls at a four-year university. The QSTP makes distributions on behalf of the designated beneficiary to the university in August for the fall semester and in December for the spring semester. Tuition for full-time attendance at the university is $7,500 per academic year in 2011 and 2012, $7,875 for the academic year in 2013, and $8,200 for the academic year in 2014. The only expense covered by the QSTP distributions is tuition for four academic years. On the last day of the calendar year the account is allocated earnings of 5% on the total account balance on that day. Under the terms of the QSTP, a penalty of 15% is applied to the earnings not used to pay tuition. The calculations are as follows:

2011		
Investment in the account	=	$18,000
Total account balance as of 12/31/2011	=	$30,000
Earnings as of 12/31/2011	=	$12,000
Distributions in 2011	=	$7,500
Earnings ratio for 2011 ($12,000÷$30,000)	=	40%
Earnings portion of distributions in 2011 ($7,500×.4)	=	$3,000
Return of investment portion of distributions in 2011 ($7,500 − $3,000)	=	$4,500
2012		
Investment in the account as of 12/31/2012 ($18,000 − $4,500)	=	$13,500
Total account balance as of 12/31/12 [($30,000 − $7,500)×105%]	=	$23,625
Earnings as of 12/31/2012	=	$10,125
Distributions in 2012	=	$7,500
Earnings ratio for 2012 ($10,125÷$23,625)	=	42.9%
Earnings portion of distributions in 2012 ($7,500×.429)	=	$3,217.50
Return of investment portion of distributions in 2012 ($7,500 − $3,217.50)	=	$4,282.50
2013		
Investment in the account as of 12/31/2013 ($13,500 − $4,282.50)	=	$9,217.50
Total account balance as of 12/31/13 [($23,625 − $7,500)×105%]	=	$16,931.25
Earnings as of 12/31/2013	=	$7,713.75
Distributions in 2013	=	$7,875
Earnings ratio for 2013 ($7,713.75÷$16,931.25)	=	45.6%
Earnings portion of distributions in 2013 ($7,875×.456)	=	$3,591
Return of investment portion of distributions in 2013 ($7,875 − $3,591)	=	$4,284
2014		
Investment in the account as of 12/31/2014 ($9,217.50 − $4,284)	=	$4,933.50
Total account balance as of 12/31/14 [($16,931.25 − $7,875)×105%]	=	$9,509.06
Earnings as of 12/31/2014	=	$4,575.56
Distributions in 2014 for qualified higher education expenses (QHEE)	=	$8,200
Distributions in 2014 not for qualified higher education expenses (Non-QHEE)	=	$1,309.06
Total distributions	=	$9,509.06
Earnings portion of QHEE distribution in 2014 [($8,200÷$9,509.06)×$4,575.56]	=	$3,945.68
Return of investment portion of QHEE distribution in 2014	=	$4,254.32
Earnings portion of Non-QHEE distribution subject to penalty [($1,309.06÷$9,509.06)×$4,575.56)]	=	$629.89
Return of investment portion of non-QHEE distribution in 2014	=	$679.17

(ii) In years 2011 through 2013 the designated beneficiary includes in gross income the earnings portion of the distributions for tuition. In year 2014 the designated beneficiary includes in gross income the earnings portion of the distribution for tuition, $3,945.68, plus the earnings portion of the distribution that was not used for tuition after reduction for the penalty, i.e. $535.41 ($629.89 minus a 15% penalty of $94.48).

(c) *Change in designated beneficiaries*—(1) *General rule.* A change in the designated beneficiary of a QSTP account is not treated as a distribution if the new designated beneficiary is a member of the family of the transferor designated beneficiary. However, any change of designated beneficiary not described in the preceding sentence is treated as a distribution to the account owner, provided the account owner has the authority to change the designated beneficiary. For rules related to a change in the designated beneficiary pursuant to a rollover distribution see §§ 1.529–1(c) and 1.529–3(a)(2).

(2) *Scholarship program.* Notwithstanding paragraph (c)(1) of this section, the requirement that the new beneficiary be a member of the family of the transferor beneficiary shall not apply to a change in designated beneficiary of an interest in a QSTP account purchased by a State or local government or an organization described in section 501(c)(3) as part of a scholarship program.

(d) *Aggregation of accounts.* If an individual is a designated beneficiary of more than one account under a QSTP, the QSTP shall treat all contributions and earnings as allocable to a single account for purposes of calculating the earnings portion of any distribution from that QSTP. For purposes of determining the effect of the distribution on each account, the earnings portion and return of investment in the account portion of the distribution shall be allocated pro rata among the accounts based on total account value as of the close of the current calendar year.

§ 1.529–4 Time, form, and manner of reporting distributions from QSTPs and backup withholding.

(a) *Taxable distributions.* The portion of any distribution made during the calendar year by a QSTP that represents earnings shall be reported by the payor as described in this section.

(b) *Requirement to file return*—(1) *Form of return.* A payor must file a return required by this section on Form 1099–G. A payor may use forms containing provisions similar to Form 1099–G if it complies with applicable revenue procedures relating to substitute Forms 1099. A payor must file a separate return for each distributee who receives a taxable distribution.

(2) *Payor.* For purposes of this section, the term ''payor'' means the officer or employee having control of the program, or their designee.

(3) *Information included on return.* A payor must include on Form 1099–G—

(i) The name, address, and taxpayer identifying number (TIN) (as defined in section 7701(a)(41)) of the payor;

(ii) The name, address, and TIN of the distributee;

(iii) The amount of earnings distributed to the distributee in the calendar year; and

(iv) Any other information required by Form 1099–G or its instructions.

(4) *Time and place for filing return.* A payor must file any return required by this paragraph (b) on or before February 28 of the year following the calendar year in which the distribution is made. A payor must file the return with the IRS office designated in the instructions for Form 1099–G.

(5) *Returns required on magnetic media.* If a payor is required to file at least 250 returns during the calendar year, the returns must be filed on magnetic media. If a payor is required to file fewer than 250 returns, the prescribed paper form may be used.

(6) *Extension of time to file return.* For good cause, the Commissioner may grant an extension of time in which to file Form 1099–G for reporting taxable earnings under section 529. The application for extension of time must be submitted in the manner prescribed by the Commissioner.

(c) *Requirement to furnish statement to the distributee*—(1) *In general.* A payor that must file a return under paragraph (b) of this section must furnish a statement to the distributee. The requirement to furnish a statement to the distributee will be satisfied if the payor provides the distributee with a copy of the Form 1099–G (or a substitute statement that complies with applicable revenue procedures) containing all the information filed with the Internal Revenue Service and all the legends required by paragraph (c)(2) of this section by the time required by paragraph (c)(3) of this section.

(2) *Information included on statement.* A payor must include on the statement that it must furnish to the distributee—

(i) The information required under paragraph (b)(3) of this section;

(ii) The telephone number of a person to contact about questions pertaining to the statement; and

(iii) A legend as required on the official Internal Revenue Service Form 1099–G.

(3) *Time for furnishing statement.* A payor must furnish the statement required by paragraph (c)(1) of this section to the distributee on or before January 31 of the year following the calendar year in which the distribution was made. The statement will be considered furnished to the distributee if it is mailed to the distributee's last known address.

(4) *Extension of time to furnish statement.* For good cause, the Commissioner may grant an extension of time to furnish statements to distributees of taxable earnings under section 529. The application for extension of time must be submitted in the manner prescribed by the Commissioner.

(d) *Backup withholding.* Distributions from a QSTP are not subject to backup withholding.

(e) *Effective date.* The reporting requirements set forth in this section apply to distributions made after December 31, 1998.

§ 1.529–5 Estate, gift, and generation-skipping transfer tax rules relating to qualified State tuition programs.

(a) *Gift and generation-skipping transfer tax treatment of contributions after August 20, 1996, and before August 6, 1997.* A contribution on behalf of a designated beneficiary to a QSTP (or to a program that meets the transitional rule requirements under § 1.529–6(b)) after August 20, 1996, and before August 6, 1997, is not treated as a taxable gift. The subsequent waiver of qualified higher education expenses of a designated beneficiary by an educational institution (or the subsequent payment of higher education expenses of a designated beneficiary to an educational institution) under a QSTP is treated as a qualified transfer under section 2503(e) and is not treated as a transfer of property by gift for purposes of section 2501. As such, the contribution is not subject to the generation-skipping transfer tax imposed by section 2601.

(b) *Gift and generation-skipping transfer tax treatment of contributions after August 5, 1997*—(1) *In general.* A contribution on behalf of a designated beneficiary to a QSTP (or to a program that meets the transitional rule requirements under § 1.529–6(b)) after August 5, 1997, is a completed gift of a present interest in property under section 2503(b) from the person making the contribution to the designated beneficiary. As such, the contribution is eligible for the annual gift tax exclusion provided under section 2503(b). The portion of a contribution excludible from taxable gifts under section 2503(b) also satisfies the requirements of section 2642(c)(2) and, therefore, is also excludible for purposes of the generation-skipping transfer tax imposed under section 2601. A contribution to a QSTP after August 5, 1997, is not treated as a qualified transfer within the meaning of section 2503(e).

(2) *Contributions that exceed the annual exclusion amount.* (i) Under section 529(c)(2)(B) a donor may elect to take certain contributions to a QSTP into account ratably over a five year period in determining the amount of gifts made during the calendar year. The provision is applicable only with respect to contributions not in excess of five times the section 2503(b) exclusion amount available in the calendar year of the contribution. Any excess may not be taken into account ratably and is treated as a taxable gift in the calendar year of the contribution.

(ii) The election under section 529(c)(2)(B) may be made by a donor and his or her spouse with respect to a gift considered to be made one-half by each spouse under section 2513.

(iii) The election is made on Form 709, Federal Gift Tax Return, for the calendar year in which the contribution is made.

(iv) If in any year after the first year of the five year period described in section 529(c)(2)(B), the amount excludible under section 2503(b) is increased as provided in section 2503(b)(2), the donor may make an additional contribution in any one or more of the four remaining years up to the difference between the exclusion amount as increased and the original exclusion amount for the year or years in which the original contribution was made.

(v) *Example.* The application of this paragraph (b)(2) is illustrated by the following example:

Example. In Year 1, when the annual exclusion under section 2503(b) is $10,000, P makes a contribution of $60,000 to a QSTP for the benefit of P's child, C. P elects under section 529(c)(2)(B) to account for the gift ratably over a five year period beginning with the calendar year of contribution. P is treated as making an excludible gift of $10,000 in each of Years 1 through 5 and a taxable gift of $10,000 in Year 1. In Year 3, when the annual exclusion is increased to $12,000, P makes an additional contribution for the benefit of C in the amount of $8,000. P is treated as making an excludible gift of $2,000 under section 2503(b); the remaining $6,000 is a taxable gift in Year 3.

(3) *Change of designated beneficiary or rollover.* (i) A transfer which occurs by reason of a change in the designated beneficiary, or a rollover of credits or account balances from the account of one beneficiary to the account of another beneficiary, is not a taxable gift and is not subject to the generation-skipping transfer tax if the new beneficiary is a member of the family of the old beneficiary, as defined in § 1.529–1(c), and is assigned to the same generation as the old beneficiary, as defined in section 2651.

(ii) A transfer which occurs by reason of a change in the designated beneficiary, or a rollover of credits or account balances from the account of one beneficiary to the account of another beneficiary, will be treated as a taxable gift by the old beneficiary to the new beneficiary if the new beneficiary is assigned to a lower generation than the old beneficiary, as defined in section 2651, regardless of whether the new beneficiary is a member of the family of the old beneficiary. The transfer will be subject to the generation-skipping transfer tax if the new beneficiary is assigned to a generation which is two or more levels lower than the generation assignment of the old beneficiary. The five year averaging rule described in paragraph (b)(2) of this section may be applied to the transfer.

(iii) *Example.* The application of this paragraph (b)(3) is illustrated by the following example:

Example. In Year 1, P makes a contribution to a QSTP on behalf of P's child, C. In Year 4, P directs that a distribution from the account for the benefit of C be made to an account for the benefit of P's grandchild, G. The rollover distribution is treated as a taxable gift by C to G, because, under section 2651, G is assigned to a generation below the generation assignment of C.

(c) *Estate tax treatment for estates of decedents dying after August 20, 1996, and before June 9, 1997.* The gross estate of a decedent dying after August 20, 1996, and before June 9, 1997, includes the value of any interest in any QSTP which is attributable to contributions made by the decedent to such program on behalf of a designated beneficiary.

(d) *Estate tax treatment for estates of decedents dying after June 8, 1997*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, the gross estate of a decedent dying after June 8, 1997, does not include the value of any interest in a QSTP which is attributable to contributions made by the decedent to such program on behalf of any designated beneficiary.

(2) *Excess contributions.* In the case of a decedent who made the election under section 529(c)(2)(B) and paragraph (b)(3)(i) of this section who dies before the close of the five year period, that portion of the contribution allocable to calendar years beginning after the date of death of the decedent is includible in the decedent's gross estate.

(3) *Designated beneficiary decedents.* The gross estate of a designated beneficiary of a QSTP includes the value of any interest in the QSTP.

§ 1.529–6 Transition rules.

(a) *Effective date.* Section 529 is effective for taxable years ending after August 20, 1996, and applies to all contracts entered into or accounts opened on August 20, 1996, or later.

(b) *Programs maintained on August 20, 1996.* Transition relief is available to a program maintained by a State under which persons could purchase tuition credits, certification or similar rights on behalf of, or make contributions for educational expenses of, a designated beneficiary if the program was in existence on August 20, 1996. Such program must meet the requirements of a QSTP before the later of August 20, 1997, or the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after August 20, 1996. If a State has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature. The program, as in effect on August 20, 1996, shall be treated as a QSTP with respect to contributions (and earnings allocable thereto) pursuant to contracts entered into under the program. This relief is available for contributions (and earnings allocable thereto) made before, and the contracts entered into before, the first date on which the program becomes a QSTP. The provisions of the program, as in effect on August 20, 1996, shall apply in lieu of section 529(b) with respect to such contributions and earnings. A program shall be treated as meeting the transition rule if it conforms to the requirements of section 529, §§ 1.529–1 through 1.529–5 and this section by the date this document is published as final regulations in the **Federal Register**.

(c) *Retroactive effect.* No income tax liability will be asserted against a QSTP for any period before the program meets the requirements of section 529, §§ 1.529–1 through 1.529–5 and this section if the program qualifies for the transition relief described in paragraph (b) of this section.

(d) *Contracts entered into and accounts opened before August 20, 1996*—(1) *In general.* A QSTP may continue to maintain agreements in connection with contracts entered into and accounts opened before August 20, 1996, without jeopardizing its tax exempt status even if maintaining the agreements is contrary to section 529(b) provided that the QSTP operates in accordance with the restrictions contained in this paragraph (d). However, distributions made by the QSTP, regardless of the terms of any agreement executed before August 20, 1996, are subject to tax according to the rules of § 1.529–3 and subject to the reporting requirements of § 1.529–4.

(2) *Interest in program pledged as security for a loan.* An interest in the program, or a portion of an interest in the program, may be used as security for a loan if the contract giving rise to the interest was entered into or account was opened prior to August 20, 1996 and the agreement permitted such a pledge.

(3) *Member of the family.* In the case of an account opened or a contract entered into before August 20, 1996, the rules regarding a change in beneficiary, including the rollover rule in § 1.529–3(a) and the gift tax rule in § 1.529–5(b)(3), shall be applied by treating any transferee beneficiary permitted under the terms of the account or contract as a member of the family of the transferor beneficiary.

(4) *Eligible educational institution.* In the case of an account opened or contract entered into before August 20, 1996, an eligible educational institution is an educational institution in which the beneficiary may enroll under the terms of the account or contract.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–22465 Filed 8–21–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 76, and 96

Availability of Documents for the Rulemaking for Certain States in the Ozone Transport Assessment Group Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document announces the availability of various documents that relate to the notice of proposed rulemaking and supplemental notice of proposed rulemaking for the ozone transport rule. These documents have been, or shortly will be, placed in the docket for this rule, or have been made available on the EPA website.

DATES: Documents were placed in the docket on or about August 10, 1998.

ADDRESSES: Some of the documents have been placed in the docket for the ozone transport rule, Docket No. A–96–56, at the Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, and are available for viewing between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be

charged for copying. Other documents have been made available in electronic form at the following EPA websites: http://www.epa.gov/scram001/regmodcenter/t28.htm and http://www.epa.gov/capi.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's document should be addressed to Kimber Smith Scavo, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–3354; e-mail: scavo.kimber@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA published a notice of proposed rulemaking (NPR) dated November 7, 1997, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' (62 FR 60318). The EPA published a supplemental notice of proposed rulemaking (SNPR) dated May 11, 1998, ''Supplemental Notice for the Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' (63 FR 25902). This rulemaking may be referred to as the ozone transport rule, and has, more colloquially, been referred to as the NO_x SIP Call or the OTAG SIP Call.

When EPA published the NPR, EPA established a 120-day comment period, ending on March 9, 1998. The EPA received numerous comments that this period was not adequate, particularly for performing air quality modeling. By notice dated April 9, 1998 (63 FR 17349), EPA extended the comment period to the close of the comment period for the SNPR, which was June 25, 1998.

Numerous States, industry groups, and others submitted air quality analyses to the docket during the initial and extended comment period. Commenters also submitted comments on a wide range of issues raised under the NPR and SNPR.

In response to these comments, EPA has conducted additional air quality modeling analyses. The EPA is announcing today that information concerning these analyses was placed in the docket as of August 10, 1998, or shortly thereafter. See Appendix A for a more detailed description of this modeling information.

In addition, EPA has placed four additional sets of IPM run files at the http://www.epa.gov/capi web site, which provide the Agency's results of analysis of cap-and-trade options that EPA examined in developing the ozone transport rulemaking using the 1998 version of IPM. These files are described in Appendix B.

The EPA has previously made other information publicly available on EPA's Technology Transfer Network (TTN) site or the http://www.epa.gov/ttn/oarpg/otagsip web site (which, in effect, superseded the TTN site) or the http://www.epa.gov/capi web site. For example, EPA made available updated emissions inventory information on the TTN on or about February 3, 1998. See Appendix C for a list of documents already made available on the TTN or web site. The EPA indicated in the NPR that related documents could be found on the TTN or on other web sites (62 FR 60318).

The EPA anticipates that the notice of final rulemaking will be signed in September 1998.

In addition, the following documents have been, or will shortly be, placed in the docket.

1. E.H. Pechan & Associates, Inc., ''Ozone Transport Rulemaking Non-Electricity Generating Unit Cost Analysis—Final Report,'' August 1998.

2. Documents evidencing the public availability of the IPM model and UAM–V: (i) Letter from Gary Vicinus, Executive Vice President, ICF Kaiser, to Paul M. Stolpman, Director, Office of Atmospheric Programs, U.S. EPA, July 22, 1998 (IPM); (ii) Excerpts from ''Analyzing Electric Power Generation Under the CAAA,'' Office of Air and Radiation, U.S. EPA (March 1998) (IPM); (iii) Letter from William F. Hunt, Jr., Director, Emissions Monitoring and Analyses Division, Office of Air Quality Planning and Standards, U.S. EPA to Andrea Bear Field, Esq., Hunton & Williams (April 15, 1998) (UAM–V).

In addition, EPA anticipates placing the following document in the docket in the near future.

a. Comparison of 8-hour model predictions and ambient 8-hour design values.

EPA may place additional documents in the docket, and if EPA does so, EPA will announce their availability by posting a notice on the http://www.epa.gov/ttn/oarpg/otagsip web site.

Dated: August 17, 1998.

Robert D. Brenner,

Acting Director, Office of Air Quality Planning and Standards.

Appendix A—Modeling Information

I. EPA UAM–V Model Runs

A. Description of Model Runs

1. ''State-by-State'' Zero-Out Runs using UAM–V for 4 OTAG episodes and 2007 SIP Call Base Case emissions Docket Number: V–L–02

—zero-out all manmade emissions for the following States, individually:
—AL, GA, IN, IL, KY, MA, MI, MO, NC, OH, SC, TN, VA, WI, WV
—zero-out all manmade emissions for the following groups of States:
—AL+GA+NC+SC+TN
—IL+WI

2. UAM–V runs for 4 OTAG episodes for various utility emissions limits and non-utility control levels, as indicated in the following table Docket Number V–L–01

Scenario	Utility	Non-utility point source
0.25	0.25 lb/mmBTU for EGUs >25MWe. Interstate trading modeled using IPM.	60% reduction from uncontrolled levels for large sources.
0.20	0.20 lb/mmBTU for EGUs >25MWe. Interstate trading modeled using IPM.	70% reduction from uncontrolled levels for large sources, RACT for medium sources.
0.15t	0.15 lb/mmBTU for EGUs >25MWe. Interstate trading modeled using IPM.	70% reduction from uncontrolled levels for large sources, RACT for medium sources.
0.12	0.12 lb/mmBTU for EGUs >25MWe. Interstate trading modeled using IPM.	70% reduction from uncontrolled levels for large sources, RACT for medium sources.
Reg-1*	0.20 lb/mmBTU in the Southeast and Midwest, 0.15 lb/mmBTU in the Northeast and adjacent States for EGUs >25MWe. Interstate trading within zones subject to the same limit modeled using IPM.	70% reduction from uncontrolled levels for large sources, RACT for medium sources.
Reg-2*	0.20 lb/mmBTU in the Southeast, 0.15 lb/mmBTU in the Midwest and adjacent States and 0.12 lb/mmBTU in the Northeast for EGUs >25MWe. Interstate trading within zones subject to the same limit modeled using IPM.	70% reduction from uncontrolled levels for large sources, RACT for medium sources.

Scenario	Utility	Non-utility point source
0.15nt	0.15 lb/mmBTU for EGUs >25MWe. Intrastate trading only modeled using IPM.	70% reduction from uncontrolled levels for large sources, RACT for medium sources.

*For the regionality cases, the Southeast includes Alabama, Georgia, North Carolina, South Carolina, and Tennessee; the Midwest includes Illinois, Indiana, Kentucky, Michigan, Missouri and Wisconsin; the Northeast includes Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island; the adjacent States include Ohio, Virginia and West Virginia.

3. UAM–V ''Transport Runs'' for 4 OTAG episodes [information to be docketed shortly]

—3 scenarios designed to examine the ''transport'' benefits of the SIP Call:

—Scenario 1: 0.15nt emissions in the Northeast SIP Call States with 2007 SIP Call Base Case emissions elsewhere

—Scenario 2: 0.15nt emissions in Georgia with 2007 SIP Call Base Case emissions elsewhere

—Scenario 3: 0.15nt emissions in Illinois, Indiana, and Wisconsin with 2007 SIP Call Base Case emissions elsewhere

4. UAM–V Utility/Non-Utility Zero-Out runs for 4 OTAG episodes using OTAG 2007Base1c emissions [information to be docketed shortly]

—zero-out utility and non-utility emissions in multi-state areas

—19 multi-state zero-out runs/ performed

B. Specific information docketed for each of the UAM–V EPA model runs

1. Tabular summaries of the types listed below are provided for each of the following metrics:

—Metrics:

(1) number of predicted exceedances of the NAAQS

(2) magnitude and frequency of ''ppb'' impacts

(3) total ''ppb'' impacts

(4) population-weighted total ''ppb'' impacts

—Tabular Summaries:

(1) 1-Hour Daily Max (and Hourly) for each 1-hr Nonattainment Area

(2) 1-Hour Daily Max (and Hourly) for each State, based on counties designated nonattainment for the 1-hr NAAQS

(3) 8-Hour Daily Max for each State, based on monitoring data showing counties violating the 8-hr NAAQS

(4) 8-Hour Daily Max for each State, based on model predictions >=85 ppb

(5) 8-Hour Average 2nd High for each State, based on monitoring data showing counties violating the 8-hr NAAQS

(6) 8-Hour Average 2nd High for each State, based on model predictions >=85 ppb

2. Electronic versions of (a) the tabular summaries and (b) the ''raw'' model predictions in the form of daily ''xymap'' files will be available shortly via the following public download site: ftp://www.epa.gov/pub/scram001/ modelingcenter/model__out put/

II. EPA CAMx Model Runs Docket Number: V–L–03

A. Description of Model Runs

1. Source Apportionment for various State and multi-State source areas using 2007 SIP Call Base Case emissions run for 4 OTAG episodes

B. Specific Information Docketed for the EPA CAMx Runs

1. Tabular summaries of the types listed below are provided for each of the following metrics:

—Metrics:

(1) magnitude and frequency of ''ppb'' impacts

(2) percentage of total man-made ozone in the ''downwind'' area contributed by the upwind area

(3) highest daily average contribution (''ppb'' and percent of ''downwind'' ozone)

—Tabular Summaries of each metric are prepared for each of the following types of receptor areas:

(1) 1-hour Nonattainment Areas

(2) States, based on counties designated nonattainment for the 1-hr NAAQS

(3) States, based on monitoring data showing counties violating the 8-hr NAAQS

(4) States, based on model predictions >=85 ppb

2. Electronic versions of (a) the tabular summaries and (b) ''raw'' source-receptor contributions in the form of ''ranktrack'' output files will be available shortly via the following public download site: ftp://www.epa.gov/pub/scram001/ modelingcenter/model__out put/

III. EPA Analysis of 8-Hour Design Values versus Model Predictions [information to be docketed shortly]

—Analysis and data files comparing 8-hr Base Year model predictions to 8-hr ambient design values derived from 1994–1996 monitoring data

Appendix B—IPM Runs

EPA has placed four additional sets of IPM run files at the http:/www.epa.gov/capi web site, which provide the Agency's results of analysis of cap-and-trade options that EPA examined in developing the Ozone Transport Rulemaking using the 1998 version of IPM. These options are: 0.25, 0.20, 0.15, and 0.12 (all which interstate trading); as well 0.15 (with intrastate trading).

The files are initially marked by a run number (e.g. ''SIPI'' is the alpha-numeric identifier of the Initial Base Case Run followed by a designation of the file type in abbreviated form (e.g. ''CAR'' for capacity available report) and a run year (e.g T05 for 2005), if appropriate). They are ''zip'' (compressed) files, which can be ''unzipped'' (made ready for review with a text editor) using Pkunzip software. Text files can be directly reviewed using Word Perfect and other word processing software. On file, containing unit-specific emissions projections, is in Microsoft Excel '97 format. The other files can be reviewed by using any good text editor. EPA uses the LIST utility for this purpose, but several others are available.

EPA recommends having on hand its Analyzing Electric Power Generation under the CAAA, March 1998, and the Supplemental Ozone Transport Rulemaking Regulatory Analysis, 1998, when reviewing the results. It is important to recognize that the costs in the IPM runs are in 1997 dollars, which EPA converted to 1990 dollars.

Appendix C—Information Available on TTN or Web Site

The following describes documents that, at various times during the course of this rulemaking, EPA has made available on the TTN or the http://www.epa.gov/ttn/oarpg/otagsip or http://www.epa.gov/capi web sites. In some cases, the date that the document was made available on the TTN or web site is indicated:

1. File Description File Date File Types Official transcript of proceedings of public hearing on proposed supplement to No_x SIP call. 6–22–98

2. List of persons scheduled to give testimony at SIP—call public hearing on 5/29/98 in Washington, DC. 5–28–98

3. Signed version of SNPR (04/28/98) 4–29–98

4. Figure for Section 7 of SNPR 4–29–98

5. Tables for Section 7 of SNPR 4–29–98

6. May 29, 1998 Public Hearing information 4–29–98

7. SRNP Fact Sheet 4–29–98

8. Reopening the comment period for certain issues raised in the Proposed Rulemaking for a Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone. 4–9–98

9. Supplemental Ozone Transport Regulatory Analysis (Zip file contains the Word Perfect files) 4–7–98

10. Technical Support Document on Development of Modeling Inventory And Budgets For The Ozone Transport Sip Call 4–2–98

a. Appendix A, List of Daily EGU Inventory 4–2–98

b. Appendix B, List of Seasonal EGU Inventory 4–2–98

c. Appendix C, List of Sources Moved From OTAG Utility to Non-EGU Data 4–2–98

d. Appendix D, List of Large and Medium Non-EGU Sources 4–2–98

11. Draft—Seasonal budget components and total budgets revisions that were made to the budgets that were proposed on November 7, 1997 3–9–98

12. Transcript from Public Hearing on Ozone Transport SIP Call—2/3/98 2–25–98

13. Transcript from Public Hearing on Ozone Transport SIP Call—2/4/98 2–25–98

14. Explanation of Revised Budget Calculations 2–3–98

15. Draft Appendices for Revised Budget Calculations for Electric Generation Sources 2–3–98

16. Draft Appendices for Revised Budget Calculations for Non-electric Generation Point Sources 2–3–98

17. Draft Public Hearing on Ozone Transport SIP Call Speaking Schedule 2–2–98

18. FACT SHEET: Notice of Public hearing—Proposed Finding of Significant Contribution and Proposed Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone 1–7–98

19. Proposed Rule for Reducing Regional Transport of Ozone (Fact Sheet) 10–10–97

20. Proposed Rule for Reducing Regional Transport of Ozone (FR Notice) [Corrected FR version (10/24/97)] 10–10–97

21. Appendix B—OTAG Recommendations 10–10–97

22. Appendix C Table II–1—OTAG 2007 State Total NO_X Emissions (tons/day) [Reformatted tables for FR version of appendix C] 10–10–97

23. Appendix C Table II–2—OTAG 2007 State NO_x Emissions (tons/day) and Emissions Density (tons/day/1000 sq. mi.) [Reformatted tables for FR version of appendix C] 10–10–97

24. Appendix C Table II–3—OTAG 2007 Baseline Control Measures [Reformatted tables for FR version of appendix C] 10–10–97

25. Appendix C Table II–4a—OTAG Strategy Control Packets for NO_X [Reformatted tables for FR version of appendix C] 10–10–97

26. Appendix C Table II–4b—OTAG Strategy Control Packets for VOC [Reformatted tables for FR version of appendix C] 10–10–97

27. Appendix C Table II–5a—Round 1 and 2 Control Levels by Emissions Sector [Reformatted tables for FR version of appendix C] 10–10–97

28. Appendix C Table II–5b—Domainwide Round 1 and 2 Emission Totals by Sector [Reformatted tables for FR version of appendix C] 10–10–97

29. Appendix C Table II–6—Round 3 Control Levels by Geographic Zone [Reformatted tables for FR version of appendix C] 10–10–97

30. Appendix C Table II–7—Round 3 Control Levels by Geographic Zone [Reformatted tables for FR version of appendix C] 10–10–97

31. Appendix C Table II–8a—Counties Violating the 1-Hr Ozone NAAQS Based on 1993–1995 Ambient Air Quality Monitoring Data [Reformatted tables for FR version of appendix C] 10–10–97

32. Appendix C Table II–8b—Counties Violating the 8-Hr Ozone NAAQS Based on 1993–1995 Ambient Air Quality Monitoring Data [Reformatted tables for FR version of appendix C] 10–10–97

33. Appendix C Table II–9a—Summary of Air Quality Contributions to Downwind Nonattainment, for SubRegions 1–6 [Reformatted tables for FR version of appendix C] 10–10–97

34. Appendix C Table II–9b—Summary of Air Quality Contributions to Downwind Nonattainment, for SubRegions 7–12 [Reformatted tables for FR version of appendix C] 10–10–97

35. Appendix C Table II–10—Number of Impacts in Each ''Downwind'' State by Impact Concentration Range for Each SubRegion—Approach 1: 1-Hr ''Violating Counties'' [Reformatted tables for FR version of appendix C] 10–10–97

36. Appendix C Table II–11—Number of Impacts in Each ''Downwind'' State by Impact Concentration Range for Each Subregion—Approach 2: 1-Hr ''All Grid Cells'' [Reformatted tables for FR version of appendix C] 10–10–97

37. Appendix C Table II–12—Number of Impacts in Each ''Downwind'' State by Impact Concentration Range for Each Subregion—Approach 3: 8-Hr ''Violating Counties'' [Reformatted tables for FR version of appendix C] 10–10–97 Appendix C Table II–13—Number of Impacts in Each ''Downwind'' State by Impact Concentration Range for Each Subregion—Approach 4: 8-Hr ''All Grid Cells'' [Reformatted tables for FR version of appendix C] 10–10–97

38. Appendix C Table II–14a—Percent of 2007 State Total NO_X Emissions by Subregion [Reformatted tables for FR version of appendix C] 10–10–97

39. Appendix C Table II–14b—Percent 2007 Baseline NO_X Emissions by Subregion, by State [Reformatted tables for FR version of appendix C] 10–10–97

40. Appendix C Table II–15—Estimate of Local Control Cost Avoided by OTAG Strategy [Reformatted tables for FR version of appendix C] 10–10–97

41. Appendix D Figure II–1—OTAG Modeling Domain 10–10–97 Appendix D Figure II–2—Location of Subregions 10–10–97

42. Appendix D Figure II–3—OTAG Round 3 Geographic Zones (shaded areas are 3 ''major'' nonattainment areas) 10–10–97

43. Appendix D Figure II–4—Transport Wind Vectors During Regionally High Ozone Days 10–10–97

44. Appendix E—Control Strategies Contained in Model Run 5 of the Ozone Transport Assessment Group 10–10–97

45. Calculation of Budget Components Technical Support Document [Revised Version] 10–27–97

46. Technical Support Document Appendix A—Unit-Specific Electric Generation Data (Utility-Owned Units) 10–14–97

47. Technical Support Document Appendix B—Unit-Specific Electric Generation Data (Non Utility-Owned Units) 10–14–79

48. Technical Support Document Appendix C—List of Large Non-Utility Point Sources 10–14–97

49. Proposed Ozone Transport Rulemaking Regulatory Analysis 10–16–97

50. Revised DRAFT Utilization Information for Electricity Generators Used in Budget Calculations for the Proposed SIP Call (zipped Microsoft Excel file)

51. Road Map to IPM Rule Files for the Proposed Ozone Transport Rulemaking

52. Data Used to Determine State-Specific Electricity Generator Growth Used in the Ozone Transport Rulemaking (zipped Microsoft Excel file)

53. Proposed Ozone Transport Rulemaking Regulatory Analysis (October 1997)

54. Summary of State-specific 1996–2007 Growth Factors for Electricity Generating Units in the SIP Call Region. Comparison table and explanation.

55. Supplemental Ozone Transport Rulemaking Regulatory Analysis, April 1998. These zipped WordPerfect files provide the complete regulatory analysis that EPA prepared for the SNPR.

56. Segments of five IPM runs used to prepared the electric power industry emissions reduction and cost analysis in Supplemental Ozone Transport Rulemaking Regulatory Analysis.

57. Estimates of annual incremental costs of combustion controls on coal-fired units that are part of EPA's estimates of compliance costs for the SNPR.

58. Analyzing Electric Power Generation under the CAAA, March 1998.

59. Supplemental Ozone Transport Rulemaking Regulatory Analysis, April 7, 1998.

60. Initial Base Case—Winter 1998 Electricity Demand Forecast, SIPJ

61. 0.15 Trading—Winter 1998 Electricity Demand Forecast, SIP2

62. Final Base Case—Winter 1998 Electricity Demand Forecast, SIP5__2

63. Initial Base Case—Summer 1996 Electricity Demand Forecast, SIP3

64. 0.15 Trading—Summer 1996 Electricity Demand Forecast, SIP14.

65. Incremental cost analyses. This zipped filed contains:

a. Title IV Controls-AllStates.xls (part of Initial Base Case cost analysis, in Excel97)

b. AddedTitleIVControlsOutside OTR.xls (part of Final Base cost analysis, in Excel97)

c. ExplnCtmbCtrl.doc (tex. explanation of how analysis was done, in Word97)

[FR Doc. 98–22528 Filed 8–21–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6145–7]

RIN 2060–AE04

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments to rule.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for new and existing secondary lead smelters. Changes to the NESHAP are being made to address comments received following promulgation of the final rule. Four changes are being made to the final rule. Two are minor typographical corrections, while two are technical corrections. In the Final Rules section of this **Federal Register,** the EPA is also making these amendments as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no significant adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no significant adverse comments are received by the due date (see **DATES** section below), no further action will be taken with respect to this proposal, and the direct final rule will become final on the date provided in that action. If the EPA receives significant 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 notice. Any parties interested in commenting on this notice should do so at this time.

DATES: *Comments.* Comments must be received on or before September 23, 1998, unless a hearing is requested by September 5, 1998. If a hearing is requested, written comments must be received by October 8, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than September 5, 1998. If a hearing is held, it will take place on September 8, 1998, beginning at 10:00 a.m.

ADDRESSES: *Docket.* Docket No. A–92–43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Comments. Written comments should be submitted to: Docket A–92–43, U.S. EPA, Air & Radiation Docket & Information Center, 401 M. Street, SW, Room 1500, Washington, DC 20460.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–2364.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–2364.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received, the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

ADMINISTRATIVE REQUIREMENTS

Docket The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking.

The docket is a dynamic file, since material is added throughout the rulemaking development. The docket system is intended to allow members of the public and affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the background information documents (BIDs) and preambles to the proposed and promulgated standards, the contents of the docket will serve as the official record in case of judicial review (section 307(d)(7)(A) of the Act).

Executive Order 12866

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

(1) Have an annual effect on the economy of § 100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

It has been determined that this amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of significantly less than $100 million in any 1 year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This amendment to the rule will not impose any new information collection requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Pub. L. 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have a significant economic impact on a substantial number of small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. This action does not involve the proposal of any new technical standards, or incorporate by reference existing technical standards.

Protection of Children From Environmental Health Risks and Safety Risk Under Executive Order 13045

The Executive Order 13045 applies to any rule that (1) OMB determine is ''economically significant'' as defined under Executive Order 12866, and (2) EPA determine the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This action is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under the executive order EPA must consult with representatives of affected State, local, and Tribal governments. The EPA consulted with State and local governments at the time of promulgation of subpart X (60 FR 32587), and no tribal governments are believed to be affected by this action. Today's changes are minor and will not impose costs on governments entities or the private sector. Consequently, the EPA has not consulted with State, local, or Tribal governments on this amendment.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: August 11, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–22649 Filed 8–21–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL–6150–2]

RIN 2060–AH60

Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes

the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic particles and deposition and their serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health.

The allowance trading component of the Acid Rain Program allows utilities to achieve sulfur dioxide emissions reductions in the most cost-effective way. Allowances are traded among utilities and recorded in EPA's Allowance Tracking System for use in determining compliance at the end of each year. The Acid Rain Program's permitting, allowance trading, and emissions monitoring requirements are set forth in the ''core rules'' promulgated on January 11, 1993. On August 3, 1998 (63 FR 41358) EPA published a proposal that would amend certain provisions in the permitting and Allowance Tracking System rules for the purpose of improving the operation of the Allowance Tracking System and the allowance market, while still preserving the Act's environmental goals. This document extends the comment period on that notice of proposed rulemaking until September 17, 1998.

DATES: *Comments.* Comments on the August 3, 1998 proposed rule must be received on or before September 17, 1998.

ADDRESSES: *Comments.* Comments should be submitted in duplicate, to: EPA Air Docket, Attention, Docket No. A–98–15, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Docket. Docket No. A–98–15, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Permits and Allowance Market Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (202–564–9089).

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking for this action (63 FR 41358, August 3, 1998) provided for a 30 day comment period ending on September 2, 1998, unless a public hearing was requested, in which case the comment period would be extended 15 days until September 17, 1998. The Agency has received a request that the comment period be extended until September 17, 1998, without a public hearing (see docket Item A–98–15–IV–D–1). That request indicated that in the event EPA declined to extend the comment period in this manner, the request constituted a request for a public hearing, which would have the same effect of extending the comment period.

In the interest of full public participation in this rulemaking, and in recognition that the Agency should not require the public to present testimony at a public hearing for the procedural reason to extend the written comment period, the Agency with this document extends the comment period until September 17, 1998. Because no public hearing was requested by the August 13, 1998 deadline specified in the original document, no public hearing will be held on this rulemaking.

Dated: August 14, 1998.

Brian McLean,

Director, Acid Rain Division.

[FR Doc. 98–22653 Filed 8–21–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, and 69

[CC Docket Nos. 96–45 and 97–160; DA 98–1587]

Model Platform Development

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission stated that it would select a federal mechanism to calculate the forward-looking economic cost of non-rural carriers serving rural, insular, and high cost areas. The Commission determined that it would select the ''platform'' (fixed assumptions and algorithms) of the mechanism in one stage, and that it would select other parts of the mechanism, including all input values, in a second stage. Three models have been submitted to the Commission for consideration as the platform for the federal mechanism: the Benchmark Cost Proxy Model (BCPM), the HAI Model (HAI), and the Hybrid Cost Proxy Model (HCPM). In an effort to move towards a result that combines the best ideas of all parties considering these complex issues, this document seeks comment on approaches to a model platform that combine specific aspects from the customer location and outside plant modules of the models under consideration.

DATES: Comments are due on or before August 28, 1998 and reply comments are due on or before September 11, 1998.

ADDRESSES: One original and six copies of all comments and reply comments should be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. All filings should reference CC Docket Nos. 96–45 and 97–160, and DA 98–1587. Parties also may file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html> and <ckeller@fcc.gov>. Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is Docket No. 96–45. Parties not submitting their comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd, Accounting Policy Division, 2100 M Street, N.W., Room 8606, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding (including the lead docket number in this case, Docket No. 96–45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Chuck Keller, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 or Jeff Prisbrey, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on August 7, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554. An electronic copy of the complete

document also may be found on the Commission's Universal Service Web Page at <www.fcc.gov/ccb/universal__service/da981587.pdf>.

Background

1. In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission stated that it would select a federal mechanism to calculate the forward-looking economic cost of non-rural carriers serving rural, insular, and high cost areas. The Commission determined that it would select the ''platform'' (fixed assumptions and algorithms) of the mechanism in one stage, and that it would select other parts of the mechanism, including all input values, in a second stage. Three models have been submitted to the Commission for consideration as the platform for the federal mechanism: the Benchmark Cost Proxy Model (BCPM), the HAI Model (HAI), and the Hybrid Cost Proxy Model (HCPM). These models have been subject to extensive review by Commission staff and outside parties, and thousands of pages of comments have been filed regarding their relative merits and problems. Recent *ex parte* meetings between Commission staff and the model sponsors suggest that certain areas of agreement now exist on the optimal approach to designing a platform for the federal mechanism. In an effort to move towards a result that combines the best ideas of all parties considering these complex issues, this document seeks comment on approaches to a model platform that combine specific aspects from the customer location and outside plant modules of the models under consideration.

Issues for Comment

2. In a *Further Notice of Proposed Rulemaking (Further NPRM),* 62 FR 4257 (August 7, 1997), the Commission raised the possibility that the platform for the federal mechanism may represent a synthesis of approaches from different sources. Such a synthesis would capitalize on the strengths of the algorithms and approaches of the models under consideration. As the Commission stated in the *Further NPRM,* the goal of this model development process is to determine the platform design components and input values that will most accurately estimate carriers' forward-looking economic costs. With this goal in mind, we note that a synthesis of the approaches taken in the models under consideration may result in a model platform with significant advantages over each of the individual models.

3. The algorithms that identify customer locations and design outside plant in each of the models under consideration are important in determining the estimated costs for a wire center or study area. One approach that might enhance the accuracy of a model's cost estimate would be a synthesis of HAI's geocoded customer location information, which identifies customer locations by latitude and longitude coordinates, BCPM's assumption that customers that cannot be located precisely are located along roads, HAI's clustering approach, and HCPM's outside plant algorithms, which are able to design outside plant directly, or nearly directly, to latitude and longitude coordinates. This approach could be combined with other aspects of BCPM, HAI, or HCPM to develop a complete model platform. While we seek comment on this possible synthesis and on the specific issues set out below, we note that the Commission may select as part of the federal mechanism other combinations of algorithms not described herein. We therefore also seek comment on any other combinations of algorithms on the record in this proceeding that they believe would most accurately estimate non-rural carriers' forward-looking economic costs of providing the supported services starting July 1, 1999.

4. *Customer Location Data.* HAI uses data provided by PNR Associates to identify customer locations by latitude and longitude (actual geocode data) and creates surrogate geocodes for those customer locations that cannot be identified (surrogate geocode data). HAI then uses an algorithm, also provided by PNR, to identify clusters of customers. BCPM and HCPM, on the other hand, identify customer locations using publicly available data about the number of customers in each Census Block. BCPM combines the Census block data about customer location with road network data, and places customers in microgrids based on the assumption that people are more likely to be located along roads. In the *Further NPRM,* the Commission requested comment on the availability, feasibility, and reliability of using geocode data to determine the distribution of customers in the federal mechanism. Many commenters from across the spectrum of the industry agree that geocode data that identify the actual geographic locations of customers are preferable to algorithms intended to estimate customer locations based on information such as census block data. Although comments on this issue have already been received, this document provides a final opportunity for parties to comment on how a model platform may use the most accurate customer location data available, which in some cases may be geocode data, in the most effective manner. We also seek comment on how the expenses for obtaining geocode data for high cost universal service mechanisms should be recovered.

5. As many commenters have noted, actual geocode data appear to be incomplete, particularly in low-density areas. A model, therefore, will have to make assumptions about where non-geocoded customers are likely to be located. Currently, the BCPM developers create surrogate geocodes on the assumption that those customers in a census block that cannot be geocoded are distributed along both the internal and peripheral roads in the Census block. HAI believes that a more accurate assumption would place surrogate geocodes along the boundary of that Census block. Another option would be to distribute surrogate geocodes randomly throughout an entire Census block, rather than just along its boundaries or roads. Although comments on this issue have already been received, this document provides a final opportunity for parties to comment on the algorithm or combination of algorithms that would locate most accurately those customers without actual geocodes, and on the empirical basis for such comments. If commenters propose a different approach than one of those described above, we seek detailed comments on how such an approach should be implemented.

6. *Grouping Customers.* After determining where customers are located using actual or surrogate geocodes, a model platform must group customers into serving areas to design feeder and distribution plant efficiently to those customers. In this document, we consider a model platform that groups customers using a clustering approach because it appears to have advantages over gridding approaches. HAI has placed the computer code for its clustering algorithm on the record in this proceeding. We are also releasing a clustering algorithm and a set of cluster outputs generated from sample, surrogate geocode data. These clusters were generated using a clustering algorithm, developed by Commission staff, that differs somewhat from the clustering algorithm used in HAI. We seek comment on the relative merits of HAI's clustering algorithm and the Commission staff's clustering algorithm described in the ''Test Data'' section, below. We also intend that parties will use these cluster outputs to test the

various algorithms for designing distribution and feeder plant that are discussed herein.

7. *Designing Distribution and Feeder Plant.* After identifying groups of customers, a model must design distribution plant from the digital loop carrier (DLC) or serving area interface (SAI) to the customers, and feeder plant from the central office to the DLC or SAI. In order to design distribution plant, both BCPM and HAI create square or rectangular distribution areas and assume that the customers in each group are uniformly spread throughout the distribution areas. While these approaches create a predictable pattern of customer lots to which the models may design distribution plant, both also appear to distort the actual locations of customers when such locations can be identified with specificity. HCPM appears to be capable of designing plant with less distortion to customer locations. By reducing the size of its microgrids, HCPM can associate those latitude and longitude coordinates of each customer with a small microgrid (the version that is currently available uses grids 360 feet on each side). With customers grouped by a clustering algorithm, HCPM can build loop plant directly to individual microgrids in which customers are located. Thus, HCPM could build plant directly to every customer with an error of no more than a few hundred feet from the actual or surrogate geocode specified for any individual customer. We seek comment on a model that synthesizes this approach with the use of geocode data and a clustering algorithm. We also seek comment on the appropriate microgrid size to utilize in building distribution plant to latitude and longitude coordinates, and on the methods used by HCPM to subdivide microgrids into lots.

8. The feeder modules of both HAI and BCPM use a modified ''pine tree'' algorithm that deploys main feeder routes in each of four quadrants surrounding the central office switch, with subfeeder routes connecting each serving area interface to the closest main feeder. In effect, HAI and BCPM build an individual subfeeder route to nearly every serving area (or cluster). The feeder module of HCPM allows for more sharing among subfeeder routes by using a modified ''spanning tree'' algorithm. The spanning tree algorithm finds the minimum distance necessary to connect a set of remote locations to a central point. As applied to feeder plant, this algorithm connects SAIs to the switch. HCPM has modified the spanning tree algorithm to consider explicitly the amount of traffic that must be carried and factors such as the costs of cable and structures. We seek comment on these different approaches to designing feeder plant, including on the feeder algorithm that should be used if the Commission also adopts a model platform that includes HCPM's distribution algorithm.

9. *Test Data.* As noted above, to enable parties to evaluate fully the synthesis discussed herein, particularly the HCPM distribution and feeder algorithm, the Bureau has made available on the Commission's World Wide Web site a set of sample geocode data and customer clusters, and the clustering algorithm used to generate those clusters. In addition, an interface that converts the output of the HCPM clustering algorithm to an appropriate input for the HCPM distribution and feeder algorithms has been placed on the public record. These latter algorithms overlay a grid on top of each cluster, and then assign each customer location in the cluster to a microgrid cell within the grid for the purpose of building distribution plant. A similar interface could be used for HAI's cluster data point outputs, or any other set of clustering outputs. The interface and test data are available via the World Wide Web at http://www.fcc.gov/Bureaus/Common__Carrier/Other/hcpm. The sample geocode data represent points randomly distributed within the census blocks of several wire centers. Groups of the sample geocode data have been identified according to a clustering algorithm developed by Commission staff. By making a set of sample geocode points publicly available and grouping them into clusters, we hope to facilitate evaluation and analysis of this particular synthesis. We note that these data could also be used to evaluate other potential approaches.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements and Telephone.

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carriers.

Federal Communications Commission.

James D. Schlichting,

Acting Chief, Common Carrier Bureau.

[FR Doc. 98–22474 Filed 8–21–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 63, No. 163

Monday, August 24, 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.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Accessibility Standards for Electronic and Information Technology

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of intent to establish advisory committee.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) announces its intent to establish an Electronic and Information Technology Access Advisory Committee (Committee) to make recommendations for accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. The Access Board requests applications for representatives to serve on the Committee.

DATES: Applications should be received by September 23, 1998.

ADDRESSES: Applications should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447. Applications may also be sent via electronic mail to the Access Board at the following address: wakefield@access-board.gov.

FOR FURTHER INFORMATION CONTACT: Doug Wakefield, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 39 (Voice); (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication N–01 (Electronic and Information Technology Access Advisory Committee notice). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication N–01. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (http://www.access-board.gov/notices/eitaac.htm).

Background

On August 7, the President signed into law the Workforce Investment Act of 1998, which includes the Rehabilitation Act Amendments of 1998. Section 508 of the Rehabilitation Act Amendments requires that when Federal departments or agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows Federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by Federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the department or agency. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal department or agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities.[1]

Section 508 was originally added to the Rehabilitation Act in 1986. (29 U.S.C. 794d). It required the Secretary of Education and the Administrator of the General Services Administration to develop and establish guidelines for Federal agencies for electronic and information technology accessibility and required that such guidelines be revised, as necessary, to reflect technological advances or changes.[2] Section 508 also required each Federal agency to comply with the guidelines. However, there was no enforcement mechanism to provide for compliance. The changes to section 508 contained in the Rehabilitation Act Amendments of 1998 were designed to strengthen current law.

Access Board Responsibilities

Section 508(a)(2)(A) of the Rehabilitation Act Amendments of 1998 requires the Architectural and Transportation Barriers Compliance Board (Access Board)[3] to publish standards setting forth a definition of electronic and information technology and the technical and functional performance criteria necessary for accessibility for such technology. The standards are required to be published by February 7, 2000.

The definition of electronic and information technology is required to be consistent with the definition of information technology in section 5002(3) of the Clinger-Cohen Act of 1996. (40 U.S.C. 1401(3)). Information technology under that law means ''any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information'' by a Federal agency.

In developing its standards, the Access Board is required to consult with

[1] Section 508 does not apply to national security systems, as that term is defined in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

[2] On January 30, 1991 the General Services Administration issued Bulletin C–8 as part of the Federal Information Resources Management Regulations (FIRMR). In 1996 the FIRMR was eliminated.

[3] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; the General Services Administration; and the United States Postal Service.

various Federal agencies,[4] the electronic and information technology industry, and appropriate public or nonprofit agencies or organizations, including organizations representing individuals with disabilities. The Access Board is also required to periodically review and, as appropriate, amend the standards to reflect technological advances or changes in electronic and information technology. The General Services Administration and the Access Board are required to provide technical assistance to individuals and Federal departments and agencies concerning the requirements of section 508.

Other Section 508 Requirements

Section 508(a)(3) provides that within six months after the Access Board publishes its standards, the Federal Acquisition Regulatory Council is required to revise the Federal Acquisition Regulation, and each Federal department or agency is required to revise the Federal procurement policies and directives under its control to incorporate the Access Board's standards.[5]

Section 508(a)(4) provides that if a Federal department or agency determines that compliance with the standards imposes an undue burden, any documentation by the department or agency supporting a procurement shall explain why compliance creates an undue burden. Additionally, when it is determined that compliance with the standards imposes an undue burden, the Federal department or agency shall provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.[6]

Section 508(a)(6)(A) states that when the Federal government provides access to the public to information or data through electronic and information technology, a Federal department or agency is not required to make equipment available or to purchase equipment at a location other than that where the electronic and information technology is provided to the public. Also, specific accessibility-related software or the attachment of specific accessibility-related peripheral devices are not required to be installed at workstations of Federal employees without disabilities.[7]

Section 508(c) provides that by February 7, 1999, each Federal department or agency shall evaluate the extent to which the electronic and information technology of the department or agency is accessible to and usable by individuals with disabilities and submit a report containing the evaluation to the Attorney General.

Section 508(d) provides that by February 7, 2000, the Attorney General shall prepare and submit to the President a report containing information on and recommendations regarding the extent to which the electronic and information technology of the Federal government is accessible to and usable by individuals with disabilities. By August 7, 2001, and every two years thereafter, the Attorney General shall submit to the President and Congress a report containing information on and recommendations regarding the state of Federal department and agency compliance with the requirements of section 508, including actions regarding individual complaints.

Section 508(f) provides that beginning August 7, 2000, any individual with a disability may file a complaint alleging that a Federal department or agency fails to comply with section 508 in providing accessible electronic and information technology.[8] Complaints shall be filed with the Federal department or agency alleged to be in noncompliance. The Federal department or agency receiving the complaint shall apply the complaint procedures established to implement section 504 of the Rehabilitation Act for resolving allegations of discrimination in a federally conducted program or activity.

Electronic and Information Technology Access Advisory Committee

The Access Board will begin the process of developing its accessibility standards by establishing an Electronic and Information Technology Access Advisory Committee (Committee). The establishment of the Committee is in the public interest and will assist the Board in meeting its obligation for broad consultation with Federal agencies, the electronic and information technology industry, organizations representing individuals with disabilities, and others in the development of the standards.

The Committee will make recommendations to the Access Board on issues such as:

- types of electronic and information technologies to be covered by the standards;
- barriers to the use of such technologies by persons with disabilities;
- solutions to such barriers, if known, and research on such barriers;
- methods for evaluating accessibility of such technologies; and
- contents of the standards.

To assist in developing the standards, the Board is interested in obtaining relevant documents on access to electronic and information technology. For example, on February 3, 1998, the Access Board published guidelines under section 255(e) of the Telecommunications Act for accessibility of customer premises equipment and telecommunications equipment. (36 CFR Part 1193). Portions of those guidelines may be appropriate for inclusion in the section 508 standards. Also, portions of the ADA Accessibility Guidelines on reach ranges (4.2.5 and 4.2.6) are applicable to fixed equipment control consoles and operable parts. (36 CFR Part 1191).

In addition to the above documents, the General Services Administration and the Department of Education have developed guidelines and other documents for accessible hardware and software. Guidelines for creating accessible World Wide Web pages have been created by several entities. These documents may provide a useful starting point for the development of electronic and information technology standards. The Board is interested in obtaining any other relevant documents that may be of assistance in developing standards.

The Committee will be expected to present a report with its recommendations to the Access Board within six months of the Committee's first meeting. The Access Board requests applications for representatives of the following interests for membership on the Committee:

- Federal agencies and Federal contractors;
- the electronic and information technology industry;
- organizations representing the access needs of individuals with disabilities; and
- other persons affected by these accessibility standards.

[4] The Access Board is required to consult with the Secretary of Education, the Administrator of General Services, the Secretary of Commerce, the Chairman of the Federal Communications Commission, the Secretary of Defense, and the head of any other Federal department or agency that the Access Board determines to be appropriate.

[5] Whenever the Access Board revises its standards, the Council is required to revise the Federal Acquisition Regulation, and each appropriate Federal department or agency is required to revise its procurement policies and directives within six months to incorporate the revisions.

[6] Section 508(a)(1)(B).

[7] Section 508(a)(6)(B).

[8] This provision applies only to electronic and information technology that is procured by a Federal department or agency after August 7, 2000.

The number of Committee members will be limited to effectively accomplish the Committee's work and will be balanced in terms of interests represented. Organizations with similar interests are encouraged to submit a single application to represent their interest. Although the Committee will be limited in size, there will be opportunities for the public to present written information to the Committee, participate through subcommittees, and to comment at Committee meetings.

Applications should be sent to the Access Board at the address listed at the beginning of this notice. The application should include the representative's name (and an alternate), title, address and telephone number; a statement of the interests represented; and a description of the representative's qualifications, including engineering, technical and design expertise and knowledge of making electronic and information technology accessible to individuals with disabilities.

Committee members will not be compensated for their service. The Access Board may, at its own discretion, pay travel expenses for a limited number of persons who would otherwise be unable to participate on the Committee. Committee members will serve as representatives of their organizations, not as individuals. They will not be considered special government employees and will not be required to file confidential financial disclosure reports.

After the applications have been reviewed, the Access Board will publish a notice in the **Federal Register** announcing the appointment of Committee members and the first meeting of the Committee. The first meeting of the Committee is tentatively scheduled for October 15–16, 1998 in Washington, DC. The Committee will operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. app 2. Committee meetings will be held in Washington, DC. Each meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least 15 days in advance of the meeting. Records will be kept of each meeting and made available for public inspection.

Thurman M. Davis, Sr.,

Chair, U.S. Architectural and Transportation Barriers Compliance Board.

[FR Doc. 98–22758 Filed 8–21–98; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Tuesday and Wednesday, September 8–9, 1998 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, September 8, 1998

11:00 a.m.–Noon
Planning and Budget Committee
1:30 a.m.–3:00 p.m.
Technical Programs Committee
3:00–5:00 p.m.
Committee of the Whole—Speaker on Technology and Accessibility
Speaker—Gregg C. Vanderheiden, Ph.D., Professor—Human Factors, Department of Industrial Engineering, University of Wisconsin, Director—Trace Research & Development Center

Wednesday, September 9, 1998

9:00–10:30 a.m.
Committee of the Whole—ADA Rulemaking (Closed Meeting).
10:30 a.m.–Noon
Technical Programs Committee (continued)
1:30 p.m.–3:30 p.m.
Board Meeting

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items. Specific voting items are noted next to each committee report.

Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the July 15, 1998 Board Meeting.
- Planning and Budget Committee Report—Agency Goals, Fiscal Years 1998 and 1999 Status.
- Technical Programs Committee Report—Status Report on Projects and Interactive Transaction Machines Research.

Closed Meeting

- Committee of the Whole Report—ADA Rulemaking.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98–22590 Filed 8–21–98; 8:45 am]

BILLING CODE 8150–01–P

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations and Additional Releases

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on August 6, 1998, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Peter Voth, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457. The public may obtain an electronic copy of the complete document-by-document determinations by contacting <Eileen__Sullivan@jfk-arrb.gov>.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On August 6, 1998, the Review Board made formal determinations on records it reviewed under the JFK Act.

Notice of Formal Determinations

8 Church Committee Documents: Postponed in Part until 05/2001
69 Church Committee Documents: Postponed in Part until 10/2017
10 CIA Documents: Postponed in Part until 05/2001
636 CIA Documents: Postponed in Part until 10/2017
140 FBI Documents: Postponed in Part until 10/2017
1 HSCA Document: Postponed in Part until 10/2003

11 HSCA Documents: Postponed in Part until 10/2017
25 JCS Documents: Postponed in Part until 10/2017
2 JFK Library Documents: Postponed in Part until 10/2017
2 LBJ Library Documents: Postponed in Part until 10/2017
5 Pike Committee Documents: Postponed in Part until 10/2017
2 State Department Documents: Postponed in Part until 10/2017
6 US ARMY (Califano) Documents: Postponed in Part until 10/2017
341 US ARMY (IRR) Documents: Postponed in Part until 10/2017

Notice of Other Releases

After consultation with appropriate Federal agencies, the Review Board announces that documents from the following agencies are now being opened in full: 44 Church Committee documents; 1 DIA documents; 1767 FBI documents; 134 JCS documents; 4 JFK Library documents; 3 LBJ Library documents; 1 NARA–WC documents; 16 Office of the Secretary of Defense documents; 1 State Department document; 256 U.S. Army (Califano) documents; 689 U.S. Army (IRR) documents.

Dated: August 14, 1998.

Laura A. Denk,

Executive Director.

[FR Doc. 98–22482 Filed 8–21–98; 8:45 am]

BILLING CODE 6118–01–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Sunshine Act Meeting Notice, 63 Fed. Reg. 43904 (1998).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE OPEN MEETING: August 26, 1998, 2:00 p.m., ARRB, 600 E Street, NW, Washington, DC.

CHANGES IN THE MEETING: Open meeting rescheduled for August 26, 1998, 1:30 p.m., ARRB, 600 E Street, NW, Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

Laura Denk,

Executive Director.

[FR Doc. 98–22729 Filed 8–20–98; 11:16 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38–98]

Foreign-Trade Zone 226—Atwater, CA; Request for Export Manufacturing Authority Pacesetter Industries, Inc. (Modular Buildings)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Merced County, California, grantee of FTZ 226, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Pacesetter Industries, Inc. (Pacesetter), for the manufacture of modular buildings under FTZ procedures for export within FTZ 226. It was formally filed on August 12, 1998.

Pacesetter operates a 500,000 square-foot facility (600 employees) within FTZ 226–Site 1A (Castle Airport) for the manufacture of modular buildings (HTSUS heading 9406) for the U.S. market and export. This application requests authority to allow Pacesetter to conduct manufacturing under FTZ procedures for export of modular building systems. Components purchased from foreign sources pursuant to current and future export contracts may include dimensional lumber, plywood, chipboard, flooring, other wood products, cabinets, moldings, furniture, fasteners, ceramic bathroom fixtures, shelving, cooking appliances, refrigerators, temperature control units, pipe hardware, roofing tiles, and glass windows (none of the lumber products which would be imported under FTZ procedures would be from Canadian sources). Foreign-sourced components are expected to comprise 10 to 30 percent of the finished products' value. The duty rates on the imported components currently range from free to 8.0 percent. The foreign-sourced products would be admitted to FTZ 226 under privileged foreign status (19 CFR § 146.41). U.S.-origin inputs may include steel plates, steel pipes and tubes, assorted steel accessories, fasteners, various wood products, bentwood and other furniture, shelving, building adhesives, paints, tapes, sand, asphalt, metal doors, lights and switches, insulation, plastic tubes, oxygen, acetylene, argon, and ''prefabricated structure components.'' All modular building products made under FTZ procedures would be exported.

FTZ procedures would exempt Pacesetter from Customs duty payments on the foreign components used in export activity. The application indicates that the savings from FTZ procedures would help to improve the facility's international competitiveness. In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 8, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 23, 1998).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 12, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–22665 Filed 8–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits For Preliminary Results of New Shipper Review.

EFFECTIVE DATE: August 24, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Strollo, Laurel LaCivita or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0648, (202) 482–4236 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

Background

On March 27, 1998, the Department of Commerce (the Department) received a request from Ningbo Nanlian Frozen Foods Company, Ltd. (Ningbo Nanlian) for a new shipper antidumping administrative review of freshwater crawfish tail meat. On May 8, 1998, the Department published its initiation of this new shipper review covering the period of September 1, 1997 through March 31, 1998 (63 FR 25449).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China, dated August 18, 1998, it is not practical to complete this review within the time limits mandated by section 751(a)(2)(B) of the Act.

Therefore, in accordance with section 751(a)(2)(B) of the Act, the Department is extending the time limits for the preliminary results 75 days to January 10, 1999. The final results continue to be due 90 days after the publication of the preliminary results.

Dated: August 18, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–22666 Filed 8–21–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium From Canada; Final Results of the Fifth (1996) Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On April 30, 1998, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the fifth administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada covering the period January 1, 1996 through December 31, 1996 (see *Pure Magnesium and Alloy Magnesium From Canada; Preliminary Results of the Fifth Countervailing Duty Administrative Reviews* (*Preliminary Results*), 63 FR 23728). We have completed these reviews and determine the net subsidy in each to be 2.78 percent *ad valorem* for Norsk Hydro Canada, Inc. (NHCI). We will instruct the U.S. Customs Service (Customs) to assess countervailing duties in this amount.

EFFECTIVE DATE: August 24, 1998.

FOR FURTHER INFORMATION CONTACT: Marian Wells or Rosa Jeong, AD/CVD Enforcement, Group 1, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230; telephone: (202) 482–6309 or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 355.22(a), these reviews cover only those producers or exporters of the subject merchandise for which reviews were specifically requested. Accordingly, these reviews cover only NHCI, a producer of the subject merchandise which exported pure and alloy magnesium to the United States during the review period.

On April 30, 1998, the Department published in the **Federal Register** the *Preliminary Results* of its fifth administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada (63 FR 23728). We invited interested parties to comment on the *Preliminary Results.* On June 1, 1998, case briefs were submitted by the Government of Québec (GOQ), and the petitioner, Magnesium Corporation of America (MAGCORP). The GOQ subsequently filed a rebuttal brief on June 8, 1998. The Department did not conduct a hearing for these reviews because none of the interested parties requested one.

These reviews cover the period January 1, 1996 through December 31, 1996 (the period of review or POR). The reviews involve one company (NHCI) and the following programs: Exemption from Payment of Water Bills, Article 7 Grants from the Québec Industrial Development Corporation (SDI), St. Lawrence River Environment Technology Development Program, Program for Export Market Development, the Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, and Transportation Research and Development Assistance Program.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA), effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. References to ''Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,'' (54 FR 23366, May 31, 1989) (''1989 Proposed Regulations''), which have been withdrawn, are provided solely for further explanation of the Department's countervailing duty practice.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Pure and alloy magnesium are currently classifiable under subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Secondary and granular magnesium are not included in the scopes of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada* (57 FR 6094, February 20, 1992).

Analysis of Programs

Based upon our analysis of the questionnaire responses and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Exemption from Payment of Water Bills

In the *Preliminary Results*, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	0.46

B. Article 7 Grants from the Québec Industrial Development Corporation

In the *Preliminary Results*, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	2.32

II. Programs Found Not to be Used

In the *Preliminary Results*, we found that NHCI did not apply for or receive benefits under the following programs:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- Export Development Corporation
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program.

We received no comments on these programs from the interested parties; therefore, we have not changed our findings from the *Preliminary Results.*

Analysis of Comments

In its June 1, 1998 case brief, Magcorp affirmed all of the Department's positions in the preliminary results of review.

Comment 1: Obligation of Department to Re-examine Specificity of Article 7 Assistance

In the event the Department continues to treat the Article 7 assistance as a nonrecurring grant, the GOQ argues that the Department must re-examine whether the assistance was specific. In particular, the Department is obliged to evaluate, according to the GOQ, in each administrative review the countervailability of a program previously determined to be de facto specific, regardless of whether the parties have provided new information. The Department may not rely, as it did in the *Preliminary Results*, on a de facto specificity determination made in the original investigations.

DOC Position

Just as it does not revisit prior determinations that a program is not specific, it is the Department's policy not to revisit prior determinations that a program is specific, absent the presentation of new facts or evidence (see e.g., *Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order (Carbon Steel Wire Rod from Saudi Arabia)*, 59 FR 58814 (November 15, 1994); *Final Results of the First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada (First Magnesium Reviews)*, 62 FR 13857 (March 24, 1997); *Final Results of the Second Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada (Second Magnesium Reviews)*, 62 FR 48607 (September 16, 1997); and *Final Results of the Third Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada (Third Magnesium Reviews)*, 62 FR 18749 (April 17, 1997)). In the present reviews, no new facts or evidence have been presented which would lead us to question our original specificity determination for the POI.

Comment 2: Alternative Methodology for Determining Specificity of Article 7 Assistance

The GOQ continues to argue, as it has in previous reviews, that the Department should take an entirely different approach to the question of how to determine if a nonrecurring grant is disproportionately large, and therefore, specific. Rather than base its analysis on the entire amount of the grant at the time of bestowal, the GOQ maintains that the Department must instead examine only the portion of the benefit allocated—in accordance with the Department's standard allocation methodology—to the POR. It is this amount, in relationship to the portions of benefits allocated to the POR for all assistance bestowed under the program to all other enterprises, that must be determined to be disproportionate. Because the benefit attributable to the POR is the subsidy at issue, it is that amount, according to the GOQ, that must be found specific before it may be countervailed.

The GOQ also counters the Department's assertion in *Final Results of the Fourth Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada (Fourth Magnesium Reviews)*, 62 FR 48812, 48814 (September 17, 1997) that the GOQ has not cited a single determination by the Department or any other legal authority to support its position. The GOQ asserts that it has cited to the sixth administrative review of *Live Swine from Canada: Final Results of Countervailing Duty Administrative Review (Live Swine from Canada)*, 59 FR 12243, 12249 (March 16, 1994) as an example where the Department reexamined the countervailability of benefits found to be de facto specific in prior reviews.

DOC Position

As we have explained in previous final results (see *First Magnesium Reviews, Second Magnesium Reviews,* and *Third Magnesium Reviews)*, the GOQ is confusing the determination of specificity with the measurement of the subsidy.

The specificity determination and the measurement of the subsidy are two separate and distinct processes. The question of whether a nonrecurring grant is disproportionately large is based on an examination of the entire amount of the grant at the time of bestowal. If such a grant is found to be

disproportionately large, it is determined to be specific. (As a grant specifically provided, it is also at this point that the statutory requirements for countervailing the grant are met. See section 771(5) of the Act.) The separate and distinct second step is the measurement of the benefit. This step involves allocating portions of the grant over time. It is these portions of the grant which then provide the basis for the calculation of the ad valorem rate of subsidization. The portions of subsidies allocated to periods of time using the Department's standard allocation methodology are irrelevant to an examination of the actual distribution of benefits by the granting government at the time of bestowal.

The GOQ refers to the sixth review of the countervailing duty order on *Live Swine from Canada* as demonstrating that the Department has, as a matter of course, revisited its de facto specificity determinations from one segment of a proceeding to another. We continue to believe that the situation in the *Magnesium* reviews can be distinguished from the situation in *Live Swine from Canada.* As explained in the *First, Second, and Third Magnesium Reviews* the facts underlying our analyses in *Live Swine from Canada* differ from the situation here. Because those facts have not changed, we continue to make the identical distinction in the current reviews. For a full discussion of the distinction made between the revisiting specificity determinations in *Live Swine from Canada* and the *Magnesium* case, see *First Magnesium Reviews* at 13861, *Second Magnesium Reviews* at 48609, and *Third Magnesium Reviews* at 18753.)

Comment 3: Appropriate Time of Specificity Determination: ''Bestowal'' or Disbursement

The GOQ argues that although the Department concluded in the *First Magnesium Reviews* and the *Third Magnesium Reviews* that the proper time period for a specificity determination is the time of bestowal, the Department did not examine specificity in the original period of investigation (POI) at the time of bestowal. Rather, the Department examined specificity at the time of approval of the funds. The GOQ states that it is confused by the Department's policy to determine specificity at a time when no funds have been provided to NHCI. The GOQ argues that the time of bestowal for the purpose of a specificity determination should refer to the time of actual disbursement of funds, and should not refer to the time funds are approved by the granting authority.

DOC Position

We disagree with the GOQ's assertion that the Department's specificity analysis during the original investigations should have been conducted based on the time of actual disbursement of funds. We acknowledge that the specificity determination in the original investigations was based on the action of the granting authority, i.e., the GOQ, at the time of approval. However, we note that the Department uses the terms ''approval'' and ''bestowal'' interchangeably in this context. The time of bestowal or approval is the appropriate basis for the specificity determination because it most directly demonstrates whether a government has limited the benefits bestowed upon an enterprise or industry, or group thereof.

Comment 4: Relevance of New Information

The GOQ maintains that given the Department's responsibility to make a finding of specificity and countervailability based on the information relevant to the POR, the Department should consider any new assistance provided by SDI since the end of the original POI. To this end, the GOQ provided information on the Article 7 assistance extended up to, and including, the POR in a submission dated January 15, 1997. According to the GOQ, this new factual information was apparently considered irrelevant information by the Department.

DOC Position

As stated above, the proper time period for a specificity determination is the time of bestowal. Therefore, information submitted by the GOQ concerning assistance that was provided subsequent to the time of bestowal of the assistance granted to NHCI under Article 7 of the SDI Act is not relevant to the specificity determination. The remaining information presented by the GOQ on the Article 7 assistance granted prior to and including the time of bestowal of NHCI's Article 7 benefits is nearly identical to that utilized by the Department in its original specificity determination. Differences between the updated information on Article 7 provided by the GOQ and information used in the original specificity determination are sufficiently small so as not to compromise the original specificity determination. *Fourth Magnesium Reviews* at 48815.

Comment 5: Relevance of Article 9 Information

The GOQ argues that assistance under Article 9 should be included in the Article 7 specificity analysis because Article 9 was the predecessor of Article 7 and the provisions of Article 9 functioned basically the same as those of Article 7.

DOC Position

We disagree. The GOQ did not provide any information which would allow us to make a determination on whether Article 9 and Article 7 should be considered integrally linked or otherwise considered a single program for purposes of our specificity analysis (see Section 355.43(b)(6) of the 1989 Proposed Regulations). Information on the record in these proceedings with respect to Article 9 consists only of a statement by the GOQ in its case brief that Article 9 was the predecessor of Article 7. This is an insufficient basis to determine that the two programs should be treated as one.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1996 through December 31, 1996, we determine the net subsidy for NHCI to be 2.78 percent ad valorem. We will instruct Customs to assess countervailing duties in this amount for all entries of NHCI's merchandise during this period. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties of 2.78 percent of the f.o.b. invoice price on all shipments of subject merchandise from NHCI, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Consequently, the requested review will normally cover only those companies specifically named (19 CFR 355.22(a)). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be

collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except NHCI are unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company, except from Timminco Limited (which was excluded from the order in the original investigations). Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the administrative reviews completed for the most recent POR, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. See *Fourth Magnesium Reviews.* This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, countervailing duties will be assessed on any entries during the period January 1, 1996 through December 31, 1996, for all non-reviewed companies at the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: August 18, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–22664 Filed 8–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050198C]

Small Takes of Marine Mammals Incidental to Specified Activities; Tatoosh Island, WA Storage Tank Removal Project

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of California sea lions, Pacific harbor seals, and Steller sea lions by harassment incidental to removing three underground storage tanks (USTs) and one or two above-ground storage tanks (ASTs) at the Cape Flattery Light Station on Tatoosh Island, Callam County, WA. has been issued to the U.S. Coast Guard's Civil Engineering Unit, Oakland, CA (USCG).

DATES: This authorization is effective from August 31, 1998, through April 29, 1999.

ADDRESSES: A copy of the application and a list of references used in this document may be obtained by writing to the Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Brent Norberg, Northwest Regional Office at 206–526–6733.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce 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 either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' ...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.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 27, 1998, NMFS received a request from the USCG for authorization to take small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and Steller sea lions (*Eumetopias jubatus*) by harassment incidental to removing three USTs and one or two ASTs at the Cape Flattery Light Station on Tatoosh Island, Callam County, WA.

The expected impact on marine mammals will be from the noise created by the arrival and departure of heavy-lift, tandem-rotor helicopters. Heavy-lift helicopters will be used to sling equipment and materials to and from the project. The most common heavy-lift helicopters commercially available in the Pacific Northwest are the Boeing 234 Chinook and Vertol 107–II.

Large equipment and materials will be slung 30 to 50 ft (9.1 to 15.2 m) below the helicopter, depending upon the load's dynamics. Personnel, small equipment, and supplies will be carried

internally. Materials removed from the site will include two 500–gallon (1,892.5–ltr) USTs, a 1,000–gallon (3,785–ltr) UST, contaminated water (estimated at 2,000 gallons (7,570 ltrs), contaminated soil (estimated at 15 cubic yards (11.5 m^3), a 33,000–gallon (124,905–ltr) AST, and possibly a 2,000–gallon (7,570–ltr) AST.

Removal of the USTs and ASTs will take place over a 3-week period, commencing on or about September 1, 1998. During approximately 4 days of work during that 3-week period, helicopters will make approximately 23 trips to and from the site. It should be noted that this activity is required by 40 CFR part 280 subpart G, Out-of-Service UST Systems and Closure and is necessary to protect the environment from leaking UST/ASTs.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on June 4, 1998 (63 FR 30476), and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from one Federal agency. Information on the activity, the authorization request, and expected impact on marine mammal species, not subject to reviewer comments, can be found in the proposed authorization notice and is not repeated here.

Comment 1: The Marine Mammal Commission (MMC), noting that a biological observer would be required to observe the closest marine mammal haulout whenever helicopters entered or left Tatoosh Island, recommended that a sufficient number of qualified observers be used to verify that no more than the authorized number of animals are harassed and that the effects are negligible.

Response: NMFS disagrees with this recommendation. Because there are 4 haulouts on Tatoosh Island that are used by the three species (two located on the eastern side of the island and two to the northwest of the island) and because the distance between each pair of haulouts is large, it is unlikely that more than one or two haulouts will be affected during an individual flight. The affected haulout(s) will be predicted in advance of the flight, and the observer will monitor the haulout closest to the flight path. With an estimated 23 round-trip flights during the 4 planned flight days, a single observer should be able to systematically survey potentially affected haulouts and, based upon the effects at the haulout most likely to be impacted, to estimate the total taking by helicopter activities.

In addition, it is highly unlikely that the estimated take under the MMPA will be reached since the USCG estimated ''worst case scenario'' is for the highest number of animals observed on the haulouts and for all animals to leave the shore during all overflights, even when some distance from the flight path. The total number of incidental harassment takes of seals and sea lions is estimated by the applicant at 12,650. The number by species is: Stellers, 6,900; harbor seal, 4,600; and California sea lions, 1,150. This estimate uses 550 animals, the maximum potentional number, and 23 flights. NMFS concurs with the USCG that the number should be significantly less because each flight should not have the same impact on each haulout. It is also likely that, as the noise impacts continue, animals will temporarily leave the haulout for other haulouts rather than return only to be driven away again.

Of more concern to NMFS than determining the number of possible harassment takes remain within quota is to ensure that behavioral observations are conducted for all three potentially affected pinniped species, especially Steller sea lions.

Comment 2: The MMC recommended that the work is conducted as scheduled to avoid the seal and sea lion pupping and molting seasons.

Response: NMFS has made a determination that the U.S. Coast Guard activity would have no more than a negligible impact on affected marine mammals based, in part, on the activity not taking place during the pupping and molting seasons. Harbor seal pupping along the coast of Washington occurs in May/June, and the molting season occurs between onset of pupping and 2 to 3 months afterward (Bigg, 1981), averaging about 6 weeks after molting (NMFS, 1992). Harbor seal molting takes approximately 2 months to complete (Stutz, 1967). Pups are weaned at approximately 4 weeks, and nursery sites are then abandoned.

During the pupping and nursing periods, pups could be injured as adults move rapidly to the water or pups become separated from their mothers. Mother-pup separation or desertion is considered a significant cause of pup mortality in harbor seals. As the USCG activity will not take place earlier than September 1, no impact to breeding seals and unweaned young will occur.

During the molting season, seals are generally hauled out for a long period of time, apparently to enhance hair growth by warming of the skin. The seals' metabolic rate is also decreased during molting. The effect of disturbance during the molting season has not been assessed, but could decrease the fitness of the seal, perhaps making it more susceptible to other mortality factors (Stokes and Jones, 1989). However, NMFS believes that it appears to be minor when compared to the possible effects of disturbances during the pupping and nursing season, and NMFS has concluded that harbor seals are evolutionarily adapted to return to the water during molting without incurring physical or physiological harm. In addition, most molting will have been completed by that time. However, in order to protect breeding harbor seals, the IHA has been written to require work to be completed before May 1, 1999.

Few Californa sea lion females and no pups have been sighted in Washington State waters, so the breeding stock of this species will not be affected by the USCG activity. For Steller sea lions the nearest breeding sites are in British Columbia and Oregon (NMFS, 1992).

Description of Marine Mammals Affected by the Activity

California sea lions, Pacific harbor seals, and Steller sea lions are the three species expected to be impacted by the UST and AST removal. Information on these species can be found in the notice of proposed authorization (63 FR 30476, June 4, 1998) for this activity. Additional information can be found in Barlow *et al.* (1997).

Potential Effects on Marine Mammals

The noise from the helicopters passing overhead is likely to startle any pinnipeds ashore at the time and result in their leaving the land for the water. Safety concerns will dictate the direction of arrival and departure of helicopters, but it is likely that many flights will be sufficiently close to one or more haulouts that pinnipeds ashore at the time will flee to the water. Hovering, which causes the most noise, will be limited to the time it takes to unsling the equipment at the UST/AST removal site on the top of the island. Except for helicopter operations, all other activities associated with the UST/AST removals will take place either on the mainland or on top of the island and should have no effect on the seals and sea lions.

Seals and sea lions haul out onto dry land for various biological reasons, including sleep, predator avoidance, and thermoregulation. Startle response in harbor seals can vary from a temporary state of agitation by a few individuals to the complete abandonment of the beach area by the entire colony. Normally, when harbor seals are frightened by noise or by the

approach of a boat, plane, human, or potential predator, they will move rapidly to the relative safety of the water. Depending upon the severity of the disturbance, seals may return to the original haulout site immediately, stay in the water for some length of time before hauling out, or haul out in a different area. When disturbances occur late in the day, harbor seals may not haul out again until the next day.

Mitigation

Because access to Tatoosh Island is limited to small boats and foot traffic, use of helicopters is the only identified means to remove the UST/ASTs. The USCG has scheduled the work to avoid the pupping and molting season for harbor seals.

To further protect seals and sea lions, NMFS will require helicopters to remain at the greatest altitude practicable prior to landing on Tatoosh Island, to attain the greatest altitude practicable at time of takeoff, and to avoid direct overflights of the haulouts.

Monitoring and Reporting

During any time that helicopter activities are undertaken, monitoring will be conducted by a minimum of one trained biologist who is approved in advance by NMFS. Observations will be made at the haulout site nearest the planned flight path of the helicopter. If neither seals nor sea lions are ashore at the time of the flight, observations will be made at the next nearest haulout site. The USCG will provide a report to NMFS within 120 days of the completion of the project. This report will provide dates and locations of operations, details of marine mammal sightings, including the number of pinipeds, by species and haulout location, that fled from the beach because of helicopter activities, the number returning subsequent to the disruption, and estimates of the amount and nature of all takes by harassment.

Consultation

Under section 7 of the Endangered Species Act, NMFS has completed consultation on the issuance of an incidental harassment authorization. NMFS has determined that the proposed activity and the issuance of an incidental harassment authorization to the USCG to incidentally harass Pacific harbor seals, California sea lions, and Steller sea lions is not likely to adversely affect any listed species under the jurisdiction of NMFS except the Steller sea lion which while it may be adversely affected, would not result in jeopardizing the continued existence of the stock.

Conclusions

NMFS has determined that the short-term impact of 4 days of helicopter flights over Tatoosh Island is expected to result at worst in a temporary reduction in utilization of the impacted haulout(s) as seals and sea lions leave the beach for the safety of the water. Helicopter activity is not expected to result in any reduction in the number of harbor seals, California sea lions, or Steller sea lions, and these species are expected to continue to occupy the same area. This behavioral change is expected to have no more than a negligible impact on the animals. Additionally, there will not be any impact on the habitat itself. Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of marine mammals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to the USCG for possible harassment of small numbers of California sea lions, Pacific harbor seals, and Steller sea lions, provided the mitigation, monitoring, and reporting requirements described in the authorization are undertaken.

Dated: August 17, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–22647 Filed 8–21–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081198E]

Gulf of Mexico Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of a public meeting; correction.

SUMMARY: The location for the teleconference public meeting of the Gulf of Mexico Fishery Management Council, which is scheduled for August 27, 1998, was published in the **Federal Register** on August 14, 1998. This document lists an addition to that public meeting notice.

DATES: The teleconference will be held Thursday, August 27, 1998. It will begin at 2:00 p.m. eastern standard time (EST) and continue until approximately 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

Correction

In the **Federal Register** issue of August 14, 1998, in FR Doc. 98–22028, on page 43678, in the second column, under **ADDRESSES**, in the fourth line, after ''TX'', add ''; and New Orleans, LA'', and in the third column, under **SUPPLEMENTARY INFORMATION**, at the end of the first paragraph, the following station is added to the list to read as follows:

Lousisiana Department of Wildlife and Fisheries, 1600 Canal Street, Room 301, New Orleans, LA; telephone: (504) 568–5614.

All other previously published information remains unchanged.

Dated: August 18, 1998.

Gary C. Matlock,

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

[FR Doc. 98–22629 Filed 8–19–98; 3:57 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080798A]

Endangered Species; Permits

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

ACTION: Issuance of scientific research permit 1159.

SUMMARY: Notice is hereby given that on July 27, 1998, NMFS issued scientific research permit 1159 to Robert L. Brownell, NMFS Southwest Fisheries Science Center, to take listed sea turtles for the purpose of scientific research subject to certain conditions set forth therein.

ADDRESSES: The application, permit, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room

13307, Silver Spring, MD 20910–3226 (301–713–1401); and Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

FOR FURTHER INFORMATION CONTACT: Michelle Rogers, F/PR3, 301–713–1401

SUPPLEMENTARY INFORMATION: Notice was published on June 19, 1998 (63 FR 33632), that an application had been filed by Robert L. Brownell, NMFS Southwest Fisheries Science Center, to take listed sea turtles as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

The applicant requested a 3-year scientific research permit to take listed sea turtles opportunistically during marine mammal research surveys in the eastern tropical Pacific. Authorization has been granted to take up to 400 turtles over the three year period to include the following species: olive ridley (*Lepidochelys olivacea*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and loggerhead (*Caretta caretta*). The turtles will be weighed, photographed, flipper tagged, blood sampled, and tissue sampled. Additionally, stomach lavage will be performed on captured turtles to identify prey items and up to 30 turtles will be outfitted with satellite transmitters. The purposes of the proposed research are to obtain data on the geographic distribution and stock assessment, migratory and dive behavior, and habitat needs and primary foraging areas of turtles at sea. Notice is hereby given that on July 27, 1998, NMFS issued permit 1159 authorized the above activities.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 13, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–22646 Filed 8–21–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Fall General Board Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at Embassy Suites in Alexandria, VA on October 14–15, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for Fall General Board Meeting.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–22562 Filed 8–21–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The C2 Advisory Panel Visit to EFX Meeting in support of the HQ USAF Scientific Advisory Board will meet at Langley Air Force Base and Hurlburt Air Force Base on September 17–18, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for C2 Advisory Panel Visit to EFX in support of the USAF Scientific Advisory Board.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–22563 Filed 8–21–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DoD.

ACTION: Notice of meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Global Positioning System (GPS) Vulnerability and Alternatives will meet to examine the vulnerabilities of the GPS on Navy and Marine Corps platforms and weapons systems. All sessions of the meeting will be devoted to briefings, tours, discussions and technical examination of information related to GPS vulnerabilities; the Department of the Navy's mitigation plans for platforms, weapons, communications, and intelligence systems as related to the projected threat; GPS modernization; and research, development, test, acquisition, and training activities to improve GPS-related military readiness and precision navigation capabilities. All sessions of the meeting will be closed to the public.

DATES: The meeting will be held on Tuesday, August 25, from 8:30 a.m. to 5:00 p.m.; Wednesday, August 26, from 8:30 a.m. to 5:00 p.m.; and Thursday, August 27, 1998, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Naval Research Laboratory, 4555 Overlook Avenue, SW, Washington, DC, on August 25; at the Applied Physics Laboratory at the Johns Hopkins University, Johns Hopkins Road, Laurel, Maryland, on August 26; and at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia, on August 27, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to briefings, tours and discussions involving technical examination of information related to vulnerabilities and deficiencies of the GPS on Navy and Marine Corps platforms and weapons systems. These briefings, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C.

App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1). Due to unavoidable delay in the administrative process of preparing for this meeting, the normal 15 day notice could not be provided.

Dated: August 19, 1998.

Ralph W. Corey,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 98–22731 Filed 8–21–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB review; Comment request

AGENCY: Department of Education.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 23, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: August 18, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Assessment of Educational Progress (NAEP) 1998–1999 Field Test, Long-Term Trend Assessment, and 1999–2000 Full Scale.

Frequency: Every two years.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 45,150.

Burden Hours: 39,130.

Abstract: The National Assessment of Educational Progress is mandated by 1994 legislation. The surveys and assessments allow NAEP to describe the educational attainment of students in grades 4, 8 and 12. Each assessment is designed to obtain comprehensive data on the knowledge, skills, concepts, understandings, and attitudes possessed by American students. This assessment will cover the subjects of math, reading, and science. The field test contains new cognitive items, and new and revised background questions to be field tested in mathematics and science. Cognitive items only will be field tested in reading. The field test is necessary to make certain that all of the materials for the 2000 NAEP are of high quality and meet rigorous content and psychometric standards. Also requested for clearance is the 1998–1999 long-term trend assessment for mathematics, science, reading, and writing which is identical to those used previously in 1986, 1990, 1992, 1994, and 1996.

[FR Doc. 98–22583 Filed 8–21–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, September 3, 1998, 6:00 p.m.—9:30 p.m.

ADDRESSES: Westminster City Hall, Lower-level Multi-purpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will accept input and prepare its first draft of the 1999 Work Plan, to be finalized and approved at a retreat in September.

2. The Board will consider a draft letter to the new Secretary of Energy regarding medical benefits for retired/disabled Rocky Flats workers, which emphasizes the importance of separating funding for retiree benefits from cleanup funding, and asks DOE to ensure the continuation of this funding once sites begin to close.

3. The Board will review prepared comments on the draft Surplus Plutonium Disposition Environmental Impact Statement.

4. The Board will consider forwarding a list of questions to DOE–RFFO, regarding Rocky Flats' preparedness for potential computer problems caused by the changing century. This list of questions was prepared by a local interest group working on the Year 2000 (Y2K) issue.

Public Participation: The meeting is open to the public. Written statements

may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on August 19, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–22670 Filed 8–21–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Meeting cancellation notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the cancellation of the open Environmental Management Site-Specific Advisory Board (EM SSAB), September 2, 1998, from 5:30 p.m.–9:00 p.m., at the U.S. Department of Energy Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada. This meeting was announced in the **Federal Register** on Friday, August 14, 1998 (63 FR 43692).

Issued at Washington, DC on August 19, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–22671 Filed 8–21–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–274–001]

Black Marlin Pipeline Company; Notice of Compliance Filing

August 18, 1998.

Take notice that on August 13, 1998, Black Marlin Pipeline Company (Black Marlin), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 (Tariff), effective January 1, 1999, the following tariff sheet:

Second Revised Sheet No. 200

Black Marlin states that by Order issued July 30, 1998 (July 30 Order) in the above-referenced docket, the Commission accepted and suspended for the maximum five-month suspension period, subject to refund and conditions, tariff sheets filed by Black Marlin on June 30, 1998, pursuant to Section 4(e) of the Natural Gas Act to effectuate changes to the rates and terms applicable to Black Marlin's jurisdictional services.

In compliance with ordering paragraph (B) of the July 30 Order, Black Marlin states that it is submitting a revised tariff sheet to reflect the deletion of the interruptible revenue sharing section from the index of the General Terms and Conditions of Black Marlin's Tariff in conformance with Black Marlin's proposal to eliminate the interruptible revenue sharing provisions from its Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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. 98–22620 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–718–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

August 18, 1998.

Take notice that on August 10, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP98–718–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new point of delivery to Washington Gas Light Company (WGL) in Montgomery County, Maryland, under Columbia's blanket certificate issued in Docket No. CP83–76–000 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.

Columbia states that the construction of the new delivery point has been requested by WGL to serve both residential and commercial customers. The estimated quantities of natural gas to be delivered at the new point of delivery is 3,500 Dth/day and 1,277,500 Dth/annually. Interconnection facilities will consist of installing a 4-inch tap, 3-inch meter, electronic measurement and approximately 410 feet of 4-inch inlet line to WGL. WGL has not requested an increase in its total firm entitlements in conjunction with this request. The estimated cost to construct this new point of delivery is $176,074 which includes ''gross up'' for income tax purposes. WGL will reimburse Columbia 100% of the total actual cost of the proposed construction.

Columbia states that the new point of delivery will have no effect on peak day and annual deliveries, that its existing tariff does not prohibit addition of new delivery points and that deliveries will be accomplished without detriment of disadvantage to its other customers and that the total volumes delivered will not

exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22612 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–328–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

August 18, 1998.

Take notice that on August 13, 1998, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed the following tariff sheet:

Sub Second Revised Sheet No. 156

East Tennessee states that this sheet is filed in compliance with the Commission's July 29, 1998 Letter Order in the above-referenced docket (July 29 Order). East Tennessee further states that in accordance with that Order, it has removed from the revised sheet language limiting shippers from designating more than one agent to make nominations for a particular contract. In accordance with the July 29 Order, East Tennessee requests an effective date of August 1, 1998.

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 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such protests must be filed as provided in 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 this 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 available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22624 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–719–000]

Koch Gateway Pipeline Company; Notice of Request under Blanket Authorization

August 18, 1998

Take notice that on August 11, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–719–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for approval to abandon and construct certain delivery facilities in St. Tammany Parish, Louisiana, under the blanket certificate issued in Docket No. CP82–430–000 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.

Koch Gateway proposes to upgrade a delivery lateral serving the City of Slidell on behalf of Louisiana Gas Service (LGS) a local distribution company. These facilities will satisfy LGS request for gas service under Koch Gateway's No-Notice Service effective on April 1, 1999. LGS estimates that maximum peak day volumes to be delivered at 18, 870MMBtu and average day volumes to be delivered at 2,000 MMBtu. Koch Gateway plans to abandon in place 1,200 feet of 3-inch pipeline, 1,770 feet of 4-inch pipeline, 1,760 feet of 6-inch pipeline and a meter station and install 875 feet of 6-inch pipeline, 1.87 miles of 8-inch pipeline and a meter station. The cost of the proposed upgrade is $1,300,000.

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. 98–22613 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–331–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

August 18, 1998.

Take notice that on August 13, 1998, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed the following tariff sheet:

Sub Second Revised Sheet No. 104

Midwestern states that this sheet is filed in compliance with the Commission's July 29, 1998, Letter Order in the above-referenced docket (July 29 Order). Midwestern further states that in accordance with that Order, it has removed from the revised sheet language limiting shippers from designating more than one agent to make nominations for a particular contract. In accordance with the July 29 Order, Midwestern requests an effective date of August 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in § 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 this 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 available

for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22625 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–030]

Montana Power Company; Notice Granting Late Intervention

August 18, 1998.

Take notice that on July 27, 1998, Source Giant Springs, Inc., filed a late motion to intervene. Granting late intervention will not unduly delay or disrupt the proceeding or prejudice any other party. Therefore, pursuant to Rule 214,[1] the late motion to intervene is granted, subject to the Commission's Rules and Regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22615 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–005]

Natural Gas Pipeline Company of America; Notice of Settlement

August 18, 1998.

Take notice that on August 12, 1998, Natural Gas Pipeline Company of America (Natural), tendered for filing a Stipulation and Agreement (Settlement) pursuant to Rule 602 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR Section 385.602.

Natural states that except for five (5) specified reserved issues on which the parties will comment, the Settlement represents a comprehensive resolution of all matters at issue in the proceeding which deals with natural's procedures for posting, auctioning, allocating and awarding firm capacity. natural also states that the comment dates agreed upon by the active participants in this matter are August 24 for initial comments and September 3 for reply comments. The comments are to include any input on the five (5) reserved issues.

Natural states that copies of the filing are being mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–431.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22616 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.214 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–310–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

August 18, 1998.

Take notice that on August 13, 1998, Natural Gas Pipeline Company of America (Natural), tendered for filing Substitute Fourth Revised Sheet No. 501 and Substitute Third Revised Sheet No. 506 to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective August 1, 1998.

Natural states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) order issued July 30, 1998 in Docket No. RP98–310–000 (the Order), which required Natural to modify its pro forma service Agreement and related tariff provisions governing discounting of rates.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP98–310–000.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective August 1, 1998, as specified in the Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22623 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–294–001]

Northern Border Pipeline Company; Notice of Compliance Filing

August 18, 1998.

Take notice that on August 12, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective August 1, 1998:

Substitute Third Revised Sheet Number 300F

The purpose of this filing is to comply with the Commission's letter order issued July 30, 1998 in Docket No. RP98–294–000. The Commission's July 30, 1998 letter order required that Northern Border delete the reference to Versions 1.0 and 1.1 in its tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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 persons 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. 98–22622 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–264–001]

Overthrust Pipeline Company; Notice of Tariff Filing

August 18, 1998.

Take notice that on August 13, 1998, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's July 29, 1998, letter order (the July 29 order) in Docket No. RP98–264–000, Overthrust Pipeline Company tendered for filing and acceptance, to be effective August 1, 1998, Substitute

Second Revised Sheet Nos. 37A, 78A, and 78B to First Revised Volume No. 1–A of its FERC Gas Tariff (Overthrust's tariff).

Overthrust states that the Commission stated in the July 29 order that Overthrust (1) failed to add GISB Standard 2.4.6 to its list of incorporated standards and (2) did not delete Standard 4.3.4 from this list. Overthrust states that as required by, and in compliance with, the July 29 order, Substitute Second Revised Sheet No. 78A has been revised by adding Standard 2.4.6—Version 1.2 to Section 29.4 while Standard 4.3.4—Version 1.0 has been deleted from Substitute Second Revised Sheet No. 78B.

Overthrust further explains that Section 4.5(a) on Substitute Second Revised Sheet No. 37A has been revised, as directed by the Commission, by adding the phrase ''to the public'' after the word ''accessible.'' This sentence, it is stated, now reads: Documents will be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. 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. 98–22619 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–283–001]

Ozark Gas Transmission System; Notice of Compliance Filing

August 18, 1998.

Take notice that on August 11, Ozark Gas Transmission, L.L.C. (formerly Ozark Gas Transmission System), submitted for filing as part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Third Revised Sheet No. 43

Ozark states that it is submitting this substitute tariff sheet to include Standard 4.3.5 of the Gas Industry Standards Board's (GISB) Version 1.2 Standards adopted by Order No. 587–G. Ozark proposes an August 1, 1998 effective date for this substitute sheet.

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 and Regulations. All such motions or protests must be filed as provided in 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. 98–22621 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–263–001]

Questar Pipeline Company; Notice of Tariff Filing

August 18, 1998.

Take notice that on August 13, 1998, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's July 29, 1998, letter order (the July 29 order) in Docket No. RP98–263–000, Questar Pipeline Company tendered for filing and acceptance, to be effective August 1, 1998, Substitute Second Revised Sheet Nos. 47A, 99B and 99C to First Revised Volume No. 1 of its FERC Gas Tariff (Questar's tariff).

Questar states that the Commission stated in the July 29 order that Questar (1) failed to add GISB Standard 2.4.6 to its list of incorporated standards and (2) did not delete Standard 4.3.4 from this list. Questar explains that as required by, and in compliance with, the July 29 order, Substitute Second Revised Sheet No. 99B has been revised by adding Standard 2.4.6.—Version 1.2 to Section 29.4 while Standard 4.3.4—Version 1.0 has been deleted from Substitute Second Revised Sheet No. 99C.

Questar further explains that Section 2.5(a) on Substitute Second Revised Sheet No. 47A has been revised, as directed by the Commission, by adding the phrase ''to the public'' after the word ''accessible.'' This sentence, it is stated, now reads: Documents will be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. 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. 98–22618 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–721–000]

Tennessee Gas Pipeline Company; Notice of Application for Abandonment

August 18, 1998.

Take notice that on August 12, 1998, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed an application pursuant to Section 7(b) of the Natural Gas Act and Sections 157.7(a) and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations for authorization to abandon in place, its Line 507F–2900 (1.6 miles of 6-inch diameter pipe) and associated piping which consists of approximately 200 feet of riser and platform piping located in East Cameron Block 67B, federal waters, Offshore, Louisiana.

These facilities were constructed pursuant to Tennessee's budget authorization under Docket No. CP66–353–000 (July 8, 1966) in order to access gas production from a platform owned by Newfield Exploration (Newfield). This line has been inactive since October 2, 1997, and there are no existing transportation agreement obligations to receive gas at this point. Further, Newfield has advised Tennessee that it intends to abandon and remove its entire platform sometime before September, 1998, that Newfield has no further use of Tennessee's facilities and Newfield has requested that Tennessee abandon its facilities in advance of the removal of the platform. Tennessee is requesting expeditious treatment of its application in order to meet Newfield's schedule.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein or if the Commission on its own review of the matter, finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If the Commission believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22614 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–99–003]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 18, 1998.

Take notice that on August 13, 1998, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed the following revised tariff sheets for inclusion in its FERC Gas Tariff:

Substitute Original Sheet No. 231
Substitute Original Sheet No. 232
Substitute Original Sheet No. 232A
Substitute Original Sheet No. 234
Substitute Original Sheet No. 235
Fourth Revised Sheet No. 323
Third Revised Sheet No. 405
Seventh Revised Sheet No. 405C
Substitute Original Sheet No. 560K
Substitute Original Sheet No. 574E

Tennessee states that the revised tariff sheets are filed in compliance with the Commission's July 29, 1998 Order in the above-referenced docket. Tennessee Gas Pipeline Company, 84 FERC 61,083 (1998). Tennessee states that the revised tariff sheets incorporate certain clarifications to its proposed Rate Schedule FT–BH under which Tennessee proposes to provide a new type of firm backhaul transportation service in addition to the firm backhaul service currently available under Tennessee's Rate Schedules FT–G, FT–GS, and FT–A and the General Terms and Conditions affected thereby. In accordance with the July 29 Order, Tennessee requests that these tariff sheets be deemed effective on August 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in 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 this 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 available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22617 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–716–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

August 19, 1998.

Take notice that on August 10, 1998, and supplemented on August 14, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck North Dakota 58501, filed in Docket No. CP98–716–000, a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to upgrade an existing meter and regulatory at an existing meter station in Mountrail County, North Dakota, under its blanket certificate issued in Docket No. CP82–487–000, *et al.*, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Williston Basin requests authorization to upgrade the Ross meter station by abandoning the existing 1-inch positive diaphragm meter and appurtenances and then installing a 2-inch positive rotary meter and

increasing the size of the regulatory orifice from ⅛ inch to ⅜ inch in diameter. Montana-Dakota Utilities Company (Montana-Dakota), a local distribution company, currently takes deliveries of natural gas at the Ross station and has requested that the gas measurement facilities be upgraded so it can commence service to Dakota Quality Grain for the operation of a grain dryer for the 1998 fall grain drying season. Williston Basin states that the current maximum daily delivery is 84 Mcf per day with an estimated maximum daily delivery of 554 Mcf per day after the upgrade.

Williston Basin says it provides service to Montana-Dakota through the Ross meter station under its Rate Schedules FT–1 and/or IT–1. Williston Basin reports that the total cost of the upgrade will be approximately $4,500 which will be 100% reimbursed to Williston Basin by Montana-Dakota.

Williston Basin asserts that the increase in the maximum daily delivery at the Ross meter station will have no significant effect on its peak day or annual requirements and it will still be able to accomplish deliveries without detriment or disadvantage to its other customers. Williston Basin states that its FERC Gas Tariff does not prohibit the proposed activity.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, 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. 98–22627 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

August 17, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Amendment of Exemption.

b. Project No.: 9922–006.

c. Date Filed: August 7, 1998.

d. Applicant: The City of Boulder, Colorado.

e. Name of Project: Lakewood Project.

f. Location: On the Lakewood Pipeline in the City of Boulder, Boulder County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Ms. Eva Busse, City of Boulder, P.O. Box 791, Boulder, CO 80306–0791, (303) 441–3266.

i. FERC Contact: Paul Shannon, (202) 219–2866.

j. Comment Date: October 1, 1998.

k. Description of Filing: The City of Boulder (Boulder) filed an application for amendment of exemption to install a 3,200-kW generating unit with a hydraulic capacity of 31 cubic feet per second (cfs) in the powerhouse of the Lakewood Project. Boulder is currently authorized to install a 1,500-kW generating unit with a hydraulic capacity of 18 cfs. Boulder indicates the larger generating unit will handle revised flow conditions though the Lakewood Pipeline which is scheduled to be upgraded in the near future. Boulder also proposes to eliminate the construction of the authorized flow control valve vault and surge tank on the Lakewood Pipeline.

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 Sections 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 is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22626 Filed 8–21–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6150–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Exclusions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Exclusion Determinations for New Non-road Spark-ignited Engines at and Below 19 Kilowatts, New Compression-ignited Engines at or Above 37 Kilowatts, New Marine Engines, and New On-road Heavy Duty Engines, EPA ICR Number 1852.01, Previous OMB Control Number 2060–0124, expiration date: 01/31/99, renewal. The ICR describes the nature of the information collection and its expected burden and cost; where

appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1852.01.

SUPPLEMENTARY INFORMATION:

Title: Exclusion Determination for New Nonroad Spark-ignited Engines At or Below 19 Kilowatts, New Compression-ignited Engines at or Above 37 Kilowatts, New Marine Engines, and New On road Heavy Duty Engines, EPA ICR Number 1852.01, Previous OMB Control Number 2060–0124, expiration date: 01/31/99. This is a request for extension of a currently approved collection.

Abstract: Some types of engines are excluded from compliance with current regulations. A manufacturer may make an exclusion determination by itself; however, manufacturers and importers may routinely request EPA to make such determination to ensure that their determination does not differ from EPA's. Only needed information such as engine type, horsepower rating, intended usage, etc., is requested to make an exclusion determination.

Responses to this collection are voluntary. The information is collected by the Engine Compliance Programs Group, Engine Programs and Compliance Division, Office of Mobile Sources, Office of Air and Radiation. Confidentiality to proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published at 63 FR 80 (4/27/98); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.6 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: engine manufacturers and importers.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 16.25 hours.

Estimated Total Annualized Labor Cost: $717.50.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. and OMB Control No. in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 18, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–22656 Filed 8–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6152–1]

Notice of Availability; Alternatives for New Source Review Applicability for Major Modifications Solicitation of Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; extension of comment period.

SUMMARY: The EPA is hereby extending by 45 days, the closing date of the public comment period regarding EPA's notice of availability published July 24, 1998 at 63 FR 39857. The original comment period was to close on August 24, 1998. The new closing date will be October 8, 1998. The EPA is soliciting comments on a specific alternative for determining the applicability of new source review (NSR) to modifications of major stationary sources under the prevention of significant deterioration and the nonattainment provisions of the Clean Air Act. This alternative would allow any source to legally avoid major NSR for a physical or operational change to an existing emissions unit by taking an enforceable temporary limit on an emissions unit from that unit for a period of at least 10 years after the change. In addition, the Agency is seeking comment upon when and under what circumstances permitting authorities should have to review the emissions level set under a plantwide applicability limitation (PAL) for any source. Industry groups have asked for an extension due to the complex issues addressed by the notice of availability. All comments received by EPA on or prior to October 8, 1998 will be considered in the development of final regulations.

DATES: *Comments.* All comments regarding EPA's notice of availability issued on July 24, 1998 must be received by EPA on or before close of business October 8, 1998 instead of August 24, 1998.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–37, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

Comments may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epa.gov. Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on a diskette in WordPerfect 5.1 or 6.1 or ASCII file format. Identify all comments and data in electronic form by docket number A–90–37. No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

INSPECTION OF DOCUMENTS: Documents related to the notice of availability are available for public inspection in EPA Air Docket A–90–37. The docket is available for public inspection and copying between 8:30 a.m. and 4:30 p.m. weekdays at EPA's Air Docket (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David Solomon, Integrated Implementation Group, Information Transfer and Program Integration Division, (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, *telephone:* 919–541–5375, *facsimile:* 919–541–5509, or e-mail solomon.david@epa.gov. For further information on the section of the notice of availability addressing PAL's, contact Mike Sewell at the above address, *telephone:* 919–541–0873, *facsimile:* 919–541–5509, or e-mail sewell.mike@epa.gov.

Electronic availability: Internet.

Electronic copies of this document also are available from the EPA home page at the **Federal Register**—Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/) or from the Office of Air and Radiation home page at http://www.epa.gov.ttn/oarpg.

Dated: August 20, 1998.

Anna B. Duncan,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 98–22768 Filed 8–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6150–5]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Metal Finishing Sector Subcommittee Meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Metal Finishing Sector Subcommittee of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at the meeting will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individual listed with the announcement below.

Metal Finishing Sector Subcommittee—September 16–17, 1998

Notification is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Metal Finishing Sector Subcommittee on Wednesday, September 16, 1998 from 8:30 a.m. EST to 5:00 p.m. EST. The Subcommittee meeting will focus on implementation of the Metal Finishing Sector's Strategic Goals Program. A formal agenda will be available at the meeting.

The Subcommittee's Research and Technology and Risk Characterization workgroups will meet on Thursday, September 17, 1998 from 8:30 a.m. EST to 12:00 p.m. EST.

All meetings will be held at the Sheraton Crystal City located at 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number is 703–486–1111.

For further information concerning meeting times and agenda of the Metal Finishing Sector Subcommittee, please contact Bob Benson, DFO, at EPA by telephone on (202) 260–8668 in Washington, DC, by fax on (202) 260–8662, or by e-mail at benson.robert@epa.gov.

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee announcements will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 3802M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http://www.epa.gov/commonsense.

Dated: August 18, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–22654 Filed 8–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6149–9]

Proposed Implementation Guidance for the Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notification is hereby given that the EPA has issued proposed guidance for public review and comment on implementation of the Clean Air Act requirements for the revised 8-hour ozone (62 FR 38856, July 18, 1997) and PM (62 FR 38652, July 18, 1997) NAAQS. On July 16, 1997 (62 FR 38421, July 18, 1997), President Clinton issued a directive to EPA Administrator Browner on implementation of the revised standards for ozone and PM. In that directive, the President laid out a plan on how these new standards are to be implemented. The guidance reflects the Presidential Directive.

DATES: Comments are due on or before September 23, 1998.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–95–38, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For specific questions and comments on the ozone portion of this guidance, contact Mr. Christopher Stoneman, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–0823; for specific questions and comments on the PM portion of this guidance, contact Mr. Larry Wallace, U.S. EPA, MD–15, Research Triangle Park NC 27711, telephone (919) 541–0906.

SUPPLEMENTARY INFORMATION: The purpose of this guidance is to set forth EPA's current views on the issues identified above. These issues will be addressed in future rulemakings as appropriate, e.g., actions approving or disapproving SIP submittals. In those

rulemakings, EPA plans to propose to take a particular action based in whole or in part on its views of the relevant issues, and the public will have an opportunity to comment on EPA's interpretations during the rulemakings. When EPA issues final rules based on its views at that time, those views will be binding on the States, the public, and EPA as a matter of law.

Electronic Availability—A World Wide Web (WWW) site has been developed for overview information on the NAAQS and the ozone, PM, and regional haze implementation process. The Uniform Resource Location (URL) for the home page of the web site is *http://ttnwww.rtpnc.epa.gov/implement*. The draft implementation guidance can be accessed through this web site in a table entitled ''Major Action Items to Reinvent Ozone and PM NAAQS and Regional Haze Implementation.'' The URL for the table is *http://ttnwww.rtpnc.epa.gov/implement/actions.htm*. For assistance with these web sites, the TTN Helpline is (919) 541–5384. For those persons without electronic capability, a copy of the draft implementation guidance may be obtained from Ms. Tricia Crabtree, U.S. EPA, MD–15, Air Quality Strategies and Standards Division, Research Triangle Park, NC 27711, telephone (919) 541–5688).

The official record for this draft guidance, as well as the public version, has been established under docket number A–95–38 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–95–38. Electronic comments on this proposed guidance may be filed online at many Federal Depository Libraries.

Dated: August 14, 1998.

Henry Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 98–22532 Filed 8–21–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2293]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed September 8, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time to filing oppositions has expired.

Subject: Assessment and Collection of Regulatory Fees for Fiscal Year 1998 (MD Docket No. 98–36).

Number of Petitions File: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–22603 Filed 8–21–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Special Executive Session

DATE & TIME: Thursday, August 20, 1998 at the conclusion of the open meeting.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting was closed to the public pursuant to 11 CFR § 2.4(b)(6) and § 2.7(b) (1) and (2).

ITEM TO BE DISCUSSED: Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–22767 Filed 8–20–98; 12:42 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Above & Beyond International Freight Forwarders Inc., 82–11 155th Avenue, Howard Beach, NY 11414, Officers: Barbara Lendener, President, Annamarie Greener, Vice President.

Cargo Cargo, 18726 So. Western Avenue, Suite 410–S, Gardena, CA 90248, James C. Houng, Max Franklin, Partnership.

E–Z Shipping Line Corp., 1355 N.W. 93rd Court, Miami, FL 33172, Officers: Freddy J. Zelaya, President, Carlos O. Cearra, Vice President.

Dated: August 18, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–22578 Filed 8–21–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Second National Financial Corporation, Culpeper, Virginia; to acquire 100 percent of the voting shares of Virginia Heartland Bank, Fredericksburg, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National Commerce Bancorporation, Memphis, Tennessee; to merge with First Community Bancorp, Inc., Cartersville, Georgia, and thereby indirectly acquire BankFirst Community Bank and Trust, Cartersville, Georgia.

Board of Governors of the Federal Reserve System, August 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–22588 Filed 8–21–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Fishback Financial Corporation, Brookings, South Dakota; to acquire Midwest Card Services, Brookings, South Dakota, and thereby engage in servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–22589 Filed 8–21–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 972–3188]

Montgomery Ward Credit Corporation, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Russell Damtoft, Federal Trade Commission, Chicago Regional Office, 55 E. Monroe Street, Suite 1860, Chicago, IL 60603–5701. (312) 960–5634.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 7, 1998), on the world Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Montgomery Ward Credit Corporation and General Electric Capital Corporation. The proposed respondent Montgomery Ward Credit Corporation is a wholly owned subsidiary of General Electric Capital Corporation that provides credit card services for Montgomery Ward & Co., Inc., a large retailer. The proposed respondent General Electric Credit Corporation provides credit card services for a number of other businesses including several large retailers.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint alleges several unfair or deceptive acts or practices related to the proposed respondent's policy of inducing consumers who have filed for bankruptcy protection to sign agreements reaffirming debts owed to proposed respondent prior to the filing of the bankruptcy petition. The complaint charges that the proposed

respondent: falsely represented to consumers that signed reaffirmation agreements would be filed with the bankruptcy courts, as required by the United States Bankruptcy Code; falsely represented to consumers that debts associated with unfiled reaffirmation agreements, or agreements that were filed but not approved by the bankruptcy courts, were legally binding on the consumers; and unfairly collected debts that it was not permitted by law to collect. The proposed consent order contains provisions designed to remedy the violations charged and to prevent the proposed respondent from engaging in similar acts in the future.

The proposed consent order preserves the Commission's right to seek consumer redress if the Commission determines that redress to consumers provided through related named and unnamed legal actions is not adequate.

Part I of the proposed order prohibits the proposed respondent from misrepresenting to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that (A) reaffirmation agreements will be filed in bankruptcy court; or (B) any reaffirmation agreement is legally binding on the consumer. Part I.C of the proposed order prohibits the proposed respondent from collecting any debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that the proposed respondent is not permitted by law to collect. Part II of the proposed order prohibits the proposed respondent from making any misrepresentation in the collection of any debt subject to a pending bankruptcy proceeding.

Part III of the proposed order contains record keeping requirements for materials that demonstrate the compliance of the proposed respondent with the proposed order. Part IV requires distribution of a copy of the consent decree to certain current and future personnel who have responsibilities related to collecting debts subject to bankruptcy proceedings.

Part V provides for Commission notification upon any change in the corporate respondent affecting compliance obligations arising under the order. Part VI requires the proposed respondent to notify the Commission of proposed settlement terms in related actions filed by various named and unnamed parties. Part VII requires the filing of compliance report(s). Finally, Part VIII provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–22640 Filed 8–21–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 972–3308]

Kalvin P. Schmidt; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Tara Flynn, FTC/H–238, Washington, D.C. 20580. (202) 326–3710.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 14, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Kalvin P. Schmidt, individually, and doing business as DKS Enterprises, DS Productions, DES Enterprises, www.mkt-america.com, and www.mkt-usa.com. Schmidt promoted Mega$Nets and MegaResource, two high tech versions of traditional chain or pyramid marketing programs, on web sites he operated, and in unsolicited e-mail messages he created and sent via the Internet on his behalf and on the behalf of others. He also created and hosted web sites for participants in Mega$Nets and MegaResources programs.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns allegations about Schmidt's promotion and dissemination of two chain or pyramid marketing programs over the Internet. The Commission has issued a proposed draft complaint that sets forth the allegations to be resolved by the proposed administrative consent order. The draft complaint alleges that respondent Schmidt misrepresented that all or virtually all consumers who participate in the Mega$Nets and MegaResources program earn substantial amounts of money. The draft complaint also alleges that respondent Schmidt did not possess a reasonable basis that substantiated these earnings claims at the time he made those representations. In additions, the draft complaint alleges that respondent Schmidt, by creating and designing for others web sites promoting the Mega$Nets and MegaResources programs, hosting these web sites, and composing and sending unsolicited electronic mail messages to consumers directing them to these web sites, violated the law by providing the ''means and instrumentalities'' to others

to make unsubstantiated and false earnings claims.

The proposed administrative consent order, published for comment with this notice, contains prohibitions designed to prevent respondent from engaging in similar acts and practices in the future. Section I of the proposed consent prohibits Mr. Schmidt from participating in or assisting in any manner or capacity whatsoever in any prohibited marketing program, as defined in the order. The definition of ''prohibited marketing program'' is similar to the definition in the settlement of *FTC* v. *Nia Cano, et al.*, Civil No. 97–7947–CAS (AJWx), and includes any pyramid sales scheme, ponzi scheme, and chain marketing scheme. Sections IIA of the proposed order requires the respondent to have substantiation when in connection with any marketing plan or program or sale of good or service, he makes representations regarding material facts, including the income, profits, or sales volume achieved by participants in any marketing program or purchasers of any good or service. Section IIB requires the respondent to make certain affirmative disclosures when, in connection with any marketing plan or program, he makes any representations regarding earnings, profits, or sales volume.

Sections III, IV, V, and VI require the respondent to maintain copies of certain business records; to provide copies of the order to all of his current and future employees; to notify the Commission of any change in employment or corporate structure that might affect compliance with the order; and to file compliance reports with the Commission. Section VII is a ''sunset'' provision that terminates the order twenty years after it is issued or after a complaint is filed in federal district court.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–22639 Filed 8–21–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Policy Division, FAR Secretariat Revision of Standard Forms

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/FAA Secretariat revised SF 1435, Settlement Proposal (Inventory Basis), to update the FAR citation in ''Certification'', update the burden statement, and make entry more database friendly.

Since this form is authorized for local reproduction, you can obtain the updated camera copy in three ways:

From the U.S. Government Management Policy CD–ROM;

On the internet. Address: http://www.gsa.gov/forms/forms.htm, or

From CARM, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, (202) 501–2164. This contact is for information on completing the form and interpreting the FAR only.

DATES: Effective August 24, 1998.

Dated: August 14, 1998.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 98–22662 Filed 8–21–98; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0014]

Submission for OMB Review; Comment Request Entitled Transfer Order-Surplus Personal Property and Continuation Sheet

AGENCY: Federal Supply Service, GSA.

Extension to an existing OMB clearance (3090–0014).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Transfer Order—Surplus Personal Property and Continuation Sheet. The information collection was previously published in the Federal Register on June 9, 1998 at 63 FR 31480, allowing for a 60-day public comment period. No comments were received.

DATES: Comment Due Date: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Andrea Dingle (703) 305–6190.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection 3090–0014, Transfer Order—Surplus Personal Property and Continuation Sheet. This form is used by public agencies, nonprofit educational or public health activities, programs for the elderly, service educational activities, and public airports to apply for donation of Federal surplus personal property. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

B. Annual Reporting Burden

Respondents: 63,000; annual responses: 63,000; average hours per response: .30; burden hours: 18,900.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street, NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: August 14, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–22663 Filed 8–21–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Review of Historic Preservation ''Memorandum of Agreement'' Documentation on Proposed Red Cross Headquarter's Expansion Project: 2025 E Street, NW, Washington, DC

The General Services Administration (GSA), in accordance with Section 106 of the National Historic Preservation Act (NHPA), has consulted with the D.C. State Historic Preservation Officer (DCSHPO), the Advisory Council on Historic Preservation, the National

Capital Planning Commission, the Commission of Fine Arts, and the National Red Cross on the expansion of the 2025 E Street, NW property and site.

At this time, we would like to invite public comment on the DRAFT version of a Memorandum of Agreement to ''take account of the effects of the Project on historic properties''. The text follows.

Memorandum of Agreement Among the General Services Administration, the National Capital Planning Commission, the Commission of Fine Arts, the American National Red Cross, the District of Columbia State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Construction of a Building at 2025 E Street, N.W. in the District of Columbia

Whereas, Public Law 100–637, Section 11(a), 102 Stat. 3325, 36 U.S.C. § 13 note (November 8, 1988), amends Public Law 80–156 (July 1, 1947), and directs the Administrator of the General Services Administration (''GSA''), notwithstanding any other provision of law, to enter into a ground lease with the American National Red Cross, District of Columbia Chapter (''ARC'') for the property described in Public Law 80–156 as the ''south half of Square 104,'' and located between 20th and 21st Streets, N.W. along E street, N.W. (''Property'') for ninety-nine (99) years, at which time any improvements on the Property shall revert to the ownership of the United States, and

Whereas, Public Law 100–637 grants ARC the right to, inter alia, demolish the existing Red Cross District of Columbia Chapter Building (''Building'') on the Property, said Building also being known by its current address of 2025 E Street, N.W., and construct improvements on the Property for use by ARC for office, medical and scientific purposes (''Project''); and

Whereas, Public Law 100–637 directs, inter alia, that the United States cooperate with ARC with respect to matters relating to the development of the Project; and

Whereas, Public Law 100–637 provides that the plans for the Project must be approved by ARC, the National Capital Planning Commission (''NCPC''), and the Commission of Fine Arts (''CFA''); and

Whereas, Section 106 of the National Historic Preservation Act, as amended (''NHPA''), 16 U.S.C. § 470f, requires that the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally-assisted undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, take into account the effect of the undertaking on any district, site, building, structure or object that is included in, or eligible for inclusion in, the National Register of Historic Places and afford the Advisory Council on Historic Preservation (''Council'') a reasonable opportunity to comment with regard to such undertaking; and

Whereas, the Council's implementing regulations, 36 CFR Part 800, ''Protection of Historic Properties'' delineate the process by which Federal agencies may fulfill their obligations pursuant to Section 106 of the NHPA; and

Whereas, GSA, as the federal agency with responsibility for the ownership interest of the United States in the Property, initiated the Section 106 process with the State Historic Preservation Officer for the District of Columbia (''SHPO'') and the Council and is participating in the review of this Project as the Federal agency coordinating the involvement of and the consultation among the parties to this Memorandum of Agreement (''MOA''); and

Whereas, ARC, as the applicant for a Federal permit, license or approval, was invited to participate as a consulting party and has done so; and

Whereas, in consultation with the SHPO, GSA has determined and the consulting parties agree that, for purposes of consultation pursuant to Section 106 of the NHPA, the Building should be considered eligible for inclusion in the National Register of Historic Places as a contributing property within a potential historic district; and

Whereas, in consultation with the SHPO, ARC has completed and transmitted to the District of Columbia Historic Preservation Review Board an unsigned District of Columbia Inventory of Historic Places Nomination Form, and an unsigned National Register Nomination Form of a potential historic district to which the Building would be considered eligible as a contributing property; and

Whereas, ARC will redevelop the Property by dismantling the Building and incorporating certain elements of it in the Project, an undertaking which the parties to this MOA have found, in consultation with the SHPO and in accordance with 36 CFR Section 800.9(b), will have an adverse effect upon properties considered eligible for inclusion in the National Register of Historic Places; and

Whereas, NCPC approved preliminary site and building plans for the Project on March 6, 1997 [NCPC File No. 5563] and must now give final approval to the Project; and

Whereas, CFA gave preliminary approval for the Project on July 25, 1996 [CFA 25/Jul/96–6 and CFR 20/Mar/97–2] and must now give final approval to the Project; and

Whereas, the parties to this MOA have solicited, in writing and in public meetings and other appropriate public forums, comments from the public on the effects of the Project on historic properties and have fully considered the views of the public and other interested parties in reaching agreement on the terms to be included in this MOA;

Now, therefore, the parties to this MOA agree that the Project, if undertaken, shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties.

Stipulations

1. Project Design

ARC shall ensure that the Project will be constructed in general accordance with the design prepared by Shalom Baranes Associates, said design being the basis upon which NCPC and CFA provided their preliminary approvals for the Project. Inasmuch as the design for the Project has not yet been given final approvals by NCPC and CFA, ARC shall ensure that the Project will secure said approval and will be built in conformance with the design given final approval by NCPC and CFA. The parties to this MOA shall not require modifications to the approved design as a result of a formal determination of eligibility of a potential historic district on either the National Register or the District of Columbia Inventory of Historic Places.

2. Landscape Plan

If the appropriate agency of the Government of the District of Columbia grants ARC the right of entry, ARC will clean, landscape, and maintain the District-owned public space delineated in Attachment A and located immediately south of the Property across E Street, N.W. ARC shall submit its landscaping and maintenance plan for the public space to NCPC and CFA for approval; said submission may, in ARC's sole discretion, be separate from, or in conjunction with, any submittal to NCPC or CFA for final approval of the Project. ARC shall improve and maintain the public space in accordance with the approved landscape plan. The initial improvement of the space shall be completed no later than six months

from the date of ARC's occupancy of the Project. ARC shall maintain the public space for a period coterminous with ARC's occupancy of the Property. ARC's maintenance shall decrease or cease as the case may be if the public space is reduced in size from the dimensions detailed in Attachment A or ceases to be an open public space.

3. Historic Documentation of the Building

A. ARC will develop photographic and historic documentation of the Building and its site consistent with the general requirements of the Historic American Buildings Survey and will consult with the SHPO and NCPC regarding the scope and content of this documentation. Said documentation, which will not include aerial photographs, will be undertaken, where necessary, prior to construction and in any event completed prior to ARC's occupancy of the Project; the original shall be donated to the Washingtoniana Collection of the District of Columbia Public Library and one duplicate copy will be made available to the SHPO and/or an appropriate local archive designated by the SHPO. ARC shall not be responsible for any other duplication or costs for duplication.

B. ARC will provide to the Washingtoniana Collection of the District of Columbia Public Library or, in the alternative, to an appropriate local archive designated by the SHPO, documentation of the process and procedures by which the Building is dismantled and portions thereof are reconstructed as part of the Project. Said documentation shall be in the form of a written narrative, photographs and other pertinent documents.

4. Potential National Register Nomination

A. ARC shall reimburse a consultant no more than $600 for fees related to the presentation, explanation or justification of the documentation it has collected and transmitted to the District of Columbia Historic Preservation Review Board should an appropriate entity sponsor or officially file an application for nomination of a historic district to either the District of Columbia Inventory of Historic Places or the National Register of Historic Places. ARC also agrees to be responsible for paying fees assessed by the Government of the District of Columbia in association with the filing of such application up to $250.

B. ARC shall not be responsible for providing any other support or testimony, authorizing the use of its name, or sponsoring or officially filing an application for any potential historic district, or assuming any liability or responsibility for issues that may arise from the District of Columbia Inventory or National Register nomination process or the use of the documentation it has collected and transmitted to the District of Columbia Historic Preservation Review Board pursuant to the terms of this MOA. The parties to this MOA will not oppose any historic district based on documentation previously provided by ARC to the District of Columbia Historic Preservation Review Board as stipulated herein.

5. Archaeology

A. ARC shall ensure that an archaeological survey of the Property is conducted in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification,* 48 Federal Register 44720–23, and with *Guidelines for Archaeological Investigation in the District of Columbia* (1998), and taking into account the recommended approaches delineated in the National Park Service publication *The Archaeological Survey: Methods and Uses*, 1978: NTIS Order No. PB284061. The survey shall be conducted in consultation with the SHPO, and a report of the survey shall be submitted to the SHPO for review and approval.

B. The ARC shall evaluate properties which are found on the Property in accordance with 36 C.F.R. Section 800.4(c). If properties which are found on the Property are eligible for inclusion in the National Register of Historic Places because they may be likely to yield information important in prehistory or history, ARC shall ensure that they are treated in accordance with a data recovery plan developed by ARC in consulting with the SHPO for recovery of archaeological data from the Property.

6. Section 106 Compliance for Other Federal Undertakings Associated With the Project

In the event that additional Federal undertakings are required or sought by ARC pursuant to the terms of Public Law 100–637, a Federal agency can fulfill its Section 106 responsibilities, where applicable, by accepting the terms of this MOA and specifying that satisfactory fulfillment of the terms of this MOA will be a condition of any such undertaking. The Federal agency and ARC will provide documentation to the signatories to this MOA of the scope of the undertaking associated with the Project and the Federal agency's acceptance of the terms of this MOA.

7. Amendments

If a signatory to this MOA determines that it cannot fulfill the terms of this agreement, or otherwise deems it necessary to seek an amendment, it will notify the signatories and request consultation concerning the terms of an amendment in accordance with 36 C.F.R. Section 800.5(e)(5).

8. Administrative Conditions

A. Professional Qualifications. All historic documentation conducted pursuant to the terms of this MOA will be carried out by personnel who meet the *Secretary of the Interior's Professional Qualification Standards,* 48 Federal Register 44738, for the particular field of study in which they are working.

B. Any and all obligations of ARC pursuant to the terms of this MOA shall only be carried out if ARC, in its sole discretion, determines to undertake construction of the Project.

C. This MOA may be executed in multiple original counterparts, each of which will be deemed to be an original, and which together will constitute one and the same agreement.

Execution of this agreement and implementation of its terms evidences that GSA, NCPC and CFA have taken into account the effect of the Project on historic properties and have afforded the Council a reasonable opportunity to comment on the Project and its effect on historic properties.

General Services Administration.

Nelson W. Alcalde,

Administrator, National Capital Region.

_____

date

National Capital Planning Commission.

Reginald W. Griffith,

Executive Director

_____

date

Commission of Fine Arts

Charles H. Atherton,

Secretary.

_____

date

American National Red Cross.

_____

Name/Title

_____

date

District of Columbia State Historic Preservation Officer.

_____

Name

_____

date

Advisory Council on Historic Preservation.

John M. Fowler,

Executive Director.

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date

In addition, a copy of this notification and Draft Memorandum of Agreement will be placed in the West End Library, (24th and L Streets, NW, Washington, DC).

Please submit your comments in writing within 30 days of this notice to Andrea Mones, Regional Cultural Asset Officer, General Services Administration, National Capital Region, (WPT), 7th and D Streets, NW, Washington, DC 20407.

Dated: August 10, 1998.

Arthur M. Turowski,

Director, Portfolio Management Division, WPT.

[FR Doc. 98–22661 Filed 8–21–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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.

Proposed Projects 1. Evaluation of the Office of Minority Health's Resource Center—NEW—The Office of Minority Health proposes to survey customers of the Office of Minority Health Resource Center to determine if the Center is providing useful services to its intended audience. The information will be used to identify potential improvements in the Center's customer service procedures. Respondents: Individuals, Businesses, Non-profit institutions, Federal, State or Local Governments; Number of Respondents: 1050; Average Burden per Response: 7 minutes; Total Burden: 123 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: August 14, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–22561 Filed 8–21–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Evaluation of the Proposed Cash and Counseling Demonstration—New—Cash and Counseling is a consumer directed care model for individuals in need of personal assistance services. A demonstration project utilizing this model is being undertaken. The Office of the Assistant Secretary for Planning and Evaluation, in partnership with the Robert Wood Johnson Foundation, is planning to engage in an information collection for the purpose of evaluating this demonstration project. Controlled experimental design methodology will be used to test the effects of the experimental intervention: cash payments in lieu of arranged services for Medicaid covered beneficiaries. *Respondents:* Individuals or Households;—Burden Information for Participation Interview—*Number of Respondents:* 7,875; *Burden per Response:* .08 hours; *Total Burden for Participation Interview:* 630 hours—Burden Information for Baseline Interview—*Number of Respondents:* 15,250; *Burden per Response:* .38 hours; *Total Burden for Baseline:* 5,795 hours—Burden Information for Four-Month Treatment Group Interview—*Number of Respondents:* 7245; *Burden per Response:* .33 hours; *Total Burden for Four-Month Treatment Group Interview:* 2,391 hours—Burden Information for Nine-Month Followup Interview—*Number of Respondents:* 13,800; *Burden per Response:* .70 hours; *Total Burden for Nine-Month Followup:* 9,660 hours—*Total Burden for Project:* 18,476 hours.

OMB Desk Officer: Allison Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: August 11, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–22668 Filed 8–21–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 98104]

Notice of Availability of Funds; Cooperative Agreement for a Research Program to Study the Dermal Toxicokinetics of Methyl Parathion

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement, for a research program to study the dermal toxicokinetics of methyl parathion. This program addresses the Healthy People 2000 priority areas of: Environmental Health and Surveillance and Data Systems. Dermal exposure is the primary route of exposure in residential scenarios. Since November 1996,

approximately 18,000 people (including 10,000 children) have been affected by the illegal spraying of methyl parathion in private residences in several states. In addition, methyl parathion has been identified at 16 National Priorities List (NPL) sites throughout the United States. The purpose of this program is to assess dermal absorption, distribution, metabolism, and excretion of methyl parathion in laboratory studies. The data will be important for planning, designing, and determining the need for future toxicology and epidemiology studies.

B. Eligible Applicants

Assistance will be provided only to the health departments of States and their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. State organizations, including State universities, State colleges, and State research institutions, must affirmatively establish that they meet their respective State's legislative definition of a State entity or political subdivision to be considered an eligible applicant.

C. Availability of Funds

Approximately $250,000 is available in FY 1998 to fund one award. The award is expected to begin on or about September 30, 1998, for a 12-month budget and project period.

D. Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested. However, the awardee, as the direct and primary recipient of ATSDR cooperative agreement funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Applicant must justify the need to use a contractor. If contractors are proposed, the following must be provided: (1) Name of contractor, (2) method of selection, (3) period of performance, (4) detailed budget, (5) justification for use of contractor, and (6) assurance of non-conflict of interest.

Equipment may be purchased with cooperative agreement funds. However, the equipment proposed should be appropriate and reasonable for the activity to be conducted. The applicant, as part of the application process, should provide: (1) A justification for the need to acquire the equipment, (2) the description of the equipment, (3) the intended use of the equipment, and (4) the advantages/disadvantages of purchase versus lease of the equipment (if applicable). Requests for equipment purchases will be reviewed and approved only under the following conditions: (1) ATSDR retains the right to request return of all equipment purchased (in operable condition) with cooperative agreement funds at the conclusion of the project period, and (2) equipment purchased must be compatible with ATSDR hardware. Computers purchased with ATSDR funds should be IBM compatible and adhere to the Centers for Disease Control and Prevention (CENTERS FOR DISEASE CONTROL) and ATSDR hardware standards.

E. Program Requirements

ATSDR may assist and work jointly with the recipient in conducting the activities of this cooperative agreement program. The application should be presented in a manner that demonstrates the applicant's ability to address the health issues in a collaborative manner with ATSDR.

Note: Recipient activities may not be conducted with funds from this cooperative agreement program at any Federal site where the State is a party to litigation at the site.

Recipient and ATSDR activities are listed below:

1. Recipient Activities

The recipient will have primary responsibilities as follows:

a. Perform a range finding study with methyl parathion to determine appropriate chronic doses that should be used to compare the kinetic parameters through various routes.

b. Perform studies to determine the rate of absorption and specific concentrations reached in tissues of appropriate laboratory animals following dermal methyl parathion treatment.

c. Through experimental studies in laboratory animals, measure the absorption, distribution, metabolism of methyl parathion over a 90-day period. Establish correlations between the amount of methyl parathion absorbed and the blood levels of p-nitrophenol, its principal metabolite.

d. Through experimental studies and measurements, determine the transfer of methyl parathion and its metabolites across the placenta and determine the distribution of these compounds in the fetus.

e. Publish results of studies in accordance with AR98–17 (attached)

2. ATSDR Activities

ATSDR will:

a. If needed, assist recipient or collaborate in the preparation of reports and briefing materials on a timely basis in effort to present and write publications, including abstracts and journal articles.

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The application must include a 200 word or less abstract of the proposal. The application pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and each copy of the application must be submitted unstapled and unbound.

G. Submission and Deadline Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001)(adhere to the instructions on the Erata Instruction Sheet for PHS 398). Forms are in the application kit. On or before September 23, 1998, submit the application to: Patrick A. Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98104, Centers for Disease Control and Prevention (CENTERS FOR DISEASE CONTROL), Room 300, 255 East Paces Ferry Road, NE., MS E–13, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR:

Scientific and Technical Review Criteria of Applications

1. Appropriateness and Knowledge of Study Design—25 Percent

The extent to which the applicant's proposal addresses:

(a) rationale for the proposed study design; (b) measurement of actual dose

absorbed and the documentation of accompanying toxicity; and (c) a detailed plan for analysis of the data.

2. Proposed Study—25 Percent

The adequacy of the proposal relevant to: (a) the study purpose, objectives, and rationale; (b) the quality of program objectives in terms of specificity, measurability, and feasibility; (c) the specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the study; and (d) the likelihood of the applicant completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program.

3. Relationship to Initiative—15 Percent

The extent to which the application addresses the areas of investigation.

4. Technical Merit of the Methods and Procedures—15 Percent

The technical merit of the methods and procedures (analytic procedures should be state of the art, including participation in a quality assurance and quality control program for comparison with other research projects) for the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the PURPOSE section of this announcement.

5. Applicant Capability and Coordination Efforts—10 Percent

The extent to which the proposal has described: the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study and the suitability of facilities and equipment available.

6. Program Personnel—10 Percent

The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate.

7. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide ATSDR with original plus two copies of:

1. Quarterly progress reports; the progress reports must report on progress toward addressing activities mutually agreed to by ATSDR and the recipient at the time of award and should include the following for each program, function or activity involved: (1) a comparison of actual accomplishments to the goals established for the period; (2) the reasons for slippage if established goals were not met; and (3) other pertinent information.

2. Financial status report, no more than 90 days after the end of the budget/project period.

Send all reports to: Patrick A. Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CENTERS FOR DISEASE CONTROL), Room 300, 255 East Paces Ferry Road, NE., MS E–13, Atlanta, GA 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each requirement, see Attachment 1 in the application kit.

AR98–3 Animal Subjects Requirements
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR98–18 Cost Recovery—ATSDR
AR98–19 Third Party Agreements—ATSDR

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 104(i), 5(A)and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i)5(A) and (15)].

The Catalog of Federal Domestic Assistance numbers are 93.200, 93.201, 93.203.

K. Where To Obtain Additional Information

Please refer to Announcement Number 98104 when requesting information and submitting an application.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all of the documents, business management technical assistance may be obtained from: Patrick A. Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CENTERS FOR DISEASE CONTROL), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305–2209, telephone (404) 842–6803.

INTERNET address phs3@cdc.gov.

For programmatic technical assistance contact: Mike Youson, Deputy Director, Division of Toxicology, Agency for Toxic Substances and Disease Registry (ATSDR), 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, telephone (404) 639–6300.

INTERNET address may1@cdc.gov.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

This and other CENTERS FOR DISEASE CONTROL/ATSDR announcements are available through the CDC homepage on the Internet: http://www.cdc.gov.

Dated: August 18, 1998.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 98–22605 Filed 8–21–98; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces fees for vessel sanitation inspections for fiscal year 1999, October 1, 1998 through September 30, 1999.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel M. Harper, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–16, Atlanta, Georgia 30341–3724, telephone (770) 488–3524, email DMH2 @CDC.GOV.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The fee schedule for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1, 1998.

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060), and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). The revised size/cost factor is presented in Appendix A.

Fee

The fee schedule is presented in Appendix A and will be effective October 1, 1998, through September 30, 1999. However, should a substantial increase occur in the cost of air transportation, it may be necessary to readjust the fees before September 30, 1999, since travel constitutes a sizable portion of the costs of this program. If such a readjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

Applicability

The fees will be applicable to all passenger cruise vessels for which inspections are conducted as part of CDC's Vessel Sanitation Program.

Dated: August 18, 1998.

Thena M. Durham,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

APPENDIX A—SIZE/COST FACTOR

Vessel size	GRT [1]	Average cost X
Extra Small	(< 3,001)	0.25
Small	(3,001–15,000)	0.5
Medium	(15,001–30,000)	1.0
Large	(30,001–60,000)	1.5
Extra Large ...	(60,000)	2.0

FEE SCHEDULE OCTOBER 1, 1998–SEPTEMBER 30, 1999

Vessel size	GRT [1]	Fee
Extra Small	(< 3,001)	$1,075
Small	(3,001–15,000)	2,150
Medium	(15,001–30,000)	4,300
Large	(30,001–60,000)	6,450

FEE SCHEDULE OCTOBER 1, 1998–SEPTEMBER 30, 1999—Continued

Vessel size	GRT [1]	Fee
Extra Large	(>60,000)	8,600

[1] GRT-Gross Register Tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Inspections and reinspections involve the same procedure, require the same amount of time, and will, therefore, be charged at the same rate.

[FR Doc. 98–22606 Filed 8–21–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; New System of Records

AGENCY: Office of Child Support Enforcement, ACF, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Child Support Enforcement (OCSE) is publishing a notice of a new system of records, 09–80–0202, ''Federal Case Registry of Child Support Orders.'' We are also proposing routine uses for this new system.

DATES: HHS invites interested parties to submit comments on the proposed notice within September 21, 1998. HHS has sent a report of a New System, as required by 5 U.S.C. 552a(r) of the Privacy Act, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) on August 17, 1998 pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, Management of Federal Information Resources, dated February 20, 1996, 61 FR 6428. The new system will be effective October 1, 1998, unless HHS receives comments which would result in a contrary determination.

ADDRESSES: Please address comments to: Donna Bonar, Director, Division of Program Operations, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447, (202) 401–9271.

Comments received will be available for inspection at the address specified above from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donna Bonar, Director, Division of Program Operations, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447, (202) 401–9271.

SUPPLEMENTARY INFORMATION: The Secretary is required to establish and conduct a Federal Parent Locator Service (Service) pursuant to sections 453 and 454 of the Social Security Act (the Act) (42 U.S.C. 653 and 654). The service is a computerized national location network which provides information to authorized persons for the purpose of establishing parentage; establishing, setting the amount of, modifying or enforcing child support obligations; determining who has or may have parental rights with respect to a child; enforcing a State or Federal law with respect to the unlawful taking or restraint of a child; or making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act (42 U.S.C. 463(d)(1)).

The Office of Child Support Enforcement (OCSE) proposes to establish a new system of records: 09–80–0202, ''Federal Case Registry of Child Support Orders'' (FCR). This system of records is being added in accordance with section 453(h)(1) of the Act, (42 U.S.C. 653(h)(1)) which requires the Secretary of Health and Human Services to establish and maintain an automated registry known as the Federal Case Registry of Child Support Orders. The FCR will contain abstracts of support orders and other information described in section 453(h)(2) of the Act (42 U.S.C. 653(h)(2)), with respect to each case and order in each State Case Registry, as

furnished and regularly updated by the States. This system of records will be used to allow States to obtain current information on, or facilitate the location of, persons specified in section 453(a) of the Act (42 U.S.C. 653(a)). The Federal Case Registry and another component of the Service, the National Directory of New Hires (contained in the Federal Parent Locator and Federal Tax Refund Offset System, DHHS/OCSE No. 09–90–0074) will automatically match each other on an ongoing basis.

These automatic matches will enable the Service to determine if a newly-hired employee is a participant in a child support case anywhere in the country. These automatic matches will also enable the Service to alert States when other States have registered the same individuals.

The FCR system of records will include records that contain the following information: Names (including alternative names); social security numbers (including alternative numbers); birth dates; participant type (custodial party, noncustodial parent, putative father, child); sex; case type (IV–D, non-IV–D) indication of an order; family violence indicator (domestic violence or child abuse); locate request type (reason for locate); locate source (source which State wishes to check for data); State Federal Information Processing Standard code; county code; State case identification number; and State member identification number.

The records in this system will be maintained in a secure manner compatible with their content and use. Approved users will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control access to the data. Access to data in this system is restricted to persons whose official duties require the use of such information, i.e., OCSE employees and contractors responsible for implementing the FCR.

When a State notifies the FCR that there is reasonable evidence of domestic violence or child abuse, and that disclosure could be harmful to the party or the child, the Service will place a family violence (FV) indicator in the record(s) of such person(s). Thereafter, no information about such person(s) will be disclosed from the FCR. Rather, the FCR will return a notice indicating that ''Disclosure is Prohibited.'' The FV designation can only be removed by the State or States that placed the designation. Information from records with the FV designation may, however, be disclosed to a court or its agents pursuant to section 453(b)(2)(B) of the Act (42 U.S.C. 653(b)(2)(B)). Data may also be withheld if its release would violate national security or policy interests or compromise the confidentiality of census data.

The records will be stored on discs, computer tapes, and hard copy. Rooms where records are to be stored will be locked when not in use. During regular business hours rooms will be unlocked but controlled by on-site personnel.

The routine uses include disclosures to States, Courts, their agents or attorneys, and representatives of certain children for purposes of establishing parentage; establishing, setting the amount of, modifying or enforcing child support obligations; and determining who have or may have parental rights with respect to a child. Disclosures for the purposes of enforcing a State or Federal law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination may also be made. Additional routine uses include disclosures to the U.S. Central Authority (under the Hague Convention on International Child Abduction) for the purpose of locating a child or parent; disclosures to State child welfare, and foster case agencies to aid in administration of these programs; disclosures to State agencies for the purpose of assisting States in carrying out their responsibilities under programs operated under Titles IV–D and IV–A of the Act; disclosures to the Social Security Administration for name, birth date and social security number verification; disclosures to the Treasury Department for the purposes of administering sections of Title 26; and disclosures for research purposes where authorized by law.

Dated: August 6, 1998.

David Gray Ross,

Commissioner.

09–80–0202

SYSTEM NAME:

Federal Case Registry of Child Support Orders (FCR), HHS, OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447;

Social Security Administration, 6200 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained with respect to all cases or orders submitted by States to the Federal Case Registry. The cases and orders which States will submit to the FCR include each case in which services are being provided by the State under the State plan approved by Title IV–D of the Act, and each support order established or modified in the State on or after October 1, 1998.

CATEGORIES OF RECORDS IN THE SYSTEM:

The FCR system of records will include records that contain the following information: Names (including alternative names); social security numbers (including alternative numbers); birth dates; participant type (custodial party, noncustodial parent, putative father, child); sex; case type (IV–D, non-IV–D); indication of an order; family violence indicator (domestic violence or child abuse); locate request type (reason for locate); locate source (source which State wishes to check for data); State Federal Information Processing Standard code; county code; State case identification number; and State member identification number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 452 and 453 of the Social Security Act (42 U.S.C. 652 and 653) required the Secretary of HHS to establish and conduct the Federal Parent Locator Service, a computerized national location network which provides address and social security number information to State and local CSE agencies.

PURPOSE(S):

The primary purpose of the FCR will be to improve States' abilities to locate parents and collect child support. The FCR will consist of State case registry information, and will contain abstracts of case and order information with respect to each case and order in each State Case Registry. At least every two business days, the FCR will be matched against the National Directory of New Hires (NDNH), another component of the Federal Parent Locator Service, to determine if a newly hired employee included in the NDNH is a participant in a child support case anywhere in the country. Within two business days after a comparison reveals a match with respect to an individual, the Service will report the match as well as the information regarding the individual's current employment and other pertinent information to the State agency or agencies responsible for the case. The Service will also alert States when other States have registered the same individuals on the FCR.

The new system of records will include a Family Violence (FV)

indicator in the FCR to prevent disclosure of the records of any person a State associates with FV. When a State notifies the FCR that there is reasonable evidence of domestic violence or child abuse, and that disclosure could be harmful to the party or the child, the FCR will not disclose any information from the records. In this instance, the FCR will return a notice indicating that ''Disclosure is Prohibited.'' A FV designation can only be removed by the State that placed the designation, and the designation may be placed by more than one State on the same person. However, information from the records containing a FV designation may be disclosed by court order pursuant to section 453(b)(2)(B) of the Act (42 U.S.C. 653(b)(2)(B)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The routine uses proposed for this system are compatible with the stated purpose of the system. Information from the Federal Case Registry may be disclosed to the following entities: (1) Under section 453(c)(1) of the Act (42 U.S.C. 653(c)(1)), to agents and attorney of a State which has in effect an approved plan under Title IV–A of the Act who have duty or authority to collect child and spousal support; (2) Under section 453(c)(2) of the Act (42 U.S.C 653(c)(2)), to a Court or its agent which has authority to issue an order against a noncustodial parent for child support or to serve as the initiating court in an action to seek a child support order against a noncustodial parent; (3) Under section 453(c)(3) of the Act (42 U.S.C. 653(c)(3)), to a resident parent, legal guardian, or attorney or agent of a child not receiving TANF benefits; (4) Under section 453(c)(4) of the Act (42 U.S.C. 653(c)(4)), to a State agency administering a child welfare program operated under a State plan pursuant to subchapter 1 of Title IV–B of the Act or a State plan pursuant to subchapter 2 of Title IV–B of the Act, or to a State agency that is administering a program operated under a State plan pursuant to Title IV–E of the Act; (5) Under section 653(j)(1)(B) of the Act (42 U.S.C. 653(j)(1)(B)), to the Social Security Administration for verification of name, social security number, and birth dates; and employer identification number; (6) Under section 453(j)(2)(B) of the Act (42 U.S.C. 653(j)(2)(B)), to State agencies responsible for paternity establishment or child support cases; (7) Under section 453(j)(3)(B) of the Act (42 U.S.C 653(j)(3)(B)), to State agencies for the purpose of assisting States to carry out their responsibilities under programs operated under Title IV–D and IV–A of the Act; (8) Under section 463(d)(2)(A) of the Act (42 U.S.C. 663(d)(2)(A)), to agents or attorneys of States who have the duty or authority to enforce child custody or visitation determinations; (9) Under section 453(d)(2)(B) of the Act (42 U.S.C. 663(d)(2)(B)), to a Court or its agent with the jurisdiction to make or enforce a child custody or visitation determination; (10) Under section 463(d)(2)(C) of the Act (42 U.S.C. 663(d)(2)(C)), to agents or attorney of the U.S. or of a State who have the authority or duty to investigate, enforce, or prosecute the unlawful taking or restraint of a child; (11) Under section 463(e) of the Act (42 U.S.C. 663(e)), to the U.S. Central Authority for the purpose of locating any parent or child on behalf of an applicant to the Central Authority; (12) Pursuant to Pub. L. 105–34, Title X, sections 1090(a)(2) and (4), to the Secretary of Treasury for the purpose of administering sections of Title 26 which grant tax benefits based on support or residence of children; (13) Where permitted by law, to researchers for the purpose of conducting research consistent with the pertinent statutory authority.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Secretary of Health and Human Services house the FCR in the Social Security Administration's National Computer Center in Baltimore, Maryland. A Direct Access Storage Data (DASD) unit will be used for storage. FCR records will be maintained on disc and computer tape, and hard copy.

RETRIEVABILITY:

System records can be accessed by either a State assigned case identification number or Social Security Number.

SAFEGUARDS:

1. *Authorized Users:* Data stored on computer files are accessed by passwords known only to persons who are responsible for implementing the FCR. Access to information in the FCR system is limited to approved users whose official duties require access to this information.

2. *Physical Safeguards:* Rooms where records are stored will be locked when not in use. During regular business hours rooms will be unlocked but controlled by on-site personnel.

3. *Procedural and Technical Safeguards:* A password is required to access the terminal and a data set name restricts the release of the data to only approved users. All users of the FCR system are required to have in effect safeguards, applicable to all confidential information that are designed to protect the privacy rights of the parties; they must also have safeguards against any unapproved use or disclosure of information contained in the FCR.

RETENTION AND DISPOSAL:

(1) Records pertaining to a child will be deleted from the FCR when a State dissociates the last custodial parent, non-custodial parent, or putative father from the case or order, and no child included in the case or order is associated with any other FCR case or order; (2) Records containing a Family Violence Indicator will be removed from the FCR when the State that initiated the indicator requests that the record be removed from the FCR or when the State closes the last case or order including the person connected to an indicator; (3) Records of information provided by the FCR to authorized users will be maintained only long enough to communicate the information to the appropriate State or Federal agent. Thereafter, the information provided will be destroyed; (4) Records pertaining to disclosures (including information provided by States, Federal agencies contacted, and an indication of the type(s) of information returned), will be stored on a history tape and in hard copy for two years and then destroyed; and (5) Any record relating or potentially relating to a fraud or abuse investigation or a pending or ongoing legal action including a class action, will be retained until conclusion of the investigation or legal action. This exception will protect information relevant to a pending case from being prematurely destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Operations Division, Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must provide his or her full name and address. Additional information, such as Social Security Number, date of birth or mother's maiden name, may be requested by the system manager in order to distinguish

between individuals having the same or similar names.

RECORD ACCESS PROCEDURES:

Individuals may have access to their records by making a written request, addressed to the System Manager specified above. The envelope containing the written request must be marked ''Privacy Act Request'' or ''Freedom of Information Act Request'' or both, in the bottom left-hand corner. The letter requesting access to FCR records must state the following: (1) That the request is being made under the Privacy Act; Freedom of Information Act, or both, (2) the name, address, and signature of the requester; and (3) a detailed description of the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Individuals may request an amendment of a record which is not accurate, relevant, timely, or complete by writing to the System Manager at the address specified above. The envelope containing the written request must be marked ''Privacy Act Amendment Request'' or ''Freedom of Information Act Request'' or both, in the bottom left-hand corner. The letter requesting an amendment to FCR records must state the following: (1) That the request to amend the record is being made under the Privacy Act; Freedom of Information Act, or both, (2) the individual's name, address, and signature; (3) a description of the contested information; (4) the reason why the information should be amended; and (5) documentation to show that the information is inaccurate, irrelevant, untimely, or incomplete. Individuals who are contesting records must also be able to prove their identity.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any State.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–22581 Filed 8–21–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0676]

Warner-Jenkinson Co., Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Warner-Jenkinson Co., Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of External D&C Violet No. 2 in coloring externally applied drug products.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3167.

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 8C0261) has been filed by Warner-Jenkinson Co., Inc., 107 Wade Ave., South Plainfield, NJ 07080. The petition proposes to amend the color additive regulations to provide for the safe use of External D&C Violet No. 2 in coloring externally applied drug products.

The agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 28, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–22569 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0675]

The Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyethylenepolyamines as cross-linking agents for epoxy resins in coatings intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4606) has been filed by The Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of polyethylenepolyamines as cross-linking agents for epoxy resins in coatings intended for use in contact with food.

The agency has determined under 21 CFR 25.32(j) that this action is of the type that does not individually or cumulatively have a significant effect on the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 28, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–22570 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis 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). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 16, 1998, 8 a.m. to 5 p.m.

Location: Gaithersburg Holiday Inn, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Gail M. Dapolito or Bill Freas, Center for Biologics Evaluation and Research (HFM–21),

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1289, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the safety and efficacy of biologics license application 98–0286, Enbrel™ (etanercept, Immunex) for the treatment of rheumatoid arthritis.

Procedure: 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 September 10, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 10, 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–22572 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products 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). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 17, 1998, 8 a.m. to 6 p.m., and September 18, 1998, 8 a.m. to 3:30 p.m.

Location: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 17, 1998, the committee will hear: (1) Updates on HCV nucleic acid testing; (2) year 2000 computer software; (3) recent review of albumin clinical trials; (4) informational summaries on the Hematopoietic/Progenitor Cell Products Workshop, Granulocytes for Transfusion Workshop, Nucleic Acid Testing for HCV and Other Viruses in Blood Donors Workshop; and (5) an informational presentation on TT virus and transfusion safety. In the afternoon, the committee will discuss and make recommendations on the Abbott Laboratories PRISM Detection Assay for HBsAg, Anti-HCV, and Anti-HTLV-I/II. On September 18, 1998, the committee will discuss and make recommendations on the topic of routine leukoreduction of blood components.

Procedure: 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 September 4, 1998. On September 17, 1998, oral presentations from the public will be scheduled between approximately 3:30 p.m. and 4 p.m. and on September 18, 1998, between approximately 11:15 a.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 12, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–22566 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Gas; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) (Nashville District Office) is announcing the following public workshop: Medical Gas Workshop. The topics to be discussed are current good manufacturing practice issues for the medical gas industry, including air liquefaction, transfilling, and hospital installations.

Date and Time: The public workshop will be held on Tuesday, October 27, 1998, 8 a.m. to 4:30 p.m.

Location: The public workshop will be held at the Holiday Inn Select, Nashville Opryland/Airport, 2200 Elm Hill Pike, Nashville, TN 37214. Maps to the public workshop location will be faxed upon request.

Contact: Kari L. Norton, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5380, ext. 112, FAX 615–781–5391, or e-mail ''knorton@ora.fda.gov''.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by Friday, October 2, 1998. Please include ''Medical Gas Workshop Registration'' in the subject line. There is no registration fee for this public workshop. Space is limited to 150 registrants, and further limited to 2 attendees per firm. Firms desiring more than two slots may be accommodated if there are vacancies.

If you need special accommodations due to a disability, please contact Kari L. Norton at least 7 days in advance.

Dated: August 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–22567 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0362]

Draft Guidance for Industry on Stability Testing of Drug Substances and Drug Products; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 8, 1998, the comment period for the draft guidance for industry entitled ''Stability Testing of Drug Substances and Drug Products.'' The draft guidance provides recommendations regarding the stability studies that should be performed to support new drug applications (NDA's), abbreviated new drug applications (ANDA's), investigational new drug applications (IND's), biologics license applications (BLA's), product license applications (PLA's), and supplements to these applications. FDA published a notice of availability of the draft guidance in the **Federal Register** of June 8, 1998 (63 FR 31224). FDA is taking this action in response to several requests for an extension.

DATES: Written comments on the draft guidance may be submitted by December 8, 1998. General comments on the draft guidance are welcome at any time.

ADDRESSES: Copies of the draft guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Furnkranz, Center for Drug Evaluation and Research (HFD–625), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855–2737, 301–827–5848.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 8, 1998 (63 FR 31224), FDA published a notice announcing the availability of a draft guidance for industry entitled ''Stability Testing of Drug Substances and Drug Products.'' The draft guidance provides recommendations regarding the stability studies that should be performed to support NDA's, ANDA's, IND's, BLA's, PLA's, and supplements to these applications. Interested persons were given until September 9, 1998, to submit written comments on the draft guidance.

On June 18, 1998, FDA received a letter from Perrigo requesting that the agency extend the comment period on the draft guidance 120 days. On June 29, 1998, FDA received a letter from Pharmaceutical Research and Manufacturers of America requesting that the agency extend the comment period on the draft guidance 90 days.

This draft guidance is long and complex and introduces a number of new issues. Therefore the agency has decided to extend the comment period on the draft guidance to December 8, 1998, to allow the public more time to review and comment on its contents.

Interested persons may, on or before December 8, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance. 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. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 12, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–22565 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration publishes abstracts of information collection requests under review by the office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance request submitted to OMB for review, call the HRSA Reports Clearance Office at (301) 443–1129. The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Evaluation of Health Care for the Homeless Program.—New—This is a request for approval to collect data to develop and test emergency department (ED) utilization rates as a measure of effectiveness of the Bureau of Primary Health Care's (BPHC) Health Care for the Homeless (HCH) program. The HCH Program is a Federal grant program authorized by section 330(h) of the Public Health Service Act. This program seeks to improve access by homeless individuals to primary health care and substance abuse treatment.

Data will be collected in five communities in which there are Health Care for the Homeless (HCH) grantees. Between 250–300 single homeless persons will be interviewed at soup kitchens in each of the five communities. The objective is a total sample of 1,350. There will be five categories of questions respondents will be asked: Emergency Room Visits, Inpatient Hospital Utilization, Outpatient Health Care Utilization, Health Status and Perceived Need for Health Care, and Demographics. Information from the study will be used in conjunction with data from ED records of homeless individuals with self reported ED use during the study period to determine whether particular ED visits should be considered ''appropriate or ''non-appropriate'.

The estimated reporting burden is as follows:

Type of report	Number of respondents	Minutes per response	Total burden hours
Individual	1,350	20	450

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 17, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–22575 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1998.

Name: National Advisory Council on the National Health Service Corps (NHSC).

Date and Time: September 9, 1998; 6:00 p.m.–9:00 p.m.; September 10–12, 1998; 9:00 a.m.–5:00 p.m.; September 13, 1998; 8:00 a.m.–11:00 a.m.

Place: Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204, (703) 521–1900.

The meeting is open to the public.

Agenda: Items will include, but not be limited to: In preparation for the year 2000 reauthorization the National Advisory Council has developed a draft position paper, ''The National Health Service Corps for the 21st Century.'' Reactions, suggestions and criticisms to this paper will be heard from public and private partners and other interested organizations on September 10–12. Copies of the draft paper will be available at the meeting. Other agenda items include updates on the NHSC program.

For further information, call Ms. Eve Morrow at (301) 594–4144.

Agenda items are subject to change as priorities dictate.

Dated: August 17, 1998.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–22574 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1998.

Name: National Advisory Committee on Rural Health.

Date and Time: September 13, 1998; 5:00 p.m.–6:30 p.m.; September 14–15, 1998; 8:30 a.m.–5:00 p.m.; September 16, 1998; 8:30 p.m.–11:30 a.m.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007, Phone: (202) 338–4600, FAX: (202) 333–6113.

The meeting is open to the public.

Agenda: A special session will be conducted on Sunday, September 13, for orientation of new members who were just appointed. Monday will include a panel discussion of ''Rural Researchers' Access to National Health Survey Data,'' a presentation and discussion of the new guidelines for designating HPSAs, and a report on ''Critical Access Hospitals.'' Tuesday will include legislative, telehealth, and regulatory updates. A presentation and discussion on the ''National Bipartisan Commission on the Future of Medicare'' will be followed by a discussion of Department interests and priorities for FY 1999. Agenda items are subject to change as priorities dictate.

Anyone requiring information regarding the subject Committee should contact Ms. Arlene A. Granderson, Office, or Rural Health Policy, Health Resources and Services Administration, Room 9–05, Parklawn Building, Rockville, Maryland 20857; telephone (301) 443–0835, FAX (301) 443–2803. Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Arlene Granderson or Ms. Lilly Smetana, Office of Rural Health Policy, Health Resources and Services Administration, telephone (301) 443–0835.

Dated: August 17, 1998.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–22576 Filed 8–21–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Compliance Program Guidance for Clinical Laboratories

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the OIG's recently-issued Compliance Program Guidance for Clinical Laboratories. The OIG had previously developed and published a model compliance plan for the clinical laboratory industry on March 3, 1997. This Compliance Program Guidance for Clinical Laboratories is intended to be more consistent with compliance program guidances issued by the OIG with respect to the hospital industry and to home health agencies, and serves to clarify various aspects of the original model plan. As with previously-issued compliance program guidances, we believe that the development of this guidance for clinical laboratories will continue as a positive step towards promoting a higher level of ethical and lawful conduct throughout the entire health care community.

FOR FURTHER INFORMATION CONTACT: Christine Saxonis, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION: As part of a major initiative to engage the private health care community in combating fraud and abuse, the OIG developed and published in the **Federal Register** a model compliance plan for the clinical laboratories (62 FR 9435; March 3, 1997). The compliance plan was intended to provide clear guidance to that aspect of the clinical laboratory industry that was interested in reducing fraud and abuse within their organizations. Since that issuance, the OIG has developed and issued specific compliance program guidance for the hospital industry and for home health agencies.

This compliance program guidance is intended to refine and build on the original model guidance plan for clinical laboratories. In developing an effective compliance program, the OIG has identified 7 fundamental elements. They are:

- Implementing written policies, procedures and standards of conduct;
- Designing a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Enforcing standards through well-publicized disciplinary guidelines;
- Conducting internal monitoring and auditing; and
- Responding promptly to detected offenses and developing corrective action.

The development of this new Compliance Program Guidance for Clinical Laboratories has been enhanced

based upon changes in Health Care Financing Administration (HCFA) policy, private industry's comments on the original model plan and additional comments submitted by HCFA and the Department of Justice.

While the key components of the original plan are still included, this Compliance Program Guidance sets forth a number of clarifying elements. Specifically, the compliance guidance:

- Focuses on the fact that while physicians can order any tests they believe are appropriate, Medicare will only pay for those tests which are covered, reasonable and necessary;
- Recognizes that individuals other than physicians may be authorized to order tests in some States;
- Recognizes additional claim information, such as requesting the diagnosis information contained in the medical record, can be obtained from an authorized person rather than directly from the physician;
- Notes that physicians are required to submit diagnostic information to the laboratory when ordering many—although not all—laboratory tests;
- Emphasizes the need for the tests performed in accordance with standing orders to be reasonable and necessary; and
- Clarifies laboratories should not charge physicians a price below fair market value for non-federal health program tests in order to include their Federal health care business.

In addition, while the original model laboratory compliance plan focused on the billing of automated multichannel chemistry tests, the American Medical Association has since deleted these codes from the 1998 CPT coding handbook, and HCFA no longer recognizes these as billable or reimbursable codes. As a result, physicians now must individually order tests that once compromised a chemistry profile. This guidance specifically reflects this policy change.

A reprint of the OIG's Compliance Program Guidance for Clinical Laboratories follows.

OIG Compliance Program Guidance for Clinical Laboratories

Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues in its efforts to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist clinical laboratories in developing effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State, and private health plans.[1] The adoption and implementation of voluntary compliance programs significantly advance the prevention of fraud, abuse, and waste in the clinical laboratory industry while at the same time further the fundamental mission of all health care providers, which is to provide quality services and care to patients.

Within this document, the OIG intends to provide first, its general views on the value and fundamental principles of clinical laboratory compliance programs, and second, specific elements that each clinical laboratory should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines for consideration by a clinical laboratory interested in implementing a compliance program. The recommendations and guidelines provided in this document must be considered depending upon their applicability to each particular clinical laboratory.

Fundamentally, compliance efforts are designed to establish a culture within a clinical laboratory that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the clinical laboratory's ethical and business policies. In practice, the compliance program should effectively articulate and demonstrate the organization's commitment to the compliance process. The existence of benchmarks that demonstrate implementation and achievements are essential to any effective compliance program.

Eventually, a compliance program should become part of the fabric of routine clinical laboratory operations.

Specifically, compliance programs guide a clinical laboratory's governing body (e.g., Board of Directors), Chief Executive Officer (CEO), managers, technicians, billing personnel, and other employees in the efficient management and operation of a clinical laboratory. These employees are especially critical as an internal control in the reimbursement and payment areas, where claims and billing operations are often the source of fraud and abuse and, therefore, historically have been the focus of Government regulation, scrutiny and sanctions.

It is incumbent upon a clinical laboratory's corporate officers and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct. Indeed, many clinical laboratories and clinical laboratory organizations have adopted mission statements articulating their commitment to high ethical standards. A formal compliance program, as an additional element in this process, offers a clinical laboratory a further concrete method that may improve quality of services and reduce waste. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable statutes, regulations and other requirements of Federal, State and private health plans.

Adopting and implementing an effective compliance program requires a substantial commitment of time, energy and resources by senior management and the clinical laboratory's governing body.[2] Programs hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective. While it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the OIG believes that the long term benefits of implementing the program outweigh the costs.

A. Benefits of a Compliance Program

In addition to fulfilling its legal duty to ensure that it is not submitting false or incorrect claims to Government and private payors, a clinical laboratory may gain numerous additional benefits by implementing an effective compliance program. Such programs make good business sense in that they help a clinical laboratory fulfill its fundamental mission of providing quality services as well as assisting clinical laboratories in identifying weaknesses in internal systems and management. Other important potential benefits include the ability to:

[1] This guidance is a republication of the model clinical laboratory compliance plan issued by the OIG on February 27, 1997. This guidance has been amended to reflect HCFA policy changes and to be consistent with the OIG's Compliance Program Guidance for Hospitals. See 63 FR 8987 (February 23, 1998) and the OIG's web site at http://www.dhhs.gov/progorg/oig.

[2] Indeed, recent case law suggests that the failure of a corporate Director to attempt in good faith to institute a compliance program in certain situations may be a breach of a Director's fiduciary obligation. See, e.g., *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Ct. Chanc. Del. 1996).

• Concretely demonstrate to employees and the community at large the clinical laboratory's strong commitment to honest and responsible corporate conduct;

• Provide a more accurate view of employee behavior relating to fraud and abuse;

• Identify and prevent criminal and unethical conduct;

• Improve the quality, efficiency and consistency of services;

• Create a centralized source for distributing information on health care statutes, regulations and other program directives related to fraud and abuse and related issues;

• Develop a methodology that encourages employees to report potential problems;

• Develop procedures that allow the prompt, thorough investigation of alleged misconduct by corporate officers, managers and other employees;

• Initiate immediate, appropriate, and decisive corrective action; and

• Through early detection and reporting, minimize the loss to the Government from false claims, and thereby reduce the clinical laboratory's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion.[3]

Overall, the OIG believes that an effective compliance program is a sound investment on the part of a clinical laboratory.

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud, abuse and waste from the clinical laboratory system. However, a sincere effort by clinical laboratories to comply with applicable Federal and State standards, as well as the requirements of private health care programs, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

There is no single ''best'' clinical laboratory compliance program, given the diversity of laboratories within the industry. The OIG understands the variances and complexities within the clinical laboratory industry and is sensitive to the differences among large and small clinical laboratories. However, elements of this guidance can be used by all clinical laboratories, regardless of size, location or corporate structure, to establish an effective compliance program. We recognize that some clinical laboratories may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG's suggestions on how a clinical laboratory can best establish internal controls and monitoring to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable elements of a compliance program.

In drafting this guidance, we took into consideration the Model Compliance Plan for Clinical Laboratories issued by the OIG in February 1997, the clinical laboratory industry's comments on that plan, changes in HCFA policy and the OIG's Compliance Program Guidance for Hospitals.

As appropriate, this guidance may be further modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the rules, policies and procedures of the Federal, State and private health plans occur. We recognize that clinical laboratories are already accountable for complying with an extensive set of statutory and other legal requirements, far more specific and complex than what we have referenced in this document. We also recognize that the development and implementation of compliance programs in clinical laboratories often raise sensitive and complex legal and managerial issues.[4] However, the OIG wishes to offer what it believes is critical guidance for providers who are sincerely attempting to comply with the relevant health care statutes, regulations and other requirements of Federal, State and private health plans.

Compliance Program Elements

The elements proposed by these guidelines are similar to those of the compliance program guidance for hospitals that was published by the OIG in February 1998 and of our corporate integrity agreements.[5] The elements represent a guide—a process that can be used by clinical laboratories, whether an independent national laboratory, a hospital laboratory, or a small, regional laboratory. Moreover, the elements can be incorporated into the managerial structure of the clinical laboratory. As we stated in our compliance program guidance for hospitals, these suggested guidelines can be tailored to fit the needs and financial realities of a particular laboratory. The OIG is cognizant that with regard to compliance programs, one model is not suitable to every clinical laboratory. Nonetheless, the OIG believes that every clinical laboratory, regardless of size or structure, can benefit from the principles espoused in this guidance.

The OIG believes that every effective compliance program must begin with a formal commitment by the clinical laboratory's governing body to include *all* of the applicable elements listed below. These elements are based on the seven steps of the Federal Sentencing Guidelines.[6] We recognize that full implementation of all elements may not be immediately feasible for all clinical laboratories. However, as a first step, a good faith and meaningful commitment on the part of the clinical laboratory will substantially contribute to a program's successful implementation.

At a minimum, comprehensive compliance programs should include the following 7 elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures that promote the clinical laboratory's commitment to compliance (e.g., by including adherence to compliance as an element in evaluating managers and employees) and that address specific areas of potential fraud, such as marketing schemes, CPT/HCPCs coding issues, improper ICD–9 coding, and improper claims submission;

(2) The designation of a chief compliance officer and other appropriate bodies (e.g., a corporate compliance committee) charged with the responsibility of operating and monitoring the compliance program, and who report directly to the CEO and the governing body;

(3) The development and implementation of regular, effective education and training programs for all affected employees;

(4) The maintenance of a process, such as a hotline, to receive complaints, and the adoption of procedures to protect the anonymity of complainants

[3] The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative penalties. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government, in certain circumstances will be subject to not less than double, as opposed to treble, damages. See 31 U.S.C. 3729(a).

[4] Nothing stated herein should be substituted for, or used in lieu of, competent legal advice from counsel.

[5] Corporate integrity agreements are executed as part of a civil settlement agreement between the health care provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of 3 to 5 years and require many of the elements included in this compliance program guidance.

[6] See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2 comment. (n.3(k)).

and to protect whistleblowers from retaliation;

(5) The development of a system to respond to allegations of improper/illegal activities and the enforcement of appropriate disciplinary action against employees who have violated internal compliance policies, applicable statutes, regulations or requirements of Federal, State or private health plans;

(6) The use of audits and/or other evaluation techniques to monitor compliance and assist in the reduction of identified problem areas; and

(7) The investigation and remediation of identified systemic problems and the development of policies addressing the non-employment or retention of sanctioned individuals.

A. Written Procedures and Policies

Laboratory compliance programs should require the development and distribution of written compliance policies. These policies should be developed under the supervision and direction of the chief compliance officer or the equivalent and should, at a minimum, be provided to all individuals who are affected by the specific policy at issue. One convenient method of achieving this goal is to create a three-ring compliance policy notebook. This format permits the filing of new and amended or revised compliance policies and ensures that affected individuals have easy access to the laboratory's written policies. A master index should show when policies are changed.

1. Standards of Conduct

Laboratories should develop standards of conduct for all employees that clearly delineate the policies of the laboratory with regard to fraud, waste and abuse and adherence to all statutes, regulations and other program requirements governing Federal, State and private health benefit plans. These standards should be made available to all employees; translated, interpreted (e.g., may be signed for hard of hearing or deaf employees) or put into Braille as necessary, and regularly updated as the policies and regulations are modified.

When an employee first begins working for the clinical laboratory, and each time new standards of conduct are issued, employees should be asked to sign a statement certifying that they have received, read, and understood the standards of conduct. All employee certifications should be retained by the laboratory.

2. Medical Necessity

Laboratory compliance programs, to be effective, should communicate to physicians that claims submitted for services will only be paid if the service is covered, reasonable, and necessary for the beneficiary, given his or her clinical condition. Laboratories should take all reasonable steps to ensure that it is not submitting claims for services that are not covered, reasonable and necessary.[7] Upon request, a laboratory should be able to produce or obtain from the treating physician (test ordering), authorized person on the physician's staff or other individual authorized by law to order tests the documentation to support the medical necessity of the service the laboratory has provided and billed to a Federal or private health care program. We recognize that laboratories do not and cannot treat patients or make medical necessity determinations. However, there are steps that such facilities can take to assure compliance with the applicable statutes, regulations and the requirements of Federal, State and private health plans.

As a preliminary matter, the OIG recognizes that physicians or other authorized individuals must be able to order any tests that they believe are appropriate for the treatment of their patients. However, we believe that physicians must be made aware by the billing laboratory that Medicare will only pay for tests that meet the Medicare coverage criteria and are reasonable and necessary to treat or diagnose an individual patient. Section 1862(a)(1)(A) of the Social Security Act states, ''no payment may be made under Part A or Part B for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body member.'' Therefore, Medicare may deny payment for a test that the physician believes is appropriate, but which does not meet the Medicare coverage criteria (e.g., done for screening purposes) or where documentation in the entire patient record, including that maintained in the physician's records, does not support that the tests were reasonable and necessary for a given patient.

[7] In limited instances, HCFA does allow laboratories to submit claims when the lab believes the test may be denied. Such instances include, but are not limited to: when the beneficiary has signed an Advance Beneficiary Notice (ABN) (See *Medicare Carriers Manual* § 7300.5) (Part D in this section further addresses ABN issues) and when the beneficiary requests the provider submit the claim (See *Medicare Carriers Manual* § 3043). In the first instance the lab should include modifier GA on the claim which indicates the beneficiary has signed an ABN and in the latter instance the lab should note on the claim their belief that the service is noncovered and that it is being submitted at the beneficiary's insistence.

Laboratories can and should advise their clients that tests submitted for Medicare reimbursement must meet program requirements[8] or the claim may be denied.

Laboratories may implement the following steps through their compliance programs or some other appropriate mechanism to ensure that the claims they submit to Federal or private health care programs meet the appropriate program requirements:

a. Requisition design: While HCFA does not design or approve requisition forms, laboratories should construct the requisition form to capture the correct program information as required by Federal or private health care programs and to promote the conscious ordering of tests by physicians or other authorized individuals. The laboratory should construct the requisition form to ensure that the physician or other authorized individual has made an independent medical necessity decision with regard to each test the laboratory will bill. Laboratories should encourage physicians or other authorized individuals to submit diagnosis information for all tests ordered, as documentation of the medical necessity of the service. The form should contain a statement indicating that Medicare generally does not cover routine screening tests.

b. Notices to physicians: While HCFA does not impose educational requirements upon the laboratories, labs are in a unique position to educate their physician clients. Therefore, laboratories should provide all of their physician clients with annual written notices that set forth: (1) The Medicare national policy and Medicare contractor local medical review policy for lab tests; (2) that organ or disease related panels will only be paid and will only be billed when all components are medically necessary; and (3) the Medicare laboratory fee schedule and a statement informing the physician that the Medicaid reimbursement amount will be equal to or less than the amount of Medicare reimbursement. The notice must also provide the phone number of the clinical consultant. The clinical consultant is required under the Clinical Laboratory Improvement Amendment (CLIA) certification (42 CFR 493.1453).

In addition to the general notices above, laboratories that continue to offer clients the opportunity to request customized profiles should provide annual written notices that: (1) Explain the Medicare reimbursement paid for each component of each such profile; (2) inform physicians that using a

[8] See fn. 7.

customized profile may result in the ordering of tests which are not covered, reasonable or necessary and that tests will not be billed;[9] and (3) inform physicians that the OIG takes the position that an individual who knowingly causes a false claim to be submitted may be subject to sanctions or remedies available under civil, criminal and administrative law.

c. Physician acknowledgments: Although HCFA does not require physicians to sign acknowledgments, laboratories should have the physician sign an acknowledgment stating he or she understands the potential implications of ordering customized profiles.

d. Use of Advance Beneficiary Notices: Advance Beneficiary Notices (ABNs) are used when there is a likelihood that an ordered service will not be paid. Before the service is furnished, the beneficiary should be notified, in writing, of the likelihood that the specific service will be denied. After being so informed the beneficiary has the choice to either (1) decide to receive the service and sign the agreement to pay on the ABN or (2) decide not to receive the service and therefore does not sign the ABN. Beneficiaries should not be asked to sign blank ABNs.

As the entity furnishing and billing for services, it is ultimately the laboratory's responsibility to produce the ABN, upon request. In many cases, it is difficult for the laboratories to directly obtain an ABN from the beneficiary. Therefore, laboratories may wish to educate physicians on the appropriate use of ABNs.

The notice must be in writing, must clearly identify a particular service, must state that payment for the particular service likely will be denied and must give the reason(s) for the belief that payment is likely to be denied.

Routine notices to beneficiaries which do no more than state that denial of payment is possible or that they never know whether payment will be denied are not considered acceptable evidence of advance notice. Notices should not be given to beneficiaries unless there is some genuine doubt regarding the likelihood of payment as evidenced by the reasons stated on the ABN. Giving notice for all claims or services is not an acceptable practice.

e. Test utilization monitoring: The OIG believes that laboratories can and should take the steps described in this compliance guidance to help ensure appropriate billing of lab tests. We also believe that there are steps laboratories can take to determine whether physicians or other individuals authorized to order tests are being encouraged to order medically unnecessary tests. More importantly, if the laboratory discovers that it has in some way contributed to the ordering of unnecessary tests, the OIG believes the laboratory has a duty to modify its practices, as well as notify the physician(s) or other authorized individual(s) of its concerns and recommend corrective action.

There are many methods by which a laboratory may determine excessive utilization of laboratory services. One approach to self-monitoring is to hire an outside consultant to analyze the laboratory's patterns of utilization, and investigate any potential problems or aberrancies.

Another approach is to analyze test utilization data by CPT or HCPCS code, for the top 30 tests performed each year. Laboratories could do this by keeping track of the number of tests performed by CPT or HCPCS code or of the number of claims submitted for each test. The laboratories would then compute the percentage growth in the number of tests or claims submitted for each of the top 30 tests from one year to the next. We believe that if a test's utilization grows more than 10 percent, the laboratory should undertake a reasonable inquiry to ascertain the cause of such growth. If the laboratory determines that the increase in test utilization occurred for a benign reason, such as the acquisition of a new laboratory facility, then the laboratory need not take any action. However, if the laboratory determines that the increase in utilization was caused by a misunderstanding or ignorance by the ordering physicians or other authorized individuals regarding the billing consequences of the tests they ordered or an action on the part of the facility, the laboratory should take any steps that it deems reasonably necessary to address the issue and to ensure misconduct is not occurring.

3. Billing

Laboratory compliance policies should ensure that all claims for testing services submitted to Medicare or other Federal health care programs correctly identify the services ordered by the physician or other authorized individual and performed by the laboratory.

a. Selection of CPT or HCPCS Codes: Laboratory compliance policies should ensure that the CPT or HCPCS code that is used to bill, accurately describes the service that was ordered and performed. Laboratories cannot alter the physician's order in any way either increasing or decreasing the number of services performed without the express consent of the ordering physician or other authorized individual. To ensure code accuracy, laboratories should require that individuals with technical expertise in laboratory testing review the appropriateness of the codes before the claims are submitted. Intentional or knowing upcoding (i.e., the selection of a code to maximize reimbursement when such code is not the most appropriate descriptor of the service) could violate the False Claims Act and/or other civil laws, and criminal law.

b. Selection of ICD–9–CM codes: Medicare carriers and fiscal intermediaries have the authority to develop and implement Local Medical Review Policy (LMRP) which specify when, and under what circumstances, a service will be considered covered, reasonable and necessary and what documentation will support the need for the service. In some cases, LMRPs may limit coverage for specified laboratory tests to specific medical diagnoses. Laboratory compliance policies should ensure that the lab can support tests billed to Medicare with documentation obtained from the physician ordering the test, an authorized person on the physician's staff or other individual authorized by law to order tests. Laboratories should not: (1) Use information provided by the physician or other authorized individual from earlier dates of service (other than standing orders, as discussed below at paragraph 4); (2) create diagnosis information that has triggered reimbursement in the past; (3) use computer programs that automatically insert diagnosis codes without receipt of diagnostic information from the ordering physician or other authorized individual; or (4) make up information for claim submission purposes. Laboratories should: (1) Contact the ordering physician, authorized person on the physician's staff or other individual authorized to order tests to obtain information in the event that such information was not provided; and (2) accurately translate narrative diagnoses obtained from the physician or other authorized individual to ICD–9–CM codes. Where medical documentation is obtained from a physician or other authorized individual after receipt of the specimen and the requisition form, it should be maintained.

c. Tests covered by claims for reimbursement: Only those tests that are ordered by an authorized individual or physician, are performed and meet Medicare's conditions of coverage are

[9] See fn. 7.

reimbursable by Medicare. If a laboratory receives a specimen without a valid test order or with a test order which is ambiguous, the laboratory must verify the tests which the physician wants and perform them before submitting a claim for reimbursement to Medicare. In this way, if the physician or other authorized individual did not order the test, the laboratory will not erroneously bill for it.

Similarly, if a laboratory did not perform an ordered test due to, for example, a laboratory accident or insufficient quantities of specimen, the laboratory should not submit a claim to Medicare. Medicare payment is made for tests that are ordered, performed, and covered. The submission of a claim for tests that were either not ordered or were not performed could subject a provider to sanctions under administrative, civil or criminal law.

d. Billing of calculations: Consistent with Medicare coverage rules, laboratory compliance policies should ensure that the laboratory does not bill both for calculations (e.g., calculated LDLs, T7s, and indices) and the tests that are performed to derive such calculations. In many situations, physicians are not offered a choice about whether to receive such calculations, nor are they aware of the practice of some laboratories to bill Medicare for such calculations in addition to the underlying tests. The fact that a separate CPT code exists does not mean that Medicare separately reimburses for the service assigned to the code. Billing both for the calculations and the underlying tests constitutes double billing, which may subject a laboratory to sanctions and other remedies available under civil, criminal, and administrative law.

e. Reflex testing: Reflex testing occurs when initial test results are positive or outside normal parameters and indicate that a second related test is medically appropriate. In order to avoid performing unnecessary reflex tests, labs may want to design their requisition form in such a way which would only allow for the reflex test when necessary. Therefore, the condition under which the reflex test will be performed should be clearly indicated on the requisition form. Laboratories may wish to adopt a similar policy for confirmation testing which may be mandatory.

4. Reliance on Standing Orders

Although standing orders are not prohibited in connection with an extended course of treatment, too often they have led to abusive practices. Standing orders in and of themselves are not usually acceptable documentation that tests are reasonable and necessary. Accordingly, the insurer may reject standing orders as evidence that a test is reasonable and necessary. Medicare contractors can and may require additional documentation to support the medical necessity of the test. As a result of the potential problems standing orders may cause, the use of standing orders is discouraged.

Thus, while laboratory compliance programs may permit the use of standing orders executed in connection with an extended course of treatment, the compliance program should require the laboratory to periodically monitor standing orders. Standing orders should have a fixed term of validity and must be renewed at their expiration. We suggest that, consistent with State law requirements, a laboratory should contact all nursing homes from which the laboratory has received such standing orders and request that they confirm in writing the validity of all current standing orders. In addition, in accordance with State law, laboratories should verify standing orders relied upon at draw stations with the physician, authorized person on the physician's staff, or other authorized individual who has provided the standing orders to the laboratory. With respect to patients with End Stage Renal Disease (ESRD), at least once annually laboratories should contact each ESRD facility or unit to request confirmation in writing of the continued validity of all existing standing orders.

5. Compliance With Applicable HHS Fraud Alerts

The OIG and HCFA periodically issue fraud alerts [10] setting forth activities believed to raise legal and enforcement issues. Laboratory compliance programs should require that any and all fraud alerts issued by OIG and HCFA are carefully considered by the legal staff, chief compliance officer, or other appropriate personnel. Moreover, the compliance programs should require that a laboratory cease and correct any conduct criticized in such a fraud alert, if applicable to laboratories, and take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, a laboratory should take the steps described in Section G regarding investigations, reporting and correction of identified problems.

[10] Both OIG and HCFA fraud alerts can be located on the internet. The OIG web site address is: http://www.dhhs.gov/progorg/oig. The HCFA web site address is: http://www.hcfa.gov.

6. Marketing

Laboratory compliance programs should require honest, straightforward, fully informative and non-deceptive marketing. It is in the best interests of patients, physicians, laboratories, the Government and private health plans that physicians and other individuals authorized to order tests fully understand the services offered by the laboratory, the services that will be provided when tests are ordered, and the financial consequences for Medicare, as well as other payors, when tests are billed. Accordingly, laboratories that market their services should ensure that their marketing information is clear, correct, non-deceptive and fully informative.

7. Prices Charged to Physicians

Laboratories are paid for their services by a variety of payors in addition to Medicare and other Federal health care programs. Such payors often include private health insurers, other health care providers, and physicians. We believe it is essential that the physician take into account the patient's best interest when deciding where to refer the patient's specimen.

The prices that laboratories charge physicians for certain laboratory services raise issues that should be addressed in a laboratory's written compliance policies. These policies should ensure that laboratories are not providing any inducements to gain a physician's business,[11] including charging physicians a price below fair market value for their non-Federal health care program tests. Laboratories that charge physicians a price below fair market value to induce them to refer their Federal health care program business may be risking anti-kickback enforcement and false claims actions.

8. Retention of Records

Compliance programs should ensure that all records required either by Federal or State law or by the compliance program are created and maintained. Adequate documentation of compliance efforts are essential in the event that a laboratory comes under Government scrutiny.

9. Compliance as an Element of a Performance Plan

Clinical laboratories should make the promotion of and adherence to

[11] The OIG has published ''Special Fraud Alert: Arrangements for the Provision of Clinical Lab Services'' that addresses how the anti-kickback statute relates to arrangements for the provision of clinical lab services. See 59 FR 65377 (December 19, 1994); OIG's web site at http://www.dhhs.gov/progorg/oig.

compliance an element in evaluating the performance of managers, supervisors and all other employees. They, along with other employees, should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors involved in the sale, marketing, or billing of laboratory services, and those who oversee phlebotomists should (1) discuss with all supervised employees the compliance policies and legal requirements applicable to their function; (2) inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and (3) disclose to all supervised personnel that the laboratory will take disciplinary action up to and including termination for violation of these policies or requirements. In addition to making performance of these duties an element in evaluations, the compliance officer or laboratory management may also choose to include in the laboratory's compliance program a policy that managers and supervisors may be sanctioned for failure to adequately instruct their subordinates or for failing to detect non-compliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations and given the laboratory the opportunity to correct them earlier.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every clinical laboratory should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the clinical laboratory and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the organization with direct access to the governing body and the CEO.[12] The officer should have sufficient funding and staff to perform his or her responsibilities fully. Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring the implementation of the compliance program;[13]
- Reporting on a regular basis to the clinical laboratory's governing body, CEO and compliance committee on the progress of implementation, and assisting these components in establishing methods to improve the clinical laboratory's efficiency and quality of services, and to reduce the clinical laboratory's vulnerability to fraud, abuse and waste;
- Developing and distributing to all affected employees all written compliance policies and procedures. These policies and procedures should be readily understandable by all employees (e.g., translated into other languages, interpreted in sign language, and/or put into Braille as necessary);
- Periodically revising the program in light of changes in the needs of the organization, and in the law, policies and procedures of Government and private payor health plans;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeks to ensure that all appropriate employees and management are knowledgeable of, and comply with, pertinent Federal, State and private payor standards;
- Ensuring that physicians who order services from the clinical laboratory are informed of the clinical laboratory's compliance program standards with respect to coding, billing, and marketing, among other things;
- Assisting the clinical laboratory's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of policies;
- Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action; and
- Developing policies and programs that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation.

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, requisition forms, billing information, claim information, and records concerning the marketing efforts of the clinical laboratory and its arrangements with its clients. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment issues that could violate the anti-kickback statute, as well as the physician self-referral prohibition and other legal or regulatory requirements.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[14] The committee's functions should include:

- Analyzing the organization's regulatory environment, the legal requirements with which it must comply, and specific risk areas;
- Assessing existing policies and procedures that address these areas for possible incorporation into the compliance program;
- Working within the clinical laboratory to develop standards of conduct and policies and procedures to promote compliance;
- Recommending and monitoring the development of internal systems and controls to implement the clinical laboratory's standards, policies and procedures as part of its daily operations;
- Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms; and
- Developing a system to solicit, evaluate and respond to complaints and problems.

The committee may also assume other functions as the compliance concept becomes part of the overall clinical laboratory operating structure and daily routine.

[12] The OIG believes that it is not advisable for the compliance function to be subordinate to the clinical laboratory's general counsel, or comptroller or similar officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the clinical laboratory make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[13] For clinical laboratory chains, the OIG encourages coordination with each affiliate owned by the company through the use of a headquarter's compliance officer, communicating with the designated compliance officers in each facility, or regional office, as appropriate.

[14] The OIG recommends the compliance committee consist of individuals with varying perspectives and responsibilities in the organization.

C. Conducting Effective Training and Education

The proper education, training and retraining of corporate officers, managers, and all other employees are significant elements of an effective compliance program. As part of its compliance program, a clinical laboratory should require all affected employees to attend specific training when they are first hired and on a periodic basis thereafter, including appropriate training in Federal and State statutes, regulations, program requirements, the policies of private payors, and corporate ethics. The training should emphasize the organization's commitment to compliance with these legal requirements and policies.

These training programs should include sessions highlighting the organization's compliance program, summarizing fraud and abuse laws, and discussing coding requirements, claim development and claim submission process and marketing practices that reflect current legal and program standards. The clinical laboratory must take steps to communicate effectively its standards and procedures to all affected employees (e.g., by requiring participation in training programs and disseminating publications that explain in a practical manner specific requirements).[15] Managers of specific departments can assist in identifying areas that require training and in carrying out such training. Training instructors may come from outside or inside the organization. New employees should be targeted for training early in their employment.[16] The compliance officer should document the attendees, the subjects covered, and the material distributed at the training sessions sponsored by the clinical laboratory as part of the compliance program.

A variety of teaching methods, such as interactive training, and training in several different languages, particularly where a clinical laboratory has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable of the clinical laboratory's standards of conduct and procedures for alerting senior management to problems and concerns. Targeted training should be provided to corporate officers, managers and other employees whose actions affect the accuracy of the claims submitted to Government and private payors, such as employees involved in the coding, billing, and marketing processes. For example, for certain employees involved in the billing and coding functions, periodic training in proper CPT/HCPCs and ICD–9 coding and documentation should be required. In addition to specific training in the areas identified in section II.A, above, basic training for appropriate corporate officers, managers and other employees should include such topics as:

- Government and private payor reimbursement principles;
- General prohibitions on paying or receiving remuneration to induce referrals;
- Proper translation of narrative diagnoses;
- Only billing for services ordered, performed and reported;
- Physician approved amendments to requisition forms;
- Proper documentation or confirmation of services rendered; and
- Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a clinical laboratory's marketing representatives, in that the pressure to meet business goals may render these employees vulnerable to engaging in prohibited practices.

The OIG suggests that all affected employees be made part of the clinical laboratory's various educational and training programs. Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.[17] In departments with high employee turnover, periodic training updates are critical.

The OIG recommends that attendance and participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee. The clinical laboratory should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

D. Developing Effective Lines of Communications

1. Access to the Compliance Officer

An open line of communication between the compliance officer and clinical laboratory employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse and waste. Written confidentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential misconduct.[18] The compliance committee should also develop several independent reporting paths for an employee to report fraud, waste or abuse so that such reports cannot be diverted by supervisors or other personnel.

The OIG encourages the establishment of a procedure so that clinical laboratory employees may seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question with regard to a laboratory policy or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies and procedures can be updated and improved to reflect any necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems.

2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines (including anonymous hotlines), e-mails, written memoranda, newsletters, and other forms of information exchange to maintain these open lines of communication. If the clinical laboratory establishes a hotline, the telephone number should be made readily available to all employees possibly by conspicuously posting the telephone number in common work areas.[19] Employees should be permitted

[15] Some publications, such as the OIG's Special Fraud Alerts, audit and inspection reports, and advisory opinions are readily available from the OIG and could be the basis for standards and educational courses for appropriate clinical laboratory employees. These documents can be found on the OIG's web site at http://www.dhhs.gov/progorg/oig.

[16] Certain positions, such as those involving the coding of medical services, create a greater organizational legal exposure, and therefore require specialized training. One recommendation would be for a clinical laboratory to attempt to fill such positions with individuals who have the appropriate educational background and training.

[17] In its corporate integrity agreements, the OIG usually requires a minimum number of hours annually for basic training in compliance areas. More hours are required for specialty fields such as billing and coding.

[18] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. In many cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when a questionable, fraudulent or abusive situation was brought to the attention of senior corporate officials.

[19] Clinical laboratories should also post in a prominent, available area the HHS–OIG Hotline

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to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, regulations, statutes or program requirements of Federal, State and private insurers should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results. Such information should be included in reports to the governing body, the CEO and compliance committee. Further, while the clinical laboratory should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed in certain instances when governmental authorities become involved.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

E. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. Discipline Policy and Actions

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, and other employees who have failed to comply with the clinical laboratory's standards of conduct, policies and procedures, or Federal and State laws, or those who have otherwise engaged in wrongdoing, which have the potential to impair the clinical laboratory's status as a reliable, honest and trustworthy health care provider.

The OIG believes that the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers, and other employees for failing to comply with the clinical laboratory's standards and policies and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension or termination. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department managers, while others may have to be resolved by a senior manager. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Employees should be advised by the clinical laboratory that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate corporate officers, managers and other employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be subject to the same disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a clinical laboratory. The OIG believes that corporate officers, managers, and other employees should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.

2. New Employee Policy

For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, clinical laboratories should conduct a reasonable and prudent background investigation, including a reference check, as part of every such employment application.[20] The application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a–7(i), or exclusion action. Pursuant to the compliance program, clinical laboratory policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded or otherwise ineligible for participation in Federal health care programs (as defined in 42 U.S.C. 1320a–7b(f)).[21] In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that such individuals should be removed from direct responsibility for or involvement in any Federal health care program.[22] With regard to current employees, physicians or other individuals authorized to order tests, if resolution of the matter results in conviction, debarment or exclusion, the clinical laboratory should terminate its employment or other contract arrangement with the individual or physician.

F. Auditing and Monitoring

An ongoing evaluation process involving thorough monitoring and regular reporting to the clinical laboratory's corporate officers is critical to a successful compliance program. Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and shared with the clinical laboratory's corporate officers and the compliance committee.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations and the program requirements of Federal, State and private insurers. At a minimum, these audits should be designed to address the clinical laboratory's compliance with laws governing kickback arrangements, the physician self-referral prohibition, CPT/HCPCS coding and billing, ICD–9 coding, claim development and submission, reimbursement, marketing, reporting and record keeping. In

telephone number, 1–800–HHS–TIPS (447–8477), in addition to any company hotline number that may be posted.

[20] The Cumulative Sanction Report is an OIG-produced report available on the Internet at http://www.dhhs.gov/progorg/oig. It is updated on a regular basis to reflect the status of health care providers who have been excluded from participation in the Medicare and Medicaid programs. In addition, the General Services Administration maintains a monthly listing of debarred contractors on the Internet at http://www.arnet.gov/epls. Also, once the data base established by the Health Care Fraud and Abuse Data Collection Act of 1996 is fully operational, the hospital should regularly request information from this data bank as part of its employee screening process.

[21] Likewise, clinical laboratory compliance programs should establish standards prohibiting the execution of contracts with physicians or other individual authorized to order tests that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs.

[22] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

addition, the audits and reviews should inquire into the clinical laboratory's compliance with specific rules and policies that have been the focus of particular attention on the part of the Medicare fiscal intermediaries or carriers, and law enforcement, as evidenced by OIG Special Fraud Alerts, OIG audits and evaluations, and publically announced law enforcement initiatives and also should focus on any areas of concern that have been identified by any entity, (i.e., Federal, State, or internally) specific to the individual clinical laboratory.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[23] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer, corporate officer or manager may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the clinical laboratory should take prompt steps to correct the problem. If potential fraud or violations of the False Claims Act are involved, the laboratory should report the potential violation to the OIG or the Department of Justice (see discussion in Section G.2, below). Any repayment of an overpayment which results from such a violation should be made as part of the discussion with law enforcement.

When making any overpayment, the clinical laboratory should inform the payor of the following information (1) the refund is being made pursuant to a voluntary compliance program; (2) a description of the complete circumstances surrounding the overpayment; (3) the methodology by which the overpayment was determined; (4) any claim-specific information used to determine the overpayment and; (5) the amount of the overpayment.

The OIG believes that the compliance officer needs to be made aware of these overpayment patterns, violations or deviations and look for trends that may demonstrate a systemic problem.

An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, e.g., whether there has been appropriate; (1) dissemination of the program's standards; (2) training; (3) ongoing educational programs; and (4) disciplinary actions, among others. This process will verify actual conformance with the compliance program. The review also should look into whether appropriate records have been created and maintained to document the implementation of an effective program. However, when monitoring discloses that deviations were not detected in a timely manner due to program deficiencies, appropriate modifications must be implemented. Such evaluations, when developed with the support of management, can help ensure compliance with the clinical laboratory's policies and procedures.

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- On-site visits;
- Interviews with personnel involved in management, marketing/sales, operations, coding/billing, claim development and submission, and other related activities;
- Questionnaires developed to solicit impressions of a broad cross-section of the clinical laboratory's employees and referring clients;
- Review of requisition forms and other documents that support claims for reimbursement;
- Review of written materials and documentation produced by the laboratory and used by physicians and other individuals authorized to order tests; and
- Trend analyses, or longitudinal studies, that seek deviations in billing or ordering patterns over a given period.

The reviewers should:

- Be independent of line management;
- Have access to existing audit resources, relevant personnel and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the CEO, governing body and members of the compliance committee on a regular basis, but no less than annually; and
- Specifically identify areas where corrective actions are needed.

With these reports, the clinical laboratory management can take whatever steps are necessary to correct past problems and prevent them from recurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

The clinical laboratory should document its efforts to comply with applicable statutes, regulations and the program requirements of Federal, State and private payors. For example, where a clinical laboratory, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the clinical laboratory should document and retain a record of the request and any written or oral response. This step is particularly important if the clinical laboratory intends to rely on that response. The laboratory should memorialize its determination as to whether reliance on any such advice is reasonable, and its efforts to develop procedures based upon such advice.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. Violations and Investigations

Violations of a clinical laboratory's compliance program, failures to comply with applicable Federal or State law, and other requirements of Government and private health plans, and other types of misconduct threaten a clinical laboratory's status as a reliable, honest and trustworthy provider capable of participating in Federal health care programs. Detected but uncorrected misconduct can seriously endanger the mission, reputation, and legal status of the clinical laboratory. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the chief compliance officer or other management officials initiate prompt steps to investigate the conduct in question to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and if so, take steps to correct the problem.[24] As appropriate, such steps

[23] The OIG recommends that when a compliance program is established in a clinical laboratory, the compliance officer, with the assistance of corporate officers, should take a ''snapshot'' of their operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This ''snapshot,'' often used as part of benchmarking analyses, becomes a baseline for the compliance officer and other corporate officers to judge the clinical laboratory's progress in reducing or eliminating potential areas of vulnerability. For example, it has been suggested that a baseline level include the frequency and percentile levels of each CPT code in relation to the clinical laboratory's overall billing.

[24] Instances of non-compliance must be determined on a case-by-case basis. The existence, or amount, of a monetary loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no monetary loss at all, but corrective action and reporting are still necessary to

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may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan,[25] a report to the Government,[26] and the submission of any overpayments, if applicable.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Some clinical laboratories should consider engaging outside counsel, auditors, or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process, copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, e.g., any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will necessarily vary depending upon the clinical laboratory and the situation, clinical laboratories should strive for some consistency by utilizing sound practices and disciplinary protocols. Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have since been uncovered.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless otherwise requested by law enforcement). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the clinical laboratory determines that disciplinary action is warranted, it should be prompt and imposed in accordance with the clinical laboratory's written standards of disciplinary action.

2. Reporting

If the compliance officer, compliance committee or management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law, then the clinical laboratory promptly should report the matter to the appropriate governmental authority[27] within a reasonable period, but not more than 60 days[28] after determining that there is credible evidence of a violation.[29] Prompt reporting will demonstrate the clinical laboratory's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.[30]

When reporting misconduct to the Government, a clinical laboratory should provide all evidence relevant to the potential violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel, and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately indicates that criminal or civil violations may have occurred, the appropriate Federal and State officials[31] should be notified immediately.

As previously stated, the clinical laboratory should take appropriate corrective action, including the imposition of proper disciplinary action, and prompt identification and restitution of any overpayment to the affected payor. In cases where potential fraud or violations of the False Claims Act are involved payment should be made as part of discussions with law enforcement. Failure to repay overpayments within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the clinical laboratory, as well as any individuals who may have been involved.[32] For this reason, clinical laboratory compliance programs should emphasize that overpayments obtained from Medicare or other Federal health care programs should be promptly returned to the payor that made the erroneous payment. Section F details the information which should be provided to the contractor when making a repayment.

Conclusion

Through this document, the OIG has attempted to provide a foundation for development of an effective and cost-efficient clinical laboratory compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual clinical laboratory, depending upon its

protect the integrity of the applicable program and its beneficiaries.

[25] Advice from the clinical laboratory's in-house counsel or an outside law firm may be sought to determine the extent of the clinical laboratory's liability and to plan the appropriate course of action.

[26] The OIG currently maintains a voluntary disclosure program that encourages providers to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. The OIG's voluntary self-disclosure program has four prerequisites (1) the disclosure must be on behalf of an entity and not an individual; (2) the disclosure must be truly voluntary (i.e., no pending proceeding or investigation); (3) the entity must disclose the nature of the wrongdoing and the harm to the Federal programs; and (4) the entity must not be the subject of a bankruptcy proceeding before or after the self-disclosure.

[27] I.e., Federal and/or State law enforcement having jurisdiction over such matter. Such governmental authority would include DOJ and OIG with respect to Medicare and Medicaid violations giving rise to causes of actions under various criminal, civil and administrative false claims statutes.

[28] To qualify for the ''not less than double damages'' provision of the False Claims Act, the report must be provided to the Government within thirty days after the date when the laboratory first obtained the information. 31 U.S.C. 3729(a).

[29] The OIG believes that some violations may be so serious that they warrant immediate notification to governmental authorities, prior to, or simultaneous with, commencing an internal investigation, e.g., if the conduct (1) is a clear violation of criminal law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws, an existing corporate integrity agreement, or other standards of conduct, regardless of the financial impact on Federal health care programs.

[30] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392 (12/24/97).

[31] Appropriate Federal and State authorities include the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in the clinical laboratory's district, and the investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, and the Offices of Inspector General of the Department of Health and Human Services, the Department of Veterans Affairs and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

[32] See 42 U.S.C. 1320a–7b(a)(3).

particular corporate structure, mission, size and employee composition. The statutes, regulations and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every clinical laboratory's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. As stated throughout this guidance, compliance is a dynamic process that helps to ensure that clinical laboratories and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is OIG's hope that a voluntarily created compliance program will enable clinical laboratories to meet their goals, improve the quality of services and control of claims submission, and substantially reduce fraud, waste and abuse, as well as the cost of health care to Federal, State and private health insurers.

Dated: August 14, 1998.

June Gibbs Brown,

Inspector General.

[FR Doc. 98–22559 Filed 8–21–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a teleconference meeting of the Center for Mental Health Services (CMHS) National Advisory Council on August 24, 1998.

The meeting will include the review, discussion, and evaluation of individual grant applications and contract proposals. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4) and (6) and 5 U.S.C. App. 2, Section 10(d).

An agenda and a roster of Council members may be obtained from Ms. Patricia Gratton, Committee Management Officer, CMHS, Room 11C–26, Parklawn Building, Rockville, Maryland 20857, Telephone (301) 443–7987.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: CMHS National Advisory Council.

Meeting date: August 24, 1998.

Place: CMHS Conference Room 5600 Fishers Lane, Room 15–94, Rockville, MD 20857.

Closed: August 24, 1998, 12:00 p.m.–1:30 p.m.

Contact: Anne Mathews-Younes, Ed.D., Executive Secretary, Room 18C–05, Parklawn Building, Telephone: (301) 443–0554 and FAX (301) 443–7912.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: August 18, 1998.

Dee Herman,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–22573 Filed 8–21–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4211–FA–03]

Lead-Based Paint Hazard Control in Privately Owned Housing: Fiscal Year 1997: Announcement of Funding Awards

AGENCY: Office of the Secretary—Office of Lead Hazard Control.

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 announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Lead-Based Paint Hazard Control in Privately Owned Housing. This announcement contains the names and addresses of the award recipients and the amounts of awards.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–1785, ext 112. Hearing-and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award grant funding for $50,000,000 for the grant program for lead-based paint hazard control in low income private housing.

The 1997 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on June 6, 1997 (62 FR 30380). Applications were scored and selected on the basis of selection criteria contained in that Notice.

A total of $50,000,000 has been awarded to twenty-five grantees. 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), Department is publishing the names, addresses, and amounts of those awards as follows.

Category A Grants

City of Phoenix

Lead Hazard Control Program, 200 West Washington, Phoenix, AZ 85003, $2,000,000

City of Long Beach

Department of Health & Human Services, 2525 Grand Avenue, Long Beach, CA 90815–1765, $2,000,000

City of Los Angeles

Los Angeles Housing Department, 400 Main St., Los Angeles, CA 90013, $2,900,000

City of Richmond

Richmond Redevelopment Agency, 330 25th St., Richmond, CA 94804, $2,300,000

Town of Manchester

Manchester Lead Abatement Project, 63 East Center St., Suite 2A, Manchester, CT 06040, $2,000,000

District of Columbia

Department of Health, 800 9th St., SW., Washington, DC 20024, $2,200,000

City of Lawrence

Community Development Department, 225 Essex St., Lawrence, MA 01840, $2,900,000

City of Springfield

Office of Housing, 81 State Street, Springfield, MA 01103, $1,800,000

City of Baltimore

Baltimore City Health Department, 210 Guilford Ave., Baltimore, MD 21044, $2,000,000

City of Portland

Portland Lead-Safe Housing Program, 389 Congress St., Portland, ME 04101, $1,400,000

City of St. Louis

Community Development Agency, 1015 Locust, Suite 1200, St. Louis, MO 63101, $2,900,000

State of New Hampshire

NH Housing Finance Authority, 32 Constitution Drive, Bedford, NH 03110, $2,900,000

Monroe County

Monroe County Department of Health, 111 Westfall Road, Rochester, NY 14692, $1,700,000

City of Akron

Department of Public Health, 177 South Broadway, Akron, OH 44308, $2,500,000

Cuyahoga County

Cuyahoga County Board of Health, 1375 Euclid Ave., Suite 524, Cleveland, OH 44115–1882, $1,500,000

City of Portland

Bureau of Housing and Community Development, 808 SW. 3rd, Suite 600, Portland, OR 97204, $2,900,000

City of East Providence

Department of Planning, 145 Taunton Ave., East Providence, RI 02914–4505, $1,600,000

City of Houston

Houston Department of Health and Human Services, 8000 N. Stadium Drive, Houston, TX 77054, $2,000,000

Harris County

Community Development Agency, 3100 Timmons Lane, Suite 220, Houston, TX 77027, $2,200,000

City of Lynchburg

Community Development Division, 900 Church St., Lynchburg, VA 24505, $2,300,000

City of Richmond

Department of Public Health, 701 N. 25th St., Richmond, VA 23223, $2,000,000

Category B Grants

Alameda County

Lead Poisoning Prevention Program, 2000 Embarcadero, Suite 300, Oakland, CA 94606–, $1,400,000

City of Boston

Department of Neighborhood Development, 249 River St., Bldg. E, Boston, MA 02126, $642,000

Butte-Silver Bow County

Butte-Silver Bow County Health Department, 25 West Front St., Butte, MT 59701, $558,000

Grand Gateway Economic Development

Council of Governments, 333 S. Oak, PO Drawer B, Big Cabin, OK 74332–0502, $1,400,000

Dated: August 13, 1998.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 98–22669 Filed 8–21–98; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of a Proposal for a Minor Adjustment to the Riverside County Habitat Conservation Agency's Stephens' Kangaroo Rat Habitat Conservation Plan in Western Riverside County, California

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service has under consideration a proposal for a minor adjustment to the Riverside County Habitat Conservation Agency's Stephens' Kangaroo Rat Habitat Conservation Plan (Plan). The proposed minor adjustment is in accordance with the Plan and Implementation Agreement for the existing section 10(a)(1)(B) permit (PRT–739678) issued by the Service in May 1996. The applicant is the Riverside County Habitat Conservation Agency (Agency), a joint powers agency comprised of the following nine member agencies: County of Riverside, City of Corona, City of Hemet, City of Lake Elsinore, City of Moreno Valley, City of Murrieta, City of Perris, City of Riverside, and the City of Temecula. In response to the proposal, an Environmental Assessment has been prepared pursuant to the National Environmental Policy Act and is available. This notice describes the currently proposed action and alternatives, and solicits comments on the issues and alternatives raised in the Environmental Assessment.

DATES: Written comments related to the Service's Environmental Assessment and the Applicant's proposed minor adjustment to the Plan should be received by the Service on or before September 23, 1998.

ADDRESSES: Information, comments, or questions regarding the Environmental Assessment and the Applicant's proposed minor adjustment to the Plan should be submitted to Mr. Ken S. Berg, Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel, Assistant Field Supervisor, at the above Carlsbad address, telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the Environmental Assessment should immediately contact the above individual. Persons wishing to review background material may obtain it by contacting Kristi Lovelady of the Agency, at 4080 Lemon Street, 12th floor, Riverside, California, telephone (909) 955–1131. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the Service's Carlsbad Field Office (see **ADDRESSES** section above) and at various public libraries throughout Riverside County. To find out the exact addresses of the public libraries, contact the Service or the Agency at the referenced locations.

Background

The Service listed the Stephens' kangaroo rat (*Dipodomys stephensi*) as an endangered species on September 30, 1988 (53 FR 38465). As an endangered species, the Stephens' kangaroo rat is protected pursuant to Section 9 of the Endangered Species Act (Act) against ''take;'' that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 USC 1538). However, under certain circumstances, the Service may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Based upon the March 1996 Plan and Implementation Agreement, and after compliance with the National Environmental Policy Act, the Service issued a permit to the Agency on May 3, 1996, to incidentally take the Stephens' kangaroo rat. The 30-year Plan is designed to acquire and permanently conserve, maintain, and fund the conservation, preservation, restoration, and enhancement of Stephens' kangaroo rat occupied habitat. The Plan covers approximately 534,000 acres within the Agency member jurisdictions, including an estimated 30,000 acres of occupied Stephens' kangaroo rat habitat. The Plan requires Agency members to preserve and manage 15,000 acres of occupied Stephens' kangaroo rat habitat in 7 Core

Reserves encompassing over 41,000 acres. Currently 12,460 acres of occupied habitat exists within the Core Reserves.

Article III, Section B(2) of the Implementation Agreement entered into by the Service, the Agency, and the California Department of Fish and Game (Department) mandates the establishment of the Core Reserves with boundaries as set forth in the Plan. This section of the Implementation Agreement allows the Agency, with written consent of the Service and the Department, to modify through sale, exchange, or otherwise the configuration, size and/or location of the Core Reserves, if in the opinion of the Service and the Department ''the revised configurations better address the overall conservation needs of the Stephens' kangaroo rat.'' Article VI, Section A(2), of the Implementation Agreement also allows minor adjustments to the Plan including ''modification to the configuration of a Core Reserve so long as the amount of occupied habitat contained within the Core Reserve is not diminished and so long as the Service and the Department determine, in writing, that the revised configuration better addresses the overall conservation needs of the Stephens' kangaroo rat.''

The Agency proposes to adjust acreage in two Core Reserves set forth in the Plan (Lake Mathews/Estelle Mountain and Lake Skinner) pursuant to Article III, Section B(2) and Article VI, Section A(2) of the Implementation Agreement. The purpose of the proposed action is to allow 561 acres of property to be removed from two Core Reserves and replaced with 719 acres of other land with equal or better value to Stephens' kangaroo rat. This minor adjustment will also release from the Core Reserves all remaining private property owners that do not wish to sell their land to the Agency for inclusion in the Core Reserves.

The Environmental Assessment analyses the proposed action and the no project alternatives in detail. In addition, several other alternatives were considered but not advanced for in-depth analysis due to inferior reserve design, unwilling property sellers and economic considerations. These alternatives include different configurations at three Core Reserves: Lake Mathews/Estelle Mountain, Lake Skinner, and San Jacinto Wildlife.

This notice is provided pursuant to section 10 of the Act and the National Environmental Policy Act regulations (40 CFR 1506.6). The Service will evaluate the proposed minor adjustment to the Plan and comments submitted thereon. If it is determined that the requirements are met, the Plan will be amended. The final determinations will be made no sooner than 30 days from the date of this notice.

Dated: August 18, 1998.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–22608 Filed 8–21–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pechanga Band of Mission Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that Resolution No. SCA–PC–03–98, enacting the Pechanga Liquor Control Ordinance of the Pechanga Band of Luiseno Mission Indians (Pechanga Band of Mission Indians) of the Pechanga Reservation was duly adopted by the General Council of the Pechanga Reservation on January 25, 1998. The Ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor on reservation lands subject to the jurisdiction of the Pechanga Band of Mission Indians of California.

DATES: This Ordinance is effective as of August 24, 1998.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street, NW, MS 4641–MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Liquor Control Ordinance of the Pechanga Band of Mission Indians is as follows:

Liquor Control Ordinance

Article 1. Name. This Ordinance shall be known as the Pechanga Liquor Control Ordinance.

Article 2. Authority. This Ordinance is enacted pursuant to the Act of August 15, 1953, Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161, and Article III of the Constitution and Bylaws of the Temecula Band of Luiseno Mission Indians (also known as the Pechanga Band of Mission Indians).

Article 3. Purpose. The purpose of this Ordinance is to regulate and control the possession and sale of liquor on the Pechanga Indian Reservation, and to permit alcohol sales by tribally owned and operated enterprises, and at tribally approved special events, for the purpose of the economic development of the Pechanga Band. The enactment of a tribal ordinance governing liquor possession and sales on the Pechanga Indian Reservation increases the ability of tribal government to control Reservation liquor distribution and possession, and will provide an important source of revenue for the continued operation and strengthening of the tribal government, the economic viability of tribal enterprises, and the delivery of tribal government services. This Liquor Control Ordinance is in conformity with the laws of the State of California as required by 18 U.S.C. § 1161, and with all applicable Federal laws.

Article 4. Effective Date. This Ordinance shall be effective August 24, 1998.

Article 5. Possession of Alcohol. The introduction or possession of alcoholic beverages shall be lawful within the exterior boundaries of the Pechanga Indian Reservation; provided that such introduction or possession is in conformity with the laws of the State of California.

Article 6. Sales of Alcohol. (a) The sale of alcoholic beverages by business enterprises owned by and subject to the control of the Pechanga Band shall be lawful within the exterior boundaries of the Pechanga Indian Reservation; provided that such sales are in conformity with the laws of the State of California.

(b) The sale of alcoholic beverages by the drink at special events authorized by the Pechanga Band shall be lawful within the exterior boundaries of the Pechanga Indian Reservation; provided that such sales are in conformity with the laws of the State of California and with prior approval by Resolution of the General Council of the Pechanga Band.

Article 7. Age Limits. The drinking age within the Pechanga Indian Reservation shall be the same as that of the State of California, which is currently 21 years. No person under the age of 21 years shall purchase, possess, or consume any alcoholic beverage. At such time, if any, as California Business and Professional Code § 25658, which sets the drinking age for the State of California, is repealed or amended to raise or lower the drinking age within California, this Article shall automatically become null and void and the Tribal Council shall be empowered

to amend this Article to match the age limit imposed by state law, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

Article 8. Civil Penalties. The Pechanga Band, through its Tribal Council and duly authorized personnel, shall have the authority to enforce this Ordinance by confiscating any liquor sold, possessed or introduced in violation hereof. The Tribal Council shall be empowered to sell such confiscated liquor for the benefit of the Pechanga Band, and to develop and approve such regulations as may become necessary for enforcement of this Ordinance.

Article 9. Prior Inconsistent Enactments. Any prior tribal laws, resolutions or ordinances which are inconsistent with this Ordinance are hereby repealed to the extent they are inconsistent with this Ordinance.

Article 10. Sovereign Immunity. Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Pechanga Band or any of its agencies, including the Pechanga Development Corporation, from unconsented suit or action of any kind.

Article 11. Severability. If any provision of this Ordinance is found by any agency or court of competent jurisdiction to be unenforceable, the remaining provisions shall be unaffected thereby.

Article 12. Amendment. This Ordinance may be amended by majority vote of the General Council of the Pechanga Band at a duly noticed General Council meeting, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

Dated: August 11, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–22644 Filed 8–21–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–920–1990; N–60870]

Notice of Realty Action: Termination of Segregation of Public Lands Under the Federal Land Exchange Facilitation Act of 1988 and Opening Order, Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates, N–60870, a segregation of public lands under the Federal Land Exchange Facilitation Act of August 20, 1988, and provides for opening the affected lands to appropriation under the public land laws and the general mining laws.

EFFECTIVE DATE: Termination of the classification is effective August 24, 1998.

FOR FURTHER INFORMATION CONTACT: Joel Mur, Natural Resource Specialist, Bureau of Land Management, Las Vegas Field Office, 4765 West Vegas Drive, Las Vegas, Nevada 89108, (702) 647–5152.

SUPPLEMENTARY INFORMATION: On May 17, 1996, 160 acres, more or less, of public lands were segregated from entry under the general mining laws and all forms of appropriation under the public land laws, except for exchange purposes. Pursuant to the regulations contained in 43 CFR 2091.3–2(b) the segregation is hereby terminated as it affects the following described lands:

Mount Diablo Meridian, Nevada

T. 24 S., R. 57 E.,
Sec. 27, S½NW¼, N½SW¼.
The area described contains 160 acres, more or less.

Upon publication, the above described lands will become open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws, rules and regulations.

Upon publication, the above described lands will become open to location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State Law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 14, 1998.

Michael F. Dwyer,

Field Office Manager, Las Vegas, NV.

[FR Doc. 98–22667 Filed 8–21–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–094–08–1430–01: GP8–0291; OR 54174 and OR 54175]

Notice of Realty Action; Recreation and Public Purposes Act Classification and Conveyance; Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice of Realty Action—Recreation and Public Purposes Act Classification and Conveyance of Public Land in Lane County, Oregon.

SUMMARY: The following land has been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*). The land will not be leased or conveyed until at least 60 days after the date of publication of this notice in the **Federal Register**:

Willamette Meridian, Oregon

T. 18 S., R. 12 W.
Sec. 15: SE¼NE¼.
Containing 40.00 acres.

The land is not required for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the national interest.

The City of Florence, Oregon, and Citizens for Florence propose to use the land for open space and recreation. The land will be conveyed without monetary consideration to the City of Florence, Oregon, to be managed for this purpose. The application of the Citizens for Florence will be denied.

The patent, when issued, will be subject to valid existing rights, the provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 20, 1890 (26 Stat. 391, 43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine and remove such deposits under applicable law and such regulations as the Secretary of the Interior may prescribe.

The above described land is segregated by Public Land Order 6963 from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws. The Public Land Order will be modified to open it to conveyance under the

Recreation and Public Purposes Act prior to conveyance.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the land to the Coast Range Area Manager, Bureau of Land Management, at the address below.

ADDRESSES: Detailed information concerning the classification and City of Florence and Citizens for Florence applications, including the reservations and planning and environmental documents, is available at the Eugene District Office, P. O. Box 10226, 2890 Chad Drive, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: David Schroeder, Eugene District Office, at (541) 683–6482.

SUPPLEMENTARY INFORMATION:

Classification Comments

Interested parties may submit comments involving the suitability of the land for management for open space and recreation. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the City of Florence and Citizens for Florence applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for management for open space and recreation.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Comments on the City of Florence and Citizens for Florence applications will be answered by the Eugene District Manager with the right of appeal to the Interior Board of Land Appeals.

Dated: August 25, 1998.

Diane Chung,

Coast Range Area Manager.

[FR Doc. 98–22607 Filed 8–21–98; 8:45 am]

BILLING CODE 4310–33–P

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 August 15, 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, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 8, 1998.

Carol D. Shull,

Keeper of the National Register.

Florida

Bay County

Sherman Arcade, 228 Harrison Ave., Panama City, 98001155

Sarasota County

American National Bank Building, 1330 Main St., Sarasota, 98001154

Maryland

Baltimore Independent City

Baltimore City Passenger Railway Power House and Car Barn, 1711–1717 N. Charles St., Baltimore, 98001156

Samester Parkway Apartments, 7000–7022 Park Heights Ave., Baltimore, 98001157

Mississippi

Hinds County

Baldwin's Ferry Mound, Address Restricted, Newman vicinity, 98001158

New Mexico

Rio Arriba County

Mesa Prieta Petroglyphs, Address Restricted, Velarde vicinity, 98001159

Virginia

King And Queen County

King and Queen Courthouse Green Historic District, Jct. of Allen Circle and Courthouse Landing Rd., NW of Shacklefords, Shacklefords vicinity, 98001162

Patrick County

Stuart, J.E.B., Birthplace, N side of VA 773, W of jct. with VA 617, Ararat vicinity, 98001161

Richmond Independent City

Walker, Maggie L., High School, 1000 N. Lombardy St., Richmond, 98001160

[FR Doc. 98–22587 Filed 8–21–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on June 16, 1998, in 63 FR #115, p. 32896, at which time a 60-calendar day comment period was announced. This comment period ended August 17, 1998. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before September 23, 1998.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–5871.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval is expiring.

Title: Application for Financing.

Form Number: OPIC–115.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions; individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 3 hours per project.

Number of Responses: 300 per year.

Federal Cost: $14,796 per year.

Authority for Information Collection: Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: August 18, 1998.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 98–22564 Filed 8–21–98; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting to Acquaint Prospective Service Providers With the National Motor Vehicle Title Information System

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meting notice.

SUMMARY: This notice announces a one-day meeting sponsored jointly by the FBI, oversight authority of the National Motor Vehicle Title Information System (NMVTIS), and the American Association of Motor Vehicle Administrators (AAMVA), the operator of the System, to acquaint prospective service providers with the System, the advantages to consumers of its use for obtaining prospective vehicle purchase information, and law enforcement safety and security concerns.

DATES AND TIME The meeting is scheduled for September 1, 1998, from 9:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held at the offices of AAMVAnet, Inc., Suite 400, 4301 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Further information and/or registration: Karen Massey, AAMVAnet, 703–908–8293 (voice) or 703–522–1553 (fax).

SUPPLEMENTARY INFORMATION: The agenda will include an explanation of the federal legislation creating the NMVTIS and its requirements, and a discussion of funding to the states to implement the System by Department of Justice officials; an overview of the technical and informational infrastructure of the System by AAMVAnet NMVTIS-program managers; lunch; a discussion by the FBI representatives of law enforcement safety and security concerns for information provided; and an open discussion of issues of concern among the participants.

All prospective service providers must meet the basic requirements for participating in AAMVAnet's network system and must contract directly with AAMVAnet, Inc. Service providers will not have exclusive rights to available consumer information, will receive no payment for services from AAMVAnet, and will be solely responsible for customer solicitation, customer fees, and any expenses connected with use of the System.

Dated: August 19, 1998.

Louis J. Freeh,

Director, Federal Bureau of Investigation.

[FR Doc. 98–22628 Filed 8–21–98; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1937–98; AG Order No. 2174–98]

Extension of Designation of Bosnia-Hercegovina Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until August 10, 1999, the Attorney General's designation of Bosnia-Hercegovina under the Temporary Protected Status (TPS) program provided for in section 244 of the Immigration and Nationality Act, as amended (Act). Accordingly, eligible aliens who are nationals of Bosnia-Hercegovina (or who have no nationality and who last habitually resided in Bosnia-Hercegovina) may re-register for TPS and extension of employment authorization. This re-registration is limited to persons who registered for the initial period of TPS, which ended on August 10, 1993.

EFFECTIVE DATES: This extension of designation is effective August 11, 1998, and will remain in effect until August 10, 1999. The re-registration procedures become effective August 24, 1998, and will remain in effect until September 22, 1998.

FOR FURTHER INFORMATION CONTACT: George Raftery, Residence and Status Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 305–3199.

SUPPLEMENTARY INFORMATION:

Background

Subsection 308(b)(7) of the Illegal Immigration Reform and Immigration Responsibility Act, Pub. L. 104–208, dated September 30, 1996, redesignated section 244A of the Act as section 244 of the Act. Under this section, the Attorney General continues to be authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

On August 10, 1992, the Attorney General designated Bosnia-Hercegovina for Temporary Protected Status for a period of 12 months (57 FR 35604). The Attorney General has extended the designation of Bosnia-Hercegovina under the TPS program several times. Last year she extended the designation for an additional 12-month period until August 10, 1998 (62 FR 41420).

Based on a thorough review by the Department of State and Justice of all available evidence, the Attorney General finds that the armed conflict in Bosnia-Hercegovina continues and that, due such conflict, requiring the return of nationals to Bosnia-Hercegovina would pose a serious threat to their personal safety.

This notice extends the designation of Bosnia-Hercegovina under the Temporary Protected Status program for an additional 12 months, in accordance with subsections 244(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Bosnia-Hercegovina (or who have no nationality and who last habitually

resided in Bosnia-Hercegovina) must comply in order to re-register for TPS.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Bosnia-Hercegovina's TPS designation, late initial registrations are possible for some Bosnians under 8 CFR 244.2(f)(2). Such late initial registrants must have been ''continuously physically present'' in the United States since August 10, 1992, must have had a valid immigrant or nonimmigrant status during the original registration period or have an application for status pending during the initial registration period, and must register no later than 30 days from the expiration of such status. Any national of Bosnia-Hercegovina who has already applied for, or plans to apply for, asylum but whose asylum application has not yet been approved may also apply for TPS. An application for TPS does not preclude or adversely affect an application for asylum or any other immigration benefit.

Nationals of Bosnia-Hercegovina (or aliens having no nationality who last habitually resided in Bosnia-Hercegovina) who have been continuously physically present and have continuously resided in the United States since August 10, 1992, may re-register for TPS within the registration period which begins on August 24, 1998, and ends on September 22, 1998.

Nationals of Bosnia-Hercegovina may register for TPS by filing an Application for Temporary Protected Status, Form I–821, which requires a filing fee (instructions regarding the payment of fees for re-registration are contained in paragraph 5 of this notice). The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. TPS applicants who already have employment authorization, including some asylum applicants, and those who have no need for employment authorization, including minor children, need only pay the I–821 fee although they must complete and file the I–765. In all other cases, the appropriate filing fee must accompany Form I–765, unless a properly documented fee waiver request is submitted under 8 CFR 244.20 to the Immigration and Naturalization Service.

Notice of Extension of Designation of Bosnia-Hercegovina Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Act (8 U.S.C. 1254), and pursuant to subsections 244(b)(3)(A) and (C) of the Act, I had consultations with the appropriate agencies of the Government concerning (a) the conditions in Bosnia-Hercegovina; and (b) whether permitting nationals of Bosnia-Hercegovina (and aliens having no nationality who last habitually resided in Bosnia-Hercegovina) to remain temporarily in the United States is contrary to the national interest of the United States. As a result, I determine that the conditions for the original designation of Temporary Protected Status for Bosnia-Hercegovina continue to be met. Accordingly, it is ordered as follows:

(1)) The designation of Bosnia-Hercegovina under subsection 244(b) of the Act is extended for an additional 12-month period from August 11, 1998, to August 10, 1999.

(2) I estimate that there are approximately 400 nationals of Bosnia-Hercegovina (and aliens having no nationality who last habitually resided in Bosnia-Hercegovnia) who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Bosnia-Hercegovina (or an alien having no nationality who last habitually resided in Bosnia-Hercegovina) who received a grant of TPS during the initial period of designation, from August 10, 1992, to August 10, 1993, must comply with the re-registration requirements contained in 8 CFR 244.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Bosnia-Hercegovina (or an alien having no nationality who last habitually resided in Bosnia-Hercegovina) who previously has been granted TPS, must re-register by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on August 24, 1998, and ending on September 22, 1998, in order to be eligible for Temporary Protected Status during the period from August 11, 1998, until August 10, 1999. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. A Form I–765 must be filed with the Form I–821. If the alien requests employment authorization for the extension period, the fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars ($70), or a properly documented fee waiver request pursuant to 8 CFR 244.20, must accompany the Form I–765. An alien who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but in such cases no fee will be charged.

(6) Pursuant to subsection 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 10, 1999, the designation of Bosnia-Hercegovina under the TPS program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register.**

(7) Information concerning the TPS program for nationals of Bosnia-Hercegovina (and aliens having no nationality who last habitually resided in Bosnia-Hercegovina) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: August 14, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–22580 Filed 8–21–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 17, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ({202} 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), by September 23, 1998. The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Benefits, Timeliness and Quality (BTQ) Review System.

OMB Number: 1205–0359 (extension).

Frequency: Monthly, Quarterly.

Affected Public: State, Local or Tribal government.

Number of Respondents: 53.

Estimated Time Per Respondent: 726.15.

Total Burden Hours: 38,486.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Unemployment Insurance (UI) and State Employment Security Agencies (SESAs) use the BTQ Review System to assess and evaluate timeliness and quality of UI benefit operations. The results help to determine operating areas that need Corrective Action Plans (CAPS) to meet achievement standards in State's annual program and Budget Plan (PBP).

Agency: Employment and Training Administration.

Title: Internal Fraud Activities.

OMB Number: 1205–0187 (extension).

Form Number: ETA 9000.

Frequency: Annual.

Affected Public: State or Local Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 159.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Form ETA 9000 is the State Employment Security Agencies, ETA's sole data collection instrument for identifying continuing activity involving internal fraud and assessing fraud prevention effectiveness. Resulting analysis will be communicated to SESAs to enhance management efforts in controlling false representation and fraud. Negative trends could result in ETA requesting OIG audits.

Agency: Employment and Training Administration.

Title: Benefit Appeals Report.

OMB Number: 1205–0172 (extension).

Form Number: ETA 5130.

Affected Public: States.

Version	Frequency	Respondents	Average time per respondent (hours)
Regular	Monthly	53	2.5
Extended Benefits	Six Times	2	2.5

Total Burden Hours: 1,620.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Data from this report is used to monitor the benefit appeals process and to develop plans for remedial action. The report is also needed for budgeting and for workload data.

Agency: Employment Standards Administration.

Title: 29 CFR Part 4, Labor Standards for Federal Service Contracts.

OMB Number: 1215–0150 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit; Federal government.

Number of Respondents: 61,789.

Requirement	Number of respondents	Average time per response	Burden hours
Vacation Benefit Seniority List	59,055	1 hour	59,055
Conformance Record	204	.5 hour	102
Collective Bargaining Agreements	2,530	5 minutes	211

Total Burden Hours: 59,368.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Service Contract Act (SCA) imposes certain recordkeeping and incidental reporting requirements applicable to employers performing on service contracts with the Federal government. The basic payroll recordkeeping requirements contained in this regulation (sections 4.6(g)(1)(I) through (I)(iv)) have been previously approved under OMB number 1215–0017, which constitutes the basic recordkeeping regulations for all laws administered by the Wage and Hour Division, and the remaining SCA requirements under 1215–0150. This information collection contains three additional requirements not cleared under either of the above information collections. They are: a vacation benefit seniority list, which is used by the contractor to determine vacation fringe benefits entitlements earned and accrued by service employees who were employed by predecessor contractors; a conformance record report, which is used by Wage and Hour to determine the appropriateness of the conformance and compliance with the SCA and its regulations; and a collective bargaining agreement, submitted by the contracting agency to Wage and Hour to be used in the issuance of wage determinations for successor contracts subject to section 2(a) and 4© of SCA.

Agency: Occupational Safety and Health.

Title: Cotton Dust 29 CFR 1910.1043.

OMB Number: 1218–0061 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit: Federal Government; State, local or tribal governments.

Number of Respondents: 597

Estimated Time Per Respondent: Ranges from 5 minutes to maintain a

record to 1.5 hours for an employee to have a medical exam

Total Burden Hours: 138,134

Total annualized capital/startup costs: 0.

Total annual cost (operating/maintaining systems or purchasing services): $12,111,320

Description: The Cotton Dust standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to Cotton Dust. The standard requires that employers establish a compliance program, including exposure monitoring and medical records. These records are used by employees, physicians, employers and OSHA to determine the effectivess of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions.

Agency: Occupational Safety and Health Administration.

Title: Acrylonitrile (29 CFR 1910.1045).

OMB Number: 1218–0126 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit; Federal Government; local or tribal government.

Number of Respondents: 26.

Estimated Time Per Respondent: Ranges from 5 minutes to maintain a record to 1.5 hours for an employee to have a medical exam.

Total Burden Hours: 6,867.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $311,360.

Description: The Acrylonitrile (AN) standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to Acrylonitrile. The Standard requires employers to monitor employee exposure, establish and maintain a compliance program, provide medical surveillance, to train employees about the hazards of AN, and to establish and maintain accurate records of employee exposure to AN. These records are used by employees, physicians, employers and the OSHA to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the AN standard.

Agency: Mine Safety and Health Administration.

Title: Escape and Evacuation Plans.

OMB Number: 1219–0046 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 270.

Estimated Time Per Respondent: 24 hours.

Total Burden Hours: 6,480.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $2,430.

Description: Requires operators of underground coal mines to keep records of the results of mandatory weekly examinations of emergency escapeways. The records are used to determine that the integrity of the escapeway is being maintained.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–22599 Filed 8–21–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Lab Test On Kennedy Assassination Evidence

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: The National Archives and Records Administration (NARA) will work with the John F. Kennedy Assassination Records Review Board (Review Board) to arrange the analysis in an FBI laboratory of a piece of evidence from the assassination of President John F. Kennedy.

The evidence item is Warren Commission Exhibit (CE) #567, which is the nose portion of a bullet from the limousine seat in which the President was riding and which consists of five fragments—one larger copper and lead fragment and four smaller pieces of possibly organic material. The larger fragment still has ''fibrous/plant debris'' adhering to it. The testing will be done on the fibrous debris, not the fragment itself, and on the four small pieces of possibly organic material. The purpose of the test will be to determine specifically the composition of the fibrous material and the small fragments.

The testing of the fiber was recommended by the Firearms Examination Panel of the House Select Committee on Assassinations (HSCA) in 1979. This recommendation was not in the published Final Report of the Committee and thus the testing was never done. NARA agrees with the Review Board that conducting limited testing to complete this ''unfinished business'' is in the public interest.

The fibrous material may be from clothing the president was wearing, or the fiber may be from material in which the bullet was wrapped after the assassination, or the tests may be inconclusive. NARA chose the FBI laboratories for the analysis as the best equipped and most expertly staffed for the purpose. To assure objectivity, the Review Board will select one or more independent observers to verify the appropriateness of the procedure and to be present throughout the testing, each phase of which will be thoroughly documented. The report on the results of the testing will be made public.

Dated: August 17, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–22674 Filed 8–21–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda for a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: September 10, 1998 from 10:00 a.m. to 5:00 p.m. and September 11, 1998 from 9:30 a.m. to 3:00 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Carolyn Staley, Deputy Director, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, NW 20006. Telephone (202) 632–1526.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of P.L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and

Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions'' (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In additional, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on September 10, 1998 from 10:00 a.m. to 5:00 p.m. and September 11, 1998 from 9:30 a.m. to 3:00 p.m. The meeting of the NIFL Advisory Board is open to the public. This meeting of the Advisory Board will focus on the following agenda items: the administrative structure of the NIFL and its staffing; a briefing on the 1998–99 Literacy Leader Fellowships; and testimony from invited State Directors of Adult Education. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 a.m. to 5:00 p.m.

Dated: August 19, 1998.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 98–22611 Filed 8–21–98; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59 issued to the Power Authority of the State of New York (the licensee, also known as the New York Power Authority) for operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) located in Oswego County, New York.

The proposed amendment would revise the FitzPatrick technical specifications to provide for installation of additional racks to increase spent fuel storage capacity, and correct the maximum exposure dependent, infinite lattice multiplication factor for fuel bundles.

The Commission had previously issued a Notice of Consideration of Issuance of an Amendment published in the **Federal Register** on February 25, 1998 (63 FR 9613). This notice contained the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination, and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest might be affected to petition for leave to intervene.

Due to oversight, the February 25, 1998, Notice of Consideration of Amendment did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by the Commission's regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors'' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined below, the Commission's rules in 10 CFR Part 2, Subpart G continue to govern the filing of requests for a hearing and petitions to intervene, as well as the admission of contentions.) The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By September 23, 1998, the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to invoke the hybrid hearing procedures and to participate as a party in such proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. If a request for a hearing and petition for leave to intervene seeking to invoke the hybrid hearing procedures in accordance with this notice is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the

Atomic Safety and Licensing Board Panel, will rule on the request and petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing and petitions for leave to intervene that do not seek to invoke the hybrid procedures are not authorized by this notice and would be considered untimely.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing and a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. David E. Blabey, 1633 Broadway, New York, NY 10019, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application for amendment dated October 14, 1997, as supplemented July 23, 1998. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, NY 13126.

Dated at Rockville, Maryland, this 18th day of August 1998.

For the Nuclear Regulatory Commission.

Joseph F. Williams,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–22634 Filed 8–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company (Surry Power Station, Units 1 and 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations with respect to Facility Operating License No. DPR–32 and Facility Operating License No. DPR–37, issued to Virginia Electric and Power Company (VEPCO, the licensee) for operation of the Surry Power Station (SPS), Units 1 and 2 located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated

March 3, 1998, as supplemented May 5, 1998, concerning the use of respiratory protection equipment which has not been tested by the National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA). Pursuant to 10 CFR 20.2301, the licensee has requested exemptions from the following:

1. 10 CFR 20.1703(a)(1) which requires that ''* * * the licensee shall use only respiratory protection equipment that is tested and certified or had certification extended by NIOSH/MSHA;''

2. 10 CFR 20.1703(c) which requires that ''the licensee shall use as emergency devices only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by NIOSH/MSHA;'' and

3. 10 CFR Part 20 Appendix A, Protection Factors for Respirators, Footnote d.2.(d), which states, in part, that ''* * * the protection factors apply for atmosphere-supplying respirators only when supplied with adequate respirable air. Respirable air shall be provided of the quality and quantity required in accordance with NIOSH/MSHA certification (described in 30 CFR Part 11). Oxygen and air shall not be used in the same apparatus.''

The Need for the Proposed Action

Subpart H to 10 CFR Part 20, ''Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas'' states in 10 CFR 20.1702, ''When it is not practical * * * to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by * * * (c) Use of respiratory protection equipment* * *.''

It is necessary for station personnel to periodically enter containments while the units are operating in order to perform inspection or maintenance. The SPS1&2 containments are designed to be maintained at subatmospheric pressure during power operations. The containment pressure can range from 9.0 to 11.0 pounds per square inch, absolute (psia). This containment environment could potentially impact the safety of personnel donning respiratory protection equipment, due to reduced pressure and resulting oxygen deficiency. Under these circumstances, the use of a self-contained breathing apparatus (SCBA) with enriched oxygen breathing gas is required. The licensee initially purchased Mine Safety Appliances, Inc. (MSA) Model 401 open-circuit, dual-purpose, pressure-demand SCBAs constructed of brass components which were originally intended for use with compressed air. The licensee qualified the Model 401 cylinders for use with 35% oxygen/65% nitrogen following the recommendations of the Compressed Gas Association's Pamphlet C–10, ''Recommended Procedures for Changes of Gas Service for Compressed Gas Cylinders,'' established procedures to utilize these devices with an enriched oxygen mixture, and is currently using these SCBAs with a 35% oxygen/65% nitrogen mixture instead of compressed air. The MSA Model 401 SCBA has received the NIOSH/MSHA certification for use with compressed air, but has not been tested for 35% enriched oxygen applications. Using these SCBAs without the NIOSH/MSHA certification requires an exemption from 10 CFR 20.1703(a)(1), 10 CFR 20.1703(c), and 10 CFR Part 20 Appendix A, Protection Factors for Respirators, Footnote d.2.(d).

Environmental Impacts of the Proposed Action

The proposed action will not alter plant operations, result in an increase in the probability or consequences of accidents, or result in a change in occupational or offsite dose. Therefore, there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Because the Commission's staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to the proposed exemption will have either no significantly different environmental impact or greater environmental impact. The principal alternative would be to deny the requested exemption. Denial would result in no change in current environmental impact.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Surry Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with Mr. Foldesi of the Virginia Department of Health on July 27, 1998, regarding the environmental impact of the proposed action. Mr. Foldesi had no comments on behalf of the Commonwealth of Virginia.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed action, see the licensee's letter dated March 3, 1998, as supplemented May 5, 1998, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 18th day of August 1998.

For the Nuclear Regulatory Commission.

G.E. Edison, Sr.,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–22633 Filed 8–21–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23393; 812–11254]

The Victory Portfolios, et al.; Notice of Application

August 18, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY: Applicants seek to amend a prior order that permits non-money market series of a registered open-end management investment company to purchase shares of one or more of the money market series of such registered investment company by adding three

registered open-end management investment companies and three investment advisers as applicants.

APPLICANTS: The Victory Funds (formerly known as The Society Funds), The Highmark Group, The Parkstone Group of Funds, The Conestoga Family of Funds, The AmSouth Funds (formerly known as The ASO Outlook Group), The Sessions Group, American Performance Funds, The Coventry Group, BB&T Mutual Funds Group (collectively, the ''Original Funds''); Society Asset Management, Inc., Union Bank of California, N.A. (formerly known as The Bank of California), First of America Investment Corporation, Meridian Investment Company, AmSouth Bank (formerly known as AmSouth Bank, N.A.), National Bank of Commerce, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, AMCORE Capital Management, Inc., and Branch Banking and Trust Company (collectively, the ''Original Advisers''); BISYS Fund Services Limited Partnership (formerly known as The Winsbury Company) (''BISYS''), BISYS Fund Services Ohio, Inc. (formerly known as The Winsbury Service Corporation) (all of the above entities collectively, the ''Original Applicants''); BISYS Fund Services, Inc. (''BISYS Services''); Martindale Andres & Company, Inc. and 1st Source Bank (the ''Additional Advisers''); Eureka Funds (''Eureka''), Performance Funds Trust (''Performance'') and Centura Funds, Inc. (''Centura'') (Eureka, Performance and Centura, collectively, the ''New Funds'') and Sanwa Bank California (''SBCL''), Trustmark National Bank (''Trustmark'') and Centura Bank (with SBCL and Trustmark, the ''New Advisers'').

The Sessions Group, BISYS, BISYS Fund Services Ohio, Inc. and the Additional Advisers are also referred to as the ''Subsequent Applicants.'' The Original Applicants and the Subsequent Applicants are referred to collectively as the ''Prior Applicants.'' The New Funds, the New Advisers, BISYS, and BISYS Services are referred to collectively as the ''New Applicants.''

FILING DATES: The application was filed on August 11, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on September 14, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, c/o Kristin H. Ives, Esq., Baker & Hosterler LLP, 65 East State Street—Suite 2100, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. On October 5, 1993, the Commission issued an order (the ''Original Order'') under sections 6(c) and 17(b) of the Act that exempted the Original Applicants from the provisions of sections 12(d)(1)(A) and 17(a) of the Act and that permitted, pursuant to rule 17d-1, certain joint transactions in accordance with section 17(d) and rule 17d-1.[1] The Original Order permitted: (i) the non-money market series of an Original Fund to utilize cash reserves that have not been invested in portfolio securities (''Uninvested Cash'') to purchase shares of one or more of the money market series of such Original Fund; and (ii) the sale of shares by the money market series of an Original Fund to the non-money market series of such Original Fund, and the purchase (or redemption) of their shares by the money market series of the Original Fund from the non-money market series of such Original Fund.

2. On May 20, 1997, the Commission issued an order that amended the Original Order (together with the Original Order, the ''Amended Order''), by extending the relief granted in the Original Order to the Subsequent Applicants.[2]

3. Eureka is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. Eureka offers shares in five series, two of which are money market series. SBCL is the investment adviser for each of the Eureka series. SBCL is not registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') in reliance upon the exclusion from the definition of investment adviser set forth in Section 202(a)(11)(A) of the Advisers Act. BISYS, one of the Prior Applicants, is the principal underwriter, administrator and distributor for each of the Eureka series. Pursuant to separate agreements with the New Fund, BISYS Services, one of the Prior Applicants, serves as transfer agent and provides fund accounting services for each of the Eureka series.

4. Performance is an open-end management investment company registered under the Act and organized as a Delaware business trust. Performance offers shares in six series, one of which is a money market series. Trustmark is the investment adviser for each of the Performance series. Trustmark is not registered under the Advisers Act in reliance upon the exclusion from the definition of investment adviser set forth in Section 202(a)(11)(A) of the Advisers Act. BISYS, one of the Prior Applicants, is the administrator for each of the Performance series. A wholly-owned subsidiary of BISYS Services, a Prior Applicant, is the principal underwriter and distributor for each of the Performance series. Pursuant to separate agreements with the Performance series, BISYS Services also serves as transfer agent and provides fund accounting services for each of the Performance series.

5. Centura is an open-end management investment company registered under the Act and organized as a Maryland corporation. Centura offers shares in six series, one of which is a money series. Centura Bank is the investment adviser for each of the Centura market series. Centura Bank is not registered under the Advisers Act in reliance upon the exclusion from the definition of investment adviser set forth in Section 202(a)(11)(A) of the Advisers Act. BISYS, one of the Prior Applicants, is the administrator for each of the Performance series. A wholly-owned subsidiary of BISYS Services,

[1] Investment Company Act Release Nos. 19965 (Sept. 9, 1993) (notice) and 19759 (Oct. 5, 1993) (order).

[2] Investment Company Act Release Nos. 22636 (April 24, 1997) (notice) and 22677 (May 20, 1997) (order).

one of the Prior Applicants, is the principal underwriter and distributor for each of the Centura series. Pursuant to separate agreements with the Centura series, BISYS Services also serves as transfer agent and provides fund accounting services for each of the Centura series.

6. The New Applicants seek to have the exemptive relief granted under the Amended Order extended to include them so as to permit the non-money market series of the New Funds which are advised by the New Advisers to utilize Uninvested Cash to purchase shares of one or more of the money market series of the New Funds which are advised by the New Advisers.[3] The New Applicants consent to the conditions set forth in the original application and agree to be bound by the terms and provisions of the Amended Order to the same extent as the Prior Applicants. The New Applicants believe that granting the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22643 Filed 8–21–98; 8:45 am]

BILLING CODE 8010–01–M

[3] The requested relief also would extend to any other registered open-end management investment companies advised by the New Advisers or any person directly or indirectly controlling, controlled by, or under common control with the New Advisers, and for which BISYS or any person directly or indirectly controlling, controlled by, or under common control with BISYS, now or in the future serves as principal underwriter.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursaunt to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 24, 1998.

A closed meeting will be held on Thursday, August 27, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 27, 1998, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters, have been added, deleted or postposed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 20, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22752 Filed 8–20–98; 11:42 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40330; File No. SR–DTC–98–8]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Increasing the Maximum Net Debit Cap and Modifying Procedures for Allocating the Net Debit Cap

August 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 11, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–98–8) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to increase the maximum net debit cap employed in DTC's settlement system by $250 million and to modify DTC's procedures for allocating the net debit cap of a participant having more than one account family.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Increase of Maximum Net Debit Cap

DTC's principal risk is the possible failure of one or more of its participants to settle their net debit obligations with DTC at the end of a business day. In order to assure that DTC is able to complete settlement on the day of a participant failure, DTC currently maintains liquidity resources of $1.1 billion, including a cash Participant's Fund of $400 million[3] and a $700 million committed line of credit with a consortium of banks.

DTC's settlement system imposes net debit caps on all participants. Each participant's net debit is limited throughout the processing day to a net debit cap that is the lesser of the following four amounts: (1) a net debit cap based on the average of the three largest net debits that the participant incurs over a rolling 70 business-day period; (2) an amount, if any, determined by the participant's settling bank; (3) an amount, if any, determined by DTC; or (4) $900 million (an amount that is $200 million less than the current amount of DTC's total liquidity resources).

DTC also requires that each participant's net settlement debit be

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Each participant is required to make a deposit to the Participant's Fund based upon a sixty business-day rolling average of the participant's six highest intraday net debit peaks. The aggregate amount of all participants' required deposits is $400 million. In the event that DTC becomes concerned with a participant's operational or financial soundness, DTC may require it to make an additional deposit to the Participant's Fund. A participant may make a voluntary deposit to the Participant's Fund in excess of the amount required. Since DTC fully converted to a same-day funds settlement system in 1995, the total amount of the Participant's Fund, including voluntary deposits, has never been less than $650 million.

fully collateralized. In the event of a participant's failure to settle, DTC will first use cash in the Participant's Fund (including any voluntary deposits) as a liquidity resource to complete settlement. If the Participant's Fund is not sufficient, DTC will borrow from its line of credit banks, pledging collateral securities in the failing participant's account.

Over the past two years DRTC's average gross daily settlement volumes have increased approximately 40% from $240 billion in 1996 to $340 billion in 1997, with daily peak volumes in excess of $400 billion on several occasions. ''Settlement progress payments'' (*i.e.*, funds sent by participants to DTC during the day primarily when a participant's settlement balance has reached its net debit cap) have increased from a daily average of $11.5 billion in 1996 to $15.8 billion in 1997 with daily peaks in excess of $20 billion. In 1997 the number of instances where the $900 million debit cap operated to block transactions ranged from a low of 46 in January to a high of 74 in October.

DTC is concerned that maintaining the maximum net debit cap at its current level of $900 million will continue to have the undesirable effect of temporarily blocking substantial numbers of book-entry delivery. In order to ease the flow of transactions through its system, DTC has decided to increase its committed line of credit from $700 million to $1 billion, thereby increasing total liquidity to $1.4 billion, and proposes to increase the maximum net debit cap from $900 million to $1.15 billion.

Modification of Net Debit Cap Allocation Procedures

The proposed modification of DTC's procedures for allocating the net debit cap of a participant having more than one account family is also designed to facilitate transaction flow by providing participants that act as issuing/paying agents (''IPAs'') in DTC's Money Market Instrument (''MMI'') program greater flexibility in allocating their total net debit cap.

Under DTC's procedures, participants that maintain separate families of accounts may allocate their net debit caps among their account families at their discretion, or alternatively, they may rely on DTC's system-generated allocations.[4] Each family's net debit cap is applied to that family only and not shared by other families of the participant. The aggregate of the net debit caps allocated to a participant's families must be equal to the participant's total net debit cap. For each participant that acts as an IPA, however, DTC currently requires that the portion of the total net debit cap allocated to the participant's IPA family be no less than the system-generated allocation. Some IPAs have expressed concern that this requirement unnecessarily inhibits their ability to match the allocation of net debit cap with important activities occurring in their other account families.

In response to these concerns, DTC proposes to apply the mandatory allocation only to IPAs having average daily maturity presentments measured over the most recent month equal to or greater than 5% of DTC's total MMI maturity presentments. Further, DTC proposes to modify the system-generated allocation formula applicable to such a participant so that no more than 40% of its total net debit cap would have to be allocated to its IPA family. DTC believes that these modifications strike an appropriate balance between attempting to assure that MMI maturity presentments to IPAs are not blocked due to insufficient net debit cap and allowing IPAs to manage efficiently the processing of their other activities at DTC.

The proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited or received comments on the proposed rule change. Informally, a number of participants have expressed support for the subject proposals.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. The Commission believes that the proposed rule change is consistent with DTC's obligations under the Act because an increase in DTC's liquidity resources will help DTC protect itself, its members, and investors from the risks associated with the failure of one or more of its participants to settle their obligation with DTC at the end of a business day. Furthermore, DTC's new maximum net debit cap will constitute a lower proportion of its liquidity resources than was previously the case.

The Commission also believes that DTC's modifications to its procedures for allocating the net debit cap of a participant having more than one account family are consistent with DTC's obligation under the Act. While the modifications will allow participants more flexibility in allocating their net debit cap, their total net debit cap will still be calculated according to the method which the Commission has previously approved as a safe and sound method.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow DTC to immediately increase its liquidity resources.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–8 and

[4] The system-generated allocations are calculated based on the average of each family's three highest net debit peaks over a rolling 70 business-day period.

[5] 15 U.S.C. 78q–1(b)(3)(F).

should be submitted by September 14, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–98–8) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22577 Filed 8–21–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0272]

CapSource Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 28, 1997, an application was filed by CapSource Fund, L.P., at 500 Northpointe Parkway, Suite 300, Jackson, MS 39211, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0270 on May 22, 1998, to CapSource Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 14, 1998.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 98–22635 Filed 8–21–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3122]

State of Indiana

Miami County and the contiguous counties of Cass, Fulton, Grant, Howard, and Wabash in the State of Indiana constitute a disaster area as a result of damages caused by severe storms, high winds, and torrential rain that occurred on July 21, 1998. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 15, 1998 and for economic injury until the close of business on May 14, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 312206 for physical damage and 997300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 14, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–22636 Filed 8–21–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9974]

State of New York and Contiguous Counties in the State of New Jersey

New York County and the contiguous counties of Bronx, Kings, Queens, and Richmond in the State of New York, and Bergen and Hudson Counties in the State of New Jersey constitute an economic injury disaster loan area as a result of a construction accident that occurred on July 21, 1998 in Manhattan. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 14, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for the State of New Jersey is 997500.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 14, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–22637 Filed 8–21–98; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of Preferential Treatment for Government Purchases of Products from Caribbean Basin Countries

AGENCY: Office of the U.S. Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments on the possible renewal of preferences that certain federal government agencies accord in their purchases to eligible products of countries designated under the Caribbean Basin Economic Recovery Act (commonly called the Caribbean Basin Initiative or CBI). Since 1995, these preferences have been granted in one-year extensions, the most recent of which, set out in the **Federal Register** on October 31, 1997 (62 FR 59014), remains in effect until September 30, 1998. That notice stated that future extension for any CBI countries would be conditioned on individual CBI beneficiaries' participation and cooperation in initiatives and agreements on government procurement in the World Trade Organization (WTO) and the Free Trade Area of the Americans (FTAA) Working Group on Government Procurement. The TPSC seeks public comments in connection with its consideration of a further extension of preferences for products of CBI countries.

DATES: Public comments are due by noon September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Barnicle, Director for Central America and the Caribbean, (202) 395–5190, Office of the United States Trade Representative (USTR).

SUPPLEMENTARY INFORMATION: Since 1986 the United States has granted products of CBI countries the same government purchase preference that it grants to products of countries that are members of the Government Procurement Agreement (GPA) (currently administered by the WTO). This preference does not apply to products originating in CBI countries that are excluded from duty-free treatment under 19 U.S.C. 2703(b). A list of CBI beneficiary countries appears as an annex to this notice.

[6] 17 CFR 200.30–3(a)(12).

Since 1995, USTR has extended the preferences for CBI-origin products a year at a time, under authority delegated by the President in section 1–201 of Executive Order 12260 of December 31, 1980. Preferences are currently in effect until September 30, 1998. In its October 31, 1997 **Federal Register** notice announcing the current extension, USTR stated that future extensions would be conditioned on the extent to which CBI beneficiary countries participated and cooperated in the WTO Working Group on Transparency in Government Procurement, made efforts to accede to the GPA or supported continuing multilateral WTO negotiations in the future; and participated in the FTAA Working Group on Government Procurement. USTR also stated that those countries making significant efforts to meet these conditions would be considered for multiple-year extensions of preferences. Interested parties are asked to comment on the impact on U.S. industry of extending government procurement treatment to CBI beneficiaries beyond September 30, 1998; on these countries' performance under the criteria set out in the 1997 **Federal Register** notice; and on possible criteria for renewal of such treatment in future years.

Public Comments

Those persons wishing to submit written comments should provide twenty (20) typed copies (in English) to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW., Washington DC 20508.

If the submission contains business confidential information, twenty copies of a confidential version must also be submitted. A justification as to why the Information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

Annex

List of Countries Designated as Beneficiary Countries for Purposes of the Caribbean Basin Economic Recovery Act

Antigua and Barbuda
Aruba
Bahamas, The
Barbados
Belize
Coasta Rica
Dominica
Dominican Republic
El Salvador
Granada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
Saint Lucia
Trindad and Tobago
Saint Kitts-Nevis
Saint Vincent and the Grenadines
Virgin Islands, British

[FR Doc. 98–22585 Filed 8–21–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for three year extension. The ICR describes the nature of the information collection and its expected burden.

DATES: Comments must be submitted on or before September 23, 1998.

FOR FURTHER INFORMATION OR COPY OF COLLECTION OF INFORMATION CONTACT: Michael Robinson, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–9456.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

Title: Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.

OMB No.: 2127–0541.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals, Households, Business, other-for-profit, Not-for-profit, Farms, Federal Government and State, Local or Tribal Government.

Abstract: 49 U.S.C. 30117 authorizes the Secretary to require that manufacturers provide technical information, as for example information directed for publication in a vehicle owner's manual, related to the performance and safety specified in the Federal motor vehicle safety standards for the purposes of educating the consumer and providing safeguards against improper use. Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the owner's manual to aid the agency in achieving many of its safety goals. FMVSS No. 108—Lamps, Reflective Devices, and Associated Equipment. This standard requires that certain lamps and reflective devices with certain performance levels be installed on motor vehicles to assure that the roadway is properly illuminated, that vehicles can be readily seen, and the signals can be transmitted to other drivers sharing the road, during day, night and inclement weather. In this particular case, a new manner of headlamp aiming is being allowed whereby owners as well as traditional vehicle service personnel could aim their vehicle's headlamps using equipment that is an integral part of the headlamp system. Since the specific manner in which aim is to be performed is not regulated (only the performance of the devices is), aiming devices manufactured or installed by different vehicle and headlamp manufacturers may work in significantly different ways. As a consequence, instructions for proper use must be part of the vehicle as a label, or optionally, in the vehicle owner's manual. Part 575 section 103—Camper Loading. This standard requires that manufacturers of slide-in campers designed to fit into the cargo bed of pickup trucks affix a label to each camper that contains information relating to certification, identification and proper loading, and to provide more detailed loading information in the

owner's manual of the truck. FMVSS No. 205—Glazing Materials. This standard specifies requirement for all glazing material used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce the likelihood of lacerations and to minimize the possibility of occupants penetrating the windshield in collision. More detailed information regarding the care and maintenance of such glazing items, as the glass-plastic windshield is required to be placed in the owner's manual. FMVSS No. 208—Occupant Crash Protection. This standard specifies requirements for both active and passive occupant crash protection systems for passenger cars, multipurpose passenger vehicles, trucks and small buses. Certain safety features, such as air bags, or the care and maintenance of air bag systems, are required to be explained to the owner by means of the owner's manual. For example, the owner's manual must describe the vehicle's air bag system and provide precautionary information about the proper positioning of the occupants, including children. The owner's manual must also warn that no objects, such as shotguns carried in police cars, should be placed over or near the air bag covers. FMVSS No. 210—Seat Belt Assembly Anchorages. This standard specifies requirements for seat belt assembly anchorages to ensure effective occupant restraint and to reduce the likelihood of failure in collisions. Manufacturers of vehicles that are not equipped with lap belt assemblies at front outboard passenger seating positions suitable for securing child restraints are required to include information in the owner's manual on the correct location and placement of seat belt anchorages which will provide this protection. Part 575—Section 105—Utility Vehicles. This regulation requires manufacturers of utility vehicles to alert drivers that the particular handling maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated on paved roads. A statement is provided in the regulation which manufacturers shall include, in its entirety or equivalent form, in the owner's manual.

Estimated Annual Burden: 1,371 hours.

Address

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on August 14,1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–22638 Filed 8–21–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–16]

Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 14, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29275.

Petitioner: Kodiak Expediting, Inc.

Regulations Affected: 14 CFR 61.133(b)(1).

Description of Petition: To permit Kodiak to conduct passenger carrying operations on cross-country flights in excess of 50 nautical miles without holding an instrument rating in the same category and class of aircraft listed on your commercial pilot certificate.

Docket No.: 29234.

Petitioner: Cowboy Transportation Company.

Regulations Affected: 14 CFR 135.421(c) and (d).

Description of Petition: To permit Cowboy Transportation Company to conduct limited, single pilot commercial operations under instrument flight rules.

Docket No.: 29302.

Petitioner: Raytheon E-Systems.

Regulations Affected: 25.365(e)(2), 25.562(c)(2), -(c)(2), -(c)(3), -(c)(4), -(c)(6), 25.785(h)(2), 25.812(e), 25.813(e), 25.853(d).

Description of Petition: To exempt Raytheon E-Sytems from the requirements of 14 CFR 25.562(c)(2) -(c)(4), 25.785(h)(2), 25.813(e), and 25.853(d) to permit business jet interiors to be installed for ''private, not-for-hire use'' on Boeing Model 777–200 IGW airplane.

Docket No.: 29301.

Petitioner: Raytheon E-Systems.

Regulations Affected: 25.562(c)(2), -(c)(3), -(c)(4), 25.785(h)(2), 25.813(e), 25.853(d).

Description of Petition: To exempt Raytheon E-Systems from the

requirements of 14 CFR 25.562(c)(2)-(c)(4), 25.785(h)(2), 25.813(e), and 25.853(d) to permit business jet interiors to be installed for ''private, not-for-hire use'' on Boeing Model 737–700 IGW airplanes.

Docket No.: 29296.

Petitioner: Sky Walk, Inc.

Sections of the FAR Affected: 14 CFR 141 appendix B.

Description of Relief Sought: To permit Sky Walk to enroll a person without a student pilot certificate in the flight portion of Sky Walk's FAA-approved part 141 private pilot certification course so long as the person obtains a student pilot certificate: (1) before the 11th flight hour of the course and (2) before any solo flight.

Docket No.: 29189.

Petitioner: Orange County Flight Center.

Sections of the FAR Affected: 14 CFR 141.77(a)(1).

Description of Relief Sought: To permit Orange County Flight Center to use Skyroamers® Publications' FAA-approved syllabus, which states that the planned training times in the syllabus are not minimum required flight times. The syllabus also would state that all part 141 training times requirements must be met for private pilot certification.

Docket No.: 29238.

Petitioner: Flightstar Corporation.

Sections of the FAR Affected: 14 CFR 61.101(d)(7).

Description of Relief Sought: To permit all recreational pilots trained at the University of Illinois Willard Airport (CMI) to act as pilot in command of an aircraft carrying a passenger to, from, and within the airspace surrounding CMI, which requires two-way radio communication with air traffic control.

Docket No.: 29266.

Petitioner: Embry-Riddle Aeronautical University.

Sections of the FAR Affected: 14 CFR 141, appendix D, para. 4(b)(1)(ii).

Description of Relief Sought: To permit Embry-Riddle Aeronautical University to allow its students who are adding a single-engine rating to a commercial pilot certificate with a multiengine rating to use time logged in a multiengine aircraft with retractable landing gear, flaps, and a controllable pitch propeller, or in a turbine-powered airplane to satisfy the requirements of subpart F of 14 CFR part 61.

Dispositions of Petitions

Docket No.: 27023.

Petitioner: The Boeing Commercial Airplane Group.

Sections of the FAR Affected: 14 CFR 25.1415(c) and 121.339(c).

Description of Relief Sought/Disposition: To permit The Boeing Commercial Airplane Group installation of survival equipment separate from slide/rafts on Boeing 757–300 aircraft. *GRANT, August 5, 1998, Exemption No. 5613A.*

Docket No.: 28655.

Petitioner: United West Airlines, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit United West to operate its Falcon 20 and Learjet 25 aircraft under part 135 without a TSO–C112 (Mode S) transponder installed. *GRANT, August 13, 1998, Exemption No. 6512A.*

Docket No.: 28514.

Petitioner: Mr. Henry D. Canterbury.

Sections of the FAR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To permit the petitioner to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, August 7, 1998, Exemption No. 6520A.*

Docket No.: 29271.

Petitioner: Mr. Kerrick R. Philleo.

Sections of the FAR Affected: 14 CFR 91.109(a).

Description of Relief Sought/Disposition: To permit Mr. Philleo to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza and Beechcraft Debonair airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, August 7, 1998, Exemption No. 6804.*

Docket No.: 29284.

Petitioner: Falcon Aviation Consultants, Inc.

Sections of the FAR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To permit Falcon Aviation Consultants, Inc., to conduct certain flight instruction in a Beechcraft Bonanza airplane equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, August 7, 1998, Exemption No. 6803.*

[FR Doc. 98–22592 Filed 8–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notices announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for September 16 and 17, 1998, beginning at 8:30 am. on September 16. Arrange for oral presentations by September 11, 1998.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., (Building 10–16), Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is give of an ARAC meeting to be held September 16–17, 1998, at Boeing Commercial Airplane Group, 535 Garden Avenue N., (Building 10–16), Renton, WA. The agenda will include:

Wednesday, September 16, 1998

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities (JAA) Report.
- Transport Canada Report.
- Executive Committee (EXCOM) Meeting Report.
- Harmonization Management Team Report.
- Harmonization Program Plan Update.
- Proposed Human Factors Terms of Reference (TOR) Update.
- Flight Test Harmonization Working Group (HWG) Report.
- Systems Design and Analysis HWG Report.
- Ice Protection HWG Report.
- Powerplant Installation HWG Report.
- Engine HWG Report and Vote.
- Flight Guidance System HWG Report.

Thursday, September 17, 1998

- General Structures HWG Report.
- Electromagnetic Effects HWG Report.

- Loads and Dynamics HWG Report.
- Airworthiness Assurance HWG Report.
- Flight Control HWG Report.
- Electrical Systems HWG Report.
- Avionics HWG Report.
- Mechanical Systems HWG Report.
- Seat Test HWG Report.
- Review Action Items.

The Engine HWG is requesting a vote for formal FAA economic and legal review for two draft notices. One draft notice proposes to amend the rotor integrity (overspeed type certification standards for the issuance of original and amended type certificates for aircraft turbine engines. The other draft notice proposes to change the fire protection standards for the issuance of original and appropriate amended type certificates for aircraft engines.

Further, the Loads and Dynamics HWG is requesting a vote for formal FAA economic and legal review for a draft notice to revise the checked pitching maneuver design load requirements for transport category airplanes. The working group is also requesting a vote to submit to the FAA for publication an advisory circular on taxi, takeoff and landing roll design loads.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by September 11, 1998, to present oral statements at the meeting. Written statements may be presented to the Committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on August 14, 1998.

Florence L. Hamn,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–22630 Filed 8–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–07–I–00–PHL) to Impose a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, Pennsylvania

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 a PFC at Philadelphia 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 Regulation (14 CFR Part 158).

DATES: Comments must be received on or before September 23, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Patrick Sullivan, Project Manager, Harrisburg, Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dennis Bouey, Director of Aviation for the City of Philadelphia at the following address: Philadelphia International Airport, Division of Aviation, Terminal E, Philadelphia, Pennsylvania 19153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Philadelphia Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Patrick Sullivan, Project Manager, Harrisburg, Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011. (717) 730–2832. The application may be reviewed in person at this same location.

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SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Philadelphia 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 August 10, 1998, the FAA determined that the application to impose a PFC submitted by the City of Philadelphia 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 December 3, 1998.

The following is a brief overview of the application.

Application number: 98–07–I–00–PHL

Level of the proposed PFC: $3.00

Proposed charge effective date: January 1, 1999

Proposed charge expiration date: July 1, 2011

Total estimated PFC revenue: $666,098,000

Brief description of proposed projects:

—Develop a new Terminal One Building (New International Terminal)

—Develop a new Terminal F Building (New Commuter Terminal)

—Construct a new Aircraft Parking Apron for Terminal One

—Construct a new Aircraft Parking Apron for Terminal F

—Airport Roadway Modification—Phase II

—Acquisition of Property—West of Terminal One

—Planning & Design of New Highway Access Ramps from I–95

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

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: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York, 11430.

In additional, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Philadelphia Department of Aviation.

Issued in Jamaica, New York on August 10, 1998.

Thomas Felix,

Manager, Planning & Programming Branch, AEA–610, Eastern Region.

[FR Doc. 98–22593 Filed 8–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4335]

Notice of Receipt of Petition for Decision That Nonconforming 1993 Chrysler Town and Country Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Chrysler Town and Country multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993 Chrysler Town and Country MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is September 23, 1998.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Atlantic ICI, Inc. of Apopka, Florida (''Atlantic'') (Registered Importer 96–096) has petitioned NHTSA to decide whether 1993 Chrysler Town and Country MPVs are eligible for importation into the United States. The vehicles which Atlantic believes are substantially similar are 1993 Chrysler Town and Country MPVs that were manufactured for sale in the United States and certified by their manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993 Chrysler Town and Country MPVs to their U.S. certified counterparts, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Atlantic submitted information with its petition intended to demonstrate that non-U.S. certified 1993 Chrysler Town and Country MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993 Chrysler Town and Country MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Motor Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components:* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1993 Chrysler Town and Country MPVs comply with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: August 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–22641 Filed 8–21–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–25: OTS No. 1421]

Home Federal Savings and Loan Association of Niles, Ohio, Approval of Conversion Application

Notice is hereby given that on August 13, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Federal Savings and Loan Association of Niles, Niles, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thift 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.

By the Office of Thrift Supervision.

Dated: August 19, 1998.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–22604 Filed 8–21–98; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB Review and Comment Request of Proposed New Collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. USIA is requesting OMB approval of a new information collection entitled, ''USIA Evaluation of the Use of Arrival Host Families'' for a three year period. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with the program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, 22 U.S.C. 2451, and Section 101(a)(15)(J) of the Immigration and Nationality Act, as amended. The Exchange Visitor Program regulations in 22 CFR 514 implement the Act; the regulations in 22 CFR 514.25 specifically govern the high school exchanges, ''Secondary School Students''.

DATES: Comments are due on or before September 23, 1998.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, SW, Washington, DC 20547, telephone (202) 619–4408, Internet address JGiovett@USIA.GOV; and OMB review: Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–5871.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 18, 1998 (vol. 63, no. 117). Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–xxxx) is estimated to average thirty (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. Responses are voluntary and respondents are required to respond an average of two times. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/AOL, 301 Fourth Street, SW, Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Current Actions: This information collection has been submitted to OMB for the purpose of requesting approval of this new collection for a three-year period.

Title: ''USIA Evaluation of the Use of Arrival Host Families''.

Form Number(s): IAP–141, IAP–142, IAP–143, IAP–144 and IAP–145.

Abstract: USIA strives to evaluate the policies, attainment of program goals, impact and administration of all its exchanges. To that end, USIA proposes to conduct a one-time evaluation project during the 1998–99 Academic year to evaluate the quality of and impact on foreign high school students placed in arrival host families (temporary living arrangements).

Proposed Frequency of Responses:

No. of Respondents—6,520

Recordkeeping Hours—.50

Total Annual Burden—3,260

Dated: August 18, 1998.

Rose Royal,

Federal Register Liaison.

[FR Doc. 98–22609 Filed 8–21–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 163

Monday, August 24, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-39]

Modification of Class E Airspace; Glenwood, MN

Correction

In rule document 98–21857 appearing on page 43621, in the issue of Friday, August 14, 1998, make the following correction:

§ 71.1 [Corrected]

On page 43621, in the third column, under the heading **AGL MN E5 Glenwood MN [Revised]**, in the second line, ''long. 95°10′14″ W)'' should read ''long. 95°19′14″ W)''.

BILLING CODE 1505–01–D

federal register

Monday
August 24, 1998

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 15 and 37

Federal Acquisition Regulation; Evaluation of Proposals for Professional Services; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 37

[FAR Case 97–038]

RIN 9000–AI07

Federal Acquisition Regulation; Evaluation of Proposals for Professional Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to provide guidance on the evaluation of proposals that include uncompensated overtime hours. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 23, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97–038@gsa.gov. Please cite FAR case 97–038 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat (MVR), Room 4035, 1800 F Street, NW, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson at (202) 501–0692. Please cite FAR case 97–038.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR Parts 15 and 37 to provide guidance on use of the provision at 52.237–10, Identification of Uncompensated Overtime. Item VII of Federal Acquisition Circular (FAC) 97–01 (62 FR 44813, August 22, 1997) elevated guidance regarding uncompensated overtime from Part 237 of the Defense Federal Acquisition Regulation Supplement (DFARS) to FAR Part 37, and elevated a DFARS solicitation provision to FAR 52.237–10. However, no information regarding the evaluation of proposals that include uncompensated overtime was added to FAR Part 15 by FAC 97–01. This proposed rule adds guidance at FAR 15.305 and 37.115 to address the evaluation of proposed uncompensated overtime hours.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the guidance proposed for inclusion in FAR Parts 15 and 37 is consistent with the existing policy pertaining to uncompensated overtime at FAR 37.115 and 52.237–10. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–038), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15 and 37

Government procurement.

Dated: August 18, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 15 and 37 be amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.305 is amended in paragraph (a)(1) by adding a parenthetical as the penultimate sentence to read as follows:

§ 15.305 Proposal evaluation.

(a) * * *

(1) * * * (See 37.115 for uncompensated overtime evaluation.) * * *

* * * * *

PART 37—SERVICE CONTRACTING

3. Section 37.115–2 is amended by adding paragraph (c) to read as follows:

§ 37.115–2 General policy.

* * * * *

(c) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the [Government's requirements (see 15.305 for competitive negotiations and 15.404–1(d) for cost realism analysis). [When acquiring these services, contracting officers shall conduct a risk assessment and evaluate, for award on that basis, any proposals received that reflect factors such as—

(1) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(2) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

[FR Doc. 98–22594 Filed 8–21–98; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Monday
August 24, 1998

Part III

Environmental Protection Agency

40 CFR Parts 123 and 501

State Sewage Sludge Management Regulations Streamlining; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 501

[FRL–6145–8]

RIN 2040–AC87

Streamlining the State Sewage Sludge Management Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending its regulations that establish the conditions for States seeking EPA approval to operate sewage sludge permit programs pursuant to the Clean Water Act (CWA). Existing requirements were modeled on the National Pollutant Discharge Elimination System (NPDES) requirements for EPA authorization of State wastewater effluent discharge programs. Many States, however, manage sewage sludge through State solid waste programs that are often structured quite differently from the NPDES programs. As a result, existing State sewage sludge programs would require significant changes for EPA approval under the current requirements. EPA is eager for States with well-run sewage sludge management programs to obtain approval to operate their own permit programs under the CWA without having to make unnecessary administrative and programmatic changes unrelated to protection of public health and the environment. Consequently, today's changes streamline the current regulations to ease the authorization process for States. These changes will provide flexibility to States in implementing their permit programs, and, at the same time, ensure that permitting determinations are based on environmental and public health considerations.

EFFECTIVE DATE: The final rule is effective on September 23, 1998. Section 501.15(d)(1)(i)(B) is stayed until the future publication of 40 CFR 122.21(q). EPA will publish a document announcing the effective date of § 501.15(d)(1)(i)(B).

FOR FURTHER INFORMATION CONTACT: Wendy Bell, (202) 260–9534, Permits Division (4203), U.S. EPA, 401 M Street S.W., Washington, D.C., 20460.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are governmental entities responsible for implementation of the State Sewage Sludge Management Program. Regulated entities include:

Category	Examples of regulated entities
State and Tribal government	States and Tribes that request authorization of their sewage sludge management program.
Federal government	EPA Regional offices that approve State sewage sludge management programs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in parts 123 and 501 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Information in the preamble is organized as follows:

I. Background
- A. Water Quality Act of 1987
- B. EPA's Sewage Sludge Management Program

II. Description of Today's Final Rule and Response to Comments
- A. General
- B. Part 123
- C. Part 501

III. Regulatory Requirements
- A. Executive Order 12866
- B. Executive Order 12875
- C. Paperwork Reduction Act
- D. Regulatory Flexibility Act
- E. Unfunded Mandates
- F. Submission to Congress and the General Accounting Office
- G. National Technology Transfer and Advancement Act
- H. Executive Order 13045

I. Background

Implementation of the CWA has increased the extent to which wastewater is treated before being discharged to surface waters. At publicly owned treatment works (POTWs), implementation of secondary and advanced treatment requirements under the NPDES Program has improved effluent quality while increasing the amount of sewage sludge being generated. EPA estimates that 7 million dry metric tons of sewage sludge is generated by about 19,500 domestic wastewater facilities. Proper management of this growing amount of sewage sludge is becoming increasingly important as efforts to remove pollutants from wastewater become more effective.

Several options exist for dealing with these vast quantities of sewage sludge. One such option is beneficial use. EPA considers sewage sludge a valuable resource since it contains nutrients and has physical properties that make it useful as a fertilizer and soil conditioner. Sewage sludge has been used for its beneficial qualities on agricultural lands, in forests, for landscaping projects, and to reclaim strip-mined land. EPA will continue to encourage such practices.

Regulation of the use or disposal of sewage sludge is important because improper use or disposal can adversely affect surface water, ground water, wetlands, and public health through a variety of exposure pathways. The multi-media nature of the risks and exposure pathways requires a comprehensive approach to protect public health and the environment in order to promote the beneficial use of sewage sludge and ensure that solving problems in one medium will not create problems for another.

EPA notes that the term ''biosolids'' is now being used by professional organizations and other stakeholders in place of ''sewage sludge'' to emphasize that it is a resource that can be recycled beneficially. EPA plans to work with these stakeholders to establish a definition for ''biosolids'' that is consistent with the definition of ''sewage sludge'' in the CWA. In the meantime, EPA encourages the use of the term ''biosolids'' in order to promote public acceptance of beneficial uses for these residuals of wastewater treatment.

A. Water Quality Act of 1987

Section 406 of the Water Quality Act of 1987, which amended section 405 of the CWA, established a comprehensive program for reducing the risks to public health and the environment from the use or disposal of sewage sludge. This program included a requirement for EPA promulgation of sewage sludge standards. Furthermore, the 1987

amendments required that all NPDES permits issued to POTWs and other treatment works treating domestic sewage (TWTDS) contain conditions implementing sewage sludge standards, unless such conditions are included in other permits. The other permits may either be other federal permits or State permits issued under approved State programs. The amendments also provided that the Administrator may issue separate sewage sludge permits to TWTDS that are not subject to section 402 of the CWA or to any of the other listed permit programs. However, the amendments provided that the standards for use or disposal are enforceable directly against any user or disposer of sewage sludge under section 405(e) of the CWA. In other words, a TWTDS and any other user or disposer must comply with the standards by the statutory compliance deadlines whether or not a permit incorporating the standards has been issued to the TWTDS.

B. EPA's Sewage Sludge Management Program

In 1989, EPA published regulations that establish the requirements and procedures a State must follow to obtain approval to operate a State sewage sludge management program under section 405(f)(1) of the CWA. These regulations established the requirements for States that chose to implement their sewage sludge programs through existing State NPDES programs (40 CFR part 123) as well as requirements for States that chose non-NPDES sewage sludge programs (40 CFR part 501) as the vehicle for managing sewage sludge in their States. These regulations also revised the NPDES permit requirements and procedures (parts 122 and 124) to incorporate sewage sludge permitting requirements. See 54 FR 18716 (May 2, 1989). On February 19, 1993 (58 FR 9404) these regulations were modified to allow for phased permit application submittal procedures. The basic requirements and procedures for States which seek EPA approval to administer a sewage sludge management program are the same under part 123 and part 501. EPA published the requirements in both places based on the belief that States that choose to add sewage sludge to their NPDES programs would find it easier if the requirements and approval procedures for the sewage sludge program were included along with the other NPDES requirements in part 123.

State assumption of the sewage sludge program is optional and until State sewage sludge programs are authorized, EPA will administer the program. Two States (Utah and Oklahoma) have been authorized at this time. EPA is working with a number of other States seeking authorization for the Federal sewage sludge permit and management program.

In discussions with these States, EPA found that the sewage sludge management program regulations were often a barrier to authorization. Given the wide and successful regulation of sewage sludge use or disposal by a number of States, EPA undertook a review of its regulations looking at ways to simplify the approval process.

In order to provide greater flexibility to the States, EPA is modifying its sewage sludge management program regulations to accommodate more administrative and programmatic variations in State programs. EPA stresses that its willingness to allow greater variation in the State permit programs does not mean that the Agency will retreat from its responsibility to ensure public participation and protection of public health and the environment. EPA will not approve State programs that do not provide adequate protection.

II. Description of Today's Final Rule and Response to Comments

A. General

EPA started the process that led to today's rule by reviewing information provided by States with active State sewage sludge programs. EPA then solicited input on two successive draft proposals from various stakeholders, including States, associations and environmental groups. The March 11, 1997 proposal was an outgrowth of that process and today's final rule continues to incorporate many of the suggestions made by commenters received on both preproposal drafts. EPA today finalizes changes to parts 123 and 501 that will provide more flexibility to States and ease the process of authorization. Under the previous regulations, States that chose to implement sewage sludge requirements through their NPDES programs had to meet the requirements and follow the procedures in part 123. States that wanted to obtain approval for existing non-NPDES programs had to comply with the procedures and requirements in part 501. These requirements for authorization under an NPDES or other type of program were very similar.

As part of an overall effort to eliminate unnecessary regulations, EPA is deleting the provisions of part 123 that contain State program requirements applying solely to sewage sludge. These provisions simply repeat the requirements in part 501, and EPA does not believe both sets of regulations are necessary. Under today's rule, States seeking approval to operate State sewage sludge management programs under section 405(f)(1) must meet the requirements and procedures in part 501 when submitting sewage sludge management programs. A State is free to operate an approvable sewage sludge management program as part of its existing State NPDES regulatory program or as part of its State solid waste management program or as part of another program. The requirements and procedures for approval are the same. Today's rule is not intended to preclude States from amending their existing, approved NPDES programs to include sewage sludge. In fact, EPA believes that many States will choose this route when they seek approval of their sewage sludge programs. States that intend to rely on their existing NPDES programs for regulation of sewage sludge may need to modify their programs to comply with part 501.

All sewage sludge programs approved under part 501 must provide for citizen suits and public participation in State enforcement proceedings, whether a State program is managed through an NPDES program or not. Section 501.17(d) contains the same requirements for public participation in State enforcement proceedings as § 123.27(d). Further, it should be noted that, under section 505 of the CWA, citizen suits are authorized for any violation of the regulations containing the standards for the use or disposal of sewage sludge (40 CFR part 503).

Because part 501 was modeled on the NPDES program, States that manage their sewage sludge through solid waste or other programs may heretofore have had difficulties in meeting some of its procedural requirements because these programs have different requirements. Today's rule modifies some of the requirements in part 501 to make it easier for States with well-run sewage sludge programs to obtain approval for their programs.

B. Part 123

Part 123 establishes the program requirements and approval procedures for States that seek EPA approval to administer NPDES permit programs pursuant to section 402 of the CWA. Today's rule modifies part 123 by deleting certain specific references to sewage sludge requirements in order to make it clear that all State sewage sludge programs (both NPDES and non-NPDES) are subject to the requirements in part 501. The deleted references occur in §§ 123.1, 123.2, 123.22, 123.24 through 123.26, and 123.45. The rule

also amends §§ 123.42, 123.44, and 123.62 through 123.64 to clarify the cross-references in the part 123 sections that apply to sewage sludge and NPDES State programs. EPA received only supporting comments on this part, and it is unchanged from the proposal.

C. Part 501

1. Purpose and Scope

Section 501.1 describes the general requirements for EPA approval of a State sewage sludge program. Today's rule modifies § 501.1(b) to explain that part 501 specifies the requirements and procedures for approval of all State sludge management programs, including those programs that are operated under the aegis of a State's NPDES program as well as those operated under other non-NPDES programs.

Section 501.1(d)(1) and the rest of paragraph (d) have been renumbered because the existing text does not have a § 501.1(d)(2). Today's rule deletes the requirement in § 501.1(d)(1) that a State sludge management program have the authority to address sewage sludge transport and storage. This requirement is deleted because there are no Federal standards that regulate the storage of sewage sludge for less than two years or sewage sludge transport. Where sewage sludge remains on the land for longer than two years, it is deemed to be surface disposal rather than storage under 40 CFR 503.20(b) and is regulated under part 503. EPA is working with the Department of Agriculture to develop a guidance document that provides information on appropriate sewage sludge storage methods.

The current language in this section includes a requirement that a State sewage sludge program must include the authority to regulate Federal facilities. This requirement is not being changed in today's rule. A State does not have to have the authority to regulate Federal facilities under its approved NPDES program in order for its sewage sludge program to be approved. If a State does not have NPDES Federal facility authority, the State must have authority to regulate sewage sludge from the State's Federal facilities under a non-NPDES program.

The language in this section clarifies that a State must have the authority to regulate only those sewage sludge management activities covered by part 503. A State does not need the authority to regulate a practice not covered by part 503, such as making bricks out of sewage sludge.

Section 501.1(d)(1)(ii) contains a list of the covered sewage sludge use or disposal practices. For consistency with the terminology used in part 503, today's rule deletes the phrase ''distribution and marketing'' since this sewage sludge use is regulated as ''land application,'' and clarifies that ''landfilling'' takes place at ''municipal solid waste landfills.''

Section 501.1(d)(1) contained a reference to a nonexistent section—40 CFR 123.30. Today's rule replaces this with a reference to a new paragraph (m) that is added to this section. Section 501.1(m) specifies the requirements for a partial sewage sludge program.

CWA section 405(f) authorizes the Administrator to approve State programs so long as the programs will assure compliance with section 405 requirements. Pursuant to this authority, EPA is providing for approval of partial sewage sludge management programs under part 501. Section 501.1(m) allows a State to submit a partial sewage sludge management program covering one or more of the sludge use and disposal practices falling under the jurisdiction of the administering State agency or department. The State agency seeking program approval is required to assume a complete management program with respect to the covered practice(s). Some States regulate septage use and disposal under different management programs than sewage sludge. In the case of those States, EPA will approve a partial program for land application, for example, that regulates only sewage sludge and excludes septage from its regulatory scope.

Section 405(f)(1) of the Clean Water Act (CWA) requires that any NPDES permit issued to a publicly owned treatment works or other treatment works treating domestic sewage must include conditions to implement the sewage sludge regulations issued under section 405(d) unless these conditions have been included through certain other specified permits, including permits under a State permit program if EPA determines ''such programs assure compliance with any applicable requirements'' of section 405. The provisions of § 501.1(c)(2) require that any complete sludge management program submitted for approval must include such authority. EPA is implementing its approval of partial programs in the same manner. An approvable partial program must include the authority to permit both POTWs and other TWTDS associated with the identifiable use and disposal option for which the State seeks authorization.

With respect to the practice(s) covered by the partial program, the State agency is required to meet the requirements of CWA section 405, and has to be able to implement the applicable requirements of 40 CFR part 503. The State must be able to clearly identify who falls within the State program, and there must be no area in which authority over a particular group is unclear.

The rule also clarifies requirements for the partial program with respect to the Attorney General's Statement, the Program Description, and the Memorandum of Agreement (MOA) between EPA and the State.

In addition to the information required for the Program Description under § 501.12, the State submission must explain how the program will operate, including the relationship between the partial program and the unassumed part which will remain under EPA control. In addition to the information required for the MOA under § 501.14, the State submission must delineate responsibilities of both the State and EPA in administering the partial program.

EPA received several favorable comments on the partial program requirements and two comments that asked for clarification on approval of partial programs that exclude septage. One commenter stated that the proposed partial program language only referred to TWTDS and a ''permitting program.'' This was never EPA's intent and the term ''permitting program'' has been changed to ''management program'' in the final rule. Any sewage sludge management program, partial or complete, must include requirements for monitoring compliance and provisions for enforcement of the Part 503 standards for all users and disposers of sewage sludge that are part of the sludge management program.

A commenter asked whether a State must have a regulatory program for septage somewhere other than in its sewage sludge program in order to secure partial program authorization for land application of sewage sludge excluding septage. EPA is willing to approve such a partial program irrespective of whether septage is regulated by another program or not regulated at all. In this situation, compliance with the Federal septage requirements in part 503 would continue to be enforced by EPA.

2. Definitions

Today's rule adds a definition of ''TWTDS,'' the acronym for ''treatment works treating domestic sewage.'' The acronym replaces the phrase throughout the regulation.

3. Elements of a Sludge Management Program Submission

Section 501.11 lists the required elements of any sewage sludge management program that a State submits for approval. EPA received one comment objecting to these requirements. EPA did not propose to change this language nor did the Agency solicit comment on it, so EPA is not responding to the objections.

4. Program Description

In order to ensure that a State program can be properly run, § 501.12 requires a description of various program elements. Today's rule amends the current regulation to reduce the level of detail required by §§ 501.12(b), (d), and (f) for the State program description. As modified, the regulation requires only the minimal information that EPA believes is necessary in a program description.

Heretofore, the language in §§ 501.12(b) (2) and (3) called for information on State program costs and funding sources for a program's first two years. The purpose of this requirement was to demonstrate that a State had the resources to properly carry out a new sewage sludge management program. In fact, many States have had programs established for many years. Consequently, for States that have at least 2 years of active experience implementing a sewage sludge regulatory program, cost and funding information is not necessary since they have already shown that they have the necessary resources to run effective programs. EPA has therefore amended the rule to require this information on program costs and funding sources only for State programs that have been in existence for less than two years.

EPA received several comments supporting the changes in this section. EPA also received one comment that stated that all the proposed information requirements are unnecessary for an existing program because EPA already has a working knowledge of existing State programs.

EPA disagrees with this commenter's belief that EPA always has a working knowledge of existing State programs. The rule promulgated today reduces the requirements for submission of information for existing programs. EPA, however, has concluded that the remaining program description requirements are the minimum necessary to ensure that EPA has a complete understanding of a State program.

Section 501.12(d) now requires submittal of forms that the State intends to use in its program. EPA wants to ensure that the State obtains the information necessary to implement an effective program but does not intend to require use of specific forms. Therefore, EPA has amended this section to provide for either submittal of applicable forms or the procedures used for obtaining information.

Section 501.12(f)(1) requires a State seeking to administer a sludge management program to provide an inventory of all TWTDS subject to part 503 and subject to the State's program. EPA believes that, in implementing an effective program, States will need an inventory of all TWTDS but should not be required to develop an inventory of land application sites in order to obtain approval for their programs. If a State is submitting a partial program, the inventory need only list the TWTDS that would be regulated under the State's program. The language in § 501.12(f) has been modified accordingly.

EPA received two comments about the required inventory. The first comment stated that a State should not be required, as the current rule provides, to submit other Federal and State permit numbers as part of the TWTDS inventory.

The submittal of existing permit numbers allows EPA to determine how many TWTDS are already permitted under different Federal or State programs. EPA agrees that permit numbers for permits unrelated to a sewage sludge program should not be required. EPA is changing the language in § 501.12(f)(1)(iv) to clarify that the only permit numbers required as part of the inventory are those that contain sewage sludge requirements.

EPA also received a comment that only land application programs should be included in the inventory. The commenter believes that including other TWTDS would be redundant because they are already permitted under other programs.

The inventory requirement is for all TWTDS that are subject to part 503 and the State's program, which includes facilities that use land application, surface disposal, incineration, or disposal in a municipal solid waste landfill, unless the State is submitting a partial program. The fact that a facility is permitted under another program does not necessarily mean that the permit includes all the part 503 requirements.

5. Memorandum of Agreement With the Regional Administrator

The changes to § 501.14(a) adopted today clarify that it is the Regional Administrator who must approve the memorandum of agreement (MOA) before the MOA is effective.

EPA has modified § 501.14(b)(1)(i) to clarify that EPA will only transfer permit-related information to a State with respect to the portion of the State program for which the State has obtained approval. For example, if a State is seeking a partial program for land application, EPA will not transfer information on pending incinerator permit applications or compliance information for incinerators to the State.

EPA has also amended § 501.14(b) to modify some of the current waiver prohibitions. The current regulations prohibit waiver of EPA review of permits issued to ''Class 1 sludge management facilities.'' EPA has removed this provision because EPA believes that the need for review of such permits should be decided by the affected State and EPA Regional office based on circumstances in the affected State. EPA has concluded, in any event, that the Regional Administrator should retain the authority to terminate a waiver after providing a written explanation of the reason for the termination to the Director of the State program.

Section 501.14(c) currently requires that the MOA provide for prompt transmission of all permit-related documents to EPA. Today's amendment modifies this provision to require that the MOA describe the circumstances in which these documents must be sent to EPA. In some cases, EPA may not want to see any permit-related documents unless the Region makes a specific request. In other cases, the Region may want the MOA to list conditions that would require automatic submittal of documents to EPA. This change will eliminate the transmission of documents that EPA does not intend to review but will not reduce EPA's ability to obtain any permit-related documents. The current regulation now provides in § 501.19 that State sewage sludge management programs must comply with § 123.41. This provision requires a State to make available to EPA ''any information obtained or used in the administration of a State program.''

One commenter objected to any requirements for States to submit permit documents to EPA and for joint EPA/State inspections. The requirements of § 501.14 list what must be discussed in the MOA. If a Region believes that a State has been operating a very good sewage sludge management program, it may decide that little oversight is necessary. In other situations, such as when a State has newly developed a program, a Region may feel that

extensive oversight is required. The Region also needs the ability to change the amount of information it requires for oversight based on a State's performance in operating its program. The proposed changes to this section provide EPA and the States flexibility in deciding what degree of oversight is necessary. The final language is essentially unchanged from the proposal except for the insertion of some clarifying language.

Currently, § 501.14 provides that the Regional Administrator would normally notify the State at least 7 days before an EPA facility inspection. Today's rule adopts the proposal to delete that language and allow the Region and State to decide whether such a time period should be included in the MOA.

6. Requirements for Permitting

The provisions of § 501.15 describe the procedural requirements that a State must follow in issuing permits in order to obtain EPA authorization to operate a section 405(f) sewage sludge management program. Many States operate well-managed sewage sludge programs that are organized differently from the NPDES model. EPA believes that the specific permitting procedures currently prescribed in § 501.15 are not always necessary to ensure compliance with the part 503 regulations and may have provided unnecessary obstacles to authorization of State sludge management programs. EPA considered removing the majority of these requirements from § 501.15. However, a number of States have laws that prohibit the State's adoption of more stringent requirements than EPA. EPA was concerned that removal of these permitting procedural requirements—a move aimed at simplifying the approval process—could, because of these State law provisions, have the perverse result of requiring a State to modify its existing program in order to obtain EPA approval for the program. In this case, deletion of the permitting requirements could effectively make the authorization process more difficult for some States while easing it for others.

The two comments that EPA received on this issue asserted that commenters' States could be more stringent than EPA although they would have to defend their reasons for differing from the Federal rules. EPA received one comment that recommended the deletion of all (or almost all) the specific permitting requirements in § 501.15. The majority of commenters supported the proposed language retaining most of the requirements but providing flexibility by allowing adoption of comparable provisions in State laws.

EPA is adopting the provision as proposed. Today's rule retains most of the current permitting requirements that are conditions for approval but allows States to follow their existing practices in many instances. In some cases, the Regional Administrator must decide whether the State's minimum permit conditions or issuance requirements establish conditions and permit issuance procedures comparable to those required by this provision. EPA recognizes that this may result in differences between State programs but believes that such differences are not a significant concern and that the added flexibility far outweighs any potential problems.

EPA received four comments on a mechanism to address differences in interpretation of program approval conditions between EPA Regions. The commenters all suggested that EPA should provide a method to resolve disputes between Regions and States through an internal policy or a provision in the rule for an ''appeal'' process to headquarters. Differences in approach between Regions are always a possibility due to EPA's decentralization. EPA has delegated the authority for approval of State sewage sludge programs to its Regions because of their intimate knowledge of these State programs and close working relationship with State officials. EPA headquarters will always attempt to resolve any differences that are brought to its attention, and thus does not believe a rule provision or policy is needed.

Among its actions today, EPA is renumbering § 501.15(a)(2) as § 501.15(a)(4). This provision requires that an approvable State sewage sludge program must contain certain specific information requirements in permit applications. The retention and renumbering of this provision is necessary because the provision that will replace it, § 501.15(d)(1)(i)(B), will not be effective until 40 CFR 122.21 is amended to add a new subsection (q). Although today's rule includes § 501.15(d)(1)(i)(B), which requires the information called for in 40 CFR 122.21(q), EPA is postponing the effective date of § 501.15(d)(1)(i)(B) until § 122.21(q) goes into effect. EPA proposed revisions to part 122 on December 6, 1995 (60 FR 62546) and expects to promulgate the final § 122.21(q) requirements within several months of publication of today's rule.

EPA does not believe retaining the existing information requirements until all of the new permit application requirements are in place will delay States that are considering applying for authorization. The application requirements are just one small part of a State program. EPA believes that any State preparing an application under the current application requirements of § 501.15(a)(2), now § 501.15(a)(4), will also meet the requirements of § 122.21(q).

As proposed, § 122.21(q) would reduce the burden on permittees by allowing State directors to waive information requirements if they have access to substantially identical information, and by modifying the land application plan requirements to require advance public notice in the manner prescribed by State and local law.

Several commenters repeated the comments that they submitted on proposed § 122.21(q) and mentioned that it was hard to separate the two rules. EPA realizes that the two rulemaking procedures are intricately connected and plans to finalize both rules as close together as possible. EPA has not responded to the comments received on proposed § 122.21(q) in the docket for today's rule, but will respond to those comments as part of its other rulemaking action.

Today's rule also removes current §§ 501.15(a) (3) and (4). The requirements of these provisions are repeated in § 501.15(b). The CWA limits the terms of NPDES permits to no more than five years. In addition, EPA is today also modifying current § 501.15(a)(5) to allow a State to issue non-NPDES sewage sludge permits for terms of no more than 10 years. EPA believes this is a good compromise between those who want to limit all sewage sludge permits to 5 years to insure that the permitting authority is aware of changed circumstances and those who believe permits do not need to expire, but should simply be modified if circumstances change.

EPA received several comments supporting ten year permits. One commenter stated that their State issues permits that do not automatically expire. This type of system allows a problem situation to continue unabated unless it is brought to the attention of the permitting authority. EPA believes that requiring a permit to be reexamined every ten years is not overly burdensome and forces the permitting authority to examine the situation to make sure that the permittee is still meeting the permit conditions.

EPA is also modifying current § 501.15(a)(6)(ii) to clarify that a permit's schedule of compliance should only require interim dates if appropriate.

EPA is modifying § 501.15(b) to require that all permits issued by the

State include certain listed permit conditions unless comparable conditions are provided for in the MOA. This provides flexibility to both the Region and the State. This change is not intended to imply that permittees can choose which conditions to put into permits, but rather recognizes that States have different types of permitting systems. Some of the permit conditions in § 501.15(b) are established by States as regulatory requirements for all TWTDS. Other conditions are required by 40 CFR part 503. Since all users or disposers of sewage sludge must comply with part 503 whether or not they have a permit, requirements contained in part 503 do not have to be spelled out in a permit in order to require compliance.

This section also contains several other specific changes. The language that requires a minimum of once per year monitoring is deleted from § 501.15(b)(10). This change is necessary for consistency with the proposed modifications to part 503 (60 FR 54771) that allow less than once per year monitoring. EPA will decide the final monitoring requirement when it promulgates the modifications to part 503.

EPA has also deleted the last sentence in current § 501.15(b)(13) because this permit condition has already been required in § 501.15(b)(2). EPA is also modifying § 501.15(b)(14) to clarify that a permittee that has applied for reissuance of a permit does not need to cease operations if the new permit is not issued before the term of an existing permit expires. This provision is consistent with section 558(b) of the Administrative Procedures Act that provides for the continuing effectiveness of permits and licenses when the permittee has filed a timely and sufficient application for renewal.

Today's rule modifies § 501.15(d) to require the listed permit procedures unless comparable State requirements are in place. As previously explained, this provision provides flexibility for accommodating varying State requirements that protect public health and the environment and provide public accountability.

EPA is changing § 501.15(d)(1)(i) to clarify which TWTDS must apply for a permit. The amended regulations provide that permit applications are only required from TWTDS whose use or disposal method is regulated under part 503. For example, a POTW that makes bricks out of all of its sewage sludge is not required to apply for a permit. In addition, an industrial facility is not required to apply at this time because such facilities are not currently covered by part 503. See 54 FR 18727 and 58 FR 9406.

In addition, permit applications are to be submitted to the State only for a use or disposal practice for which the State has obtained approval to operate a section 405(f) sewage sludge management program. Thus, if a State implements a partial program, permit applications for use or disposal practices not covered by the State program must still be submitted to the EPA Region.

Finally, the application time for TWTDS that do not yet have an individual or general permit containing sewage sludge use or disposal conditions is different than the reapplication time for those TWTDS that already have such a permit. In cases where a TWTDS is covered under a State's sewage sludge general permit, the TWTDS should follow the State's notification procedures rather than submit an individual permit application.

A TWTDS that already has an individual sewage sludge permit must submit a renewal application 180 days before its permit expires. If the permit is an NPDES permit, an application must be submitted every five years. If a State issues sewage sludge permits for a longer time period (up to ten years as allowed by 501.15(a)(2)(ii)), the permit renewal application must be submitted 180 days before the sewage sludge permit expires. Section 501.15(d)(1)(ii) has been added to clarify the renewal requirements.

EPA is also deleting existing § 501.15(d)(1)(ii)(A). This provision was intended to address those circumstances in which an incinerator or other TWTDS requested site-specific pollutant limits. However, there have been few requests for site-specific permits. In addition, proposed changes to part 503 (60 FR 54771) will make the incineration standard totally self-implementing along with the rest of the rule, i.e., the standard must be met whether or not a permit is issued. Therefore, this paragraph is no longer necessary. However, as provided in § 501.15(d)(1)(i)(D), the Director may require permit applications from any TWTDS at any time if necessary to protect public health and the environment. This provides the Director with the flexibility to first address the largest public health or environmental threat.

EPA is redesignating § 501.15(d)(1)(ii)(B)–(E) as § 501.15(d)(1)(i)(A),(C),(D), and (E) and adding a new § 501.15(d)(1)(i)(B). These paragraphs contain the application time frames and have been moved from § 501.15(d)(1)(ii) to § 501.15(d)(1)(i) to help clarify that they apply to TWTDS that do not yet have an effective sewage sludge permit. Section 501.15(d)(1)(i)(B) has been added to separate the application time frames from the required application information. As previously mentioned, § 501.15(d)(1)(i)(B) will not be effective until § 122.21(q) becomes effective. Language will be added to the § 122.21(q) rulemaking to delete § 501.15(a)(4) once § 122.21(q) becomes effective. Until then, the application information is specified in § 501.15(a)(4) and the time frames applicable to a permit application are specified in § 501.15(d)(1)(i)(A),(C),(D) and (E).

Section 501.15(d)(1)(i)(C) lists the limited background information requested of non-NPDES TWTDS. EPA is modifying its paragraph (3) to be consistent with the full permit information requirements as proposed in § 122.21(q). If sewage sludge meets the ''exceptional quality'' requirements, no additional information is required about land application sites or facilities that further treat the sewage sludge.

Section 501.15(d)(4) requires fact sheets for draft permits containing case-by-case permit conditions or land application plans. They are also required for Class I sludge management facilities or draft permits that are the subject of widespread public interest or raise major issues. EPA is revising this section to require a fact sheet only when a permit is the subject of widespread public interest or raises major issues. In addition, EPA is revising this provision to delete the list of the specific information required to be included in a fact sheet.

EPA is making these changes to provide additional flexibility to States in operating their sewage sludge permit programs. EPA believes that the basis for a permit should be available to the public but does not believe that a fact sheet should be the only available option for a State to provide information to the public on a proposed permit. For example, in some States the basis for the permit may be the State's sewage sludge regulations. In this situation a fact sheet is not necessary.

In addition, EPA is amending § 501.15(d)(5) to insert the phrase ''meeting or hearing'' in place of ''hearing'' throughout the section. This change simplifies the approval process for States whose public participation requirements for permit issuance call for public ''meetings'' rather than ''hearings.'' This modification in the regulations obviates the need for a change in State law in States with such procedures in order to obtain approval.

Today's rule also modifies the requirement that the State provide at least a 30-day comment period on the draft permit. Some States require public notification of a permit application so the public has the opportunity to review the application and request a public hearing before a draft permit is issued. In this situation a 30-day comment period after issuance of a draft permit may not be necessary. Today's rule also deletes the requirement for 30 days notice before a meeting or hearing. These changes are not intended to suggest that a State should not provide an adequate comment period or adequate advance notice of any hearing or meeting. State law must provide the public both timely and meaningful opportunity to participate in its permitting determinations. This means that a State's procedures must be reasonably calculated to apprise the public of the nature of any proposed permitting action as well as provide the public with an opportunity to submit its view on the proposed permitting action.

Today's changes are merely intended to allow the States the flexibility to follow their current public notice procedures that may provide for public notice at different times in the permitting process.

Changes to § 501.15(d)(5) allow the State flexibility in the method used to provide public notice. The MOA could be used to specify required methods, if deemed necessary by an EPA Region.

EPA received four comments on this proposed change. One of the commenters asserted that the proposed language could be interpreted to require public notice in all newspapers along the entire route used to transport biosolids from a generator to a land application site. EPA has changed the language in this section to provide flexibility to States with different types of public notification procedures while ensuring that members of the public that are affected by the sewage sludge use or disposal are notified. EPA did not intend the phrase ''area affected by the facility or activity'' to mean the route of sewage sludge transportation. EPA's objective in modifying the rule language is to ensure actual public notice—not publication in a newspaper unlikely to be read by those people living near the sewage sludge use or disposal site(s).

Other commenters thought that the public notice requirements for permits should be the same as the proposed land application plan public notice requirements that allow States to use any type of public notification process that is consistent with existing State and local laws.

The land application plan is part of the permit application and is therefore subject to public notice and comment as part of the permit. When part 501 was developed in 1989, EPA decided to not require permit modifications for new land application sites in part because the permit required adequate public notice to the affected parties (54 FR 18738). EPA wants to ensure that adequate public notice remains part of the permit process. EPA believes the revised language accomplishes this while providing the States with the desired flexibility. Any State that requires some type of public notice of permits in the area affected by the sewage sludge use or disposal should have no problem meeting the requirements of today's rule. EPA has promulgated the provisions of § 501.15 as proposed, with a slight language change to clarify the public notice methods in § 501.15(d)(5)(ii).

7. Requirements for Enforcement Authority

EPA is revising the language of § 501.17 to clarify the intent of the section. A State must have the authority to assess civil penalties or criminal fines in, at least, the amounts listed. States are not required to impose these or any other specific penalties in any civil or criminal proceeding, and State law may, of course, authorize the imposition of larger penalties.

The one commenter on this section thought EPA should provide for State environmental enforcement discretion. As mentioned above, the States must have the authority to impose fines up to the listed amounts but they do not have to impose penalties in any specific penalty amount. EPA has promulgated this provision as proposed.

8. Program Reporting to EPA

The current requirements in § 501.21 require extensive information on noncompliance to be reported semiannually to EPA by the State program director. EPA is attempting to streamline all of its reporting requirements, including the information requested from States. Today's rule reduces the information required from States and requires annual reports that contain only the information that EPA believes is of most value in reviewing a States's sludge management program.

EPA received three comments on this section. One supported the proposed changes; the other two thought that EPA should be even more flexible. The proposed requirements are a significant reduction from what is required in the existing rule. Given EPA's limited experience in overseeing State sewage sludge programs, EPA believes the requested information is the minimum that should be reported annually about a sewage sludge program. EPA has revised § 501.21(b)(2) for consistency with the changed language for reporting permit numbers in § 501.12(f)(1)(iv). EPA is promulgating the rest of this section as proposed.

9. Procedures for Revision of State Programs

The language in § 501.32 required a State to revise its program within one or two years of promulgation of changes to the sewage sludge regulations. Today's change allows EPA and the State to agree to a different schedule in the MOA. As the MOA is part of the State program submittal, comments on this or any other issue in the MOA can be raised when the State program is published in the **Federal Register**. Because the sewage sludge regulations are directly enforceable, users or disposers of sewage sludge must comply with any new Federal sewage sludge requirements, whether or not the State has modified its regulations to conform with the Federal rule. EPA received no comments on this section and it is promulgated as proposed.

III. Regulatory Requirements

A. Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action''. As such, this action was

submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, on October 28, 1993 (58 FR 58093). Under Executive Order (E.O.) 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government unless the federal government provides the necessary funds to pay the direct costs incurred by the State, local or Tribal government or EPA provides to the Office of Management and Budget a description of the extent of the Agency's prior consultation and written communications with elected officials and other representatives of affected State, local or Tribal governments, the nature of their concerns, and an Agency statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

EPA has determined that E.O. 12875 does not apply since this rule does not create a mandate upon State, local, or tribal governments. This rule imposes no enforceable duty on any State, local, or tribal government or the private sector.

C. Paperwork Reduction Act

The information collection requirements for parts 123 and 501 were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (OMB Control No. 2040–0057). The rule changes are designed to streamline the regulatory process and will not impose any new information collection requirements.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, provides that, whenever an agency promulgates a final rule under section 553 of the Administrative Procedures Act, after being required by that section or any other law to publish a general notice of rulemaking, the agency generally must prepare a final regulatory flexibility analysis (FRFA). The agency must prepare a FRFA for a final rule unless the head of the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Today's rule will only apply to those States and tribes that choose to seek EPA authorization for their sewage sludge permit programs. As previously explained, today's changes streamline the regulations to ease the authorization process and provide States and tribes flexibility in implementing their permit programs. These changes will reduce the burden on all affected entities. The Administrator therefore certifies, pursuant to section 605(b) of the RFA, that this rule will not have a significant economic impact on a substantial number of small entities.

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

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, or tribal governments or the private sector because the UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. This rule imposes no enforceable duty on any State, local, or tribal government or the private sector. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The amendments provide additional flexibility to the States in complying with current regulatory requirements and reduce the burden on affected governments. As noted above, there are no costs associated with today's changes. Thus, today's rule is not subject to the requirements in sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements in section 203 of UMRA. The amendments will not significantly affect small governments because as explained above, the amendments provide additional flexibility in complying with pre-existing regulatory requirements. The only small governments affected by this rule are tribal governments and they are subject to the same requirements as States if they choose to seek authorization of their sewage sludge program.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 23, 1998.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practice, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This final rule does not prescribe any technical standards, so the Agency has determined that the NTTAA requirements are not applicable.

H. Executive Order 13045

The Executive order, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) ''economically significant'' as defined under E.O. 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. EPA interprets the E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation.

This rule is not subject to E.O. 13045 because it is not an economically significant action as defined by E.O. 12866 and it does not involve decisions regarding environmental health or safety risks. This rule streamlines the regulations and authorization procedures for States seeking authorization to implement the Federal Sewage Sludge Management Program.

List of Subjects

40 CFR Part 123

Environmental protection, Confidential business information, Hazardous materials, Penalties, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 501

Environmental protection, Confidential business information, Publicly owned treatment works, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal.

Dated: August 11, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 123 and 501 of title 40 of the Code of Federal Regulations are amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 123.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs and the requirements State programs must meet to be approved by the Administrator under sections 318, 402, and 405(a) (National Pollutant Discharge Elimination System—NPDES) of the CWA. This part also specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under section 405(f) (sludge management programs) of the CWA. The requirements that a State sewage sludge management program must meet for approval by the Administrator under section 405(f) are set out at 40 CFR part 501.

* * * * *

(c) The Administrator will approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program.

* * * * *

3. Section 123.2 is revised to read as follows:

§ 123.2 Definitions.

The definitions in part 122 apply to all subparts of this part.

4. Section 123.22 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

5. Section 123.24 is amended by removing paragraph (d)(8).

6. Section 123.25 is amended by revising the introductory text of paragraph (a) and paragraph (a)(37) to read as follows:

§ 123.25 Requirements for permitting.

(a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

* * * * *

(37) 40 CFR parts 129, 133, and subchapter N; and

* * * * *

7. Section 123.26 is amended by revising paragraph (e)(5) to read as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(e) * * *

(5) Inspecting the facilities of all major dischargers at least annually.

8. Section 123.42 is amended by revising the introductory paragraph to read as follows:

§ 123.42 Receipt and use of Federal information.

Upon approving a State permit program, EPA will send to the State agency administering the permit program any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.24 (or, in the case of a sewage sludge management program, § 501.14 of this chapter) will provide for the following, in such manner as the State Director and the Regional Administrator agree:

* * * * *

9. Section 123.44 is amended by revising paragraphs (d)(1), (d)(2), (e), and (j) to read as follows:

§ 123.44 EPA review of and objection to State permits.

* * * * *

(d) * * *

(1) Will consider all data transmitted pursuant to § 123.43 (or, in the case of a sewage sludge management program, § 501.21 of this chapter);

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If

this request is made within 30 days of receipt of the State submittal under § 123.43 (or, in the case of a sewage sludge management program, § 501.21 of this chapter), it will constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review will recommence when the Regional Administrator has received such record or portions of the record; and

* * * * *

(e) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. A public hearing in accordance with the procedures of § 124.12 (c) and (d) of this chapter (or, in the case of a sewage sludge management program, § 501.15(d)(7) of this chapter) will be held, and public notice provided in accordance with § 124.10 of this chapter, (or, in the case of a sewage sludge management program, § 501.15(d)(5) of this chapter), whenever requested by the State or the interstate agency which proposed the permit or if warranted by significant public interest based on requests received.

* * * * *

(j) The Regional Administrator may agree, in the Memorandum of Agreement under § 123.24 (or, in the case of a sewage sludge management program, § 501.14 of this chapter), to review draft permits rather than proposed permits. In such a case, a proposed permit need not be prepared by the State and transmitted to the Regional Administrator for review in accordance with this section unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment.

10. Section 123.45 is amended by removing paragraph (e).

11. Section 123.62 is amended by revising paragraphs (b)(3), and (c) to read as follows:

§ 123.62 Procedures for revision of State programs.

* * * * *

(b)* * *

(3) The Administrator will approve or disapprove program revisions based on the requirements of this part (or, in the case of a sewage sludge management program, 40 CFR part 501) and of the CWA.

* * * * *

(c) States with approved programs must notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and must identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.22(b) (or, in the case of a sewage sludge management program, § 501.12(b) of this chapter) must be revised and resubmitted.

* * * * *

12. Section 123.63 is amended by revising the introductory text of paragraph (a) and paragraph (a)(4) to read as follows:

§ 123.63 Criteria for withdrawal of State programs.

(a) In the case of a sewage sludge management program, references in this section to ''this part'' will be deemed to refer to 40 CFR part 501. The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

* * * * *

(4) Where the State program fails to comply with the terms of the Memorandum of Agreement required under § 123.24 (or, in the case of a sewage sludge management program, § 501.14 of this chapter).

* * * * *

13. Section 123.64 is amended by revising the introductory text of paragraph (a) and paragraph (b)(1) to read as follows:

§ 123.64 Procedures for withdrawal of State programs.

(a) A State with a program approved under this part (or, in the case of a sewage sludge management program, 40 CFR part 501) may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

* * * * *

(b) * * *

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this part as set forth in § 123.63 (or, in the case of a sewage sludge management program, § 501.33 of this chapter). The Administrator will respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph will fix a time and place for the commencement of the hearing and will specify the allegations against the State which are to be considered at the hearing. Within 30 days the State must admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program will have the burden of coming forward with the evidence in a hearing under this paragraph.

* * * * *

PART 501—[AMENDED]

14. The authority citation for part 501 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

15. Section 501.1 is amended by revising paragraphs (b) and (d), and adding paragraph (m) to read as follows:

§ 501.1 Purpose and scope.

* * * * *

(b) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State sludge management programs under section 405(f), and the requirements State programs must meet to be approved by the Administrator under section 405(f) of CWA. Sludge Management Program submissions may be developed and implemented under any existing or new State authority or authorities as long as they meet the requirements of this part.

* * * * *

(d) In addition, any complete State Sludge Management Program submitted for approval under this part must have authority to regulate all sewage sludge management activities subject to 40 CFR part 503, unless the State is applying for partial sludge program approval in accordance with paragraph (m) of this section. The State sludge management program must include authority to regulate all Federal facilities in the State. Sludge management activities must include as applicable:

(1) Land application;

(2) Landfilling in a Municipal Solid Waste Landfill regulated under 40 CFR part 258;

(3) Incineration;

(4) Surface disposal; and

(5) Any other sludge use or disposal practices that may subsequently be regulated by 40 CFR part 503.

* * * * *

(m) A State whose sludge management program has not been approved under this part may submit to the Regional Administrator an application for approval of a partial sewage sludge program. The following are the requirements for approval of a partial program:

(1) A partial program submission must constitute a complete management program covering one or more categories of sewage sludge use or disposal. The program must also apply to anyone engaged in the sewage sludge use or disposal practice that is the subject of the partial program. A complete management program is one that provides for the issuance of permits, the monitoring of compliance and, in the event of violations, possible enforcement action.

(2) The partial program submission must also address the following requirements:

(i) The Attorney General's Statement, in addition to the information required by § 501.13, must clearly explain the jurisdiction of the administering agency or department;

(ii) The program description, in addition to the information required by § 501.12, must explain how the program will operate, including which use and disposal practice(s) the State will cover. The program description must also explain the relationship and coordination between the proposed partial sewage sludge program and that part of the program for which EPA will remain the permitting authority, including a discussion of the division of permitting, enforcement, and compliance monitoring responsibilities between the State and EPA; and

(iii) The Memorandum of Agreement between EPA and the State, in addition to the information required by § 501.14, must set out the responsibilities of EPA and the State in administering the partial program, including specific provisions for transfer of information and determination of which users or disposers of sewage sludge are included in the partial program.

16. Section 501.2 is amended by adding a definition to read as follows:

§ 501.2 Definitions.

* * * * *

''TWTDS'' means treatment works treating domestic sewage.

17. Section 501.12 is amended by revising paragraphs (b), (d), (f)(1) introductory text, (f)(1)(iv), (f)(1)(v), and (f)(2), and removing paragraph (f)(3) to read as follows:

§ 501.12 Program description.

* * * * *

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program. If more than one agency is responsible for administration of a program, the responsibilities of each agency, and their procedures for coordination must be set forth, and an agency must be designated as a ''lead agency'' (i.e., the ''State sludge management agency'') to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by federal law, the information provided under this paragraph must indicate the resources dedicated to administering the federally required portion of the program. This description must include:

(1) A description of the general duties and the total number of State agency staff carrying out the State program;

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval including cost of the personnel described in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support, except where a State is seeking authorization for an established sewage sludge management program that has been in existence for a minimum of two years and is at least as stringent as the program for which the State is seeking authorization; and

(3) An estimate of the sources and amounts of funding for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, except where a State is seeking authorization for an established sewage sludge management program that has been in existence for a minimum of two years and is at least as stringent as the program for which the State is seeking authorization.

* * * * *

(d) Copies of the permit, application, and reporting forms or a description of the procedures the State intends to employ for obtaining information needed to implement its permitting program.

* * * * *

(f)(1) An inventory of all POTWs and other TWTDS that are subject to regulations promulgated pursuant to 40 CFR part 503 and subject to the State program, which includes:

* * * * *

(iv) Permit numbers for permits containing sewage sludge requirements, if any, and;

(v) Compliance status.

(2) States may submit either:

(i) Inventories which contain all of the information required by paragraph (f)(1) of this section; or

(ii) A partial inventory with a detailed plan showing how the State will complete the required inventory within five years after approval of its sludge management program under this part.

* * * * *

18. Section 501.14 is amended by revising paragraphs (a), (b)(1)(i), (b)(2), (b)(3), and (c) to read as follows:

§ 501.14 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part must submit a Memorandum of Agreement. The Memorandum of Agreement must be executed by the State Program Director and the Regional Administrator and will become effective when approved by the Regional Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator will not approve any Memorandum of Agreement which contains provisions which restrict EPA's exercise of its oversight responsibility.

(b) * * *

(1)(i) Provisions for the prompt transfer from EPA to the State of pending permit applications applicable to the State program (or portion of the State program for which the State seeks approval) and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement must contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the federal government, a procedure may be established to transfer responsibility for these permits.

* * * * *

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the

State will send to the Regional Administrator for review, comment and, where applicable, objection. These provisions must follow the permit review procedures set forth in 40 CFR 123.44.

(3) The Memorandum of Agreement must also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits.

* * * * *

(c) The Memorandum of Agreement must also provide for the following:

(1) The circumstances in which the State must promptly send notices, draft permits, final permits, or related documents to the Regional Administrator; and

(2) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(3) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs (see for example 40 CFR 124.4).

(4) Provisions for modification of the Memorandum of Agreement in accordance with this part.

* * * * *

19. Section 501.15 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(10)(i), (b)(13), (b)(14), the introductory text of paragraph (d), paragraph (d)(1), and (d)(4) through (d)(8), to read as follows:

§ 501.15 Requirements for permitting.

(a) *General requirements.* All State programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) *Confidentiality of information.* Claims of confidentiality will be denied for the following information:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and sewage sludge data. This includes information submitted on the permit application forms themselves and any attachments used to supply information required by the forms.

(2) *Duration of permits.* (i) NPDES permits issued to treatment works treating domestic sewage pursuant to section 405(f) of the CWA will be effective for a fixed term not to exceed five years.

(ii) Non-NPDES Permits issued to treatment works treating domestic sewage pursuant to section 405(f) of the CWA will be effective for a fixed term not to exceed ten years.

(3) *Schedules of compliance.* (i) General. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and the requirements of this part. Any schedules of compliance under this section must require compliance as soon as possible, but not later than any applicable statutory deadline under the CWA.

(ii) *Interim dates.* If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule must set forth interim requirements and the date for their achievement, as appropriate.

(iii) *Reporting.* The permit must be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee must notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(3)(ii) of this section is applicable.

(4) *Information requirements.* All treatment works treating domestic sewage shall submit to the Director within the time frames established in paragraph (d)(1)(ii) of this section the following information:

(i) The activities conducted by the applicant which require it to obtain a permit.

(ii) Name, mailing address, and location of the treatment works treating domestic sewage for which the application is submitted.

(iii) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(iv) Whether the facility is located on Indian lands.

(v) A listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management program under RCRA.

(B) UIC program under SDWA.

(C) NPDES program under CWA.

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(E) Nonattainment program under the Clean Air Act.

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(G) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act.

(H) Dredge or fill permits under section 404 of CWA.

(I) Other relevant environmental permits, including State or local permits.

(vi) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the treatment works treating domestic sewage, depicting the location of the sludge management facilities (including disposal sites), the location of all water bodies, and the location of wells used for drinking water listed in the public records or otherwise known to the applicant within ¼ mile of the property boundaries;

(vii) Any sludge monitoring data the applicant may have, including available ground water monitoring data, with a description of the well locations and approximate depth to ground water, for landfills or land application sites (see appendix I to 40 CFR part 257);

(viii) A description of the applicant's sludge use and disposal practices (including, where applicable, the location of any sites where the applicant transfers sludge for treatment and/or disposal, as well as the name of the applicator or other contractor who applies the sludge to land if different from the applicant, and the name of any distributors when the sludge will be disposed of through distribution and marketing, if different from the applicant);

(ix) For each land application site the applicant will use during the life of the permit, the applicant will supply information necessary to determine if the site is appropriate for land application and a description of how the site is (or will be) managed. Applicants intending to apply sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum;

(A) Describes the geographical area covered by the plan;

(B) Identifies site selection criteria;

(C) Describes how sites will be managed;

(D) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to the sludge application; and

(E) Provides for advance public notice as required by State and local law, but

in all cases requires notice to landowners and occupants adjacent to or abutting the proposed land application site.

(x) Annual sludge production volume;

(xi) Any information required to determine the appropriate standards for permitting under 40 CFR part 503; and

(xii) Any other information the Program Director may request and reasonably require to assess the sludge use and disposal practices, to determine whether to issue a permit, or to ascertain appropriate permit requirements.

(b) *Conditions applicable to all permits.* In addition to permit conditions which must be developed on a case-by-case basis in order to meet applicable requirements of 40 CFR part 503, paragraphs (a)(1) through (a)(3) of this section, and permit conditions developed on a case-by-case basis using best professional judgment to protect public health and the environment from the adverse effects of toxic pollutants in sewage sludge, all permits must contain the following permit conditions (or comparable conditions as provided for in the Memorandum of Agreement):

* * * * *

(10) *Monitoring and records.* (i) The permittee must monitor and report monitoring results as specified elsewhere in this permit with a frequency dependent on the nature and effect of its sludge use or disposal practices. At a minimum, this will be as required by 40 CFR part 503.

* * * * *

(13) *Reopener.* If a standard for sewage sludge use or disposal applicable to permittee's use or disposal methods is promulgated under section 405(d) of the CWA before the expiration of this permit, and that standard is more stringent than the sludge pollutant limits or acceptable management practices authorized in this permit, or controls a pollutant or practice not limited in this permit, this permit may be promptly modified or revoked and reissued to conform to the standard for sludge use or disposal promulgated under section 405(d) of the CWA.

(14) *Duty to reapply.* If the permittee wishes to continue an activity regulated by the this permit after the expiration date of this permit, the permittee must apply for a new permit.

* * * * *

(d) *Permit procedures.* All State programs approved under this part must have the legal authority to implement, and be administered in accordance with, each of following provisions, unless the Regional Administrator determines that the State program includes comparable or more stringent provisions.

(1) Application for a permit. (i) Any TWTDS whose sewage sludge use or disposal method is covered by part 503 and covered under the State program, and who does not have an effective sewage sludge permit, must complete, sign, and submit to the Director an application for a permit within the following time frames.

(A) TWTDS with a currently effective NPDES permit must submit the required application information when the next application for NPDES permit renewal is due.

(B) The required application information is listed in 40 CFR 122.21(q).

(C) Other existing TWTDS not addressed under paragraph (d)(1)(i)(A) of this section must submit the information listed in paragraphs (d)(1)(i)(C)(*1*) through (d)(I)(i)(C)(*5*) of this section, to the Director within one year after publication of a standard applicable to their sewage sludge use or disposal practices. The Director will determine when such a TWTDS must submit a full permit application.

(*1*) Name, mailing address and location of the TWTDS;

(*2*) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;

(*3*) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

(*4*) Annual amount of sewage sludge generated, treated, used or disposed (dry weight basis); and

(*5*) The most recent data the TWTDS may have on the quality of the sewage sludge.

(D) Notwithstanding paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section, the Director may require permit applications from any TWTDS at any time if the Director determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(E) Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal must submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

(ii) All TWTDS with a currently effective sewage sludge permit must submit a new application at least 180 days before the expiration date of their existing permit.

(iii) The Director will not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

* * * * *

(4) Fact sheets. A fact sheet must be prepared for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director will send this fact sheet to the applicant and, on request, to any other person.

(5) Public notice of permit actions and public comment period. (i) The Director must give public notice that the following actions have occurred:

(A) A draft permit has been prepared. At least 30 days must be allowed for public comment on the draft permit unless the Director has previously provided for public comment, for example after receipt of the permit application.

(B) A meeting or hearing has been scheduled.

(ii) Methods. Public notice of activities described in paragraph (d)(5)(i) of this section must be given in the area affected by these activities by any method reasonably calculated to give actual notice of the action in question to any person affected or requesting notice of the action. Public notice may include publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity, press releases, or any other forum or medium to elicit public participation.

(*iii*) Contents.

(A) *All public notices.* All public notices issued under this part must contain the following minimum information:

(*1*) Name and address of the office processing the permit action for which notice is being given;

(*2*) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(*3*) A brief description of the activity described in the permit application (including the inclusion of land application plan, if appropriate);

(4) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application;

(*5*) A brief description of the comment procedures required by § 501.15(d)(6) and the time and place of any meeting or hearing that will be held, including a Statement of procedures to request a meeting or hearing (unless a meeting or hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(*6*) Any additional information considered necessary or proper.

(B) *Public notices for meetings or hearings.* In addition to the general public notice described in paragraph (d)(5)(iii)(A) of this section, the public notice of a meeting or hearing must contain the following information:

(*1*) Date, time and place of the meeting or hearing; and

(*2*) A brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures.

(6) *Public comments and requests for public meetings or hearings.* During the public comment period, any interested person may submit written comments on the draft permit and may request a public meeting or hearing, if no meeting or hearing has already been scheduled. A request for a public meeting or hearing must be in writing and must state the nature of the issues proposed to be raised in the meeting or hearing. All comments will be considered in making the final decision and must be answered as provided in paragraph (d)(8) of this section.

(7) *Public meetings or hearings.* The Director will hold a public meeting or hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. The Director may also hold a public meeting or hearing at his or her discretion, (e.g. where such a hearing might clarify one or more issues involved in the permit decision).

(8) *Response to comments.* At the time a final permit is issued, the Director will issue a response to comments. The response to comments must be available to the public, and must:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any meeting or hearing.

* * * * *

20. Section 501.17 is amended by revising paragraphs (a)(3)(i) through (a)(3)(iii) and (b)(1) to read as follows:

§ 501.17 Requirements for enforcement authority.

(a) * * *

(3) * * *

(i) Civil penalties will be recoverable for the violation of any permit condition; any applicable standard or limitation; any filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Program Director. The State must at a minimum, have the authority to assess penalties of up to $5,000 a day for each violation.

(ii) Criminal fines will be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any permit condition; or any filing requirement. The State must at a minimum, have the authority to assess fines of up to $10,000 a day for each violation. States which provide the criminal remedies based on ''criminal negligence,'' ''gross negligence'' or strict liability satisfy the requirement of this paragraph (a)(3)(ii) of this section.

(iii) Criminal fines will be recoverable against any person who knowingly makes any false statement, representation or certification in any program form, or in any notice or report required by a permit or State Program Director, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Program Director. The State must at a minimum, have the authority to assess fines of up to $5,000 for each instance of violation.

(b)(1) The civil penalty or criminal fine will be assessable for each instance of violation and, if the violation is continuous, will be assessable up to the maximum amount for each day of violation.

* * * * *

21. Section 501.21 is revised to read as follows:

§ 501.21 Program reporting to EPA.

The State Program Director must prepare annual reports as detailed in this section and must submit any reports required under this section to the Regional Administrator. These reports will serve as the main vehicle for the State to report on the status of its sludge management program, update its inventory of sewage sludge generators and sludge disposal facilities, and provide information on incidents of noncompliance. The State Program Director must submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The reports specified below may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate and must include the following:

(a) A summary of the incidents of noncompliance which occurred in the previous year that includes:

(1) The non-complying facilities by name and reference number;

(2) The type of noncompliance, a brief description and date(s) of the event;

(3) The date(s) and a brief description of the action(s) taken to ensure timely and appropriate action to achieve compliance;

(4) Status of the incident(s) of noncompliance with the date of resolution; and

(5) Any details which tend to explain or mitigate the incident(s) of noncompliance.

(b) Information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports, including:

(1) Name and location;

(2) Permit numbers for permits containing sewage sludge requirements;

(3) Sludge management practice(s) used; and

(4) Sludge production volume.

22. Section 501.32 is amended by revising paragraph (a) to read as follows:

§ 501.32 Procedures for revision of State programs.

(a) Any State with an approved State program which requires revision to comply with amendments to federal regulations governing sewage sludge use or disposal (including revisions to this part) must revise its program within one year after promulgation of applicable regulations, unless either the State must amend or enact a statute in order to make the required revision, in which case such revision must take place within 2 years; or a different schedule is established under the Memorandum of Agreement.

* * * * *

[FR Doc. 98–22193 Filed 8–21–98; 8:45 am]

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federal register

Monday
August 24, 1998

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Harmonization of Critical Parts Rotorcraft Regulations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 29311; Notice No. 98–10]

RIN 2120–AG60

Harmonization of Critical Parts Rotorcraft Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes changes to the type certification requirements for both normal and transport category rotorcraft. The changes would amend the airworthiness standards to define critical parts and to require a critical parts plan. The critical parts plan would establish procedures that would require the control of the design, substantiation, manufacture, maintenance, and modification of critical parts.

DATES: Comments must be received on or before November 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 29311; Room 915G, 800 Independence Avenue SW, Washington, DC 20591. Comments submitted must be marked Docket No. Comments may also be sent electronically to the following internet address: 9-nprm-cmts@faa.dot.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Rotorcraft Directorate, Aircraft Certification Service, Regulations Group, FAA, Fort Worth, Texas 76193–0111, telephone number (817) 222–5120.

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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket at the address specified under the caption **ADDRESSES.**

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered before taking action on this proposal. Late-filed comments will be considered to the extent practicable. The proposals contained in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's webpage at http://www.access.gpo.gov/su__docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, NPRM Distribution System, which describes the application procedure.

Background

The FAA has established an Aviation Rulemaking Advisory Committee (ARAC). The FAA assigns certain tasks to ARAC. The ARAC tasks working groups to make recommendations. The ARAC, in turn, makes recommendations to the FAA.

The ARAC first assigned the critical parts task to the JAR/FAR 27 and 29 Harmonization Working Group by announcement in the **Federal Register** (57 FR 58846, December 11, 1992). However, during the rulemaking process, it was decided that this issue could involve 14 CFR parts 21, ''Certification Procedures for Products and Parts''; and 43, ''Maintenance, Preventive Maintenance, Rebuilding, and Alteration''; and would require the efforts of a separate ARAC working group. Consequently, by another document in the **Federal Register** (60 FR 4219, January 20, 1995), the ARAC announced the establishment of the Critical Parts Working Group. The FAA tasked the ARAC to recommend to FAA new or revised requirements for a critical parts plan that would control the design, substantiation, manufacture, maintenance, and modification of critical parts. These airworthiness standards have been harmonized and will be proposed by the Joint Aviation Authorities (JAA).

Specifically, the task is as follows:

> Review Title 14 Code of Federal Regulations, parts 27 and 29, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of identification of the critical parts for consideration under design, production and maintenance, according to a critical parts plan to be prepared by the manufacturer. Consider adding new §§ 27.602 and 29.602 to Title 14.

The working group included representatives from the major rotorcraft manufacturers (normal and transport) and representatives from Aerospace Industries Association of America, Inc. (AIA), Association Europeene des Constructeurs de Material Aerospatial (AECMA), Transport Canada Aviation, JAA, the FAA Rotorcraft Directorate, and other interested parties. This broad participation is consistent with FAA policy to involve all known interested parties as early as practicable in the rulemaking process.

The working group presented its findings to the ARAC, which recommended to the FAA that a critical parts section be added to the airworthiness standards for both 14 CFR parts 27 and 29 (parts 27 and 29).

The FAA has evaluated the ARAC recommendations and proposes the changes contained in this document.

General Discussion of the Proposals

The objective of identifying critical parts is to ensure that critical parts are controlled during design, substantiation, manufacture, and throughout their service life so that the risk of failure in

service is minimized by ensuring that the critical parts maintain their critical characteristics on which certification is based. Although manufacturers currently have various methods to control critical parts, this proposal would require that the control process be formalized and submitted as part of the type certification process. This proposal to address critical parts in the regulations would apply to parts 27 and 29. A critical part would be defined as a part, the failure of which could have a catastrophic effect upon the rotorcraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity. The use of the word ''could'' in §§ 27.602(a) and 29.602(a) of the rule means that this failure assessment should consider the effect of flight regime (i.e., forward flight, hover, etc.). The operational environment need not be considered. The term ''catastrophic'' means the inability to conduct an autorotation to a safe landing, without exceptional piloting skills, assuming a suitable landing surface.

Paperwork Reduction Act

The information collection associated with this proposed rule is currently covered under OMB control #2120–0018.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs and is not a ''significant regulatory action'' as defined under section 3(f) of Executive Order 12866 and Department of Transportation's (DOT) policies and procedures (44 FR 11034, February 26, 1979). In addition, under the Regulatory Flexibility Determination, the FAA certifies that this proposal would not have a significant impact on a substantial number of small entities. Furthermore, this proposal will lessen restraints on international trade. Finally, the FAA has determined that the proposal would not impose a federal mandate on state, local, or tribal governments, or the private sector of $100 million per year. These analyses, available in the docket, are summarized below.

Cost/Benefit Analysis

The FAA estimates that any costs associated with the proposed rule would be negligible. Rotorcraft manufacturers already have many requirements (e.g., §§ 21.31, 21.33, 21.50, 21.139, 21.143, 27.1529, and 29.1529) to ensure the safety of the design manufacture, maintenance, inspection, and overhaul of rotorcraft parts. All manufacturers have some procedures in place to identify and control ''critical parts,'' which are called ''flight safety parts,'' ''critical parts,'' ''vital parts,'' or ''identifiable parts.'' This proposed rule would merely formalize these procedures into a Critical Parts Plan.

The Joint Aviation Authorities (JAA) has indicated that it will amend its Joint Aviation Requirements (JAR's) by adopting the requirements in proposed § 27.602 and 29.602 and incorporate the elements of the FAA's Advisory Circular (AC). The benefit of the proposed rule could result in both improved safety and cost savings from formalization and harmonization of procedures by rotorcraft manufacturers.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule formalizes existing requirements and current practices and would result in no more than negligible costs to rotorcraft manufacturers. Based on this review, the FAA determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to American companies doing business in foreign markets, and foreign companies doing business in the United States.

This rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European Joint Aviation Requirements. The result will be a positive step toward removing impediments to international trade.

Federalism Implications

The regulations proposed 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The proposed rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Parts 27 and 29

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

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 27 and 29 as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Add a new § 27.602 to read as follows:

§ 27.602 Critical parts.

(a) *Critical Part*—A critical part is a part, the failure of which could have a catastrophic effect upon the rotorcraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity.

(b) If the type design includes critical parts, a critical parts list shall be established. Procedures shall be established to define the critical design characteristics, identify processes that affect those characteristics, and identify the design change and process change controls necessary for showing compliance with the quality assurance requirements of part 21 of this chapter.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

3. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. Add a new § 29.602 to read as follows:

§ 29.602 Critical parts.

(a) *Critical Part*—A critical part is a part, the failure of which could have a catastrophic effect upon the rotorcraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity.

(b) If the type design includes critical parts, a critical parts list shall be established. Procedures shall be established to define the critical design characteristics, identify processes that affect those characteristics, and identify the design change and process change controls necessary for showing compliance with the quality assurance requirements of part 21 of this chapter.

Issued in Washington, DC, on August 17, 1998.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 98–22591 Filed 8–21–98; 8:45 am]

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federal register

Monday
August 24, 1998

Part V

Federal Communications Commission

47 CFR Parts 51, 64, and 68

Deployment of Wireline Services Offering Advanced Telecommunications Services; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 64, and 68

[CC Docket Nos. 98–147, 98–11, 98–26, 98–32, 98–15, 98–78, 98–91; FCC 98–188]

Deployment of Wireline Services Offering Advanced Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the order we clarify that sections 251 and 252 apply to advanced telecommunications facilities and services offered by an incumbent local exchange carrier (LEC) and that the facilities and equipment used by incumbent LECs to provide advanced services are network elements and subject to section 251(c). We deny requests to forbear from application of sections 251(c) and/or 271, and we deny requests for large-scale changes in LATA boundaries. We have taken these steps to meet one of the fundamental goals to promote innovation and investment by all participants in the telecommunications marketplace.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Kinney, Assistant Division Chief, Policy and Program Planning Division, Common Carrier Bureau, at 202–418–1580 or via the Internet at lkinney@fcc.gov or Jordan Goldstein, Attorney, Policy and Program Planning Division, Common Carrier Bureau, at 202–418–1580 or via the Internet at jgoldste@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted August 6, 1998, and released August 7, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/98188, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Order

A. Applicability of Section 251(c) to Incumbent Local Exchange Carriers

1. Introduction

1. In this section, we address several issues that ALTS raises in its petition for a declaratory ruling. First, as described in greater detail below, we grant the ALTS petition to the extent it asks the Commission to clarify that the obligations of sections 251 and 252 of the Act apply to advanced services and the facilities used to provide those services. We hold that, pursuant to the Act and our implementing orders, incumbent LECs are required to (1) provide interconnection for advanced services; and (2) provide access to unbundled network elements, including conditioned loops capable of transmitting high-speed digital signals, used by the incumbent LEC to provide advanced services. We also note that under the plain terms of the Act, incumbent LECs have an obligation to offer for resale, pursuant to section 251(c)(4), all advanced services that they generally provide to subscribers who are not telecommunications carriers. Finally, for the reasons discussed below, we conclude that incumbent LECs have an obligation under the statute and our implementing rules to offer collocation arrangements that reduce unnecessary costs and delays for competitors and that optimize the amount of space available for collocation.

2. Statutory Classification of Advanced Services

2. Before turning to the specific declaratory rulings requested by ALTS, we first must address the regulatory classification of ''advanced services.'' The specific obligations of the 1996 Act depend on application of the statutory categories established in the Act's definitions section. In particular, we consider whether advanced services constitute ''telecommunications services,'' and, if so, what type of telecommunications service.

a. Telecommunications services. (1) Background. 3. The obligations imposed by sections 251 and 252 of the Act are triggered by the provision of a ''telecommunications service.'' Thus, for example, section 251(a) requirements apply to each ''telecommunications carrier,'' which is to say, each ''provider of telecommunications services.'' Section 251(c)(3) obligates incumbent LECs to provide unbundled access to ''network elements,'' which is to say, ''facilit[ies] or equipment used in the provision of a telecommunications service.'' The Act defines ''telecommunications service'' to mean ''the offering of telecommunications for a fee directly to the public * * *.'' It defines ''telecommunications'' to mean ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.''

(2) Discussion. 4. We conclude that advanced services are telecommunications services. The Commission has repeatedly held that specific packet-switched services are ''basic services,'' that is to say, pure transmission services. xDSL and packet switching are simply transmission technologies. To the extent that an advanced service does no more than transport information of the user's choosing between or among user-specified points, without change in the form or content of the information as sent and received, it is ''telecommunications,'' as defined by the Act. Moreover, to the extent that such a service is offered for a fee directly to the public, it is a ''telecommunications service.''

5. Incumbent LECs have proposed, and are currently offering, a variety of services in which they use xDSL technology and packet switching to provide members of the public with a transparent, unenhanced, transmission path. Neither the petitioners, nor any commenter, disagree with our conclusion that a carrier offering such a service is offering a ''telecommunications service.'' An end-user may utilize a telecommunications service together with an information service, as in the case of Internet access. In such a case, however, we treat the two services separately: the first service is a telecommunications service (*e.g.*, the xDSL-enabled transmission path), and the second service is an information service, in this case Internet access.

6. We note that, pursuant to the Commission's *Computer Inquiry* and *Open Network Architecture (ONA)* proceedings, BOCs are permitted to offer information services on either an integrated basis, *i.e.* through the regulated telephone company, or through a separate affiliate. The BOCs are obligated, however, to unbundle and make available to competing information service providers (ISPs): (1) the network services that underlie the BOCs' own information services (pursuant to the *Computer Inquiry* proceedings); and (2) additional network services that the BOCs do not use in their information service offerings (pursuant to *ONA*). We note

that BOCs offering information services to end users of their advanced service offerings, such as xDSL, are under a continuing obligation to offer competing ISPs nondiscriminatory access to the telecommunications services utilized by the BOC information services. In the NPRM, we seek comment on whether we should apply any similar safeguards if a BOC affiliate offers advanced services in conjunction with a BOC information service.

b. Telephone exchange service or exchange access. (1) Background. 7. Certain obligations under section 251 turn on whether the carrier is providing ''telephone exchange service'' or ''exchange access.'' Pursuant to section 251(c)(2), an incumbent LEC must provide interconnection only ''for the transmission and routing of telephone exchange service and exchange access.'' Section 251(b) applies to each ''local exchange carrier''; section 153(26), in turn, defines ''local exchange carrier'' to include any person ''engaged in the provision of telephone exchange service or exchange access.''

8. Prior to 1996, the Communications Act defined ''telephone exchange service'' to include ''service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge.'' In the 1996 Act, Congress expanded that definition to include ''comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.'' The Act defines ''exchange access'' to mean ''the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.''

(2) Discussion. 9. We conclude that advanced services offered by incumbent LECs are either ''telephone exchange service'' or ''exchange access.'' At this time, we do not decide whether, or to what extent, specific xDSL-based services offered by incumbent LECs are ''telephone exchange service'' as opposed to ''exchange access.'' We note, however, that this question has been raised in other pending proceedings, and we will continue to address it on a case-by-case basis.

10. Nothing in the statutory language or legislative history limits these terms to the provision of voice, or conventional circuit-switched service. Indeed, Congress in the 1996 Act expanded the scope of the ''telephone exchange service'' definition to include, for the first time, ''comparable service'' provided by a telecommunications carrier. The plain language of the statute thus refutes any attempt to tie these statutory definitions to a particular technology. Consequently, we reject US WEST's contention that those terms refer only to local circuit-switched voice telephone service or close substitutes, and the provision of access to such services.

11. We note that in a typical xDSL service architecture, the incumbent LEC uses a DSLAM to direct the end-user's data traffic into a packet-switched network, and across that packet-switched network to a terminating point selected by the end-user. Every end-user's traffic is routed onto the same packet-switched network, and there is no technical barrier to any end-user establishing a connection with any customer located on that network (or, indeed, on any network connected to that network). We see nothing in this service architecture mandating a conclusion that advanced services offered by incumbent LECs fall outside of the ''telephone exchange service'' or ''exchange access'' definitions set forth in the Act.

12. US WEST's reliance on the fact that the Commission in the *Local Competition Order,* 61 FR 45476, August 29, 1996, noted that CMRS carriers ''provide local, two-way switched voice service,'' as part of the analysis leading to its conclusion that such carriers provide telephone exchange service, is misplaced. The Commission nowhere suggested that two-way voice service is a *necessary* component of telephone exchange service. It certainly did not suggest that two-way voice service is a necessary component of exchange access.

13. We also reject U S WEST's contention that it is not subject to section 251(c) for its provision of advanced services because such services are neither ''telephone exchange services'' nor ''exchange access services.'' To the extent that it offers advanced services, U S WEST contends, it is not acting as a ''local exchange carrier'' or ''incumbent local exchange carrier,'' and the obligations imposed by section 251(c) on incumbent local exchange carriers do not apply. Because we have determined that advanced services offered by incumbent LECs are telephone exchange service or exchange access, we need not and do not address the section 251(c) obligations of an incumbent local exchange carrier offering services other than telephone exchange service or exchange access.

3. Interconnection

a. Background. 14. Section 251(a) of the Act requires all ''telecommunications carriers'' to ''interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.'' Section 251(c)(2) imposes interconnection obligations on incumbent LECs for purposes of transmitting and routing telephone exchange or exchange access traffic.

b. Discussion. 15. We agree with ALTS that the interconnection obligations of section 251 of the Act apply equally to facilities and equipment used to provide data transport functionality and voice functionality. Because advanced services that provide members of the public with a transparent, unenhanced transmission path are telecommunications services, all carriers offering such services are subject to the requirements of section 251(a), including the interconnection obligation set out in section 251(a)(1). In addition, because such services offered by an incumbent LEC are either ''telephone exchange services'' or ''exchange access,'' the incumbent LEC is subject to the interconnection obligations of section 251(c). Thus, any telecommunications carrier in need of interconnection with an incumbent LEC network ''for purposes of transmitting and routing telephone exchange traffic or exchange access traffic or both'' is entitled to interconnection pursuant to section 251(c)(2) of the Act.

16. For purposes of determining the interconnection obligation of carriers, the Act does not draw a regulatory distinction between voice and data services. In particular, the Commission drew no such distinction in the *Local Competition Order,* when it required incumbent LECs to offer interconnection with competitors for the transmission and routing of telephone exchange and exchange access traffic. Thus, the interconnection obligations of incumbent LECs apply to packet-switched as well as circuit-switched services.

17. The ability of competitive LECs to interconnect with incumbent LEC data networks ''will permit all carriers, including small entities and small incumbent LECs, to plan regional or national networks using the same interconnection points in similar networks nationwide.'' Our rules make it possible for competing telecommunications providers to offer seamless service to end-users by

interconnecting with incumbents' networks. We therefore grant the ALTS request that we declare that the interconnection obligations of sections 251(a) and 251(c)(2) apply to incumbents' packet-switched telecommunications networks and the telecommunications services offered over them.

18. We reject BellSouth's argument that Congress intended that section 251(c) not apply to new technology not yet deployed in 1996. Nothing in the statute or legislative history indicates that it was intended to apply only to existing technology. Moreover, Congress was well aware of the Internet and packet-switched services in 1996, and the statutory terms do not include any exemption for those services.

4. Unbundled Network Elements

a. Background. 19. We next consider the unbundling obligations of section 251(c)(3). Section 251(c)(3) requires incumbent LECs to ''provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory * * *.'' Section 153(29) defines ''network element'' to include any ''facility or equipment used in the provision of a telecommunications service'' along with the ''features, functions, and capabilities that are provided by means of such facility or equipment.'' The Commission noted in the *Local Competition Order,* however, that section 251(d)(2) gave it authority ''to refrain from requiring incumbent LECs to provide all network elements for which it is technically feasible to provide access.'' In considering whether to refrain from requiring the unbundling of a particular network element, the Commission is to weigh the standards set out in section 251(d)(2), as well as any other standards the Commission considers consistent with the objectives of the 1996 Act.

20. So as to ''promote efficient, rapid, and widespread new entry,'' the Commission identified a minimum list of seven network elements that incumbent LECs must make available to new entrants. The Commission did not identify DSLAMs or packet switches as network elements that incumbent LECs must unbundle. It emphasized, however, that its list was a minimum one, because an exhaustive list would not accommodate changes in technology or differing local conditions. Further, the Commission noted that it might identify ''additional, or perhaps different'' unbundling requirements in the future.

b. Discussion. (1) Loops. 21. We grant the ALTS request for a declaratory ruling that incumbent LECs are required, pursuant to section 251(c)(3) of the Act, to provide unbundled loops capable of transporting high speed digital signals. ALTS asserts that competitive LECs are having extreme difficulty obtaining the digital loops needed to provide advanced services. We agree with ALTS that, if we are to promote the deployment of advanced telecommunications capability to all Americans, competitive LECs must be able to obtain access to incumbent LEC xDSL-capable loops on an unbundled and nondiscriminatory basis.

22. In the *Local Competition Order,* the Commission identified the local loop as a network element that incumbent LECs must unbundle ''at any technically feasible point.'' It defined the local loop to include ''two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals.'' To the extent technically feasible, incumbent LECs must ''take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities.'' For example, if a carrier requests an unbundled loop for the provision of ADSL service, and specifies that it requires a loop free of loading coils, bridged taps, and other electronic impediments, the incumbent must condition the loop to those specifications, subject only to considerations of technical feasibility. The incumbent may not deny such a request on the ground that it does not itself offer advanced services over the loop, or that other advanced services that the competitive LEC does not intend to offer could be provided over the loop. As the Commission stated in the *Local Competition Order,* ''section 251(c)(3) does not limit the types of telecommunications services that competitors may provide over unbundled elements to those offered by the incumbent LEC.''

23. The incumbent LECs' obligation to provide requesting carriers with fully functional conditioned loops extends to loops provisioned through remote concentration devices such as digital loop carriers (DLC). The Commission concluded in the *Local Competition Order* that it was ''technically feasible'' to unbundle loops that pass through an integrated DLC or similar remote concentration devices, and required incumbent LECs to unbundle such loops for competitive LECs.

24. To the extent that a competitive LEC cannot obtain nondiscriminatory access to an xDSL-capable loop, or any other loop capabilities to which it is entitled by virtue of section 251(c)(3) and the *Local Competition Order,* the competitive LEC can pursue remedies before the Commission and the appropriate state commissions. We note that the Commission has recently adopted an expedited complaint process to resolve these types of competitive issues in an accelerated fashion.

25. Under our existing rules, incumbent LECs are also required to provide competing carriers with nondiscriminatory access to the operations support systems (OSS) functions for pre-ordering, ordering, and provisioning loops. If new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not a loop is capable of supporting xDSL-based services. An incumbent LEC does not meet the nondiscrimination requirement if it has the capability electronically to identify xDSL-capable loops, either on an individual basis or for an entire central office, while competing providers are relegated to a slower and more cumbersome process to obtain that information. In the NPRM below, we seek comment on whether we should adopt any additional rules to ensure that competing providers have nondiscriminatory access to the loop information they need to provide advanced services.

(2) Other Network Elements. 26. We further grant ALTS' petition to the extent that ALTS requests a declaratory ruling that advanced services are telecommunications services, and that the facilities and equipment used to provide advanced services are network elements subject to the obligations in section 251(c). Given our conclusion above that advanced services offered by incumbent LECs are telecommunications services, all equipment and facilities used in the provision of advanced services are ''network elements'' as defined by section 153(29).

27. We seek comment in the NPRM below on the specific unbundling obligations that would apply to the network elements used to provide advanced services. We note, for example, that the section 251(c)(3) unbundling requirement is subject to the question of technical feasibility. We seek comment in the NPRM on whether the Commission should weigh any

criteria under section 251(d)(2) other than those expressly listed in that provision to determine the extent to which network elements used to provide advanced services should be unbundled.

5. Resale Obligations Under Section 251(c)(4)

(a) Background. 28. Section 251(c)(4) requires incumbent LECs to offer for resale at wholesale rates ''any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.'' The Commission held in the *Local Competition Order* that this obligation extends to *all* telecommunications services, not merely voice services, that an incumbent LEC provides to subscribers who are not telecommunications carriers. The Commission concluded that an incumbent LEC must establish a wholesale rate for every retail service that: (1) meets the statutory definition of a ''telecommunications service,'' and (2) is provided at retail to subscribers who are not telecommunications carriers. The Commission concluded, however, that exchange access services are generally offered to telecommunications carriers rather than retail subscribers, and thus were not subject to the provisions of section 251(c)(4).

(b) Discussion. 29. Given our determination above that advanced services offered by incumbent LECs are telecommunications services, by the plain terms of the Act, incumbent LECs have the obligation to offer for resale, pursuant to section 251(c)(4), all advanced services that they generally provide to subscribers who are not telecommunications carriers. The Commission in the *Local Competition Order* similarly emphasized that the resale obligation extends to all such telecommunications services, including advanced services.

30. To the extent that advanced services are local exchange services, they are subject to the resale provisions of section 251(c)(4). In the *Local Competition Order,* however, the Commission concluded that exchange access services are not subject to the provisions of section 251(c)(4) because ''[t]he vast majority of purchasers of interstate access services are telecommunications carriers, not end users.'' To the extent that advanced services are exchange access services, we believe that advanced services are fundamentally different from the exchange access services that the Commission referenced in the Local Competition Order and concluded were not subject to section 251(c)(4). We expect that advanced services will be offered predominantly to residential or business users or to Internet service providers. None of these purchasers are telecommunications carriers. We examine this issue further and propose specific requirements in the NPRM below.

6. Collocation

a. Background. 31. In order to provide advanced services, new entrants may need to collocate equipment on the incumbent LEC's premises for interconnection and access to network elements. Congress recognized competing providers' need for collocation in section 251(c)(6) of the Act, which requires incumbent LECs to provide ''for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.'' In the *Local Competition Order,* the Commission implemented specific minimum requirements to implement the collocation requirements of section 251(c)(6). The Commission adopted rules for, among other things, space allocation and exhaustion, types of equipment that could be collocated, and LEC premises where parties could collocate equipment.

32. ALTS asserts that excessive rates and unreasonably burdensome terms and conditions for collocation are blocking competitive entry into data service markets. As a result, ALTS requests that we initiate proceedings to help ensure implementation of section 251 and 252 of the Act with respect to deployment of advanced services. Among other requests, ALTS asks us to exercise our authority under section 251(c)(6) of the Act and establish additional rules governing collocation arrangements.

b. Discussion. 33. We conclude that the availability of cost efficient collocation arrangements is essential for the deployment of advanced services by facilities-based competing providers. Given incumbent LECs' statutory duty to provide physical collocation on just, reasonable, and nondiscriminatory rates, terms, and conditions, we believe that incumbent LECs have a statutory obligation to offer cost efficient and flexible collocation arrangements. In addition, we expect that incumbent LECs will fulfill their statutory collocation duty by taking steps to offer collocation arrangements that permit new entrants to provide advanced services using equipment that the new entrant provides. Such steps include offering collocation to competing providers in a manner that reduces unnecessary costs and delays for the competing providers and that optimizes the amount of space available for collocation. We conclude that measures that optimize the available collocation space and that reduce costs and delays for competing providers are consistent with an incumbent LEC's obligation under both the statute and our rules. In addition, we agree with ALTS that we should build upon our current physical and virtual collocation requirements adopted in the *Expanded Interconnection* and *Local Competition* proceedings to ensure that our rules promote, to the greatest extent possible, the rapid deployment of advanced telecommunications capability to all Americans. We, therefore, propose specific additional physical and virtual collocation requirements in the NPRM below.

B. Forbearance and LATA Boundary Modifications

1. Background

34. As discussed above, sections 251(c)(3) and (4) require incumbent LECs to provide nondiscriminatory access to unbundled network elements and to offer for resale, at wholesale rates, any telecommunications service the carrier provides at retail. Section 271(b)(1) provides that a BOC or BOC affiliate ''may provide interLATA services originating in any of its in-region States'' only ''if the Commission approves the application of such company for such State under [section 271(d)(3)].'' Under section 271(d)(3), the Commission may grant a BOC authorization to originate in-region, interLATA services only if it finds that the BOC has met the competitive checklist set forth in section 271(c)(2)(B) and other statutory requirements.

35. Section 706(a) of the 1996 Act instructs the Commission and each state commission to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans * * * by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, *regulatory forbearance,* measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.''

36. Section 10 of the Communications Act requires the Commission to forbear from applying any regulation or any

provision of the Communications Act to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain conditions are satisfied. Section 10(d) specifies, however, that ''[e]xcept as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under [section 10(a)] until it determines that those requirements have been fully implemented.''

37. In their petitions, Ameritech, U S WEST, Bell Atlantic, and SBC seek regulatory relief from the application of section 251 and/or section 271 through Commission forbearance from applying those sections or through LATA boundary changes. Recognizing that the Commission may not forbear from application of sections 251(c) and 271 under section 10(a) until the requirements in those sections have been fully implemented, petitioners seek forbearance pursuant to section 706(a). Petitioners contend that section 706(a) constitutes an independent grant of forbearance authority that encompasses the ability to forbear from sections 251(c) and 271. Ameritech, Bell Atlantic, and U S WEST seek regulatory relief not only to provide xDSL-based services to end users, but also to obtain freedom to become Internet backbone providers. Ameritech and U S WEST, notwithstanding their request here for LATA boundary changes, argue that this relief would not affect their compliance with section 271 for voice services.

2. Discussion

a. Forbearance. 38. After reviewing the language of section 706(a), its legislative history, the broader statutory scheme, and Congress' policy objectives, we agree with numerous commenters that section 706(a) does not constitute an independent grant of forbearance authority or of authority to employ other regulating methods. Rather, we conclude that section 706(a) directs the Commission to use the authority granted in other provisions, including the forbearance authority under section 10(a), to encourage the deployment of advanced services.

39. To determine whether section 706(a) constitutes an independent grant of forbearance authority, we look first to the text of the statute. We recognize that the language of section 706 directs the Commission to encourage the deployment of advanced services ''by utilizing * * * regulatory forbearance * * * .'' It is not clear from the text of section 706(a), however, whether Congress intended that provision to constitute an independent grant of forbearance authority, or, alternatively, a directive that the Commission use forbearance authority granted elsewhere, in encouraging the deployment of advanced services.

40. Because the language of section 706(a) does not make clear whether section 706(a) constitutes an independent grant of forbearance authority, we look to the broader statutory scheme, its legislative history, and the underlying policy objectives to resolve the ambiguity. We examine the structure of the 1996 Act as a whole. As the courts have recognized, ''[t]he literal language of a provision taken out of context cannot provide conclusive proof of congressional intent, any more than a word can have meaning without context to illuminate its use.'' Rather, when we are ''charged with understanding the relationship between two different provisions within the same statute, we must analyze the language of each to make sense of the whole.''

41. As stated above, section 10(d) expressly forbids the Commission from forbearing from the requirements of sections 251(c) and 271 ''until it determines that those requirements have been fully implemented.'' There is no language in section 10 that carves out an exclusion from this prohibition for actions taken pursuant to section 706.

42. If section 706(a) were an independent grant of authority, as the BOCs argue, then it would allow us to forbear from applying sections 251(c) and 271 regardless of whether either section were fully implemented. Sections 251(c) and 271 are cornerstones of the framework Congress established in the 1996 Act to open local markets to competition. The central importance of these provisions is reflected in the fact that they are the only two provisions that Congress carved out in limiting the Commission's otherwise broad forbearance authority under section 10. We find it unreasonable to conclude that Congress would have intended that section 706 allow the Commission to eviscerate those forbearance exclusions after having expressly singled out sections 251(c) and 271 for different treatment in section 10.

43. We are not persuaded by Bell Atlantic's argument that a conclusion that section 706(a) confers no independent authority would make that section redundant. On the contrary, we conclude that section 706(a) gives this Commission an affirmative obligation to encourage the deployment of advanced services, relying on our authority established elsewhere in the Act. Our actions and proposals in this Order and NPRM make clear that this obligation has substance.

44. Furthermore, we find nothing in the legislative history of section 706 to indicate that Congress gave us independent authority in section 706(a) to forbear from provisions of the Act. Section 706 was adopted contemporaneously with the forbearance authority in section 10, with section 706 contained in section 304 of the Senate version of the Communications Act of 1996, and the forbearance authority that was later included in section 10 contained in section 303 of that bill. Thus, when enacting section 706, Congress was well aware of the explicit exclusions of our forbearance authority in section 10(d). Congress presumably would have stated explicitly that those exclusions would not apply to forbearance under section 706 had it so intended. We are not persuaded by Ameritech's argument that the statement in the Senate Commerce Committee's Report that section 706 is intended as a ''fail-safe'' indicates that Congress provided independent forbearance authority in section 706(a). The Senate Commerce Committee's Report makes clear that section 706 ''ensures that advanced telecommunications capability is promptly deployed by requiring the [Commission] to initiate and complete regular inquiries,'' and then take immediate action if it determines that such capability is not being deployed to all Americans. The Report does not clarify, however, whether section 706 is an independent grant of regulatory authority or directs the Commission to use regulatory measures granted in other provisions of the Act.

45. Moreover, as a matter of policy, we believe that interpreting section 706, not as an independent grant of authority, but rather, as a direction to the Commission to use the forbearance authority granted elsewhere in the Act, will further Congress' objective of opening all telecommunications markets to competition, including the market for advanced services. As discussed above, because of the central importance of the requirements in sections 251(c) and 271 to opening local markets to competition, we consider these sections to be cornerstones of the framework Congress established in the 1996 Act. We find that this conclusion that section 706 does not provide the statutory authority to forbear from sections 251(c) and 271 will better promote Congress' objectives in the Act.

46. For the foregoing reasons, we conclude that, in light of the statutory language, the framework of the 1996 Act, its legislative history, and Congress'

policy objectives, the most logical statutory interpretation is that section 706 does not constitute an independent grant of authority. Rather, the better interpretation of section 706 is that it directs us to use, among other authority, our forbearance authority under section 10(a) to encourage the deployment of advanced services. Under section 10(d), we may not use that authority to forbear from applying the requirements of section 251(c) and 271 prior to their full implementation. Petitioners do not suggest that either section 251(c) or section 271 has been fully implemented, and we have no record on which to determine that either has been fully implemented. We, therefore, deny the BOC requests that we forbear from applying the requirements of sections 251(c) and 271. We seek comment in the NPRM below on whether there are avenues other than forbearance that might allow us to lessen the obligations of these sections in appropriate circumstances.

47. Ameritech also requests forbearance pursuant to section 706 from application of section 272's requirements if we grant its request to forbear from applying section 271's requirements. Because we deny that request for section 271 forbearance, we also deny Ameritech's request for section 272 forbearance.

48. In addition, SBC requests forbearance, under section 10: (1) from the dominant treatment of ADSL service to the extent that treatment results in the imposition of tariff filing requirements and other obligations under the Act and under parts 61 and 69 of the Commission's rules; and (2) from the obligations of section 252(i). Section 10(a) requires us to forbear from the application of a statutory provision or regulation if we determine that specific criteria are met. We conclude, on the record before us, that SBC has not demonstrated that the relief it requests pursuant to section 10 meets these criteria. In particular, to the extent that advanced services are offered by an incumbent LEC, we find, on the record before us, that it is consistent with the public interest to subject such incumbents to full incumbent LEC regulation. We therefore deny SBC's requests for forbearance under section 10. We note, however, that, in the NPRM below, we address the regulatory status of an advanced services affiliate that competes without any unfair advantages derived from its affiliation with the incumbent. In particular, we tentatively conclude below that such an affiliate, to the extent it provides interstate exchange access services, should, under existing Commission precedent, be presumed to be nondominant and should not be required to file tariffs for its provision of any interstate services that are exchange access.

b. LATA Boundary Modifications. 49. As an alternative to forbearance from enforcing section 271, Ameritech, Bell Atlantic and U S WEST request that the Commission permit them to change LATA boundaries pursuant to section 3(25) of the Communications Act in order to create a large-scale ''LATA'' for packet-switched services. We decline to grant petitioners' requests for large-scale changes in LATA boundaries.

50. Although section 3(25)(B) of the Act permits a BOC to modify LATA boundaries upon Commission approval, we conclude that petitioners' requests for large-scale changes in LATA boundaries amount to more than requests for ''modified'' LATAs as that term is used in section 3(25)(B). In *MCI* v. *AT&T*, the Supreme Court held that the Commission's authority to ''modify'' portions of the Communications Act means ''moderate change'' and not ''basic and fundamental changes in the scheme created by [the section at issue]'' We conclude that such large-scale changes in LATA boundaries for packet-switched services as proposed by petitioners would effectively eliminate LATA boundaries for such services.

51. Such far-reaching and unprecedented relief could effectively eviscerate section 271 and circumvent the procompetitive incentives for opening the local market to competition that Congress sought to achieve in enacting section 271 of the Act. We conclude, therefore, that the requests for large-scale changes in LATA boundaries, such as Ameritech's request for a global, ''data LATA,'' are functionally no different than petitioners'' requests that we forbear from applying section 271 to their provision of these services. It would exalt form over substance if we were to grant the requested large-scale changes in LATA boundaries. In the NPRM below, we seek comment on whether the Commission should, in certain circumstances, modify LATA boundaries to provide targeted relief.

C. Ordering Clauses

52. Accordingly, it is ordered that, pursuant to sections 1–4, 10, 201, 202, 251–254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201, 202, 251–254, 271, and 303(r), the order is hereby adopted. The requirements adopted in this Order shall become effective September 23, 1998.

53. *It is further ordered that,* pursuant to sections 1–4, 10, 201, 202, 251–254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201, 202, 251–254, 271, 272, and 303(r), the Petitions filed by ALTS, Ameritech, SBC, U S WEST, and Bell Atlantic are granted to the extent described herein and otherwise denied.

54. *It is further ordered that,* pursuant to sections 1–4, 10, 201, 202, 251–254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201, 202, 251–254, 271, and 303(r), the Petition filed by the Alliance for Public Technology is granted to the extent described herein.

List of Subjects in 47 CFR Parts 51, 64, and 68

Communications common carriers, Communications equipment, Local exchange carrier, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–22598 Filed 8–21–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 64, and 68

[CC Docket Nos. 98–147, 98–11, 98–26, 98–32, 98–15, 98–78, 98–91; FCC 98–188]

Deployment of Wireline Services Offering Advanced Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On August 7, 1998, the Commission released a Notice of Proposed Rulemaking (NPRM) addressing deployment of wireline services offering advanced telecommunications capability. The NPRM is intended to obtain comment on how to facilitate deployment of advanced services and promote competition in the advanced services marketplace.

DATES: Comments are due on or before September 25, 1998 and reply comments are due on or before October 16, 1998. Written comments by the public on the proposed information collections are due September 23, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., N.W., Washington, D.C. 20036. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov. See Supplementary Information section for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: Linda Kinney, Assistant Division Chief, Policy and Program Planning Division, Common Carrier Bureau, at 202–418–1580 or via the Internet at lkinney@fcc.gov or Jordan Goldstein, Attorney, Policy and Program Planning Division, Common Carrier Bureau, at 202–418–1580 or via the Internet at jgoldste@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections contained in the NPRM contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted August 6, 1998 and released August 7, 1998 (FCC 98–188). The NPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. The full text of the Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/[Orders/fcc98188.wp], or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

Paperwork Reduction Act

The NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due October 23, 1998. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability.

Form No.: N/A.

Type of Review: New collection.

Information collection	Number of respondents (approx.)	Estimated time per response (hours)	Total annual burden (hours)
Listing of Collocation Equipment	1400	1	1400
Collocation Space Report	1400	1	1400
Local Loops and OSS Information	1400	1	1400

Total Annual Burden: 4200 hours.

Respondents: Business or other for profit.

Estimated costs per respondent: $0.

Needs and Uses: The NPRM seeks comment on a number of issues, the result of which could lead to the imposition of information collections. The NPRM seeks comment on certain reporting requirements to implement the requirements of the 1996 Act. The information will be used to facilitate the deployment of advanced services.

Initial Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected economic impact on small entities by the policies and proposals in the NPRM. The Commission solicited written public comments on the IRFA, which must be filed by the deadlines for the submission of comments in this proceeding.

I. Need for and Objectives of This NPRM

In this NPRM, we propose an optional alternative pathway for incumbent LECs that would allow separate affiliates to provide advanced services free from incumbent LEC regulation. In particular, if an incumbent LEC chooses to offer advanced services through an affiliate that is truly separate from the incumbent, that affiliate would not be deemed an incumbent LEC and therefore would not be subject to incumbent LEC regulation, including the obligations under section 251(c). On the other hand, if the advanced services affiliate derives an unfair advantage from its relationship with the incumbent, that affiliate should be viewed as stepping into the shoes of the incumbent LEC and would be subject to all the requirements that Congress established for incumbent LECs. We propose in this NPRM specific structural separation and nondiscrimination requirements that need to be in place in order for an affiliate to be deemed a non-incumbent LEC, and thus not subject to section 251(c). We also offer guidance on various factors that the Commission should consider in determining when an advanced services affiliate would be an ''assign'' of the incumbent LEC, and, therefore, subject to the obligations of section 251(c).

In this NPRM, we also propose additional rule changes that would apply whether or not incumbent LECs choose to establish a separate affiliate to provide advanced services. We propose rules to ensure that all entities seeking to offer advanced services have adequate access to collocation and loops, which is critical to promote competition in the marketplace for advanced services. We then seek comment on ways to modify the section 251(c) unbundling requirements, once companies are in compliance with the rule changes we propose regarding collocation and access to loops. Finally, we seek comment on measures that would provide BOCs with targeted interLATA relief to ensure that all consumers, even those in rural areas, are able to reap the benefits of advanced telecommunications capability.

II. Legal Basis

The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1–4, 10, 201, 202, 251–254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 160, 201, 202, 251–254, 271, and 303(r).

III. Description and Estimate of the Number of Small Entities to Which the Proposals, if Adopted, Would Apply

Below, we describe and estimate the number of small entities that may be affected by the proposals in this NPRM, if adopted.

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,459 interstate carriers. These carriers include, *inter alia*, local exchange carriers (LECs), wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

The SBA has defined establishments engaged in providing ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies and small businesses in this category, and we then attempt to refine further those estimates.

Although some affected incumbent LEC may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.''

Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small incumbent LECs that may be affected by the proposed rules, if adopted.

Competitive LECs. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive LECs. The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies. The most reliable source of information regarding the number of competitive LECs nationwide is the data that we collect annually in connection with the TRS Worksheet. According the most recent *Telecommunications Industry Revenue* data, 109 companies reported that they were engaged in the provision of either competitive local exchange service or competitive access service, which are placed together in the data. We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA definition. Consequently, we estimate that there are fewer than 109 small competitive LECs or competitive access providers.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The collocation and loops sections of the NPRM include proposed reporting requirements. With regard to collocation, the NPRM tentatively concludes that incumbent LECs should

be required to list all equipment approved for use in a central office. The NPRM also tentatively concludes that, upon request from a competitive LEC, an incumbent LEC should submit to the requesting competitor a report indicating the incumbent LEC's available collocation space. The NPRM indicates that this report should: (1) Specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report; and (2) include measures that the incumbent LEC is taking to make additional space available for collocation. With regard to loops, the NPRM tentatively concludes that incumbent LECs should be required to share information about loops with new entrants.

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

We tentatively conclude that our proposals in the NPRM would impose minimum burdens on small entities. We seek comment on these proposals and the impact they may have on small entities.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposals in the NPRM

None.

Synopsis of Notice of Proposed Rulemaking

A. Introduction

1. In this NPRM, we propose an optional alternative pathway for incumbent LECs that would allow separate affiliates to provide advanced services free from incumbent LEC regulation. In particular, if an incumbent LEC chooses to offer advanced services through an affiliate that is truly separate from the incumbent, that affiliate would not be deemed an incumbent LEC and therefore would not be subject to incumbent LEC regulation, including the obligations under section 251(c). On the other hand, if the advanced services affiliate derives an unfair advantage from its relationship with the incumbent, that affiliate should be viewed as stepping into the shoes of the incumbent LEC and would be subject to all the requirements that Congress established for incumbent LECs. We propose in this NPRM specific structural separation and nondiscrimination requirements that need to be in place in order for an affiliate to be deemed a non-incumbent LEC, and thus not subject to section 251(c). We also offer guidance on various factors that the Commission should consider in determining when an advanced services affiliate would be an ''assign'' of the incumbent LEC, and, therefore, subject to the obligations of section 251(c).

2. In this NPRM, we also propose additional rule changes that would apply whether or not incumbent LECs choose to establish a separate affiliate to provide advanced services. We propose rules to ensure that all entities seeking to offer advanced services have adequate access to collocation and loops, which is critical to promote competition in the marketplace for advanced services. We then seek comment on ways to modify the section 251(c) unbundling requirements, once companies are in compliance with the rule changes we propose regarding collocation and access to loops. Finally, we seek comment on measures that would provide BOCs with targeted interLATA relief to ensure that all consumers, even those in rural areas, are able to reap the benefits of advanced telecommunications capability.

B. Provision of Advanced Services Through a Separate Affiliate

3. A number of parties have raised the question of whether incumbent LECs may provide advanced services through separate affiliates that would not be subject to incumbent LEC regulation.

4. We are committed to ensuring that an optional alternative pathway is available for incumbent LECs that are willing to offer advanced services on the same footing as any of their competitors. We believe that, if advanced services are offered by an affiliate that is truly separate from the incumbent LEC (an ''advanced services affiliate''), that affiliate should not be deemed an incumbent LEC and, therefore, should not be subject to the incumbent LEC regime established by Congress in section 251(c). In addition, we tentatively conclude below that such an advanced services affiliate, to the extent it provides interstate exchange access services, should, under existing Commission precedent, be presumed to be nondominant (and, therefore, not be subject to price cap regulation or rate of return regulation for its provision of such services). We also tentatively conclude below that such an affiliate, as a non-incumbent, also should not be required to file tariffs for its provision of any interstate services that are exchange access. We emphasize that we are not proposing that incumbent LECs be required to establish affiliates to provide advanced services. Any incumbent LEC is free to provide advanced services on an integrated basis, but, in those circumstances, is subject to section 251(c) requirements. Simply put, each incumbent LEC seeking to provide advanced services must make a business decision as to whether it wishes to provide such services free of section 251(c) requirements.

5. In this NPRM we lay out a framework that will guide incumbent LECs that choose to pursue this alternative. The proposals in this NPRM are based on the underlying assumption that, to be free of incumbent LEC regulation, an advanced services affiliate must function just like any other competitive LEC and not derive unfair advantages from the incumbent LEC.

6. We recognize that many states have significant practical experience in dealing with LEC affiliates in a variety of contexts. We therefore welcome input from the states on each of the issues raised below regarding provision of advanced services through a separate affiliate.

1. Background

7. The obligations set out in section 251(c) of the Act are imposed only on incumbent LECs. In the *Non-Accounting Safeguards Order*, 62 FR 2927, January 21, 1997, the Commission concluded that a BOC affiliate that satisfies appropriate structural separation requirements is not deemed an incumbent LEC for purposes of section 251 merely because it is engaged in local exchange activities. Consistent with the reasoning in the Non-Accounting Safeguards Order, a determination as to whether a carrier is an incumbent LEC is not based on the nature of the service the carrier provides. Rather, in order to be deemed an incumbent LEC, a carrier must meet the definition in section 251(h).

8. Section 251(h)(1), in turn, defines an incumbent LEC as either a member of NECA as of the date of the enactment of the 1996 Act, or a ''successor or assign'' of such a member. When applying the definition of section 251(h)(1)(B)(i) to separate affiliates in the *Non-Accounting Safeguards Order*, the Commission concluded that ''[n]o BOC affiliate was a member of NECA when the 1996 Act was enacted.'' The Commission determined that an affiliate can, however, be a ''successor or assign'' of a BOC. The Commission concluded that, if a BOC transfers to its affiliate ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3), the affiliate would be deemed an assign of

the BOC under section 3(4) of the Act with respect to those network elements.

9. In addition, we note that the Commission, under section 251(h)(2), may, by rule, treat as an incumbent a LEC (or a class or category of LECs) that occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by the incumbent LEC, and such carrier has substantially replaced an incumbent LEC. The Commission stated in the *Local Competition Order* that it ''will not impose incumbent LEC obligations on non-incumbent LECs absent a clear and convincing showing that the LEC occupies a position in the telephone exchange market comparable to the position held by an incumbent LEC, has substantially replaced an incumbent LEC, and that such treatment would serve the public interest, convenience, and necessity and the purposes of section 251.'' In the *Non-Accounting Safeguards Order*, the Commission determined that a BOC affiliate is not ''comparable'' to an incumbent LEC under section 251(h)(2) merely because it is engaged in local exchange activities.

2. Advanced Services Affiliates

10. Building upon the reasoning in this existing precedent, we believe that an advanced services affiliate of an incumbent LEC that (1) satisfies adequate structural separation requirements (*i.e*, is ''truly'' separate); and (2) acquires, on its own, facilities used to provide advanced services (or leases such facilities from an unaffiliated entity) is generally not an incumbent LEC, and, therefore, is not subject to section 251(c) obligations with respect to those facilities. We also note that, although we believe an advanced services affiliate that is structured in accordance with rules we adopt in this proceeding would not be an incumbent LEC, the affiliate would remain subject to the general duties of telecommunications carriers in section 251(a) and the obligations of all local exchange carriers in section 251(b).

11. In describing what we believe is an alternative pathway by which a truly separate affiliate of an incumbent LEC may provide advanced services free from the obligations of section 251(c), we emphasize that we are not proposing to forbear from section 251(c) requirements. Rather, we are setting forth proposals on the circumstances under which an affiliate is not deemed an incumbent LEC in the first place.

12. Under section 251(c), obligations to unbundle and to offer resale at wholesale rates apply only to incumbent LECs, as defined in section 251(h). Accordingly, to the extent that an entity is not an ''incumbent LEC'' within the meaning of section 251(h), that entity will not be subject to the obligations, under section 251(c), to unbundle and to offer resale at wholesale rates. We believe that it would be contrary to congressional intent to impose these obligations under section 251(c) upon entities that do not fall within the definition of an incumbent LEC. We seek comment on this statutory analysis and on our belief that a truly separate affiliate of an incumbent LEC may provide advanced services free from the obligations of section 251(c).

a. Circumstances under which an advanced services affiliate would not be an incumbent LEC. 13. *Separation Requirements for Non-Incumbent LEC Status.* We now explore the circumstances under which an advanced services affiliate would not qualify as an ''incumbent LEC'' under the definition set forth by Congress in section 251(h), and thus would not be subject to section 251(c) obligations. In particular, we explore what structural separation requirements for advanced services affiliates are sufficient for those affiliates to be deemed non-incumbent LECs.

14. We believe that, if an incumbent LEC wishes to establish an advanced services affiliate that would not be deemed an incumbent LEC, it should comply with the following structural separation and nondiscrimination requirements.

—First, the incumbent must ''operate independently'' from its affiliate. In particular, the incumbent and affiliate may not jointly own switching facilities or the land and buildings on which such facilities are located. In addition, the incumbent may not perform operating, installation, or maintenance functions for the affiliate.

—Second, transactions must be on an arm's length basis, reduced to writing, and made available for public inspection. We propose that the affiliate be required to provide a detailed written description of any asset or service transferred and the terms and conditions of the transaction on the Internet, through the company's home page, within ten days of the transaction. This would provide a readily accessible mechanism for new entrants to ensure they are receiving treatment equivalent to that provided to the incumbent LEC's advanced services affiliate. All transactions between the incumbent and its affiliate also must comply with the affiliate transactions rules, as modified in the *Accounting Safeguards* proceeding. We believe that these affiliate transactions rules are, in the context of transfers from incumbent LECs to their advanced services affiliates, sufficient to discourage, and facilitate detection of, improper cost allocations in order to prevent incumbent LECs from imposing the costs of their competitive ventures on telephone ratepayers.

—Third, the incumbent and affiliate must maintain separate books, records, and accounts.

—Fourth, the incumbent and advanced services affiliate must have separate officers, directors, and employees.

—Fifth, the affiliate must not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the incumbent.

—Sixth, the incumbent LEC, in dealing with its advanced services affiliate may not discriminate in favor of its affiliate in the provision of any goods, services, facilities or information or in the establishment of standards.

—Seventh, an advanced services affiliate must interconnect with the incumbent LEC pursuant to tariff or pursuant to an interconnection agreement, and whatever network elements, facilities, interfaces and systems are provided by the incumbent LEC to the affiliate must also be made available to unaffiliated entities. We seek comment on our proposal.

15. To the extent commenters disagree with our reasoning, we invite them to propose specific modifications to the framework set forth above, and to describe with particularity why such modifications should be adopted. In particular, commenters should address how any proposed modification addresses concerns that incumbent LECs could improperly discriminate against competing providers, for instance, by using control over key facilities and services, in order to gain a competitive advantage for their advanced services affiliates. Commenters also should address how any proposed modification addresses concerns about cost misallocation.

16. We seek comment on whether the same separation requirements should apply to all advanced services affiliates for them to be deemed not incumbent LECs, regardless of the size of the associated incumbent LECs. We seek comment on whether, as a practical matter, a BOC would choose to establish two separate affiliates to provide advanced services—one to provide such

services on an interLATA basis and another to provide such services on an intraLATA basis—if we were to adopt separation requirements less stringent than those in section 272 for advanced services affiliates.

17. We seek comment on whether any separation and other safeguards should sunset after a certain period of time or change in conditions. For example, with respect to the BOCs, we seek comment on whether the safeguards necessary to be deemed a non-incumbent LEC in the provision of advanced services should sunset at the same time that the statutorily-mandated section 272 requirements sunset with respect to the BOCs' provision of in-region interLATA services. We seek comment on what other periods may be appropriate.

18. *Non-Dominant Status.* We also tentatively conclude that an advanced services affiliate, to the extent it provides interstate exchange access services, should, under existing Commission precedent, be presumed to be nondominant. Therefore, such affiliate would not be subject to price cap regulation or rate of return regulation for its provision of such services. We tentatively conclude that such an affiliate, as a non-incumbent, also should not be required to file tariffs for its provision of any interstate services that are exchange access. We seek comment on these tentative conclusions.

19. *Miscellaneous Issues.* We seek comment on whether an advanced services affiliate should be limited in its ability either to resell telecommunications services offered by the incumbent LEC or to purchase unbundled network elements from the incumbent LEC. We also seek comment on whether a virtual collocation arrangement is more practical or attractive to an incumbent's affiliate than to other competitive LECs, and, therefore, creates an unfair competitive advantage for an advanced services affiliate vis-a-vis other entrants. If so, are there ways to make virtual collocation arrangements more equal?

20. We also note that some incumbent LECs have formed their own information services providers. Are advanced services affiliates likely to favor such affiliated information services providers, and, if so, in what ways? We also seek comment on whether competing information services providers (such as, for example, Internet services providers) will have the ability to offer service to customers of the advanced services affiliate. Could the advanced services affiliate and the incumbent LEC act in concert to engage in a price squeeze on unaffiliated information service providers? Parties arguing that the incentive and ability for affiliates to favor affiliated information services providers should suggest means by which the Commission could address these concerns.

21. Finally, commenters should compare any anticompetitive concerns they have with the operation of an advanced services affiliate to similar concerns they may have with the offering of such services on an integrated basis by the incumbent.

b. Transfers from an incumbent LEC to an advanced services affiliate. 22. In order not to be subject to the requirements of section 251(c), the advanced services affiliate must not be a successor or assign of the incumbent LEC. A determination as to whether an affiliate is a successor or assign is ultimately fact-based. In order to provide clarity and regulatory certainty, we make certain proposals below regarding when we would view an affiliate as a successor or assign. We seek to establish principles to guide the conduct of firms that choose to avail themselves of this pathway. We seek comment on how particular transactions between incumbents and their advanced services affiliates should affect the regulatory status of the affiliates. Commenters should consider whether, in a particular situation, the affiliate would be functioning like any other competitive LEC, or more like an assign of the incumbent.

23. *Transfers of Facilities.* Under existing Commission precedent, if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3), such an entity would be deemed to be an assign of the BOC under section 3(4) of the Act with respect to those network elements. We seek comment on whether the converse is true: should an affiliate not be deemed an assign of the incumbent LEC if the affiliate acquires facilities on its own, and not by transfer from the incumbent LEC?

24. In the Order, we state that network elements used to provide advanced services must be unbundled pursuant to section 251(c)(3), subject to considerations of technical feasibility. We seek comment on the extent to which incumbent LECs already have purchased facilities used to provide advanced services, including, but not limited to DSLAMs and packet switches. We tentatively conclude that, subject to any *de minimis* exception as discussed below, a wholesale transfer of such facilities would make an affiliate the assign of the incumbent LEC.

25. Moreover, we tentatively conclude that any transfer of local loops from an incumbent LEC to an advanced services affiliate would make that affiliate an assign of the incumbent LEC and subject to section 251(c) with respect to those loops. We seek comment on these tentative conclusions.

26. We seek comment on whether there should be a *de minimis* exception, under which a limited transfer of equipment would not make an advanced services affiliate an assign of the incumbent LEC. We ask commenters to address with specificity what should be deemed a ''*de minimis* transfer of equipment.'' We tentatively conclude that, if we were to adopt a *de minimis* exception, such an exception should apply only to transfers of facilities used specifically to provide advanced services, such as DSLAMs, packet switches, and transport facilities, and not to other network elements, such as loops. We seek comment on this tentative conclusion. We also seek comment on whether a *de minimis* exception should apply only to transfers of equipment that the incumbent LEC purchased and installed, or whether it should apply only to equipment that the incumbent LEC has ordered but not installed.

27. We seek comment on whether, if we adopt a *de minimis* exception, there should be a time limitation on when such transfers may occur, and if so, whether six months would be an appropriate period. We also seek comment on whether there should be any difference in treatment for transfers of equipment ordered and/or installed prior to the release date of this NPRM as opposed to prior to the effective date of any rule adopted in this proceeding.

28. We also seek comment on whether, if we allow any transfer of ownership of equipment from the incumbent LEC to an advanced services affiliate, the affiliate should have the right to leave that equipment in its current location on the incumbent's premises. We tentatively conclude that to the extent there are space limitations on the incumbent LEC's premises, either in the central office or remote terminal, an affiliate may not leave such equipment in its current location. We seek comment on this analysis.

29. We also seek comment on whether, if we allow any transfer of equipment between the incumbent LEC and the advanced services affiliate, such transfers should be exempt from the nondiscrimination requirement we propose above, for a limited time. Without such an exception from the nondiscrimination requirement, the incumbent would be required to offer

such equipment on a nondiscriminatory basis to all entities. We seek comment on whether six months would be an appropriate period for such exemption. We tentatively conclude that even if we adopt such an exemption from the nondiscrimination requirement, such transfers should remain subject to the affiliate transactions rules. We seek comment on this analysis.

30. In addition, we seek comment on whether there are other circumstances under which incumbent LECs should be permitted to transfer facilities to their affiliates. For example, should the transfer of a packet switch used solely for trial purposes make the advanced services affiliate an assign of the incumbent LEC with respect to that packet switch? Commenters should suggest other situations in which transfers of network elements from an incumbent LEC to its advanced services affiliate should not render the affiliate an incumbent LEC.

31. *Other Transfers.* Incumbent LECs also may seek to transfer to their advanced services affiliates assets other than network elements. In order to provide clarity and regulatory certainty, we ask commenters to provide examples of what types of transfers an incumbent LEC may wish to make to its advanced services affiliate and whether these transfers should make advanced services affiliates assigns of incumbent LECs. Commenters should consider, among other things, transfers of customer accounts, employees, and brand names. In addition, we seek comment on whether, and if so to what extent, transfers of funds from an incumbent LEC's corporate parent to the incumbent LEC's advanced services affiliate should affect the affiliate's regulatory status as a non-incumbent LEC. We also seek comment on whether use by an affiliate of customer proprietary network information (CPNI) gathered by the incumbent LEC is one factor among many that might be relevant in making the determination that an affiliate is an assign of the incumbent LEC. In addition, we tentatively conclude that, if an incumbent sells or conveys central offices or other real estate in which equipment used to provide telecommunications services is located to an advanced services affiliate, that would make the affiliate an assign of the incumbent. We seek comment on this analysis.

32. We tentatively conclude that, if we adopt a de minimis exception for transfers of network elements, we should adopt an analogous exception for any transfers of other assets. We also tentatively conclude that if we adopt any exception from the nondiscrimination requirement for transfers of network elements, we should adopt an analogous exception for transfers of other assets. We seek comment on these tentative conclusions.

33. *Other Issues.* We also seek comment on whether the network disclosure requirements in section 251(c)(5) are sufficient to notify competitive LECs who might be using, or planning to use, facilities of the incumbent LEC that those facilities are being transferred to the advanced services affiliate. Parties arguing that the existing network disclosure requirement is not sufficient should suggest alternative disclosure rules, including suggestions regarding how soon prior to the transfer the incumbent LEC must notify competing carriers.

3. State Regulation

34. We note that, to the extent that an advanced services affiliate provides interstate exchange access services, the Commission has clear authority to regulate the separate affiliate's provision of those services. To the extent that an advanced services affiliate provides advanced services on an intrastate basis, we encourage states to treat the affiliate equivalently to any other competing carrier offering advanced services. We believe that, if states regulate advanced services affiliates equivalently to other competitive LECs, incumbents are more likely to offer such services through separate affiliates. On the other hand, if states impose incumbent LEC regulation on such affiliates, incumbent LECs are not likely to incur the expense of establishing such affiliates. We encourage the states, therefore, to the extent they require certification for competitive carriers, to certify such advanced services affiliates within their jurisdictions in the same manner as they certify other entities to provide advanced services. Moreover, we encourage states to apply regulatory policies in a nondiscriminatory fashion to all entities seeking to provide such services, including advanced services affiliates that qualify for non-incumbent LEC treatment under the rules we adopt in this NPRM. We believe that such nondiscriminatory treatment is essential in order to encourage innovation and investment in these new technologies. Congress has determined that state actions should not ''prohibit, or have the effect of prohibiting, the ability of any entity to provide interstate or intrastate telecommunications service.'' We seek comment on whether, if we adopt safeguards less stringent than those proposed in this NPRM, states might have a legitimate interest in regulating an incumbent LEC's advanced services affiliate differently than other competitive LECs offering advanced services, due to increased entanglement of the incumbent LEC and its advanced services affiliate.

35. We note, however, that our discussion here is limited to state regulation of the provision by advanced services affiliates of advanced services. We do not address state regulation of an advanced services affiliate's provision of other services, such as circuit-switched voice services. In addition, we note that some states have expressed concerns about an incumbent LEC's incentive to continue to innovate and invest in the public switched network. We are sensitive to these concerns, and we seek comment on how we and the states can work together to ensure that the incumbent LECs who choose to offer advanced services through affiliates do not allow their existing incumbent LEC networks to degrade.

C. Measures To Promote Competition in the Local Market

1. Collocation Requirements

a. Adoption of national standards. 36. We seek comment on the extent to which we should establish additional national rules for collocation pursuant to sections 201 and 251 in order to remove barriers to entry and speed the deployment of advanced services. Parties should address whether adoption of additional uniform standards would encourage the deployment of advanced services by increasing predictability and certainty, and by facilitating entry by competitors providing advanced services in multiple states. We also ask commenters to address how any collocation requirements they suggest would affect investment in, and deployment of, advanced services.

37. We tentatively conclude that any standards we adopt in this proceeding should serve as minimum requirements and that states should continue to have flexibility to adopt additional requirements that respond to issues specific to that state or region. In the past two years, a number of states have adopted collocation requirements that go beyond the minimum requirements the Commission adopted in the *Local Competition* proceeding. With respect to each subsection that follows, we encourage commenters to address whether any state approach to collocation might provide useful guidelines for additional national standards to facilitate deployment of

advanced services. We welcome input from the states on each of these issues.

38. We note that competitive LECs can pursue remedies for violations of our collocation requirements before the Commission and the appropriate state commissions. We seek comment on any measures we could take to aid enforcement of our collocation requirements.

b. Collocation equipment. 39. We tentatively conclude that incumbent LECs should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that competing carriers may collocate. We seek comment on whether we should require incumbent LECs to allow new entrants to collocate equipment that is used for interconnection and access to unbundled network elements even if such equipment also includes switching functionality. Would allowing collocation of equipment that performs both switching and other functions encourage competitive LECs to use integrated equipment as a means to collocate equipment that otherwise would not be allowed in central offices? Would restrictions on placing switching equipment in collocation spaces prevent new entrants from taking advantage of integrated equipment that may be more cost efficient? We tentatively conclude that, if an incumbent LEC chooses to establish an advanced services affiliate, the incumbent must allow competitive LECs to collocate equipment to the same extent as the incumbent allows its advanced services affiliate to collocate equipment in order to meet its existing obligation to provide collocation on nondiscriminatory terms and conditions.

40. If we decide to allow carriers (whether they be new entrants or advanced services affiliates) to collocate equipment that includes switching functionality, should we limit such collocation to equipment that performs both switching and other functions (such as multiplexing), or should we extend such collocation to switching equipment in general? If we allow carriers to collocate switching equipment, should we limit such collocation to packet-switching equipment or should we allow collocation of circuit-switching equipment? Does it makes sense to differentiate among technologies? To the extent that parties urge the Commission to permit collocation of switching or other equipment that is not used for interconnection or access to unbundled network elements, as required by section 251(c)(6), parties should indicate what sections of the Act authorize the Commission to require collocation of such equipment.

41. We also seek comment on any other specific restrictions that we should adopt for switching equipment, assuming new entrants and advanced services affiliates are permitted to collocate such equipment. For example, given the lack of space in many central offices, we seek comment on whether we should adopt size restrictions on the switching equipment that a competing provider may collocate at a LEC's premises. Parties should address whether failure to impose size or other restrictions could impede competition by, for example, allowing the first competing provider in the market to request all of the available space, thereby potentially depriving other competitors of the opportunity to collocate facilities. We tentatively conclude that an advanced services affiliate should not be permitted to collocate its switching equipment if there is only enough room at the central office for one carrier to collocate such equipment. We seek comment on this tentative conclusion.

42. We further seek comment on whether carriers should be permitted to collocate other equipment on LEC premises. We tentatively conclude that we should continue to decline to require collocation of equipment used to provide enhanced services. We seek comment on this tentative conclusion. Parties should address whether provision of other advanced services would only be possible if we allow collocation of enhanced services equipment. Parties should further address whether allowing any other equipment in the collocation space will facilitate new entrants' ability to provide advanced services and thereby encourage widespread deployment of such services.

43. ALTS contends that some incumbent LECs will not allow competitive LECs to interconnect their collocated equipment. Under our current rules, an incumbent LEC is required to allow competing carriers to establish cross-connects to the collocated equipment of other competing carriers at the incumbent's premises. We seek comment on any additional steps we might take so that competitive LECs are able to establish cross-connects to the equipment of other collocated competitive LECs.

44. Finally, we tentatively conclude that incumbent LECs may require that all equipment that a new entrant places on its premises meet safety requirements to avoid endangering other equipment and the incumbent LECs' networks. Some performance and reliability requirements, however, may not be necessary to protect LEC equipment. Such requirements may increase costs unnecessarily, which lessens the ability of new entrants to serve certain markets and thereby harms competition. We tentatively conclude that, to the extent that incumbent LECs use equipment that does not satisfy the Bellcore Network Equipment and Building Specifications (NEBS) requirements, competitive LECs should be able to collocate the same or equivalent equipment. We further tentatively conclude that incumbent LECs should be required to list all approved equipment and all equipment they use.

45. We seek comment on whether competitive LECs should be required to use NEBS-compliant equipment where the incumbent LEC uses NEBS-compliant equipment for equivalent functions. Parties should address whether allowing competitive LECs to collocate non-NEBS-compliant equipment would introduce new vulnerability into the central office. Commenters should distinguish between those NEBS safety requirements, which address the need to protect central office equipment and telecommunications networks, and NEBS performance requirements, which set equipment reliability standards.

c. Allocation of space. 46. We tentatively conclude that we should require incumbent LECs to offer collocation arrangements to both new entrants and any advanced services affiliate incumbent LECs establish that minimize the space needed by each competing provider in order to promote the deployment of advanced services to all Americans. Such alternative collocation arrangements include: (1) The use of shared collocation cages, within which multiple competing providers' equipment could be either openly accessible or locked within a secure cabinet; (2) the option to request collocation cages of any size without any minimum requirement, so that competing providers will not use any more space than is reasonably necessary for their needs; and (3) physical collocation that does not require the use of collocation cages (''cageless'' collocation).

47. We anticipate that requiring such alternative collocation arrangements would foster deployment of advanced services by facilitating entry into the market by competing carriers. We tentatively conclude that allowing these alternative collocation arrangements will optimize the space available at a LEC's premises, thereby allowing more

competitive LECs to collocate equipment and provide service. Moreover, as ALTS indicates, more cost-effective collocation solutions may spur collocation in residential and less densely populated areas. We seek comment on what specific rules we should adopt to ensure that these alternative arrangements are offered in a manner that facilitates deployment of advanced services to the greatest extent possible.

48. We recognize that section 251(c)(6) requires the incumbent LEC to offer physical collocation unless the incumbent demonstrates to the state commission that such an arrangement is not technically feasible. We note that U S WEST is currently offering a cageless collocation arrangement, and SBC is permitting competitive LECs to share collocation space. We seek comment on whether, if an incumbent LEC offers a particular collocation arrangement, such a collocation arrangement should be presumed to be technically feasible at other LEC premises.

49. In addition, we note that, in the *Local Competition Order*, the Commission concluded that incumbent LECs should be permitted reasonable security arrangements to protect their equipment and ensure network security and reliability. We recognize that adequate security for both incumbent LECs and competitive LECs is important to encourage deployment of advanced services. We now seek comment on the security and access issues and any other issues that may arise from a requirement that incumbent LECs provide these alternative collocation arrangements, including cageless collocation. In addressing any security or other issues, parties should identify any safeguards or other measures that would resolve such concerns.

50. With cageless collocation, in particular, we seek comment on whether incumbent LECs should be allowed to require escorts for competitive LEC technicians; whether concealed security cameras or badges with computerized tracking systems would provide sufficient protection; whether security measures should vary, or be allowed to vary, by central office; and what security measures are appropriate for unstaffed offices in remote areas. Given that incumbent LECs currently maintain control over competitive LEC equipment in virtual collocation arrangements, and competitive LECs have access to each other's equipment in shared collocation space, we tentatively conclude that carriers should be able to resolve any security concerns raised by cageless collocation. We ask parties with knowledge of virtual collocation and shared collocation arrangements to address how these arrangements might serve as models for cost-effective cageless collocation arrangements.

51. We further seek comment on any other alternative physical collocation arrangements that we should require to lower the cost of collocation and thereby facilitate competition in the advanced services marketplace. In addition, we seek comment on any other measures that would facilitate the implementation of collocation arrangements and thereby enable firms to enter new markets. Given that space preparation and construction times vary greatly depending on the location, parties should address whether there should be any uniform standards that would apply on a national level. We also ask commenters to address whether we can and should require incumbent LECs to remove obsolete equipment and non-critical offices in central offices to increase the amount of space available for collocation.

52. We also seek comment on other measures that would reduce the cost of physical collocation arrangements. For example, we seek comment on ALTS' proposal that we establish rules for the allocation of up-front space preparation charges. One approach, adopted by Bell Atlantic in its pre-filing statement in the New York Commission's section 271 docket, is that the competing provider would be responsible only for its share of the cost of conditioning the collocation space, whether or not other competing providers are immediately occupying the rest of the space. In addition, Bell Atlantic committed to allowing smaller competing providers to pay on an installment basis. We seek comment on whether we should adopt Bell Atlantic's approach, or any other approach, as a national standard in order to speed the deployment of advanced telecommunications capability to all Americans. We also seek comment on the ramifications that such a national standard would have on the implementation and enforcement of the requirements of section 251 and 271. We tentatively conclude that any standards we adopt in this proceeding should serve as minimum requirements, and that states should continue to have flexibility to adopt additional collocation requirements, consistent with the Act.

53. Finally, we seek comment on how to address the entry barrier posed by delays between the ordering and provisioning of collocation space. We seek comment on ALTS' proposal that we should establish presumptive reasonable deployment intervals for new collocation arrangements and expansion of existing arrangements. Currently, a new entrant typically must first seek state competitive LEC certification, before it can begin to negotiate an interconnection agreement. In addition, competitive LECs have asserted that some incumbent LECs will not allow a requesting carrier to order collocation space until an interconnection agreement becomes final. If certain issues are taken to arbitration, there can be considerable delay. We seek comment on ways to shorten collocation ordering intervals. We also ask commenters to address whether we should set specific intervals by which time the incumbent LEC must or should be expected to provide the competitive LEC with: (1) information on collocation availability and prices; and (2) collocation space. We also seek comment on what should be done in the event that an incumbent LEC fails to meet a specified interval.

d. Space exhaustion. 54. We tentatively conclude that an incumbent LEC that denies a request for physical collocation due to space limitations should not only continue to provide the state commission with detailed floor plans, but should also allow any competing provider that is seeking physical collocation at the LEC's premises to tour the premises. We tentatively conclude that state commissions will be better able to evaluate whether a refusal to allow physical collocation is justified if competing providers can view the LEC's premises and present their arguments to the state commission. We seek comment on these tentative conclusions.

55. We further tentatively conclude that, upon request from a competitive LEC, an incumbent LEC should submit to the requesting carrier a report indicating the incumbent LEC's available collocation space. This report should specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. The report should also include measures that the incumbent LEC is taking to make additional space available for collocation. We seek comment on this tentative conclusion. Parties should address whether the incumbent LEC should be required to include any additional information in such a report.

56. We also seek comment on measures that would facilitate the use of virtual collocation for the provision of advanced services. Although competing providers may prefer physical collocation arrangements that permit

their employees to install and repair their own equipment, we seek comment on measures that would make virtual collocation an effective alternative in locations where physical collocation space is unavailable. We tentatively conclude that all competitive LECs must be offered the same virtual collocation arrangements as the incumbent provides to its advanced services affiliate in order to meet its existing obligation to provide collocation on nondiscriminatory terms and conditions.

57. We seek comment on any other measures that would help ensure that sufficient collocation space will be available in the future. Such measures may include, but are not limited to, modifying our rules on warehousing of space. Parties should address how any such measures they propose would affect investment in, and deployment of, advanced services.

e. Effects of additional collocation requirements. 58. Although this NPRM addresses ways in which the Commission can promote the deployment of advanced services, a number of our tentative conclusions and rule proposals relating to collocation may affect existing collocation arrangements. We seek comment on whether (and, if so, to what extent) any of our tentative conclusions or proposals might affect existing negotiated and arbitrated interconnection agreements, existing state requirements, or pending state proceedings.

2. Local Loop Requirements

a. Overview. 59. In the Order, we grant ALTS' request for a declaratory ruling that incumbent LECs are required to provide xDSL-compatible loops to requesting carriers pursuant to section 251(c)(3) and our implementing rules. We are concerned, however, that our existing rules requiring the unbundling of loops do not fully ensure that competitive providers of advanced services have adequate access to the ''last mile,'' which is critical to ensure that a variety of providers are able to offer the full range of advanced services that consumers may demand. Accordingly, in this section, we seek comment on rule changes that we could adopt pursuant to section 251 that would strengthen the ability of new entrants to gain access to xDSL-compatible loops.

b. Adoption of National Standards. 60. We seek comment on the extent to which we should establish additional national rules for local loops pursuant to sections 201 and 251 in order to remove barriers to entry and speed the deployment of advanced services. Parties should address whether adoption of additional uniform standards would encourage the deployment of advanced services by increasing predictability and certainty, and by facilitating entry by competitors providing advanced services in multiple states. We also ask commenters to address how any local loop requirements they suggest would affect investment in, and deployment of, advanced services.

61. We tentatively conclude that any standards we adopt in this proceeding should serve as minimum requirements and that states should continue to have flexibility to adopt additional requirements that respond to issues specific to that state or region. In the past two years, a number of states have adopted local loop requirements that go beyond the minimum requirements the Commission adopted in the *Local Competition* proceeding. With respect to each subsection that follows, we encourage commenters to address whether any state approach to local loops might provide useful guidelines for additional national standards to facilitate deployment of advanced services. We welcome input from the states on each of these issues.

62. We note that competitive LECs can pursue remedies for violations of our local loop requirements before the Commission and the appropriate state commissions. We seek comment on any measures we could take to aid enforcement of our local loop requirements.

c. Loops and operations support systems. 63. We seek comment on whether our existing operations support system rules adequately ensure that competitive LECs have access to necessary information about loops. We tentatively conclude that incumbent LECs should provide requesting competitive LECs with sufficient detailed information about the loop so that competitive LECs can make an independent determination about whether the loop is capable of supporting the xDSL equipment they intend to install. Thus, competitive LECs would need access to such information as whether the loops pass through remote concentration devices, what, if any, electronics are attached to loops, the condition and location of loops, loop length, the electrical parameters that determine the suitability of loops for various xDSL technologies, and other loop quality issues. We tentatively conclude that it is important that competitors have the ability to make their own assessments because the parameters for determining whether a loop is xDSL-compatible may differ for different technologies. Such parameters may also change as technology evolves. We seek comment on these tentative conclusions and whether other types of information should also be made available. We note that, to the extent that a competitive LEC cannot obtain nondiscriminatory access to operations support systems, competitive LECs can pursue remedies for violations of our requirements before the Commission and the appropriate state commissions. We seek comment on any additional measures we could take to ensure that competitive LECs receive nondiscriminatory access to operations support systems. We tentatively conclude that incumbent LECs must provide competitors with the same access to operations support systems as the incumbent provides to its advanced services affiliate pursuant to its existing obligation to provide nondiscriminatory access to operations support systems.

64. We also seek comment on the type of information that is currently available to incumbent LECs. Do incumbent LECs currently have a detailed inventory of existing loops? Do incumbent LECs currently have electronic access to such information? If so, is the same quality of access being made available to new entrants? We tentatively conclude that, in order to satisfy the nondiscrimination requirements of the Act, competitive LECs should have access to the same electronic interfaces that are available to incumbent LECs to obtain loop information. We also tentatively conclude that, as new information becomes available, incumbent LECs should be required to share such information with new entrants immediately. We seek comment on these tentative conclusions.

d. Loop spectrum management. 65. We seek comment on the way in which we should address loop spectrum issues. In particular, we ask commenters to address any interference that may result from provision of advanced telecommunications capability using different signal formats on copper pairs in the same bundle.

66. We ask parties to suggest ways to determine when a particular service, technology or piece of equipment causes network interference such that use of the particular service, technology, or piece of equipment should be prohibited. We also ask commenters to suggest ways to distinguish between legitimate claims that particular services, technologies or equipment create spectrum interference and claims raised simply to impede competition. We seek comment on whether the Commission should adopt any industry

standards as the basis for national spectrum management requirements. We also seek comment on how any requirements should evolve over time so as to encourage and not stifle innovation. In addition, we seek comment on other approaches to spectrum management that would foster pro-competitive use of the loop plant by incumbent LECs and new entrants, while providing necessary network protection.

67. If we adopt any national standards on spectrum management, we propose to impose the same spectral requirements on both incumbent LECs and new entrants. We seek comment on whether and how to grandfather existing technology that does not satisfy any new requirements. We seek comment on how we might best administer the grandfathering process.

68. We also seek comment on whether two different service providers should be allowed to offer services over the same loop, with each provider utilizing different frequencies to transport voice or data over that loop. xDSL technology, for example, separates a single loop into a POTS channel and a data channel, and can carry both POTS and data traffic over the loop simultaneously. A competitive LEC may want to provide only high-speed data service, without voice service, over an unbundled loop. Should the competitive LEC have the right to put a high frequency signal on the same loop as the incumbent LEC's voice signal? If a competitive LEC takes an entire loop, could the competitive LEC sell the voice channel back to the incumbent LEC or to another carrier? Should the competitive LEC be allowed to lease the loop for data services and resell the voice service of the incumbent LEC? Commenters should address with particularity the advantages and disadvantages of these various possibilities, and what practical considerations would arise in each situation. For example, which entity would manage the frequency division multiplexing equipment if two carriers are offering services over the same loop? We tentatively conclude that any voice product that the incumbent LEC provides to its advanced services affiliate would have to be made available to competitive LECs on the same terms and conditions. For example, if the advanced services affiliate leases the loop and resells the incumbent's voice service, the competitive LEC must be allowed to do likewise.

e. Uniform standards for attachment of electronic equipment at the central office end of a loop. 69. To facilitate competition in the local loop, we tentatively conclude that there should be uniform national standards for attachment of electronic equipment (such as modems and multiplexers) at the central office end of a loop by incumbent LECs and new entrants. The requirements would apply to both incumbent LEC and new entrant equipment. The requirements would serve the same role, for the attachment of equipment to the central office end of a loop, as do the *Part 68—Connection of Terminal Equipment to the Telephone Network*—rules for the attachment of customer premises equipment. Currently, each incumbent LEC sets its own requirements for central office equipment, and each has its own processes for certifying equipment before it can be connected to loop plant. This increases new entrants' costs and time to market. A simple set of national requirements would reduce new entrants' costs, speed their time to market, and reduce confusion. We seek comment on the content of these requirements. We also seek comment on whether central office equipment complying with these requirements should be certified, and if so, how.

f. Redefining the local loop to ensure competitive LEC access to loops capable of providing advanced services. 70. In the Order above, we emphasize that, under our existing rules, incumbent LECs are required to make xDSL-compatible loops available to competitors. We seek comment on whether our current definition of the loop is sufficient to ensure that competitive LECs have access to the loop functionalities they need to offer advanced services, such as xDSL-based services, or whether any refinements to that definition are necessary to ensure that incumbent LECs are providing competitive LECs with loops capable of delivering such advanced services. Commenters should also address whether our current definition is sufficiently flexible and forward-looking to facilitate deployment of new technologies and new services in the future.

g. Unbundling loops passing through remote terminals. 71. *Unbundling DLC-Delivered Loops.* As discussed in the Order, we grant ALTS' request for a declaratory ruling that incumbent LECs are required to provide loops capable of transporting high-speed digital signals where technically feasible. This requirement includes the obligation to unbundle high-speed data-compatible loops whether or not a remote concentration device like a digital loop carrier is in place on the loop. We tentatively conclude that providing an xDSL-compatible loop as an unbundled network element is presumed to be ''technically feasible'' if the incumbent LEC is capable of providing xDSL-based services over that loop. Consistent with the pro-competitive goals of the Act, we tentatively conclude that the incumbent LEC shall bear the burden of demonstrating that it is not technically feasible to provide requesting carriers with xDSL-compatible loops. We seek comment on these tentative conclusions.

72. We note that, to the extent that a competitive LEC cannot obtain nondiscriminatory access to xDSL-compatible loops, competitive LECs can pursue remedies for violations of our requirements before the Commission and the appropriate state commissions. We seek comment on any additional measures we could take to ensure that competitive LECs receive nondiscriminatory access to access to xDSL-compatible loops. We tentatively conclude that if the incumbent chooses to offer xDSL-based services through an advanced services affiliate, whatever loops are provided to the affiliate must also be provided to the other entrants.

73. We ask commenters to address the technical issues that may arise when local loops pass through digital loop carriers or similar remote concentration devices. For example, we ask commenters to address the issues of loop quality, analog-to-digital translation of signals, electronic equipment attached to loops, loop length, and other issues that arise with remote concentration devices. We ask commenters to address the traffic management issues that may arise when local loops pass through digital loop carrier systems or similar remote concentration devices. We ask commenters to identify and evaluate any concerns that they identify with having the traffic on the digital loop carrier systems managed by the incumbent LEC and to identify feasible alternatives. We encourage commenters to identify other technological problems and to propose concrete solutions to those problems. We also ask commenters to address the extent to which next generation digital loop carrier systems and other new technologies will affect the provision of advanced data services over unbundled loops.

74. We ask commenters to propose methods of unbundling loops passing through remote concentration devices that will enable competitive carriers to provide advanced services. We ask commenters to identify and evaluate the benefits and drawbacks of any proposed methods. We ask commenters to evaluate the technical feasibility, legal

consequences, and policy ramifications of any proposed unbundling methods. We also ask commenters to consider how any loop requirements we may adopt will affect investment in, and deployment, of advanced services.

75. We tentatively conclude that the competitive LEC may request any ''technically feasible'' method of unbundling the DLC-delivered loop, and the incumbent LEC is obligated to provide the particular method requested. We base this tentative conclusion on the premise that each competitive LEC may have its own business strategy and unique reasons for obtaining loop access in a particular manner or at a specific interconnection point. We tentatively conclude that, in the event that the incumbent LEC demonstrates that the unbundling method requested by the competitive LEC is not technically feasible, the competitive LEC may request other unbundling methods. In the event that the incumbent LEC demonstrates that none of the requested methods are technically feasible, the incumbent LEC may offer another unbundling method, provided that the method would provide the competitive LEC with a loop of equal quality and functionality as the incumbent's loop. We seek comment on these tentative conclusions.

76. We further tentatively conclude that competitive LECs should not be comparatively disadvantaged by incumbent LECs regarding provisioning of DLC-delivered loops. We tentatively conclude that incumbent LECs must make available, in a nondiscriminatory manner, to competitive LECs the same methods that the incumbent (or its advanced services affiliate) uses itself to provide advanced telecommunications capability such as xDSL-based services. We further tentatively conclude that deployment intervals for provisioning xDSL-compatible loops should be the same for incumbent LECs and competitive LECs, regardless of whether the loop passes through a remote concentration device. We seek comment on these tentative conclusions. We also ask commenters to address whether we should require incumbent LECs to provision xDSL-compatible loops within a specified interval and, if so, what that interval should be. Again, we tentatively conclude that whatever accommodations are provided to the incumbent's advanced services affiliate must be equally provided to new entrants.

77. *Sub-Loop Unbundling and Collocation at the Remote Terminal.* We seek comment on whether we need to extend the concept of loop unbundling to sub-loop elements in order to further the pro-competitive goals of the 1996 Act and facilitate deployment of advanced services. We ask commenters to address whether it is technically feasible to require incumbent LECs to unbundle sub-loop elements and provide competitive LECs access to the remote terminal so that competitive LECs can provide advanced services.

78. We tentatively conclude that incumbent LECs must provide sub-loop unbundling and permit competitive LECs to collocate at remote terminals, unless the incumbent LEC can demonstrate one of the following with respect to the particular remote terminal requested by the competitive LEC: (1) Sub-loop unbundling is not ''technically feasible;'' or (2) there is insufficient space at the remote terminal to accommodate the requesting carrier. We make this tentative conclusion because the use of sub-loop elements and access to the remote terminal may be the only means by which competitive LECs can provide xDSL-based services for those end-users whose connection to the central office is currently provided via digital loop carrier systems. We further tentatively conclude that it would be an unreasonable practice for an incumbent LEC to deny competitive LECs collocation at the remote terminal on either of these grounds, while allowing its own affiliate to collocate at the remote terminal. We seek comment on these tentative conclusions. In particular, we seek comment on whether such sub-loop unbundling and remote terminal access are, in fact, necessary in order for competitive LECs to provide high bandwidth services, such as xDSL-based services. We ask commenters to consider whether new technologies, such as next generation digital loop carrier systems, might reduce or eliminate the need for competitive LEC access to sub-loop elements. As an alternative to requiring sub-loop unbundling, or if sub-loop unbundling proves to be technically infeasible or there is insufficient space at the remote terminal, we seek comment on whether the incumbent LEC should be obligated to provide an alternative unbundling method at no greater cost to the competitive LEC. Should the incumbent LEC be obligated to demonstrate that such unbundling method will provide the competitive LEC with a loop of the same quality and functionality as the loop that the competitive LEC would have obtained through access to the sub-loop element(s)?

79. We also ask commenters to address the use to which competitive LECs would put sub-loop elements and what specific sub-loop elements, if any, should be unbundled. We also ask commenters to address the technical issues involved with loops that pass through remote concentration devices, including the ability of competitive providers of advanced services to access the necessary elements of the incumbent LEC networks. Commenters should address the extent to which the incumbent LEC's control over the remote terminal and electronics therein might limit the ability of end users to access a full range of competitive services. We seek comment on the technical issues of customer premises equipment and central office or remote terminal equipment compatibility, and we ask commenters that perceive problems to propose solutions that would ensure that end users have the widest possible access to competitive services. We also ask commenters to address what should be done if more competitive LECs request access to a remote terminal than the remote terminal can accommodate. What would be a fair means of allocating limited space? Should there be a lottery system? Should the space be auctioned? Should the space be made available on a ''first come, first served'' basis? If we conclude that ''first come, first served'' is the most appropriate method, how can we ensure that incumbent LECs do not fill up all the available space before competitive LECs have the opportunity to collocate their equipment? We tentatively conclude that an incumbent LEC may not take all the available space in a remote terminal, and then transfer ownership of that equipment in the remote terminal to an advanced services affiliate. We seek comment on this tentative conclusion.

80. We seek comment from those with evidence demonstrating or challenging the proposition that sub-loop unbundling and competitive LEC access to remote terminals may impair network reliability or pose significant technical problems. We seek comment on whether accountability for the network would be lost or compromised if competitive LECs are allowed access to the incumbent LEC's remote terminals or other plant in the field. We seek comment on whether there is a need for operational, administrative, and maintenance procedures for allowing access to the incumbent LEC's plant in the field in order to ensure network quality and reliability. We seek comment on how best to allow such access and ask commenters to propose operational, administrative and maintenance procedures to ensure network quality and reliability in the event that we permit competitive LECs

access to incumbent LEC plant in the field. We also seek comment on ways to minimize the cost of providing such access.

h. Effects of additional requirements for local loops. 81. We seek comment on whether (and if so, to what extent) any of our tentative conclusions or proposals might affect existing negotiated or arbitrated interconnection agreements, existing state requirements, or pending state proceedings.

D. Unbundling Obligations Under Section 251(c)(3)

82. We now seek comment on the specific unbundling requirements we should impose on network elements used by incumbent LECs in the provision of advanced services. Parties should address the specific network elements that incumbent LECs should be required to unbundle pursuant to section 251(c)(3). In particular, parties should address the applicability of section 251(d)(2), namely: (1) The extent to which particular network elements are ''proprietary'' as that term is used in section 251(d)(2)(a), and (2) the extent to which a carrier would be ''impair[ed],'' as that term is used in section 251(d)(2)(b), in its ability to offer advanced services without unbundled access to a particular network element.

83. We also seek comment on whether there are any additional criteria under section 251(d)(2) that the Commission should consider when identifying those network elements used to provide advanced services that must be made available pursuant to section 251(c)(3). Parties suggesting additional criteria should address the extent to which consideration of those criteria could lead the Commission to remove certain facilities used to provide advanced services from the unbundling obligations of section 251(c)(3). Parties should also address the extent to which consideration of each criterion will promote the deployment of advanced services.

84. In addition, we seek comment on the attributes of particular network elements that may make unbundling of those elements technically infeasible. For example, we note that it may not be technically feasible to offer unbundled access to individual packet switches. If the functionality offered by a single packet switch in the incumbent's network is not available to a competitor using packet switches of a different manufacturer, we seek comment on whether the unbundling of that packet switch would be ''technically infeasible.'' In addition, we ask commenters how an incumbent LEC's claim of technical infeasibility should be verified, such as whether the lack of a standard network interface, for example, should support such a claim.

85. We also seek comment on NTIA's proposal that we find section 251(c) to be fully implemented on a service-by-service basis. For example, NTIA suggests that the Commission should determine that section 251(c) is fully implemented with respect to xDSL services only after incumbent LECs ''give competitors access to * * * loop facilities capable of supporting DSL services and collocation space on [incumbent] LEC premises.'' Parties commenting on this proposal should address whether it provides an appropriate framework for ensuring compliance with section 251(c) by incumbent LECs.

86. In addition, given our objective in this proceeding to encourage deployment of wireline advanced services by all telecommunications carriers, including incumbent LECs, we seek comment in this section on any other specific measures that the Commission should take to provide regulatory relief from the obligations of section 251(c) for incumbent LECs that choose to offer advanced services on an integrated basis. Parties should address the extent to which any measures they propose will give incumbent LECs greater incentive to offer advanced services, promote competition in the advanced services market, and encourage widespread deployment of such services. Parties should also address whether such relief would justify the loss of significant pro-competitive benefits that we expect would accompany a separate affiliate approach.

E. Resale Obligations Under Section 251(c)(4)

87. In the Order, we conclude that an incumbent LEC has the obligation to offer for resale the advanced services that it generally offers to subscribers who are not telecommunications carriers. We further conclude above that, to the extent advanced services are telephone exchange services, incumbent LECs must offer such services for resale.

88. We now seek comment on the applicability of section 251(c)(4) to advanced services to the extent that such services are exchange access services. We tentatively conclude that such advanced services are fundamentally different from the exchange access services that the Commission referenced in the *Local Competition Order* and concluded were not subject to section 251(c)(4). We expect that advanced services will be offered predominantly to ordinary residential or business users or to Internet service providers. None of these purchasers are telecommunications carriers.

89. By its terms, section 251(c)(4) applies to ''any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.'' Advanced services generally offered by incumbent LECs to subscribers who are not telecommunications carriers meet this statutory test. We thus tentatively conclude that these services fall within the core category of retail services that both Congress and the Commission deemed subject to the resale obligation, and the reasoning that led the Commission in the *Local Competition Order* to exclude exchange access from the section 251(c)(4) resale obligation does not apply. We tentatively conclude, therefore, that advanced services marketed by incumbent LECs generally to residential or business users or to Internet service providers should be deemed subject to the section 251(c)(4) resale obligation, without regard to their classification as telephone exchange service or exchange access. We seek comment on these tentative conclusions.

F. Limited InterLATA Relief

1. Background

90. In this section, we seek comment on the scope of section 271(b)(3) of the Act, which permits the BOCs and their affiliates to provide certain ''incidental interLATA services.'' In addition, section 3(25)(B) of the Act permits the BOCs to modify LATA boundaries provided that the Commission approves such modifications. Since the 1996 Act became law, both the Commission and the Common Carrier Bureau (acting on delegated authority) have approved a significant number of LATA boundary modifications. As a general matter, the Commission, within the discretion granted to it under the Act, weighs the need for the proposed modification against the potential harm from anticompetitive BOC activity, and considers whether the proposed modification will have a significant effect on the BOC's incentive to open its local market pursuant to section 271. In the Order, we deny Ameritech's, Bell Atlantic's, and U S WEST's requests for large-scale changes in LATA boundaries for packet-switched services, because such changes could effectively eviscerate section 271 for those services and circumvent the procompetitive incentives for opening the local market to competition. In this section, we seek comment on the criteria we should use

in evaluating requests for more targeted LATA boundary changes. We also seek comment on whether there are any other forms of interLATA relief that we may consider.

2. Discussion

91. *Incidental InterLATA Services.* Section 271(b)(3) permits the BOCs and their affiliates to provide ''incidental interLATA services,'' as defined in section 271(g). We seek comment on the scope of this authority as it relates to BOC provision of advanced services. Section 271(g)(2), for example, permits the BOCs to provide ''two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools.'' This authority clearly allows the BOCs to provide certain advanced services to or for elementary and secondary schools. We seek comment on whether the ability to provide the other incidental interLATA services defined in section 271(g) affects the BOCs' ability to deploy advanced services on a reasonable and timely basis.

92. *LATA Boundary Modifications for Elementary and Secondary Schools and Classrooms.* We seek comment on whether additional relief beyond the incidental interLATA authority set forth in section 271(g)(2) would help ensure that elementary and secondary schools and classrooms have adequate access to advanced services. We tentatively conclude, for example, that it would be reasonable to approve LATA boundary modifications that allow BOCs to provide advanced services to entire elementary or secondary school districts on an intraLATA basis, when the school districts straddle LATA boundaries. We ask the commenters to suggest other types of LATA boundary modifications that would encourage deployment of advanced telecommunications capability to elementary and secondary schools and classrooms. Parties should address, with particularity, the criteria that we should use to evaluate these requests. We seek comment, for example, on whether we should adopt the same criteria used in the expanded local calling service proceedings. Parties should also address whether we should take such actions only to the extent that advanced services are provided by BOC advanced services affiliates, rather than by the BOCs.

93. *Network Access Points.* We seek comment on the criteria that we should use to evaluate LATA boundary modification requests that would allow BOCs to carry packet-switched traffic across current LATA boundaries for the purpose of providing their subscribers with high-speed connections to nearby network access points, which are points of access to the Internet. U S WEST contends that many rural areas do not have high-capacity network access points. We seek comment on the criteria we should use to determine whether a LATA has high-speed access to the Internet. Commenters should provide empirical data on the number and location of LATAs that do not contain high-speed network access points.

94. We tentatively conclude that some modification of LATA boundaries may be necessary to provide subscribers in rural areas with the same type of access to the Internet that other subscribers throughout the nation enjoy. We also tentatively conclude that modification of those boundaries for the purpose of facilitating high-speed access to the Internet would further Congress' goal of ensuring that advanced services are deployed to all Americans. Furthermore, we tentatively conclude that such boundary modifications would be consistent with the Common Carrier Bureau's decision that, under certain circumstances, a limited LATA boundary modification for integrated services digital network (ISDN) services is appropriate where such a modification is necessary to accommodate a demonstrated need and would have only a small impact on competition. We seek comment on these tentative conclusions. We also seek comment on whether LATA modifications to facilitate high-speed access to the Internet for rural subscribers would be consistent with the requirement under section 10(d) of the Act that the Commission must ensure that the requirements of section 271 are fully implemented before a BOC may offer interLATA services.

95. In addition, we seek comment on the type of documentation that BOCs should submit in order to qualify for such a LATA boundary modification. We note that in a July 23, 1998 petition, Bell Atlantic asks that we modify LATA boundaries for the limited purpose of allowing Bell Atlantic to provide high-speed connections between West Virginia's two LATAs and between West Virginia and the nearest Internet access points located in other states. We ask the parties to address whether the information in Bell Atlantic's petition is the appropriate type of documentation that a BOC should submit. We also seek comment on whether the LATA boundary modification should be withdrawn if a high-speed network access point is established in the LATA or whether it should expire at a certain date. We further seek comment on the competitive impact of permitting LATA boundary modifications in this limited context. Parties should address whether the BOCs are the only carriers likely to serve areas that do not currently contain high-speed network access points. Parties should also address whether we should take such action only to the extent that advanced services are provided by BOC advanced services affiliates, rather than by the BOCs.

96. *Additional Targeted InterLATA Relief.* We seek comment on whether we have authority to take other actions to facilitate deployment of advanced services and, if so, the criteria we should use in evaluating such requests. For example, we seek comment on the criteria we should use in evaluating requests to permit BOCs and/or BOC affiliates to provide corporate intranet and extranet services or to serve institutions such as universities or health care facilities. Parties should address any safeguards that we should adopt to ensure that these services are provided in a pro-competitive manner and that any targeted interLATA relief does not undermine the incentives for opening the local market to competition. Such safeguards may include, but not be limited to, taking such actions only to the extent they are provided by BOC advanced services affiliates, rather than by the BOCs.

G. Procedural Matters

1. Ex Parte Presentations

97. The matter in Docket No. 98–147, initiated by the NPRM portion of this item, shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

2. Initial Paperwork Reduction Act Analysis

98. The NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public comments are due at the same time as other comments on this NPRM; OMB

comments are due October 23, 1998. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

3. Initial Regulatory Flexibility Analysis

99. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth in the Appendix. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

4. Comment Filing Procedures

100. The proceeding, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147, is initiated by the NPRM portion of this item. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 25, 1998 and reply comments on or before October 16, 1998. All filings should refer only to Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail.

101. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554.

102. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Janice Myles, Common Carrier Bureau, Policy and Program Planning Division, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number, in this case, CC Docket No. 98–147, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

103. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C., 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

104. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

105. Written comments by the public on the proposed information collections are due on or before September 25, 1998 and reply comments on or before October 16, 1998. Written comments must be submitted by OMB on the proposed information collections on or before October 23, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

5. Further Information

106. For further information regarding this proceeding, contact Linda Kinney, Assistant Division Chief, Policy and Program Planning Division, Common Carrier Bureau, at 202–418–1580 or lkinney@fcc.gov or Jordan Goldstein, Attorney, Policy and Program Planning Division, Common Carrier Bureau, at 202–418–1580 or jgoldste@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

H. Ordering Clauses

107. *It is ordered that,* pursuant to sections 1–4, 10, 201, 202, 251–254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 160, 201, 202, 251–254, 271, and 303(r), the Notice of Proposed Rulemaking is hereby adopted.

108. *It is further ordered that* the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, see 5 U.S.C. § 605(b).

List of Subjects in 47 CFR Parts 51, 64, and 68

Communications common carriers, Communications equipment, Local exchange carrier, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–22597 Filed 8–21–98; 8:45 am]

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federal register

Monday
August 24, 1998

Part VI

Environmental Protection Agency

Sustainable Development Challenge Grant Program; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6150–4]

Sustainable Development Challenge Grant Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of proposals for FY 1998.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting proposals for the FY 1998 Sustainable Development Challenge Grant (SDCG) program, one of President Clinton's ''high priority'' actions described in the March 16, 1995 report, ''Reinventing Environmental Regulation.'' The EPA has a total of $5 million available for this program in FY 1998. The SDCG program provides an opportunity to develop place-based approaches to problem solving that can be replicated in other communities. Approaches should address problems related to current patterns of growth and public investment/disinvestment that accelerate loss of open space and wetlands, fragment habitat, and increase consumption of fossil fuels for energy and transportation. These grants are intended to encourage communities to recognize and build upon the fundamental connection between environmental protection, economic prosperity and community well-being. EPA will select projects on a competitive basis using the criteria outlined below. Applicants may compete for funding from EPA in two ranges for FY 1998: (1) requesting $50,000 or less, and (2) requesting between $50,001 and $200,000. Proposals will compete with other proposals in the same range (i.e., a proposal for $50,000 will not compete with a proposal for $200,000). Applicants in each category are required to provide a minimum 20% match from non-federal funding sources.

The Sustainable Development Challenge Grant program strongly encourages partnering among community members, business and government entities to work cooperatively to develop flexible, locally-oriented approaches that link place-based environmental management and quality of life activities with sustainable development and revitalization. This program challenges communities to invest in a sustainable future that links environmental protection, economic prosperity and community well-being. These grants are intended to: catalyze community-based projects to promote environmentally and economically sustainable development; build partnerships which increase a community's capacity to take steps that will ensure the long-term health of ecosystems and humans, economic vitality, and community well-being; and leverage public and private investments to enhance environmental quality by enabling sustainable community efforts to continue beyond the period of EPA funding.

This document includes the following: background information on the Sustainable Development Challenge Grant program; a description of the FY 1998 program which incorporates comments on the FY 1996 pilot and FY 1997 program (both public and Agency comments/suggestions) on the design of the program; the criteria projects must meet to be considered for funding; the process for selection of projects; and the program's relationship to other related EPA activities. More detailed information is available via Internet at: http:www.epa.gov/ecocommunity. A guidance document to assist applicants in developing their proposal is also available at this Internet site and from regional offices.

DATES: The period for submission of proposals for FY 1998 will begin upon publication of this **Federal Register** document pursuant to the Information Collection Request (ICR No. 938.06) approved by the Office of Management and Budget (OMB Approval No. 2030–0020) under the Paperwork Reduction Act. Project proposals must be postmarked by November 24, 1998 to be considered for funding.

ADDRESSES: Please provide an original and four copies of your entire proposal to the regional representative listed below for the state in which your project will take place.

APPLICATIONS: Complete proposal information for FY 1998 is available via Internet at: http:www.epa.gov/ecocommunity or from EPA Headquarters and EPA Regional Offices. This information will include more detailed guidance and may be requested in writing from your regional or headquarters representative, or by fax at 202–260–2555 or by voice mail at 202–260–6812. Although you may fax your request, these documents are not available by fax. If you have requested this information previously, your name has been added to our mailing list and you will be sent the application kit automatically as soon as it is available. EPA will notify applicants of selected proposals in writing. Please do not send duplicate requests. Proposals must include the following:

(1) A one page cover sheet that provides:

(a) The project title;

(b) Applicant's name, address, phone number and organization type;

(c) A list of entities or organizations that will be providing matching funds in the project and their organization type; and

(d) A project abstract that includes a brief project description, the amount of assistance requested from EPA, amount of match, total project cost, and match percentage.

(2) The project proposal narrative must be limited to five (5) double-sided pages. The proposal should contain the following: Project Goals; Project Tasks; Relationship of Project to Selection Criteria; All Confirmed Partners (including those providing match); Schedule; and Budget.

(3) A plan for overall project evaluations (see guidance below on what to include in this plan).

(4) All applicants (except public agencies) must attach documentation demonstrating non-profit status or articles of incorporation.

(5) Letters of commitment from all partners contributing matching funds to the project. These letters must specify the nature of the match (whether it is in-kind services or cash) and the dollar value of the match. Applications without these commitment letters will not be considered.

Attachments listed in (3), (4) and (5) above will not count toward the five double-sided narrative page limit. Any other attachments will not be considered. Please do not send letters of general support from non-match partners or others. Proposals lacking complete documentation will not be considered.

FOR FURTHER INFORMATION CONTACT: The regional representative for your state or Juanita Smith, U.S. EPA, Office of Air & Radiation (MC 6101), 401 M Street SW, Washington, D.C. 20460, telephone (202) 260–6812, fax (202) 260–2555, e-mail smith.juanita@epa.gov.

Regional Offices

Rosemary Monahan, US EPA Region I, JF Kennedy Federal Bldg. (RSP), Boston MA 02203, (617) 565–3551, monahan.rosemary@epa.gov, States: ME, NH, VT, MA, CT, RI

Theresa Martella, US EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–5423, martella.theresa@epa.gov, States: DE, DC, MD, PA, VA, WV

Janette Marsh, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3507, (312) 886–4856, marsh.janette@epa.gov, States: MN, WI, MI, IL, IN, OH

Marcia Seidner, US EPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007–1866, (212) 637–3590, seidner.marcia@epa.gov, States & Territories: NY, NJ, PR, VI

Annette N. Hill, US EPA Region 4, OPM, 61 Forsyth Street, SW, Atlanta, GA 30303, (404) 562–8287, hill.annetten@epa.gov, States: AL, FL, GA, KY, MS, NC, SC, TN

Karen Alvarez, US EPA Region 6, Fountain Place, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–7273, alvarez.karen@epa.gov, States: AR, LA, NM, OK, TX

Dick Sumpter, US EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7661, sumpter.richard@epa.gov, States: KS, MO, NE, IA

Debbie Schechter, US EPA Region 9, 75 Hawthorne Street (CMD–7), Francisco, CA 94105, (415) 744–1624, schechter.debbie@epa.gov, States & Territories: CA, NV, AZ, HI, AS, GU

David Schaller, US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6164, schaller.david@epa.gov, States: CO, MT, ND, SD, UT, WY

Anne Dalrymple, US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–0199, dalrymple.anne@epa.gov, States: AK, ID, OR, WA

SUPPLEMENTARY INFORMATION:

Purpose

EPA intends these competitive grants to be catalysts that challenge communities to invest in a more sustainable future, recognizing that sustainable environmental quality, economic prosperity, and community well-being are inextricably linked. The Sustainable Development Challenge Grant program is an important opportunity for EPA to award competitive grants that leverage private and other public sector investment in communities (ranging in size from neighborhoods to cities to larger geographic areas such as watersheds or metropolitan areas) to build partnerships that will increase the capacity of communities to ensure long-term environmental protection through the application of sustainable development strategies.

Overview of the Sustainable Development Challenge Grant Approach

The grant program encourages communities to recognize and build upon the fundamental connection between environmental protection, economic prosperity and community well-being. Accomplishing this linkage requires integrating environmental protection in policy and decision-making at all levels of government and throughout the economy. The SDCG program recognizes the significant role that communities have and should play in environmental protection. The program acknowledges that sustainable development is often best designed and implemented at a community level and encourages projects that can be replicated in other communities. This program also requires grantees to implement a stakeholder process to identify measurable milestones to assess progress toward integrating environmental and economic goals and community well-being.

Achieving sustainability is a responsibility shared by environmental, community and economic interests at all levels of government and the private sector. This emphasis on strong community involvement requires a commitment to ensuring that all residents of a community, of varying economic and social groups, have opportunities to participate in decision-making and benefit from successful sustainable development activities. Only through the combined efforts and collaboration of governments, private organizations and individuals can our communities, regions, states, and nation achieve the benefits of sustainable development. In keeping with this philosophy, the EPA will implement this program consistent with the principles of Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations' (February 11, 1994). Projects funded must ensure that no person(s) is subjected to unjust or disproportionate environmental impacts. We encourage submissions from Empowerment Zones and Enterprise Communities.

Linkages to Other Initiatives

The EPA initiated the SDCG program as a pilot effort in 1996 and funded ten of the 600 proposals for a total of $500,000. In 1997, the Agency received 962 proposals requesting $38,000,000 in assistance and selected 45 of the proposals for funding at a total of approximately $5,000,000. Project descriptions are available via the Internet at http:www.epa.gov/ecocommunity.

EPA and its state and local partners continue to refine how environmental protection is accomplished in the United States. The Agency recognizes that environmental progress will not be achieved solely by regulation. Innovative attitudes of regulatory agencies combined with individual, institutional, and corporate responsibility, commitment and stewardship will be needed to assure adequate protection of the earth's resources. The Sustainable Development Challenge Grant program is consistent with other community-based efforts EPA has introduced, such as the Brownfields Initiative, Environmental Justice Small Grants Program, Project XL, the President's American Heritage Rivers Initiative, Watershed Protection Approach, Transportation Partners, the $mart Growth Network, the Community-Based Environmental Protection Approach, and the Sustainable Urban Environment effort. The Sustainable Development Challenge Grant program is also a step in implementing ''Agenda 21, the Global Plan of Action on Sustainable Development,'' signed by the United States at the Earth Summit in Rio de Janeiro in 1992. All of these programs require broad community participation to identify and address environmental issues.

Through the Sustainable Development Challenge Grant program, EPA also intends to further the vision and goals of the President's Council on Sustainable Development (PCSD), created in 1993 by President Clinton. EPA is coordinating existing urban environmental programs within the Agency and with other federal, state and local agencies. The President charged the Council, composed of corporate, government, and non-profit representatives, to find ways to ''bring people together to meet the needs of the present without jeopardizing the future.'' The Council has declared this vision:

> ''Our vision is of a life-sustaining Earth. We are committed to the achievement of a dignified, peaceful and equitable existence. We believe a sustainable United States will have a growing economy that equitably provides opportunities for satisfying livelihoods and a safe, healthy, high quality of life for current and future generations. Our nation will protect its environment, its natural resource base, and the functions and viability of natural systems on which all life depends.'' (February 1996)

The Sustainable Development Challenge Grant program furthers this vision by encouraging community initiatives that achieve environmental quality with economic prosperity through public and private involvement and investment.

Examples of Potential Projects

EPA welcomes proposals for many types of projects, as demonstrated in the projects funded in the previous two years. The following are examples of the types of projects EPA could consider for

funding. These examples are illustrative and are not intended to limit proposals in any way.

◆ Demonstrate the range of environmental, economic and community benefits associated with alternative development patterns. This project would examine drinking water quality, air quality, and wildlife habitat. For instance, open spaces may offer protection of water quality by acting as natural retention areas for the treatment of storm water runoff and increase aesthetic value and recreation opportunities. Elements of the project may include the comparison of the environmental, fiscal and community benefits of the purchase and trade of development rights, and alternative zoning provisions related to various densities and degrees of automobile, bicycle and pedestrian accessibility.

◆ Demonstrate a cutting edge approach to the cleanup and redevelopment of contaminated property. This project would demonstrate a comprehensive, interagency, intergovernmental approach to the challenges of abandoned, idled, or under-used properties that blight the landscape of our urban centers. In addition to strategies being used at Brownfield assessment pilot sites across the country, it would move beyond the narrow limits of the Superfund law and include issues of contamination from oil fields and leaking underground storage tanks—currently excluded by the Superfund law, yet thought to be the cause of significant contamination. Instead of staying within the confines of land-based contamination, this effort would address issues with other environmental media, including water, non-point source permitting and non-point sources in air quality non-attainment areas relating to the siting of new businesses and industries. Practical applications of environmental justice principles, public participation and environmental job training/workforce development strategies would be woven throughout the entire effort. Training would be provided for public officials as well as local citizens to ensure that local land use decision-making processes will be fair, open and inclusive.

◆ Demonstrate how a stakeholder group can comprehensively identify the multiple sources of pollution contributing to environmental problems within their watershed; collaboratively develop solutions to address these causes to the satisfaction of stakeholders; develop policy and financial support and commitment for the solution along with the plan to implement the necessary actions. Project elements may include: how you would organize and develop your stakeholders and community-based support; watershed-based problem identification, priority-setting and monitoring; the mix of voluntary and regulatory programs; the most promising approaches to the restoration of urban river corridors and wetlands; to identify and eliminate, to the maximum extent possible, activities and programs that create unintended barriers and disincentives to community revitalization.

◆ Support a regional bottom-up process for better managing rapid, sprawling development. Local governments along with public and private interests will join together to secure written agreements on actions to be taken to carry out the community's vision of a sustainable future, and to prepare a State of the Region report outlining the area's most significant challenges and opportunities for improving local conditions.

◆ Demonstrate the benefits of implementing metropolitan-wide transportation programs that promote sustainable development. Specific projects would examine new and innovative ways of integrating air quality, storm water and other urban wet weather flows management, transportation, and land use planning processes to effectively reduce vehicle miles traveled, thereby reducing congestion, lowering energy consumption, improving air quality, and reducing green house gas emissions. Specific pilots could focus on demonstrating effective methods of community collaboration and linkage with other planning efforts traditionally conducted at different jurisdiction levels (e.g., state, city, county). In addition, pilots could integrate a number of important, but to date, separate federal initiatives such as Federal Transit Administration's Livable Communities, Federal Highway Administration's Congestion Mitigation and Air Quality Program, Department of Energy's Clean Cities program, or the Department of Agriculture's Urban Resources Partnership, the Department of Transportation's Transportation and Community System Preservation Pilot Program, or Empowerment Zones and Enterprise Communities along with various innovative transportation control measures. Both short and long-term strategies could be selected.

◆ Nature-based tourism: Demonstrate a cooperative effort among environmental groups, business interests, and community leaders to design and implement a community-based strategy for ecology-based tourism. The strategy would identify techniques to manage appropriate travel to, and recreation within, natural areas which are designed to contribute substantially to the area's conservation and improvement of the welfare of local people, through education and the dedication of tourism dollars to protect natural resources. The goal would be to support properly planned and managed nature tourism, which will have minimal impacts on the environment, conserve and enhance social and cultural values, and improve the economic well-being of residents. EPA encourages projects that correct existing environmental problems and are restorative in their outcome.

◆ Changing unsustainable behaviors can begin through visioning and planning projects. Such proposals are welcomed and encouraged. Visioning and planning proposals should address geographic and jurisdictional areas appropriate and applicable to the scope of the proposal. Proposals should demonstrate how actions and collaborations and outreach efforts are intended to result in a vision or plan with a sufficient consensus in the community to take the proposal beyond the preparation of a summary report. The proposal should address to the extent possible next steps that would be taken toward plan implementation and how these steps would be carried out after completion of the visioning/planning effort.

Selection Criteria

The proposed project must meet the two statutory threshold determinations described below in the Statutory Authority section, then EPA will also consider the following criteria, weighting each as indicated. Please describe how your project addresses the following criteria in the section of your proposal on Relationship of Project to Selection Criteria. We recommend that you address each bullet point listed.

(1) Sustainability: 50 points

► How well does the proposal integrate environmental protection, economic prosperity and community well-being at the community level? Does the proposal address how current and future generations are affected?

► Does the proposal address what type of sustainable behavior is desired, and what type of non-sustainable behavior needs to be changed?

► Does the proposal take a comprehensive approach to specific environmental problems that reflects a good understanding of the larger ecosystem context within which the problems occur? Does the proposal offer

a locally and regionally appropriate solution that does not shift the problem to another area or create a new problem as a result? Does this proposal benefit a significant percentage of the population in the affected community or region?

► How does the proposal assure that economic activities do not exhaust or degrade the environment?

► Explain how the proposal will result in long-term environmental protection as well as sustainable economic vitality, (such as more appropriate, efficient use of resources and changes in consumption patterns) so that jobs created will be sustained, or the amount of money retained in the local economy will be maximized?

► How does the proposal represent new solutions for the community, given their previous history and current circumstances?

(2) Community Commitment and Contribution: 25 points

► Explain how the partners fully represent those in the community who have an interest in or will be affected by the project?

► Will the proposal's outcomes and results benefit all affected groups to the maximum extent possible?

► Does the proposal describe effective methods for community involvement to assure that all affected by the project are provided an opportunity to participate?

► Does the proposal describe the depth and breadth of the community's support (financial and in-kind) for the proposal? Does the community have in place the legal and regulatory authority they need to implement the project? Does it provide evidence of long-term commitment to the proposal?

(3) Measurable Results: 25 points

► Does the proposal describe the specific environmental, economic, and quality of life benefits to be gained by the community? Is there a plan to identify which non-sustainable behaviors will be addressed by the proposal and how will behavior change be measured?

► How does the proposal include significant achievable short-term (within three years) and long-term targets or benchmarks to measure the proposal's contribution to the community's environmental and economic sustainability? (These should be both quantitative and qualitative.) For planning or visioning proposals, explain how the plan or vision that is developed, and any next steps that will be taken toward plan implementation, will contribute to the community's environmental or economic sustainability, and how the contribution will be measured.

► Does the proposal set goals for the proactive environmental approaches it employs?

► After seed funds from EPA are exhausted, does the proposal demonstrate how the work will continue, or how it will evolve into or generate other sustainability efforts, either locally or regionally?

► Will the experiences gained during the project be transferable to other communities? If so, how?

► Does the proposal describe how the success of the project will be evaluated? Does the proposal explain how to determine and measure whether expected results have been accomplished? How will the project's contribution to sustainability be measured and evaluated? Who will be responsible for performing the evaluation and what process they will use? How will needed changes to the project be identified and incorporated on an ongoing basis?

Statutory Authority

EPA expects to award Sustainable Development Challenge Grants program under the following eight grant authorities: Clean Air Act section 103(b)(3); Clean Water Act section 104 (b)(3); Resource Conservation and Recovery Act section 8001; Toxics Substances Control Act section 10; Federal Insecticide, Fungicide, and Rodenticide Act section 20; Safe Drinking Water Act sections 1442(a) and (b); National Environmental Education Act, section 6; and Pollution Prevention Act, section 6605.

In addition to the selection criteria listed above, a proposal must meet the following two important threshold criteria to be considered for funding. (1) A project must consist of activities within the statutory terms of these EPA grant authorities. Most of the statutes authorize grants for the following activities: ''research, investigations, experiments, training, demonstrations, surveys and studies.'' These activities relate generally to the gathering or transferring of information or advancing the state of knowledge. Grant proposals should emphasize this ''learning'' concept, as opposed to ''fixing'' an environmental problem via a well-established method. For example, a proposal to plant some trees in an economically depressed area in order to prevent erosion would probably not in itself fall within the statutory terms ''research, studies'' etc., nor would a proposal to start a routine recycling program.

On the other hand, the statutory term ''demonstration'' can encompass the first instance of the application of a pollution control and prevention techniques, or an innovative application of a previously used method. Similarly, the application of established practices may qualify when they are part of a broader project which qualifies under the term ''research.''

(2) In order to be funded, a project's focus generally must be one that is specified in the statutes listed above. For most of the statutes, a project must address the causes, effects, extent, prevention, reduction, and elimination of air, water, or solid/hazardous waste pollution, or, in the case of grants under the Toxic Substances Control Act or the Federal Insecticide, Fungicide and Rodenticide Act, to ''carrying out the purposes of the Act.'' While the purpose of the SDCG program will include the other two aspects of sustainable development (economic prosperity and community well-being), the overarching concern or principal focus must be on the statutory purpose of the applicable grant authority, in most cases ''to control pollution.'' Note that proposals relating to other topics which are sometimes included within the term ''environment'' such as recreation, conservation, restoration, protection of wildlife habitats, etc., should describe the relationship of these topics to the statutorily required purpose of pollution control. For assistance in understanding statutory authorities under which EPA is providing these grants contact your regional representatives.

Definitions

Sustainable Development: Sustainable development means integrating environmental protection, and community and economic goals. Sustainable development meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The sustainable development approach seeks to encourage broad-based community participation and public and private investment in decisions and activities that define a community's environmental and economic future and community well-being.

Community well-being: In the sustainable development context this means understanding and considering the impacts of activity on the diversity of cultures, values, and traditions in a community. It acknowledges both current and future generations. Community well-being means ensuring that all members of the community, regardless of ethnic or cultural group, age or income, have access to services

provided through the sustainable development project, and those benefits/burdens of the project are fairly distributed.

Community: The scale used to define ''community'' under this challenge grant program will vary with the issues, problems, or opportunities that an applicant intends to address. The SDCG program recognizes the significant role that communities have and should play in environmental protection. ''Community'' means a geographic area within which different groups and individuals share common interests related to their homes and businesses, their personal and professional lives, the surrounding natural landscape and environment, and the local or regional economy. A community can be one or more local governments, a neighborhood within a small or large city, a large metropolitan area, a small or large watershed, an airshed, tribal lands, ecosystems of various scales, or some other specific geographic area with which people identify.

Non-sustainable Behavior: Development, or land and water activities, management or uses, which limit the ability of humans and ecosystems to live sustainably by destroying or degrading ecological values and functions, diminishing the material quality of life, and diverting economic benefits away from long-term community prosperity and decreases the long-term capacity for sustainability.

Who Should Apply?

Eligible applicants include: (1) Incorporated non-profit (or not-for-profit) private agencies, institutions and organizations, and (2) public (state, county, regional or local) agencies, institutions and organizations, including those of Native Americans (American Indians and Alaskan Native Villages). While state agencies are eligible they are encouraged to work in partnership with community groups to strengthen their proposals. Federal agencies are not eligible for funding, however, they are also encouraged to work in partnership with state and local agencies on these projects. For instance, the Urban Resources Partnership places government resources into the service of community-led environmental projects.

Applicants are not required to have a formal Internal Revenue Service (IRS) non-profit designation, such as 501(c)(3) or 501(c)(4), however they must present their letter of incorporation or other documentation demonstrating their non-profit or not-for-profit status. This requirement does not apply to public agencies. *Failure to enclose the letter of incorporation or other documentation demonstrating their non-profit or not-for-profit status will result in an incomplete submission and will not be reviewed.* Applicants who do have an IRS 501(c)(4) designation are not eligible for grants if they engage in lobbying, no matter what the source of funding for the lobbying activity. No recipient may use grant funds for lobbying. Further, profit-makers are not eligible to receive sub-grants from eligible recipients, although they may receive contracts, subject to EPA's regulations on procurement under assistance agreements, 40 Code of Federal Regulations (CFR) 30.40 (for non-governmental recipients) and 40 CFR 31.36 (for governments). Profit-making organizations are encouraged to participate in sustainability efforts in their community by becoming partners with eligible organizations.

Funding Ranges and Match

Applicants may compete for funding from EPA in two ranges for FY 1998: (1) requesting $50,000 or less, and (2) requesting between $50,001 and $200,000. Proposals will compete with other proposals in the same range (i.e., a proposal for $50,000 will not compete with a proposal for $200,000). Applicants in each category are required to demonstrate how they will meet the minimum 20% non-federal match. Applicants may submit multiple proposals, but each specific proposal must be for a separate and distinct project. However, no organization may receive funding for more than one grant each year under the SDCG program. In addition, projects awarded will be ineligible for future competition for this program.

This program is intended to provide seed money to leverage a broader public and private investment in sustainability activities. As a result, the program requires a minimum non-federal match of at least 20% of the total project budget (the total budget includes EPA's share). The match must be calculated in accordance with the example provided in EPA's guidance document. EPA strongly encourages applicants to leverage as much investment in community sustainability as possible. EPA views this leverage as a measure of community support and an indication of the possible longevity of the project. The match can come from a variety of public and private sources and can include in-kind goods and services. No federal funds, however, can be used as matching funds without specific statutory authority.

Selection Process

EPA Regional Offices will assess how well the proposals meet the selection criteria outlined above. The Regional Offices will then forward their top proposals to Headquarters for review by a national panel consisting of Headquarters and Regional representatives. The panel's recommendations will be presented to EPA Senior Management for final selection. In making these final selections such factors as geographic diversity, project diversity, costs, matching funds, and project transferability or replicability may be considered.

What Costs Can Be Paid?

Even though a proposal may involve an eligible applicant, eligible activity, and eligible purpose, grant funds cannot necessarily pay for all of the costs which the recipient might incur in the course of carrying out the project. Allowable costs, including those paid for by matching funds, are determined by reference to EPA regulations cited below and to OMB Circulars A–122, ''Cost Principles for Non-profit Organizations,'' A–21 ''Cost Principles for Education Institutions,'' and A–87, ''Cost Principles for State, Local, and Indian Tribal Governments.'' Generally, costs which are allowable include salaries, equipment, supplies, training, rental of office space, etc., as long as these are ''necessary and reasonable.'' Entertainment costs are an example of unallowable costs.

Applicable Grant Regulations

40 CFR part 30 for other than state/local governments, for example, non-profit organizations (see 61 FR 6065 (Feb. 15, 1996)), and part 31 for state and local governments and Indian tribes.

Paperwork Reduction Act

The information collection provisions in this document for solicitation of proposals are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* in a generic Information Collection Request titled *Generic Administrative Requirements for Assistance Programs* (ICR No. 938.06 and OMB Approval No. 2030–0020). A copy of the Information Collection Request (ICR No. 938.06) may be obtained from Sandy Farmer in the Regulatory Information Division, EPA, 401 M Street, S.W. (Mail Code 2137), Washington, DC 20460 or by calling (202) 260–2740.

Submission to Congress and the General Accounting Office

On May 15, 1997, EPA published the regulatory requirements that also are included in this document (62 FR 26896) and submitted a report containing that 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 pursuant to the Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996. This action merely announces the availability of additional funds for this program and does not contain any new requirements; the regulatory requirements are included in thus document only for the convenience of the reader. Accordingly, the CRA does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Dated: August 6, 1998.

Fred Hansen,

Deputy Administrator.

[FR Doc. 98–22655 Filed 8–21–98; 8:45 am]

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federal register

Monday
August 24, 1998

Part VII

The President

Proclamation 7116—Women's Equality Day, 1998

Federal Register
Vol. 63, No. 163
Monday, August 24, 1998

Presidential Documents

Title 3—

The President

Proclamation 7116 of August 20, 1998

Women's Equality Day, 1998

By the President of the United States of America

A Proclamation

Since the earliest days of our democracy, Americans have taken great pride and found great purpose in our pursuit of equality. It is a right for which many have bravely struggled and the ideal that challenges us even today to build a more perfect union and to forge a future in which our children know no boundaries to their dreams. Each year, on Women's Equality Day, we rededicate ourselves to the pursuit of full equality for women and girls in our society.

This year, as we reflect on the magnificent journey and the extraordinary heroines and heroes of the women's rights movement in America, we celebrate the 150th anniversary of the first women's rights convention, which took place in Seneca Falls, New York, in 1848 and set our Nation on a course toward equality. It was at this historic gathering that pioneers such as Elizabeth Cady Stanton, Lucretia Mott, Mary Ann McClintock, and Frederick Douglass signed the Declaration of Sentiments—a document unequivocally affirming that all men and women are created equal. Encouraged by the truth of their convictions, these determined women and men set out to make equality for women a reality in America.

In the decades following the convention at Seneca Falls, many of the rights expressed in the prophetic Declaration of Sentiments became law. The ratification of the 19th Amendment to the Constitution secured a woman's right to vote; the passage of the Civil Rights Act of 1964 barred employment discrimination; and the enactment of Title IX of the Education Amendments of 1972 guaranteed equal opportunity in education and sports.

This year, we recognize another milestone on the road to women's equality: the 35th anniversary of the enactment of the Equal Pay Act, which for the first time in our Nation's history guaranteed equal pay to women who perform the same jobs as men. Only a generation ago, a woman could legally be paid less for her time and talent solely because of her gender. Today, we realize that the denial of equal pay not only unfairly limits a woman's ability to provide for her family's economic security, but also diminishes her dignity by belittling the value of her labor.

While we have made progress in closing this pay gap in the 35 years since the enactment of the Equal Pay Act, women today continue to make less than men for the same work—earning 76 cents for every dollar paid to a man. As we celebrate the Equal Pay Act's anniversary, we must reaffirm our commitment to making equal pay for equal work a reality in the workplace. My Administration supports new proposed legislation that will close the pay gap completely, strengthen enforcement of the Equal Pay Act, and toughen penalties for violations.

My Administration is striving to ensure women's equality in other areas of our society. We have dramatically increased the funding for research, prevention, and treatment of diseases that predominantly affect women. Through the Family and Medical Leave Act that I signed and our proposed child care initiative, we are working to help women balance their responsibilities at home and on the job. During the past 5 years, the Small Business Administration has tripled loans to women-owned businesses, and we have strengthened enforcement of Title IX to ensure that education programs, activities, and institutions receiving Federal funds do not discriminate on the basis of gender.

On Women's Equality Day, as we look back on what we have accomplished, we also recognize how far we have to go before we complete the journey that began so long ago. As women continue to distinguish themselves in boardrooms, classrooms, courtrooms, and family rooms across America, we must renew our efforts to empower all women with the rights and opportunities promised by our founders and fought for by the heroic women and men whose achievements we honor today.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1998, as Women's Equality Day. I call upon the citizens of our great Nation to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of August, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 98–22855
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 3824/P.L. 105–234
Amending the Fastener Quality Act to exempt from its coverage certain fasteners approved by the Federal Aviation Administration for use in aircraft. (Aug. 14, 1998; 112 Stat. 1536)

S.J. Res. 54/P.L. 105–235
Finding the Government of Iraq in unacceptable and

material breach of its international obligations. (Aug. 14, 1998; 112 Stat. 1538)

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3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
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1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
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500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
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220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
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500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
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15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
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200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
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19 Parts:			
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20 Parts:			
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600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
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22 Parts:			
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23	(869–034–00070–3)	25.00	Apr. 1, 1998
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27 Parts:			
*1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

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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
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1–190	(869–032–00114–6)	42.00	July 1, 1997
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125–199	(869–032–00121–9)	36.00	July 1, 1997
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42 Parts:			
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400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
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43 Parts:			
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1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
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45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
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1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
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90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
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47 Parts:			
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[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 July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.