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Thursday
June 10, 1999

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Presidential Documents

Title 3—

The President

Executive Order 13125 of June 7, 1999

Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where they may be underserved (e.g., health, human services, education, housing, labor, transportation, and economic and community development), it is hereby ordered as follows:

Section 1. (a) There is established in the Department of Health and Human Services the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission). The Commission shall consist of not more than 15 members appointed by the President, one of which shall be designated by the President as Chair. The Commission shall include members who: (i) have a history of involvement with the Asian American and Pacific Islander communities; (ii) are from the fields of health, human services, education, housing, labor, transportation, economic and community development, civil rights, and the business community; (iii) are from civic associations representing one or more of the diverse Asian American and Pacific Islander communities; and (iv) have such other experience as the President deems appropriate.

(b) The Secretary of the Department of Health and Human Services (Secretary) shall appoint an Executive Director for the Commission.

Sec. 2. The Commission shall provide advice to the President, through the Secretary, on: (a) the development, monitoring, and coordination of Federal efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where such persons may be underserved and the collection of data related to Asian American and Pacific Islander populations and sub-populations; (b) ways to increase public-sector, private-sector, and community involvement in improving the health and well-being of Asian Americans and Pacific Islanders; and (c) ways to foster research and data on Asian Americans and Pacific Islanders, including research and data on public health.

Sec. 3. The Department of Health and Human Services shall establish the White House Initiative on Asian Americans and Pacific Islanders (Initiative), an interagency working group (working group) whose members shall be appointed by their respective agencies. The Executive Director of the Commission shall also serve as the Director of the Initiative, and shall report to the Secretary or the Secretary's designee. The working group shall include both career and noncareer civil service staff and commissioned officers of the Public Health Service with expertise in health, human services, education, housing, labor, transportation, economic and community development, and other relevant issues. The working group shall advise the Secretary on the implementation and coordination of Federal programs as they relate to Asian Americans and Pacific Islanders across executive departments and agencies.

Sec. 4. The head of each executive department and each agency designated by the Secretary shall appoint a senior Federal official responsible for management or program administration to report directly to the agency head on activity under this Executive order, and to serve as a liaison to the

Initiative. The Secretary also may designate additional Federal Government officials, with the agreement of the relevant agency head, to carry out the functions of the Initiative. To the extent permitted by law and to the extent practicable, each executive department and designated agency shall provide any appropriate information requested by the working group, including data relating to the eligibility for and participation of Asian Americans and Pacific Islanders in Federal programs. Where adequate data are not available, the Initiative shall suggest the means of collecting such data.

Sec. 5. Each executive department and designated agency (collectively, the ''agency'') shall prepare a plan for, and shall document, its efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where Asian Americans and Pacific Islanders may be underserved. This plan shall address, among other things, Federal efforts to: (a) improve the quality of life for Asian Americans and Pacific Islanders through increased participation in Federal programs where they may be underserved and the collection of data related to Asian American and Pacific Islander populations and sub-populations; (b) increase public-sector, private-sector, and community involvement in improving the health and well-being of Asian Americans and Pacific Islanders; and (c) foster research and data on Asian Americans and Pacific Islanders, including research and data on public health. Each agency's plan shall provide appropriate measurable objectives and, after the first year, shall assess that agency's performance on the goals set in the previous year's plan. Each plan shall be submitted at a date to be established by the Secretary.

Sec. 6. The Secretary shall review the agency plans and develop for submission to the President an integrated Federal plan (Federal Plan) to improve the quality of life of Asian American and Pacific Islanders through increased participation in Federal programs where such persons may be underserved. Actions described in the Federal Plan shall address improving access by Asian Americans and Pacific Islanders to Federal programs and fostering advances in relevant research and data. The Secretary shall ensure that the working group is given the opportunity to comment on the proposed Federal Plan prior to its submission to the President. The Secretary shall disseminate the Federal Plan to appropriate members of the executive branch. The findings and recommendations in the Federal Plan shall be considered by the agencies in their policies and activities.

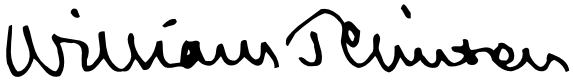
Sec. 7. Notwithstanding any other Executive order, the responsibilities of the President that are applicable to the Commission under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 8. Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). To the extent permitted by law and appropriations, and where practicable, agencies shall, upon request by the Secretary, provide assistance to the Commission and to the Initiative. The Department of Health and Human Services shall provide administrative support and funding for the Commission.

Sec. 9. The Commission shall terminate 2 years after the date of this Executive order unless the Commission is renewed by the President prior to the end of that 2-year period.

Sec. 10. For the purposes of this order, the terms: (a) ''Asian American'' includes persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent; and

(b) ''Pacific Islander'' includes the aboriginal, indigenous, native peoples of Hawaii and other Pacific Islands within the jurisdiction of the United States.



THE WHITE HOUSE,
June 7, 1999.

[FR Doc. 99–14901
Filed 6–9–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

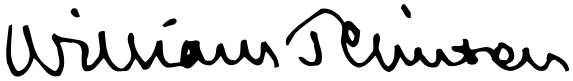
Presidential Determination No. 99–26 of June 3, 1999

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter the ''Act''), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the Republic of Belarus will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 3, 1999.

[FR Doc. 99–14859
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Billing code 4710–10–M

Presidential Documents

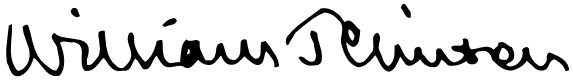
Presidential Determination No. 99–27 of June 3, 1999

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (the ''Act''), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to Vietnam will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
Washington, June 3, 1999.

[FR Doc. 99–14860
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Billing code 4710–10–M

Presidential Documents

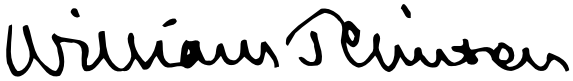
Presidential Determination No. 99–28 of June 3, 1999

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (the ''Act''), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the wavier authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
Washington, June 3, 1999.

[FR Doc. 99–14861
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Update of FOIA fee schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991, the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on June 1, 1998. 63 FR 27667, May 20, 1998.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge	$48 per hour
Copy Charge (paper)	$.04 per page, if done in-house, or generally available commercial rate (approximately $.10 per page).
Copy Charge (3.5″ diskette)	$5.00 per diskette.
Copy Charge (audio cassette)	$3.00 per diskette.
Duplication of Video	$25.00 for each individual videotape; $16.50 for each additional individual videotape
Copy Charge for large documents (e.g., maps, diagrams)	Actual commercial rates.

Dated: June 4, 1999.

Kenneth M. Pusateri,

General Manager

[FR Doc. 99–14685 Filed 6–9–99; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–11]

Amendment to Class E Airspace; Neosho, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Neosho, MO.

DATES: The direct final rule published at 64 FR 10940 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 8, 1999 (64 FR 10940). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on April 19, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14610 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–18]

Amendment to Class E Airspace; Washington, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rue; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which

revises Class E airspace at Washington, IA.

DATES: The direct final rule published at 64 FR 14593 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 26, 1999 (64 FR 14593). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 14, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14609 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–23]

Amendment to Class E Airspace; Thedford, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Thomas County Airport, Thedford, NE. The FAA has developed Global Positioning System (GPS) Runway (RWY) 11, GPS RWY 29, and VHF Omnidirectional Range (VOR) RWY 11, Standard Instrument Approach Procedures (SIAPs) to serve Thomas County Airport, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 11, GPS RWY 29, and VOR RWY 11 SIAPs in controlled airspace.

The old Thomas County Airport was closed and a new Thomas County Airport was constructed approximately 2 miles farther west. Therefore, a new Airport Reference Point (ARP) was established and is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 11, GPS RWY 29, and VOR RWY 11 SIAPSs, amend the ARP, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 16, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–23, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408

SUPPLEMENTARY INFORMATION: The FAA has developed GSS RWY 11, GPS RWY 29, and VOR RWY 11 SIAPs to serve the Thomas County Airport, Thedford, NE. The amendment to Class E airspace at Thedford, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The new ARP is included in this document. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, or a written notice of intent to submit an adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–23.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE NE E5 Thedford, NE [Revised]

Thedford, Thomas County Airport, NE
(Lat. 41°57′44″N., long. 100°34′08″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Thomas County Airport.

* * * * *

Issued in Kansas City, MO, on May 10, 1999.

Donovan D. Schardt

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14608 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–12]

Amendment to Class E Airspace; West Union, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at West Union, IA.

DATES: The direct final rule published at 64 FR 19261 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 20, 1999 (64 FR 19261). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice ofintent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 21, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14607 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–13]

Amendment to Class E Airspace; Cresco, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Cresco, IA.

DATES: The direct final rule published at 64 FR 19262 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 20, 1999 (64 FR 19262). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 21, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14606 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–26]

Amendment to Class E Airspace; Rolla/Vichy, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Rolla/Vichy, Rolla National Airport, Rolla, MO. A review of the Class E airspace area for Rolla/Vichy, Rolla National Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 25, 1999.

EFFECTIVE DATE: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–26, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Rolla/Vichy, MO. A review of the Class E airspace for Rolla/Vichy, Rolla National Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Rolla/Vichy, Rolla National Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–26.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant

regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 600 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Rolla/Vichy, MO [Revised]

Rolla/Vichy, Rolla National Airport, MO
(Lat. 38°07′39″N., long. 91°46′11″W.)
Vichy VORTAC
(Lat. 38°09′15″N., long. 91°42′24″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Rolla/Vichy, Rolla National Airport and within 3 miles each side of the 067° radial of the Vichy VORTAC, extending from the 6.6-mile to 7.4 miles northeast of the Vichy VORTAC.

Issued in Kansas City, MO, on May 21, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14605 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–21]

Amendment to Class E Airspace; Ottawa, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Ottawa Municipal Airport, Ottawa, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17 and GPS RWY 35 Standard Instrument Approach Procedures (SIAPs) to serve Ottawa Municipal Airport, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17 and GPS RWY 35 SIAPs in controlled airspace.

In addition, the Ottawa Nondirectional Radio Beacon (NDB) has been decommissioned. Based on this information, references to the Ottawa NDB in the text header and airspace designations have been removed.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17 and GPS RWY 35 SIAPs, remove references to the Ottawa NDB, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 28, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–21, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17 and GPS RWY 35 SIAPs to serve the Ottawa Municipal Airport, Ottawa, KS. The amendment to Class E airspace at Ottawa, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. Any references to the Ottawa NDB have been removed from the text header and airspace designation.

The amendment at Ottawa Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and

a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–21.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE KS E5 Ottawa, KS [Revised]

Ottawa Municipal Airport, KS
(Lat. 38°32′19″N., long. 95°15′11″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ottawa Municipal Airport.

* * * * *

Issued in Kansas City, MO, on May 11, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14604 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–16]

Amendment to Class E Airspace; Shenandoah, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Shenandoah, IA.

DATES: The direct final rule published at 64 FR 19265 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 20, 1999 (64 FR 19265). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on May 11, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14603 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–10]

Amendment to Class E Airspace; Lebanon, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Lebanon, MO.

DATES: The direct final rule published at 64 FR 10938 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 8, 1999 (64 FR 10938). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on April 19, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division.

[FR Doc 99–14602 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Experimental Nonletter-Size Business Reply Mail Categories and Fees; Implementation Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Renewal of Experimental Classifications and Fees for Nonletter-Size Business Reply, Docket No. MC99–1.

During the past two years, the Postal Service has studied the effects of two alternative experimental accounting methods for nonletter-size business reply mail (BRM) with a controlled number of recipients: The reverse manifesting method and the bulk weight averaging method. Until the implementation of a permanent classification and fees, the Postal Service intends to continue the experiment with up to 10 participants to resolve some administrative and technical issues related to permanent implementation of the bulk weight averaging accounting method.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Lettmann, (202) 268–6261, or Michael T. Tidwell, (202) 268–2998.

SUPPLEMENTARY INFORMATION: The Postal Service will review applications and select as many as six mailers to join the four current participants in the experiment. It is hoped that the BRM received by the participants will represent a diverse range of products returned by BRM. The limitation on the number of participants in the extension of the weight averaging experiment is consistent with the need to conduct an experiment that can be managed effectively, with the narrow scope of the administrative and technical issues the extension is expected to resolve, and with the relatively short time frame during which the extension is likely to be in effect.

The selection of experiment participants depends on various criteria such as mail volume, product type and packaging, geographic location, ability to implement and maintain quality control procedures for accounting and documentation, and availability of postal resources. A prospective participant should be able to participate until February 29, 2000, and, if selected, begin within a short period of time. Only the weight averaging method of counting the returned nonletter-size BRM pieces will be tested as part of this experiment.

As part of this study, participants will be charged lower per piece BRM fees for qualifying pieces as follows:

For participants using the weight averaging accounting method, the per piece accounting fee is 1 cent, plus the appropriate First-Class Mail or Priority Mail postage.

Participants must pay an *annual* business reply mail permit fee and an *annual* business reply mail advance deposit accounting fee, which are currently $100.00 and $300.00, respectively. In addition, there will be a monthly audit and maintenance fee of $600.00 assessed per BRM account at each site where the experimental weight averaging accounting method is employed.

Background

As a consequence of Postal Rate Commission Docket No. MC97–1, the United States Postal Service has engaged in an experiment since June 8, 1997, which was designed to test the feasibility of two alternative methods of accounting for nonletter-size Business Reply Mail: the reverse manifesting method and the bulk weight averaging method. For each method, the experiment was designed to involve up to 10 recipients of nonletter-size BRM. On an experimental basis, separate experimental set-up/qualification, monthly auditing or sampling, and per piece fees were established for each method. All experimental classifications and fees are scheduled to expire on June 7, 1999.

To date, four BRM recipients have participated in the experiment, which is scheduled to expire on June 7, 1999. One participant began the experiment utilizing the reverse manifest method. Three others elected to participate utilizing the weight averaging method.

Approximately nine months ago, the one participant using the reverse manifest method unilaterally determined on the basis of internal operational considerations that it would switch to the weight averaging method. The Postal Service has since been unable to recruit any participants to experiment with the reverse manifest method. Although the Postal Service believes that the method has potential, the limited experience during the experiment did not provide an adequate opportunity to fully evaluate the method or overcome the shortcomings with the method that were identified when the experiment was initiated. As a consequence, the operational feasibility of the reverse manifest method remains unproved.

The experiment has demonstrated the feasibility of the bulk weight averaging accounting method for nonletter-size BRM to the satisfaction of the Postal Service. At the same time, the Postal Service has determined that it must resolve some administrative and technical issues related to the operation of bulk weight averaging before implementing the method on a permanent basis.

Accordingly, on March 10, 1999, the Postal Service filed two requests before the Postal Rate Commission. The first request sought an extension of the current bulk weight averaging experiment beyond its June 7, 1999, expiration date to allow for the continuation of work to resolve the aforementioned administrative and technical issues that stand in the way of

implementing weight averaging on a permanent basis. That proceeding was designated by the Postal Rate Commission as Docket No. MC99–1. The second request proposed the establishment of a permanent classification and fees for weight averaged nonletter-size BRM. That proceeding was designated as Docket No. MC99–2. The Postal Service intends to let the reverse manifest classification and fees expire as scheduled.

Manual BRM Verification Method

The manual counting, weighing, rating, and billing for incoming nonletter-size BRM at delivery post offices is a labor-intensive and time-consuming task usually performed by postage due unit employees. These postal employees must weigh and rate each piece individually and calculate the appropriate postage and fees.

This manual process frequently takes place during a short period between the arrival of the BRM at the postage due unit and the arrival of the BRM recipient at the post office to pick up the mail. Depending on mail volume, the necessary accounting sometimes delays the release and delivery of the mail. Such delays can adversely affect the recipient's ability to meet customer fulfillments expeditiously.

Weight Averaging Method

Some recipients of large volumes of incoming nonmachinable BRM and local postal officials have developed an alternative accounting method, bulk weight averaging, that allows the recipients to take possession of their incoming mail sooner than mail manually weighed and rated on a piece-by-piece basis by the Postal Service.

This method also makes it less expensive for the Postal Service to determine the postage and fees. This alternative method reduces postal workhours, provides more expeditious accounting, allows for earlier delivery of BRM pieces, and increases recipient satisfaction with BRM service.

Application of the bulk weight averaging accounting method for a BRM permit account requires periodic sampling and monitoring of the permit holder's nonletter-size BRM. As a consequence, the added administrative overhead generates extraordinary postal costs not covered by the current $100.00 annual BRM permit fee and $300.00 annual BRM advance deposit accounting fee.

For purposes of the current experiment, the Postal Service adopted additional fees for the nonletter-size BRM weight averaging accounting method:

- A one-time set-up/qualification fee of $3,000.
- A $3,000 monthly maintenance fee.
- A $0.03 per piece accounting fee.

These fees expire on June 7, 1999. On May 14, 1999, in Docket No. MC99–1, the Postal Rate Commission recommended the extension of the nonletter-size BRM experiment until February 29, 2000, or until implementation of permanent fees, whichever comes first, which was the term requested by the Postal Service. The Commission also recommended the classification and fees proposed in a Joint Stipulation and Agreement by the parties in Docket No. MC99–1. The Commission's recommendations were approved in the May 26, 1999, Decision of the Governors of the United States Postal Service. Accordingly, on June 8, 1999, the following fees will apply to nonletter-size BRM subject to the terms of the weight averaging experiment:

- A $600 monthly maintenance fee.
- A $0.01 per piece accounting fee.

The one-time set-up/qualification fee has been eliminated. These new experimental fees expire on February 29, 2000, or upon implementation of permanent fees, whichever comes first.

Selection Process for Participants

A reply mail recipient who wants to participate in the extension of the nonletter-size BRM experiment must submit a written request to: Manager, Mail Preparation and Standards, Postal Service Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2405. The request must include sufficient data to assist in making an initial determination.

Consideration is given to product type, geographic location, variability in the weight and daily volume of BRM, current accounting and quality control procedures, and availability of postal resources. In selecting participants, the manager of Mail Preparation and Standards also uses the following criteria:

- The applicant must receive at one site a yearly average volume of approximately 100,000 or more nonletter-size BRM pieces eligible for the current $0.08 per piece fee.
- The applicant must be prepared to participate in the experiment through February 29, 2000.
- The applicant must be prepared to begin operation at a mutually agreed upon time soon after selection.

If the manager of Mail Preparation and Standards determines that the applicant is suitable for participation, the applicant is instructed to follow the appropriate application procedures for authorization, as described in Domestic Mail Manual G092 and published in this final rule. If the manager of Mail Preparation and Standards determines that the applicant is not suitable, that manager sends the applicant a written notice explaining the reasons for the determination and, if appropriate, requests additional information for further review.

Decisions of the manager of Mail Preparation and Standards may be appealed to the BRM Experiment Review Board, Postal Service Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2405. Appeals must include sufficient information to assist the Review Board in reconsideration of initial determinations. Decisions of the Review Board are final.

Implementation

Pursuant to 39 U.S.C. 3624, the PRC on May 14, 1999, issued to the Governors of the Postal Service its Recommended Decision on the Postal Service's Request to extend the weight averaging portion of the nonletter-size BRM experiment.

After reviewing the PRC's Recommended Decision and its consequences for the Postal Service and postal customers, the Governors, pursuant to 39 U.S.C. 3625, acted on the PRC's recommendations on May 26, 1999. (Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Renewal of Experimental Classification and Fees for Nonletter-Size Business Reply Mail Categories and Fees, Docket No. MC99–1.)

The Governors determined to approve the PRC's recommendations, and the Board of Governors set an implementation date of June 8, 1999, for the classification and fee changes to take effect. A notice announcing the Governors' Decision and the final Domestic Mail Classification Schedule and Fee Schedule changes is published elsewhere in this issue of the **Federal Register**.

This final rule contains the DMM standards adopted by the Postal Service to implement the Governors' Decision.

As described below, the Postal Service is limiting these experimental fee categories to those pieces of nonletter-size business reply mail that are outside the parameters of current automation-compatible letter-size business reply mail. As a consequence, the final rule excludes letter-size pieces which could qualify for Qualified Business Reply Mail (QBRM) rates and fees. (Currently, pieces weighing two ounces or less can qualify for QBRM.)

Because of the purpose and limited scope of this experiment, the Postal Service finds no need to solicit comment on the standards for nonletter-size BRM or to delay implementation of this extension.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[REVISED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise G092 to the Domestic Mail Manual as follows:

G GENERAL INFORMATION

* * * * *

G090 Experimental Classifications and Rates

[Revise G092 to remove references to reverse manifesting; remove 2.0, which explains reverse manifesting; and renumber 3.0 to 5.0 to leave weight averaging as the experimental accounting method as follows:]

G092 Nonletter-Size Business Reply Mail

1.0 BASIC ELIGIBILITY

[Amend 1.1 to remove references to reverse manifesting to read as follows:]

1.1 Description

The standards in G092 apply to pieces claimed by an authorized mailer at the experimental fees for nonletter-size business reply mail (BRM). Draft Publication 405, Guide to Business Reply Mail, contains an explanation of weight averaging sampling procedures, calculations, and other information.

[Revise 1.2 to read as follows:]

1.2 Applicability

BRM pieces eligible under G092 must:

a. Be mailed as First-Class Mail or Priority Mail and meet the specific standards in 2.0.

b. Meet the applicable physical standards for nonletter-size mail in C050 (i.e., flat-size mail, machinable parcels, irregular parcels, or outside parcels) and Cl00 for First-Class Mail, except any BRM piece accounted for under the weight averaging method in 2.0 may not exceed 5 pounds. Reply mail letters which cannot qualify for Qualified Business Reply Mail (QBRM) because they weigh too much also are eligible for the weight averaging method.

c. Meet the basic standards for BRM in S922 other than those specific to letter-size pieces or pieces processed as QBRM.

d. Meet the addressing standards in A010 and bear a delivery address with the correct ZIP+4 code and barcodes assigned to the BRM permit holder by the USPS.

e. Be marked as specified in the service agreement under 2.0 and comply with any current or future USPS marking standard.

f. Meet the documentation and postage payment standards in 2.0 and the service agreement.

g. Be received at the post office that serves the permit holder.

[Amend 1.3 by removing 1.3d concerning the set-up/qualification fee and redesignating current 1.3e as 1.3d to read as follows:]

1.3 Fees

Each BRM piece eligible under G092 is charged the corresponding single piece rate for First-Class Mail or Priority Mail plus the appropriate fee as shown in 4.2. To receive pieces under this fee schedule, the participating mailer also must pay fees for these accounts and services:

* * * * *

d. Applicable monthly maintenance fee.

[Amend 1.4 to remove the reference to reverse manifesting information and change the manager to whom BRM customer requests are submitted to read as follows:]

1.4 Participation in Test

A business reply mail recipient who wants to participate in the experiment and receive an account for nonletter-size BRM under G092 must submit a written request for consideration to the manager of Mail Preparation and Standards, USPS Headquarters (see G043 for address). The request must include sufficient data to assist the manager in making an initial determination. The manager may request additional data and an on-site visit to the applicant's plant. If the manager determines that the applicant is suitable for participation, the applicant follows the application procedures in 2.0. Consideration is given to product type, geographic location of the mailer's site of operation, variability in the weight and daily volume of BRM, current accounting and quality control procedures, and availability of postal resources. In selecting participants, the manager also uses the following additional criteria:

a. The applicant must receive or expect to receive at one site a yearly average volume of approximately 100,000 or more nonletter-size BRM pieces eligible for the current $0.08 per piece fee under S922.

b. The applicant must be able to participate in the experiment through February 29, 2000.

c. The applicant must be prepared to begin operation at a mutually agreed upon time soon after selection.

[Remove current 2.0 in its entirety. Re-designate current 3.0 through 3.4 as 2.0 through 2.4, respectively, to read as follows:]

2.0 WEIGHT AVERAGING

* * * * *

[Amend renumbered 2.2 to change the manager to whom customers submit requests to read as follows:]

2.2 Application

A business reply mail recipient applying for participation in the extension of the weight averaging experiment must complete a standard application provided by the Postal Service. The applicant submits this application to the manager of Mail Preparation and Standards. The applicant includes with the application documentation that contains sample BRM pieces and labels representative of the weight range and types of pieces to be weight-averaged.

[Amend renumbered 2.3 to change the manager to whom customers submit requests and to change the effective dates to read as follows:]

2.3 Authorization

The manager of Mail Preparation and Standards reviews the application and proceeds as follows:

a. If the applicant meets the conditions required for the experimental weight averaging accounting method and the application is otherwise consistent with the purposes and goals of the experiment, the manager approves the application and prepares a service agreement with the applicant. The agreement details the operating procedures for weight averaging and the responsibilities of the applicant and the Postal Service. For the purposes of the experiment, the Postal Service may require additional documentation and periodic review and inspection of each experiment participant's BRM processing and accounting operations. No agreement may remain in effect beyond the February 29, 2000, outside duration date established for the extension of the experiment. The

experimental classification and fees take effect on June 8, 1999; they will expire on February 29, 2000, or when the permanent classification and fees for weight averaged nonletter-size BRM are implemented, whichever comes first.

b. If the application does not appear to meet the conditions required for the weight averaging method, the manager of Mail Preparation and Standards denies the application and sends written notice to the applicant, with the reasons for denial. The applicant has 10 days after receipt of the notice to file a written appeal to the BRM Experiment Review Board, U.S. Postal Service Headquarters. Decisions of the Review Board are final.

[Remove renumbered 3.4, Renewal, in its entirety.]

[Re-designate current 4.0 as 3.0.]

3.0 REVOCATION

[Amend renumbered 3.1 to change the manager who may revoke a participant's authorization and remove the reference to a manifest to read as follows:]

3.1 Reasons

The manager of Mail Preparation and Standards may revoke a BRM participant's authorization for the experiment if that participant:

a. Provides incorrect data on the required documentation and appears unable or unwilling to correct the problems.

b. Neglects to perform required quality control procedures.

c. No longer meets the criteria in this standard and the service agreement.

* * * * *

[Revise 3.3 to shorten the appeal period to 10 days to read as follows:]

3.3 Appeal

Revocation proceeds if the participant is unable or unwilling to correct the discrepancies found. The participant may file a written appeal of revocation within 10 days from the date of receipt of the notice, with evidence explaining why the authorization should not be revoked. The appeal must be filed with the BRM Experiment Review Board, which issues the final agency decision. The participant may continue to accept BRM under the authorization, pending a decision on appeal. The revocation decision takes effect 7 days after receipt by the participant.

[Re-designate current 5.0 as 4.0:]

4.0 RATES AND FEES

[Amend 4.1 to change references from ''5.2'' and ''5.3 and 5.4'' to ''4.2'' and ''4.3 and 4.4,'' respectively, to read as follows:]

4.1 Rate Application

Each BRM piece received under G092 is charged the applicable per piece fee in 4.2 and the appropriate single-piece First-Class Mail rate or Priority Mail rate. In addition to the fees in 4.3 and 4.4, the required BRM permit fee and BRM advance deposit account fee must be paid every 12 months.

[Amend 4.2 by removing 4.2b and revising 4.2 to read as follows:]

4.2 Per Piece Fee

Per piece, in addition to single-piece rate First-Class Mail or Priority Mail postage for nonletter-size experimental (weight averaging): $0.01.

[Amend 4.3 by removing 4.3b and revising 4.3 to read as follows:]

4.3 Monthly Maintenance Fee

Monthly fee for nonletter-size experimental (weight averaging): $600.00.

5.4 [Removed]

[Remove current 5.4. There is no longer a one-time set-up/qualification fee.]

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. As provided by 39 CFR 111.3, notice of issuance will be published in the **Federal Register**.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–14636 Filed 6–8–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300858; FRL–6080–4]

RIN 2070–AB78

Aminoethoxyvinylglycine; Temporary Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary tolerance for residues of aminoethoxyvinylglycine in or on food commodities of the stone fruit crop group. Abbott Laboratories requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire on April 1, 2001.

DATES: This regulation is effective May 13, 1999. Objections and requests for hearings must be received by EPA on or before August 9, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300858], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300858], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300858]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 902W43, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8263, greenway.denise@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1999 (64 FR 11872) (FRL–6067–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of

1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 9G5048) for a temporary tolerance by Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064. The notice included a summary of the petition prepared by Abbott Laboratories, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.502 be amended by establishing a temporary tolerance for residues of the biochemical plant regulator aminoethoxyvinylglycine, in or on food commodities of the stone fruit crop group. The proposed temporary tolerance level of 0.170 part per million (ppm) was inadvertently not stated in the notice of filing. This tolerance will expire on April 1, 2001.

Under section 408(g)(1) of the FFDCA, a regulation issued under subsection (d)(4) shall take effect upon publication unless the regulation specifies otherwise. In this case, the temporary tolerance will be effective on May 13, 1999.

Section 801 of the Congressional Review Act (CRA), 5 U.S.C. 801, generally requires that, before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding. EPA has determined that there is good cause for making today's rule final prior to submission to Congress because the timing is such that immediate action was necessary to allow farmers to sell and distribute certain stone fruit produce with residues of this product this year. This pesticide is only applied once during the growing season, and this must be done 7-14 days prior to the beginning of the harvest period. The harvest season for certain stone fruits is very early in the year. Many of the tests sites for these stone fruits are located in the Southern region of the United States. Thus, in order to provide for the sale and distribution of certain stone fruit produce with residues of this pesticide in 1999 and to optimize the benefits of the experimental use of the pesticide, approval of the use was necessary in May of this year. Furthermore, the Agency has provided notice and comment for this rulemaking action and no comments were received. The Agency has also provided a 60–day objection period in this final rule as required by section (g)(2) of the FFDCA. See Unit V. of this preamble for further information. Thus, further notice and public procedure are unnecessary. The Agency finds that this constitutes good cause to provide for an immediate effective date pursuant to 5 U.S.C. 808(2).

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of aminoethoxyvinylglycine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a temporary tolerance for residues of aminoethoxyvinylglycine on food commodities of the stone fruit crop group at 0.170 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

Because the technical active ingredient being evaluated in the associated Experimental Use Permit (275–EUP–82) is a conditionally registered section 3 pesticide product, EPA has previously evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by aminoethoxyvinylglycine are discussed in this unit, and presented in the **Federal Register** of May 7, 1997 (62 FR 24835) (FRL–5713–5) and in a subsequent correction to the Final Rule, which appeared in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5751–5).

B. Toxicological Endpoints

1. *Acute toxicity.* A battery of acute toxicity studies placed technical aminoethoxyvinylglycine in Toxicity Categories III and IV.

2. *Chronic toxicity.* Using an uncertainty factor of 1,000, EPA has established the reference dose (RfD) for aminoethoxyvinylglycine at 0.002 milligrams/kilogram of body weight/day (mg/kg bwt/day). This RfD is based on a no observed adverse effect level (NOAEL) of 2.2 mg/kg bwt/day from a subchronic toxicity study that demonstrated reduced body weight gain, food consumption, and food efficiency; increased severity and incidence of reversible kidney and liver effects; and discoloration of the liver.

C. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances, to expire April 1, 2001, were previously established at 0.08 ppm (40 CFR 180.502) for the residues of aminoethoxyvinylglycine, in or on the food commodities apples and pears. This rule establishes a temporary tolerance at 0.170 ppm, to expire April 1, 2001, for the residues of aminoethoxyvinylglycine in or on food commodities of the stone fruit crop group. Risk assessments were conducted by EPA to assess dietary exposures from the additional stone fruit uses of aminoethoxyvinylglycine proposed for the Experimental Use Permit 275–EUP-82 via PP 9G5048 as follows:

A worst-case scenario (using tolerance level residues for both the existing apple/pear use and for the experimental stone fruit use, and 100% crop treated) aggregate risk assessment was prepared. The reported assessment includes exposure to aminoethoxyvinylglycine through food.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological

study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In the case of aminoethoxyvinylglycine, because there were no acute toxic endpoints, no acute dietary risk assessments were required or performed.

ii. *Chronic exposure and risk.* The endpoint and dose level selected for assessment of chronic dietary risks are based on a 90-day feeding study with an uncertainty factor of 1,000 and use a RfD of 0.002 mg/kg bwt/day determined from a NOAEL of 2.2 mg/kg bwt/day. In considering the sensitivity of infants and children the thousand-fold safety factor includes an additional uncertainty factor of 10 for incompleteness of data until a 2-generation reproduction study in rats is completed. The study was a condition of registration of the subject active ingredient, and interim data have been submitted to the Agency. The results of the chronic dietary exposure analysis indicate a reasonable certainty of no harm to the U.S. population or subpopulations, including infants and children, as the result of the pesticidal uses of aminoethoxyvinylglycine on apples, pears, and stone fruits.

2. *From drinking water.* Studies of the potential for aminoethoxyvinylglycine to be present in water have not yet been conducted. As a worst-case scenario, residue levels in water were calculated to be 0.0012 ppm by assuming that 10% of the applied treatment could drift into nearby drinking water sources. This conservative approach is consistent with a worst-case exposure scenario.

i. *Acute exposure and risk.* In the case of aminoethoxyvinylglycine, because there were no acute toxic endpoints, no acute risk assessments based on drinking water exposure were required or performed.

ii. *Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOAEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause aminoethoxyvinylglycine to exceed the RfD if the temporary tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with aminoethoxyvinylglycine in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the temporary tolerance is granted.

3. *From non-dietary exposure.* Aminoethoxyvinylglycine is currently not registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether aminoethoxyvinylglycine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, aminoethoxyvinylglycine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that aminoethoxyvinylglycine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For risk assessment purposes, there were no acute endpoints identified for aminoethoxyvinylglycine.

2. *Chronic risk.* Using the Theoretical Maximum Residue Contribution (TMRC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to aminoethoxyvinylglycine from food (the current section 3 apple and pear uses plus the experimental stone fruit use) will utilize 6.9% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to aminoethoxyvinylglycine in drinking water (there is no non-dietary, non-occupational exposure because neither the Experimental Use Permit nor the section 3 registrations involve residential use), EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to aminoethoxyvinylglycine residues.

3. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of aminoethoxyvinylglycine.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of aminoethoxyvinylglycine, EPA considered data from developmental toxicity studies in the rat. A 2-generation reproduction study in the rat is pending and was a condition of the section 3 registration for the subject active ingredient. Interim data on the first generation have been received by the Agency. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for pre-and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no

appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional ten-fold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor. In this case, due to the incompleteness of the data, the Agency used a thousand-fold uncertainty factor in the RfD calculations, and previously imposed a requirement for a 2-generation reproduction study in rats. The thousand-fold uncertainty factor includes an additional uncertainty factor of 10 to protect infants and children.

ii. *Developmental toxicity studies.* In a developmental toxicity study in rats by oral gavage, a NOAEL of 1.77 mg active ingredient/kg bwt/day was determined for both developmental and maternal toxicity.

iii. *Reproductive toxicity study.* Two-generation rat reproduction data are pending, as a condition of the section 3 registration. Interim data on the first generation have been submitted to the Agency.

iv. *Conclusion.* Due to the incomplete data set (2-generation rat reproduction data, a condition of registration for the active ingredient are pending), the Agency used a thousand-fold uncertainty factor in the RfD calculations. The thousand-fold uncertainty factor includes an additional uncertainty factor of 10 to protect infants and children. The data adequately support the conditional 1997 registration of the active ingredient and also adequately support the temporary tolerance level of 0.170 ppm proposed for the experimental stone fruit use.

2. *Acute risk.* For risk assessment purposes, there were no acute endpoints identified for aminoethoxyvinylglycine.

3. *Chronic risk.* Using the conservative exposure assumptions described in this unit, EPA has concluded that aggregate exposure to aminoethoxyvinylglycine from food will utilize 50.9% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to aminoethoxyvinylglycine in drinking water (there is no non-dietary, non-occupational exposure because neither the Experimental Use Permit nor the section 3 registered products are for residential use), EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to aminoethoxyvinylglycine.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to aminoethoxyvinylglycine residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of aminoethoxyvinylglycine in plants and animals is adequately understood for the purposes of these temporary tolerances.

B. Analytical Enforcement Methodology

The submitted analytical method, High Performance Liquid Chromatography (HPLC)/Fluorescence detector, is acceptable; it is also verified and validated.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

The experimental program (275–EUP–82) specifies a single application of 50 grams of active ingredient be applied 7–14 days prior to anticipated harvest. For the purposes of the temporary tolerance, the magnitude of residues was evaluated in/on peaches at proposed and exaggerated label rates. After application of proposed label rates, residue levels were below the level of quantitation, if detectable at all, within 5 days of application. Exaggerated rates (up to 4 times the proposed label rates) demonstrated rapid decline of residues to below quantifiable levels by 14 days after application. The limit of quantitation (LOQ) is 0.170 ppm and the limit of detection (LOD) is 0.050 ppm.

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for residues of aminoethoxyvinylglycine.

IV. Conclusion

Therefore, the temporary tolerance, to expire April 1, 2001, is established for residues of aminoethoxyvinylglycine in or on food commodities of the stone fruit crop group at 0.170 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 9, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions

on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request 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 information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300858] (including any comments and data submitted electronically). 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the temporary tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), 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 funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action

does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 13, 1999. 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).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 13, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. In § 180.502, in paragraph (a), by alphabetically adding the following commodity to the table:

§ 180.502 Aminoethoxyvinylglycine; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* * *		* *
Stone fruit crop group	0.170	04/01/01

* * * * *

[FR Doc. 99–14760 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300873; FRL–6085–4]

RIN 2070–AB78

Kresoxim-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of kresoxim-methyl and its metabolites in or on pome fruit, grapes, pecans, apple pomace, raisins, and meat byproducts of cattle, sheep and goats. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 10, 1999. Objections and requests for hearings must be received by EPA on or before August 9, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300873], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300873], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300873]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Product Manager 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1999 (64 FR 11874) (FRL–6063–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 7F4880 for tolerances by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for the combined residues of the fungicide kresoxim-methyl, (BAS 490F) or (methyl (*E*)-2-[2-(2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetate) and its metabolites as follows: (BF 490–1) or (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid; (BF 490–2) or (*E*)-2-[2-(2-hydroxymethylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated); and (BF 490–9) or (*E*)-2-[2-(4-hydroxy-2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated) in or on pome fruit at 0.5 parts per million (ppm), grapes at 1.0 ppm, pecans, at 0.15 ppm, apple pomace at 1.0 ppm, and raisins at 1.5

ppm. The petition also requested that 40 CFR part 180 be amended by establishing tolerances in or on meat byproducts of cattle, sheep and goats at 0.01 ppm for the residues of the metabolite (BF 490–1) or ((*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid) resulting from the use of the fungicide kresoxim-methyl.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of kresoxim-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of kresoxim-methyl and its metabolites in or on pome fruit, grapes, pecans, apple pomace, raisins, and meat byproducts of cattle, sheep and goats. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by kresoxim-methyl are discussed in this unit.

1. *Acute toxicity*. A battery of acute toxicity studies using technical kresoxim-methyl resulted in the following: an acute rat oral LD_{50} > 5,000 milligrams/kilogram(mg/kg) (toxicity category IV); an acute rat dermal LD_{50} > 2,000 mg/kg (toxicity category III); an acute rat inhalation LC_{50} > 5.6 milligrams/liter(mg/L) (toxicity category IV); mild eye irritation in a primary eye irritation study using rabbits (toxicity category III); no irritation in a primary skin irritation study using rabbits (category IV); and no sensitization demonstrated in a dermal sensitization study using guinea pigs.

2. *Subchronic toxicity*. i. In a 90–day oral toxicity study, rats were fed kresoxim-methyl at dose levels of 0, 500, 2,000, 8,000, and 16,000 parts per million (ppm) (0, 36, 146, 577, and 1,170 mg/kg/day for males and 0, 43, 172, 672, and 1,374 mg/kg/day for females). The Lowest Observed Adverse Effect Level (LOAEL) for male rats was 8,000 ppm based on elevated serum GGT. A LOAEL was not established for females. The No Observed Adverse Effect Level (NOAEL) for males was 2,000 ppm and for females was 16,000 ppm.

ii. In a 90–day oral toxicity study, mice were fed kresoxim-methyl at levels of 0, 250, 1,000, 4,000, and 8,000 ppm (0, 57, 230, 909, and 1,937 mg/kg/day for males and 0, 80, 326, 1,326 and 2,583 mg/kg/day for females). A LOAEL was not determined for either sex. The NOAEL for males and females was 8,000 ppm.

iii. In a 21–day dermal toxicity study, 5 male and 5 female rats were treated with kresoxim-methyl by dermal occlusion at doses of 0 and 1,000 mg/kg/day, 6 hours/day for 21 days. The NOAEL for males and females was 1,000 mg/kg/day. A LOAEL was not determined.

3. *Developmental toxicity*. i. In a developmental toxicity study, rats were gavaged with kresoxim-methyl at dose levels of 0, 100, 400, or 1,000 mg/kg/day on gestation days 6–15. No clinical signs of toxicity were observed in any treated animals during the study and no treatment-related gross abnormalities were observed at maternal necropsy. The maternal NOAEL was ≧ 1,000 mg/kg/day and the maternal LOAEL was not determined. There were no treatment-related external, visceral, or skeletal malformations/variations observed in any of the fetuses. The developmental NOAEL was ≧ 1,000 mg/kg/day and the developmental LOAEL was not determined.

ii. In a developmental toxicity study, rabbits were gavaged with kresoxim-methyl at dose levels of 0, 100, 400 or 1,000 mg/kg/day on gestation days 7–19. No clinical signs of toxicity were observed in any treated animals during the study and no treatment-related gross abnormalities were observed at maternal necropsy. The maternal NOAEL was ≧ 1,000 mg/kg/day and the maternal LOAEL was not determined. There were no differences between treated and control groups for number of corpora lutea/doe, implantation sites/doe, pre- and post-implantation loss, resorptions/doe, fetuses/litter, fetal sex ratios, gravid uterine or fetal body weights, or number of dead fetuses. The overall incidence rates for litters containing fetuses with major malformations in the 0, 100, 400, and 1,000 mg/kg/day groups were 7/13, 7/14, 11/15, and 10/14, respectively. There was no statistically significant difference between control and treated groups of fetuses regarding the number of external, soft-tissue, or skeletal malformations/variations with the exception of fetal incidence of fused sternebrae in the low dose group compared to the controls ($p < 0.05$). Since a dose-response relationship was not apparent, toxicological significance could not be established. The developmental NOAEL was ≧ 1,000 mg/kg/day and the developmental toxicity LOAEL was not identified.

4. *Reproductive Toxicity*. In a 2–generation reproduction study, 25 rats/sex/dose were fed kresoxim-methyl at dose levels of 0, 50, 1,000, 4,000, or 16,000 ppm for two generations. Two litters were produced in the first generation (F_{1a} and F_{1b}) and one litter in the second generation (F_2). Premating doses for the F_0 males were 5.1, 102.6, 411.0, and 1,623.1 mg/kg, respectively and for F_0 females were 5.6, 108.7, 437.2 and 1,741.1 mg/kg, respectively. Premating doses for the F_1 males were 4.4, 88.3, 362.7, and 1,481.6 mg/kg and for the F_1 females were 5.0, 100.8, 416.6, and 1,652.6 mg/kg, respectively. Animals were given test or control diet for at least 10 weeks then mated within the same dose group. F_1 animals were chosen from the F_{1a} litters and weaned on the same diet as their parents. At least 22 litters/group were produced in

each generation. All animals were exposed to test material either in the diet or during lactation until sacrifice.

There were no dose- or treatment-related clinical signs of toxicity in the parental animals of either sex or generation. No dose- or treatment-related gross or histological abnormalities were observed at necropsy in either parent or first generation animals of either sex. The LOAEL for systemic/postnatal developmental toxicity was 4,000 ppm based on reduced body weights and body weight gains of the parent and first generation parental animals and delayed growth and maturation of the first and second generation pups. The NOAEL for systemic toxicity was 1,000 ppm. No treatment-related effects were observed in the reproductive performances of either generation. There were no dose- or treatment-related clinical signs of toxicity in the offspring of either generation. The NOAEL for reproductive toxicity was ≧ 16,000 ppm and the LOAEL for reproductive toxicity was not identified.

5. *Mutagenicity*. No mutagenicity was noted in the following assays: reverse gene mutation, *S. typhimurium*, *E. coli*; forward gene mutation - HGPRT locus; chromosome aberrations, human lymphocyte cultures; mouse bone marrow micronucleus; unscheduled DNA synthesis, rat hepatocyte cultures; and unscheduled DNA synthesis, rat hepatocytes (*in vivo/in vitro* procedure).

6. *Chronic Toxicity*. i. In a 2–year chronic feeding study, 20 rats/sex/dose were fed kresoxim-methyl at dose levels of 0, 200, 800, 8,000, or 16,000 ppm (0, 9, 36, 370 or 746 mg/kg/day for males and 0, 12, 48, 503, or 985 mg/kg/day for females). The LOAEL for male and female rats was 8,000 ppm based in males on the increase in SGGT levels, liver weight and histopathological changes, and in females on roughly 10% lowered body weights and weight gains throughout most of the study. The NOAEL for both sexes was 800 ppm.

ii. In a 1–year chronic feeding study, 5 dogs/sex/dose were fed kresoxim-methyl at levels of 0, 1,000, 5,000 or 25,000 ppm (0, 27, 138, or 714 mg/kg/day for males and 0, 30, 146, or 761 mg/kg/day for females). The LOAEL for males was 25,000 ppm based on decreased mean body weight and body weight gain and decreased food efficiency. A LOAEL was not identified for females. The NOAEL for males was 5,000 ppm, and for females was 25,000 ppm.

7. *Carcinogenicity*. i. In a 2–year oncogenicity feeding study, 50 rats/sex/dose were fed kresoxim-methyl at dose levels of 0, 200, 800, 8,000, or 16,000 ppm (0, 9, 36, 375, and 770 mg/kg/day for males and 0, 12, 47, 497, and 1,046 mg/kg/day for females). Clinical observations and mortality were not affected by treatment in either sex of rats. Body weights and body weight gains of males and females were decreased relative to controls in the respective 8,000 and 16,000 ppm groups throughout most or all of the study. The incidence of gross liver masses increased in both sexes ($p \leq 0.05$ in 8,000 ppm males; $p \leq 0.01$ in 8,000 and 16,000 ppm females). This was correlated in males with dose-related increases in the incidence of microscopic lesions including eosinophilic cell foci, mixed cell foci, cellular hypertrophy (dose related; $p \leq 0.05$ or 0.01 at 16,000 ppm), and biliary cysts ($p \leq 0.05$ at 8,000 ppm) and in females with altered cell foci, mixed cell foci, bile duct proliferation, and cholangiofibrosis ($p \leq 0.05$, 0.01, or 0.001 at 16,000 ppm). The liver (with bile ducts) is therefore implicated as a target organ in both sexes of rats. The increased incidence in females of gross ovarian masses ($p \leq 0.05$ at 16,000 ppm), microscopic ovarian cysts ($p \leq 0.001$ at 800 and 16,000 ppm), uterine/cervical dilation ($p \leq 0.01$ at 800 and 16,000 ppm) and brain hemorrhage ($p \leq 0.05$ at 16,000 ppm) and in males of enlarged testes ($p \leq 0.05$ at 800 and 8,000 ppm) did not appear to be treatment-related. The LOAEL for both male and female rats was 8,000 ppm. The LOAEL for males was based on the minor decrease in body weight and body weight gain and the increase in gross and microscopic liver (and biliary) lesions. The LOAEL in females was based on the lowered body weights and weight gains and on the increased incidence of liver masses. The NOAEL for both sexes was 800 ppm. Liver carcinoma was the primary neoplastic finding in both sexes of rats, consistent with the histopathological findings.

ii. In an 18–month feeding study, mice were fed kresoxim-methyl at dose levels of 0, 400, 2,000, and 8,000 ppm (0, 60, 304, and 1,305 mg/kg/day for males and 0, 81, 400, and 1,662 mg/kg/day) for 18 months. An additional 10 animals were treated for 12 months in a satellite study. The LOAEL was 2,000 ppm (400 mg/kg/day) for females, based on decreased weight gain and 8,000 ppm (1,350 mg/kg/day for males, based on decreased weight gain and liver amyloidosis. The NOAEL was 400 ppm (81 mg/kg/day) for females and 2,000 ppm (304 mg/kg/day) for males. At the doses tested, there was not a treatment related increase in tumor incidence when compared to controls. Dosing was considered adequate and the high dose rate was above the limit dose of 1,000 mg/kg/day for both sexes.

8. *Metabolism*. In a metabolism study, rats were gavaged with kresoxim-methyl at dose levels of 50 or 500 mg/kg or 15–day repeated doses of 50 mg/kg, or as a single intravenous dose of 5 mg/kg/day. Radiolabeled test compound was included in one 500 mg/kg dose group to facilitate metabolite identification. Biliary metabolites were assessed in rats with cannulated bile ducts given an oral dose of 50 or 500 mg/kg/day.

Orally administered test compound was widely distributed and quickly eliminated. Results indicated there was no bioaccumulation. In both sexes, the major routes of excretion were feces and the urine. No radioactivity was detected in exhaled air. A total of 32 different metabolites were identified in the urine, feces, bile, plasma, liver, and kidneys of rats. There were some sex, dose, route, and label-dependent differences in the metabolite profiles.

9. *Neurotoxicity*. i. In an acute oral neurotoxicity, 10 rats/sex/dose were gavaged with kresoxim-methyl at dose levels of 0, 500, 1,00, or 2,000 mg/kg. No signs of neurotoxicity were observed at any dose level and no systemic toxicity was observed at any dose level. A LOAEL was not established. The NOAEL for acute neurotoxicity is 2,000 mg/kg.

ii. In a subchronic oral neurotoxicity study, 10 rats/sex/dose were fed kresoxim-methyl at dose levels of 0, 1,000, 4,000 or 16,000 ppm (0, 78, 317, 1,267 mg/kg/day) for 3 months. All animals survived to scheduled termination. There were statistically significant decreases in body weight, body weight gain, and food consumption on some days only at the high-dose level for males and females. No effects were observed at the other dose levels. There were no observable signs of a neurotoxic effect at any dose level. Functional observation battery and motor activity remained comparable to controls throughout the study an no neuropathological endpoints were observed during the histological examinations. The LOAEL for systemic toxicity is 16,000 ppm for males and females based on decreases in body weight, body weight gain, and food consumption. The NOAEL for systemic toxicity is 4,000 ppm for male and female rats, and is ≧ 16,000 ppm for neurotoxicity.

B. Toxicological Endpoints

1. *Acute toxicity*. An acute endpoint was not selected because no adverse effects resulting from a single exposure were identified in an acute

neurotoxicity study in rats, and developmental toxicity studies in the rat and rabbit.

2. *Short- and intermediate-term toxicity.* A short- and intermediate -term endpoint was not selected because no dermal or systemic toxicity was seen in a 21–day dermal toxicity study in rats.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for kresoxim-methyl at 0.36 mg/kg/day. This RfD is based on a 2–year oncogenicity feeding study in rats. The FQPA safety factor was reduced to 1X for chronic dietary exposure because there was no increase in susceptibility identified in developmental or reproductive toxicity studies. Therefore, the chronic PAD (chronic population adjusted dose or cPAD) and the chronic RfD are identical.

4. *Chronic dermal toxicity.* EPA selected the RfD of 0.36 mg/kg/day to assess long-term dermal exposure. This RfD (identified above) is from an oral study and, based on available data, dermal absorption is expected to be equivalent to oral absorption (approximately 63–70%). Therefore a dermal absorption factor was not required for risk calculations. This endpoint was selected for occupational exposure only as there are no residential uses of kresoxim-methyl.

5. *Carcinogenicity.* Kresoxim-methyl has been classified as a ''likely human carcinogen''. The Q_1* for kresoxim-methyl is 2.90×10^{-3}. The Q_1* is based on the female rat combined (adenomas and/or carcinomas) liver tumor rates from a 2–year oncogenicity feeding study.

C. Exposures and Risks

1. *From food and feed uses.* There are no food or feed uses currently registered for kresoxim-methyl. In today's action, tolerances are being established at 40 CFR 180.554 for combined residues of the fungicide kresoxim and its metabolites in or on pome fruit at 0.5 ppm, grapes at 1.0 ppm, pecans at 0.15 ppm, apple pomace at 1.0 ppm, raisins at 1.5 ppm, and meat byproducts of cattle, sheep and goats at 0.01 ppm. Risk assessments were conducted by EPA to assess dietary exposures from kresoxim methyl as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No toxicological endpoint attributable to a single (acute) dietary exposure was identified.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis used the cPAD of 0.36 mg/kg/day which applies to all population subgroups. Anticipated residue values were used and EPA assumed that 100% of all crops having kresoxim-methyl tolerances were treated. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The Agency estimated that chronic dietary exposure to kresoxim-methyl will utilize 0.1% of the cPAD for the U.S. population and 0.2% of the cPAD for the most highly exposed population subgroup, non-nursing infants. The chronic dietary risk does not exceed the Agency's level of concern.

iii. *Dietary cancer risk.* Kresoxim-methyl is classified as a ''likely human carcinogen'' with a Q^* of 2.90×10^{-3}. The upper bound lifetime cancer risk estimated for U.S. population is 5.7×10^{-7} and is below the Agency's level of concern (cancer risks greater than 1×10^{-6}). Therefore, the dietary food cancer risk to kresoxim-methyl is below the Agency's level of concern.

2. *From drinking water.* Kresoxim-methyl is relatively short lived and therefore, unlikely to leach to ground water or move offsite to surface water in significant concentrations. However, the major acid degradate/metabolite (BF 490–1) has physical/chemical characteristics in common with pesticides that are known to leach to groundwater or to move offsite to surface water. Possible contamination of groundwater and surface water by BF 490–1 may occur when applied to fields with one or more of the following characteristics: alkaline soils, low organic matter, high sand, shallow groundwater table, and nearby bodies of water.

i. *Acute exposure and risk.* No acute risk is expected from exposure to kresoxim-methyl.

ii. *Chronic exposure and risk.* The Agency used the Screening Concentration in Ground Water (SCI-GROW) screening model to determine the estimated environmental concentration (EEC) in ground water and the Pesticide Root Zone model-Exposure Analysis Modeling (PRZM-EXAMS) to determine the EEC in surface water. Drinking water levels of comparison (DWLOC) which represent the upper limit of a chemical's concentration in drinking water that will result in an acceptable aggregate exposure were calculated for comparison to the EEC's from the SCI-GROW and PRZM-EXAMS model values. The combined ground water EEC for kresoxim-methyl and BF 490–1 is 4.1 parts per billion (ppb) (groundwater screening for kresoxim-methyl is negligible and groundwater screening concentration for BF 490–1 is 4.1 ppb). The combined surface water EEC for kresoxim-methyl and BF 490–1 is 5.0 ppb. The combined groundwater EEC of 4.1 ppb and the combined surface water EEC of 5.0 ppb are substantially lower than the Agency's chronic (non-cancer) DWLOC of 12,593 ppb for the U.S. population and the chronic (non-cancer) DWLOC of 3,591 ppb for the most highly exposed population subgroup, non-nursing infants. Therefore, the Agency concludes with reasonable certainty that residues of kresoxim-methyl and BF 490–1 do not contribute significantly to the aggregate chronic (non-cancer) human health risk.

The Agency calculated a chronic (cancer) DWLOC of 4.9 ppb for the U.S. population. The combined groundwater EEC of 4.1 ppb is lower than the chronic (cancer) DWLOC of 4.9 ppb. The PRZM-EXAMS surface water EEC of 5.0 ppb produces a cancer risk estimate in the range of 10E6. However, EPA believes this overstates the cancer risk because the chronic dietary exposure estimates for kresoxim-methyl assumed 100% crop treated. The Agency calculated the expected market share for kresoxim-methyl and assumed that kresoxim-methyl would capture 100% of the market share from the alternative product with the highest use. The maximum kresoxim-methyl percent crop treatment estimates for apples, pears, pecans, and grapes are 70%, 55%, 55%, and 30%, respectively. The Agency considers these estimates to be conservative with actual use rates of kresoxim-methyl likely to be considerably lower. The Agency believes that actual dietary exposure to kresoxim-methyl and BF 490–1 will

decrease at least by a factor of > 2% resulting in a combined surface water DWLOC for kresoxim-methyl and BF 490–1 of ≥ 5.0 ppb.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency believes that the three conditions, discussed in section 408(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency.

3. *From non-dietary exposure.* Kresoxim-methyl has no proposed or registered residential uses. Therefore, no non-occupational, non-dietary exposure and risk are expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether kresoxim-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, kresoxim-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that kresoxim-methy has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* No acute risk are expected because no acute dietary endpoint was determined.

2. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to kresoxim-methyl from food will utilize 0.1% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to kresoxim-methyl in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Aggregate cancer risk for U.S. population.* The upper bound lifetime cancer risk estimated for U.S. population is in the range of 10E6. The Agency's general level of concern for cancer risks is for risks greater than risks in the range of 1×10^{-6}. Use of percent crop treated estimates will significantly lower the combined surface water estimates and thus significantly lower the risk estimate. Therefore, the Agency concludes with reasonable certainty that no harm will result from aggregate exposure to kresoxim-methyl and its metabolites.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of kresoxim-methyl and its metabolites.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of kresoxim-methyl and its metabolites, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and post-natal sensitivity.* In the prenatal developmental toxicity studies in rat and rabbit fetuses, no evidence of developmental toxicity in fetuses was seen at the limit dose. In the 2–generation reproduction study in rats, offspring effects occurred only at parentally toxic dose levels.

iii. *Conclusion.* There is a complete toxicity database for kresoxim-methyl and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Taking

into account the lack of any special pre- or post-natal susceptibility and the completeness of the toxicity and exposure data base, EPA concluded that an additional tenfold safety factor was not needed to protect the safety of infants and children.

2. *Acute risk*. No acute risk is expected because no acute dietary endpoint was identified.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to kresoxim-methyl from food will utilize 0.2% of the cPAD for the most highly exposed population subgroup, non-nursing infants. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for dietary exposure to kresoxim-methyl in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to kresoxim-methyl residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues in plants and animals is adequately understood. The residues of concern in plants are kresoxim-methyl, (BAS 490F or methyl (*E*)-2-[2-(2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetate) and its metabolites as follows: BF 490-1 or (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid; BF 490-2 or (*E*)-2-[2-(2-hydroxymethylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated); and BF 490-9 or (*E*)-2-[2-(4-hydroxy-2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated). The residue of concern in animals is the metabolite BF 490-1 or (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid.

B. Analytical Enforcement Methodology

Adequate enforcement methodology high performance liquid chromatography/using ultra violet detection (HPLC/ULV) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

The Agency has concluded that residue data submitted in support of the tolerances for kresoxim-methyl as follows: 0.5 ppm for pome fruit, 1.0 ppm for grapes, 0.15 ppm for pecans, 1.0 for apple pomace, 1.5 ppm for raisins, and 0.01 ppm for meat byproducts of cattle, sheep and goats are adequate.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits for kresoxim-methyl.

E. Rotational Crop Restrictions

Rotational crop restrictions are not required as rotation to other crops is not anticipated.

IV. Conclusion

Therefore, tolerances are established for *combined residues* of kresoxim-methyl (methyl (*E*)-2-[2-(2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetate) and its metabolites as follows: (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid; (*E*)-2-[2-(2-hydroxymethylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated); and (*E*)-2-[2-(4-hydroxy-2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated) in or on the following commodities: pome fruit at 0.5 ppm, grapes at 1.0 ppm, pecans, at 0.15 ppm, apple pomace at 1.0 ppm, and raisins at 1.5 ppm. Tolerances are established in or on meat byproducts of cattle, sheep and goats at 0.01 ppm for the metabolite [(*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid] resulting from the use of the fungicide kresoxim-methyl.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 9, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request 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 information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300873] (including any comments and data submitted electronically). 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), 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 funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Joseph J. Merenda, Jr.

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.554 is added to read as follows:

§ 180.554 Kresoxim-methyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the fungicide kresoxim-methyl (methyl (*E*)-2-[2-(2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetate) and its metabolites as follows: (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid; (*E*)-2-[2-(2-hydroxymethylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated); and (*E*)-2-[2-(4-hydroxy-2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated) in or on the following commodities:

Commodity	Parts per million
Apple, pomace	1.0
Grapes	1.0
Pecans	0.15
Pome fruit	0.5
Raisins	1.5

(2) Tolerances are established in or on the following commodities for the residues of the metabolite (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid resulting from the use of the fungicide kresoxim-methyl:

Commodity	Parts per million
Cattle, meat byproducts	0.01
Goat, meat byproducts	0.01
Sheep, meat byproducts	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–14761 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Conduct at the Mt. Weather Emergency Assistance Center and at the National Emergency Training Center

44 CFR Part 15

RIN 3067–AC83

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule makes certain technical amendments to 44 CFR part 15 to reflect the name change of a FEMA facility, to effect other minor changes governing conduct at the Mt. Weather Emergency Assistance Center (Mt. Weather) and at the National Emergency Training Center (NETC), and to consolidate the rules applicable to both facilities.

EFFECTIVE DATE: This rule is effective on July 12, 1999.

FOR FURTHER INFORMATION CONTACT: For information on Mt. Weather, contact John L. Matticks, Senior Resident Manager, Mt. Weather Emergency Assistance Center, Federal Emergency Management Agency, Washington, DC 20472, (telephone) (540) 542–2001, (facsimile) (540) 542–2005, or (email) John.Matticks@fema.gov; for information on the National Emergency Training Center, Ronald P. Face, Jr., Assistant Administrator, United States Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727, (telephone) (301) 447–1223, (facsimile) (301) 447–1052, or (email) ron.face@fema.gov.

SUPPLEMENTARY INFORMATION. Throughout this preamble and rule the term ''we'' means the Federal Emergency Management Agency or FEMA.

This final rule makes certain technical amendments to 44 CFR part 15, as follows:

1. We changed the heading of part 15 from ''Conduct at the FEMA Special Facility'' to ''Conduct at the Mt. Weather Emergency Assistance Center and at the National Emergency Training Center.''

2. Part 15 previously contained two subparts, the one relating to the ''Special Facility'', now Mt. Weather, and the other to the NETC. In this final rule we eliminated the subparts and consolidated the rules, while separately treating rules that differ at the two facilities.

3. We changed all references from ''the Special Facility'' to the ''Mt. Weather Emergency Assistance Center'' or to ''Mt. Weather''.

3. We changed the format of certain sections for purposes of clarity.

4. We changed a reference to the ''Manual on Fund Raising within the Federal Service'' to the current requirements under 5 CFR 950, Solicitation of Federal Civilian and Uniformed Service Personnel for Contribution to Private Voluntary Organizations.

5. We changed certain Public Law and Statutes at Large citations to United States Code citations for consistency within 44 CFR and to assure those using the latest version of the United States Code that they have the latest version of law involved.

Administrative Procedure Act Determination

FEMA is publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. This final rule is a rule of agency organization, procedure, or practice that is excepted from the prior public comment requirements of the § 553(b). The rule makes nonsubstantive, nonsignificant changes in 44 CFR 15 to change the heading of part 15, to change references from ''the Special Facility'' to the ''Mt. Weather Emergency Assistance Center'' or to ''Mt. Weather'', to change the format of certain sections, to change certain references and citations to more current ones, and to consolidate rules for Mt. Weather and the NETC.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed the final rule under E.O. 12866.

Regulatory Flexibility Act

I certify that this rule is not a major rule under Executive Order 12291. It will not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and we do not expect it (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities. We have not prepared a regulatory flexibility analysis of this proposed rule.

Paperwork Reduction Act

This final rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Congressional Review of Agency Rulemaking

We have submitted this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 15

Federal buildings and facilities, Penalties.

Accordingly, we revise 44 CFR Part 15 to read as follows:

PART 15—CONDUCT AT THE MT. WEATHER EMERGENCY ASSISTANCE CENTER AND AT THE NATIONAL EMERGENCY TRAINING CENTER

Sec.
15.1 Applicability.
15.2 Definitions.
15.3 Access to Mt. Weather.
15.4 Inspection.
15.5 Preservation of property.
15.6 Compliance with signs and directions.
15.7 Disturbances.
15.8 Gambling.
15.9 Alcoholic beverages and narcotics.
15.10 Soliciting, vending, and debt collection.
15.11 Distribution of handbills.
15.12 Photographs and other depictions.
15.13 Dogs and other animals.
15.14 Vehicular and pedestrian traffic.
15.15 Weapons and explosives.
15.16 Penalties.
15.17. Other laws.

Authority: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 13239, 3 CFR, 1979 Comp., p. 412; Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2201 *et seq.*; delegation of authority from the Administrator of General Services, dated July 18, 1979; Pub.L. 80–566, approved June 1, 1948, 40 U.S.C. 318–318d; and the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 271 *et seq.*

§ 15.1 Applicability.

The rules and regulations in this part apply to all persons entering, while on, or leaving all the property known as the Mt. Weather Emergency Assistance Center (Mt. Weather) located at 19844 Blue Ridge Mountain Road, Bluemont, Virginia 20135, and all the property known as the National Emergency Training Center (NETC), located on 16825 South Seton Avenue in Emmitsburg, Maryland, which the Federal Emergency Management Agency (FEMA) owns, operates and controls.

§ 15.2 Definitions.

Terms used in part 15 have these meanings:

Administrator means the Administrator, United States Fire Administration, FEMA.

Director means the Director of the Federal Emergency Management Agency.

FEMA means the Federal Emergency Management Agency.

Mt. Weather means the Mt. Weather Emergency Assistance Center, Bluemont, VA.

NETC means the National Emergency Training Center, Emmitsburg, MD.

Senior Resident Manager means the Senior Resident Manager, Mt. Weather Emergency Assistance Center.

We means the Federal Emergency Management Agency or FEMA.

§ 15.3 Access to Mt. Weather.

Mt. Weather contains classified material and areas that we must protect in the interest of national security. The facility is a restricted area. We deny access to Mt. Weather to the general public and limit access to those persons having official business related to the missions and operations of Mt. Weather. The Director or the Senior Resident Manager must approve all persons and vehicles entering Mt. Weather. All persons must register with the Mt. Weather Police/Security Force and must receive a Mt. Weather identification badge and vehicle parking decal or permit to enter or remain on the premises. No person will enter or remain on Mt. Weather premises unless he or she has received permission from the Director or the Senior Resident Manager and has complied with these procedures.

§ 15.4 Inspection.

(a) *In general.* All vehicles, packages, handbags, briefcases, and other containers being brought into, while on or being removed from Mt. Weather or the NETC are subject to inspection by the Police/Security Force and other authorized officials. A full search of a vehicle or person may accompany an arrest.

(b) *Inspection at Mt. Weather.* We authorize inspection at Mt. Weather to prevent the possession and use of items prohibited by these rules and regulations or by other applicable laws, to prevent theft of property and to prevent the wrongful obtaining of defense information under 18 U.S.C. 793. If individuals object to such inspections they must tell the officer on duty at the entrance gate before entering Mt. Weather. The Police/Security Force and other authorized officials must not authorize or allow individuals who refuse to permit an inspection of their vehicle or possessions to enter the premises of Mt. Weather.

§ 15.5 Preservation of property.

At both Mt. Weather and NETC we prohibit:

(a) The improper disposal of rubbish;

(b) Willful destruction of or damage to property;

(c) Theft of property;

(d) Creation of any hazard on the property to persons or things;

(e) Throwing articles of any kind from or at a building;

(f) Climbing upon a fence; or

(g) Climbing upon the roof or any part of a building.

§ 15.6 Compliance with signs and directions.

Persons at Mt. Weather and the NETC must comply at all times with official signs that prohibit, regulate, or direct, and with the directions of the Police/Security Force and other authorized officials.

§ 15.7 Disturbances.

At both Mt. Weather and NETC we prohibit any unwarranted loitering, disorderly conduct, or other conduct at Mt. Weather and NETC that:

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of classrooms, dormitory rooms, entrances, foyers, lobbies, corridors, offices, elevators, stairways, roadways or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by government employees or government contractors;

(d) Interferes with the delivery of educational or other programs; or

(e) Prevents persons from obtaining in a timely manner the administrative services provided at both facilities.

§ 15.8 Gambling.

We prohibit participating in games for money or other personal property, including the operation of gambling devices, the conduct of a lottery or pool, or the sale or purchase of numbers tickets at both facilities.

§ 15.9 Alcoholic beverages and narcotics.

At both Mt. Weather and the NETC we prohibit:

(a) Operating a motor vehicle by any person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines as defined in Title 21 of the Annotated Code of Maryland, Transportation, sec. 21–902 or in Title 18.2, ch. 7, Art. 2 of the Code of Virginia, secs. 18.2–266 and 18.2–266.1, as applicable;

(b) Entering upon or while on either property being under the influence of or using or possessing any narcotic drug, marijuana, hallucinogen, barbiturate or amphetamine. This prohibition does not apply in cases where a licensed physician has prescribed the drug for the person;

(c) Entering upon either property or being on either property under the influence of alcoholic beverages;

(d) Bringing alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines onto the premises unless the Director, the Senior Resident Manager, or the Administrator or designee for the NETC authorizes it in writing; and

(e) Use of alcoholic beverages on the property except:

(1) In the Balloon Shed Lounge at Mt. Weather and in other locations that the Director or the Senior Resident Manager authorizes in writing; and

(2) In the Student Center at the NETC and other locations that the Director or the Administrator, or designee, authorizes in writing.

§ 15.10 Soliciting, vending, and debt collection.

(a) We prohibit soliciting alms and contributions, commercial or political soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts unless the Director for either facility or the Senior Resident Manager approve the activities in writing and in advance.

(b) The prohibitions of this section do not apply to:

(1) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR part 950, Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations. The Director, or the Senior Resident Manager, or the Administrator for the NETC or designee, must approve all such national or local drives before they are conducted on either premises;

(2) Authorized concessions;

(3) Personal notices posted by employees on authorized bulletin boards; and

(4) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978, 5 U.S.C. 7101 *et seq.*

§ 15.11 Distribution of handbills.

We prohibit the distribution of materials such as pamphlets, handbills or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere at Mt. Weather and the NETC unless the Director, the Senior Resident Manager, or the Administrator for the NETC or designee, approves such distribution or display, or when such distribution or display is conducted as part of authorized government activities.

§ 15.12 Photographs and other depictions.

(a) *Photographs and other depictions at Mt. Weather.* We prohibit taking photographs and making notes, sketches, or diagrams of buildings, grounds or other features of Mt. Weather, or the possession of a camera while at Mt. Weather except when the Director or the Senior Resident Manager approves in advance.

(b) *Photographs and other depictions at the NETC.* (1) Photographs may be taken inside classroom or office areas of the NETC only with the consent of the occupants. Except where security regulations apply or a Federal court order or rule prohibits it, photographs may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings.

(2) Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of the Assistant Administrator, Management Operations and Student Support, United States Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727, (telephone) (301) 447–1223, (facsimile) (301) 447–1052, or other authorized official where photographs are to be taken.

§ 15.13 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, must not be brought onto Mt. Weather grounds or into the buildings at NETC for other than official purposes.

§ 15.14 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles entering or while at Mt. Weather or the NETC must drive carefully and safely at all times and must obey the signals and directions of the Police/Security Force or other authorized officials and all posted traffic signs;

(b) Drivers must comply with NETC parking requirements and vehicle registration requirements;

(c) At both Mt. Weather and the NETC we prohibit:

(1) Blocking entrances, driveways, walks, loading platforms, or fire hydrants on the property; and

(2) Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs.

(3) Where warning signs are posted vehicles parked in violation may be removed at the owners' risk and expense.

(d) The Director or the Senior Resident Manager or the Administrator for the NETC or designee may issue and post specific supplemental traffic directives if needed. When issued and posted supplemental traffic directives will have the same force and effect as if they were in these rules. Proof that a parked motor vehicle violated these rules or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

§ 15.15 Weapons and explosives.

No person entering or while at Mt. Weather or the NETC will carry or possess firearms, other dangerous or deadly weapons, explosives or items intended to be used or that could reasonably be used to fabricate an explosive or incendiary device, either openly or concealed, except:

(a) For official purposes if the Director or the Senior Resident Manager or the Administrator for the NETC or designee approves; and

(b) In accordance with FEMA policy governing the possession of firearms.

§ 15.16 Penalties.

(a) *Misconduct.* (1) Whoever is found guilty of violating any of these rules and regulations is subject to a fine of not more than $50 or imprisonment for not more than 30 days, or both. (See 40 U.S.C. 318c.)

(2) We will process any misconduct at NETC according to FEMA/NETC policy or instructions.

(b) *Parking violations.* We may tow at the owner's expense any vehicles parked in violation of State law, FEMA, Mt. Weather, or NETC instructions.

§ 15.17. Other laws.

Nothing in the rules and regulations in this part will be construed to abolish any other Federal laws or any State and local laws and regulations applicable to Mt. Weather or NETC premises. The rules and regulations in this part supplement penal provisions of Title 18, United States Code, relating to Crimes and Criminal Procedure, which apply without regard to the place of the offense and to those penal provisions that apply in areas under the special maritime and territorial jurisdiction of the United States, as defined in 18 U.S.C. 7. They supersede provisions of State law, however, that Federal law makes criminal offenses under the Assimilated Crimes Act (18 U.S.C. 13) to the extent that State laws conflict with these regulations. State and local criminal laws apply as such only to the extent that the State reserved such authority to itself by the State consent or cession statute or that a Federal statute vests such authority in the State.

Dated: May 26, 1999.

James L. Witt,

Director.

[FR Doc. 99–14326 Filed 6–9–99; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 99–823]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules that implement the Freedom of Information Act (FOIA) fee schedule. This amendment pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived in accordance with the rules. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 1–C–804, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, (202) 418–0440 or via Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: The FCC is amending § 0.467(a) of the Commission's Rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1987. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

Regulatory Procedures

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a ''significant rule'' since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 0 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: § 5, 48, Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.467 is amended by revising the table in paragraph (a)(1), its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * *

Grade	Hourly fee
GS–1	9.40
GS–2	10.22
GS–3	11.52
GS–4	12.94
GS–5	14.47
GS–6	16.13
GS–7	17.93
GS–8	19.85
GS–9	21.92
GS–10	24.14
GS–11	26.53
GS–12	29.80
GS–13	37.81
GS–14	44.69
GS–15	52.56

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a) (1) of this section were computed at step 5 of each grade level based on the General Schedule effective January 1999 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. 99–14495 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–191; RM–9351]

Radio Broadcasting Services; Leesville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C3 for Channel 224A at Leesville, Louisiana, and modifies the license for Station KJAE(FM) to specify operation on the nonadjacent higher powered channel, consistent with the provisions of Section 1.420(g) of the Commission's Rules. Although an additional equivalent channel was identified as available to Leesville in the event another party expressed an interest in a Class C3 channel at that community, no other interest was received. *See* 63 FR 59262, November 3, 1998. Coordinates used for Channel 228C3 at Leesville are 31–11–29 NL and 93–14–35 WL. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 19, 1999.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–191, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

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 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana is amended by adding Channel 228C3 at Leesville.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14722 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–5; RM–9430]

Radio Broadcasting Services; Velva, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 235C1 to Velva, ND, as the community's first local aural service. *See* 64 FR 5624, February 4, 1999. Channel 235C1 can be allotted to Velva in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 48–03–18 NL; 100–55–54 WL. Canadian concurrence in the allotment has been received since Velva is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATE: Effective July 12, 1999. A filing window for Channel 235C1 at Velva will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–5, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Velva, Channel 235C1.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14723 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–4; RM–9429]

Radio Broadcasting Services; Cannon Ball, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 298C to Cannon Ball, ND, as the community's first local aural service. *See* 64 FR 5624, February 4, 1999. Channel 298C can be allotted to Cannon Ball in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 46–24–48 NL; 100–38–12 WL. Canadian concurrence in the allotment has been received since Cannon Ball is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 298C at Cannon Ball, ND, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–4, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Cannon Ball, Channel 298C.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14724 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–7; RM–9432]

Radio Broadcasting Services; Delhi, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dana Puopolo, allots Channel 248A to Delhi, NY, as the community's second local aural transmission service. *See* 64 FR 5625, February 4, 1999. Channel 248A can be allotted to Delhi in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.6 kilometers (3.5 miles) southwest, at coordinates 42–15–23 NL; 74–58–35 WL, to avoid a short-spacing to Station WMYY, Channel 247A, Schoharie, NY. Canadian concurrence in the allotment has been received since Delhi is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 248A at Delhi, NY, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–7, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 248A at Delhi.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14725 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–37; RM–9450]

Radio Broadcasting Services; Flasher, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 290C to Flasher, ND, as the community's first local aural service. *See* 64 FR 7848, February 17, 1999. Channel 290C can be allotted to Flasher in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 46–27–12 NL; 101–14–06 WL. Canadian concurrence in the allotment has been received since Flasher is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 290C at Flasher, ND, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–37, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Flasher, Channel 290C.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14726 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–38; RM–9451]

Radio Broadcasting Services; Berthold, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 264C to Berthold, ND, as the community's first local aural service. *See* 64 FR 7847, February 17, 1999. Channel 264C can be allotted to Berthold in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 48–18–54 NL; 101–44–12 WL. Canadian concurrence in the allotment has been received since Berthold is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 264C at Berthold will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–38, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Berthold, Channel 264C.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14727 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–39; RM–9464]

Radio Broadcasting Services; Ranier, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Washington Interstate Broadcasting Company, Inc., allots Channel 252A to Ranier, OR, as the community's first local aural service. *See* 64 FR 7847, February 17, 1999. Channel 252A can be allotted to Ranier in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.4 kilometers (5.8 miles) north, at coordinates 46–10–18 NL; 122–57–42 WL, to avoid a short-spacing to vacant and unapplied-for Channel 252C3 at Dallas, OR. Canadian concurrence in the allotment has been received since Ranier is located within 320 kilometers (200 miles) of the U.S.–Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 252A at Ranier, OR, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–39, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Ranier, Channel 252A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14728 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–40; RM–9465]

Radio Broadcasting Services; Richardton, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 270C to Richardton, ND, as the community's first local aural service. *See* 64 FR 7847, February 17, 1999. Channel 270C can be allotted to Richardton with a site restriction of 6.2 kilometers (3.8 miles) southwest, at coordinates 46–50–25 NL; 102–21–35 WL, to avoid a short-spacing to Station KBTO, Channel 270C1, Bottineau, ND. Canadian concurrence in the allotment has been received since Richardton is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 270C at Richardton, ND, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–40, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Richardton, Channel 270C.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14729 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–41; RM–9466]

Radio Broadcasting Services; Wimbledon, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 276C1 to Wimbledon, ND, as the community's first local aural service. *See* 64 FR 7846, February 17, 1999. Channel 276C1 can be allotted to Wimbledon without the imposition of a site restriction, at coordinates 47–10–18 NL; 98–27–30 WL. Canadian concurrence in the allotment has been received since Wimbledon is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 276C1 at Wimbledon, ND, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–41, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Wimbledon, Channel 276C1.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14730 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–113; RM–9296]

Radio Broadcasting Services; Tumon, GU

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Guam Broadcast Services, Inc., allots Channel 282A at Tumon, Guam, as the community's first local aural transmission service. *See* 63 FR 38785, July 20, 1998. Channel 282A can be allotted to Tumon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 282A at Tumon are 13–30–25 North Latitude and 144–48–05 East Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 14, 1999. A filing window for Channel 282A at Tumon, Guam, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–113, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

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, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Guam, is amended by adding Tumon, Channel 282A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14731 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990527146–9146–01; I.D. 052099B]

RIN 0648–AM24

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery, Framework Adjustment 11; Northeast Multispecies Fishery, Framework Adjustment 29

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 29 to the Northeast Multispecies FMP. This final rule creates a 1999 seasonal Georges Bank Sea Scallop Exemption Area (Exemption Area) in and adjacent to Closed Area II and includes the following primary measures for vessels fishing in the Exemption Area: A possession limit of up to 10,000 lb (4,536.0 kg) of scallop meats per trip; a maximum of three trips for full and part-time vessels and a maximum of one trip for occasional vessels; an automatic minimum deduction of 10 days-at-sea (DAS) for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a total allowable catch (TAC) of yellowtail flounder of 387 metric tons (mt); and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 500 lb (226.8 kg), among other measures. In addition, this rule implements a minimum mesh twine top of 8 inches (20.32 cm) for vessels under a scallop DAS when fishing outside the Exemption Area. The primary intent of this action is to provide scallop vessels with a short-term strategy to access Closed Area II without compromising multispecies rebuilding or habitat protection, while the New England Fishery Management Council (Council) develops an amendment that would implement a sea scallop area rotational management plan.

DATES: Effective June 15, 1999, except for § 648.51(b)(2)(ii), which is effective December 16, 1999.

ADDRESSES: Copies of Framework Adjustment 11/Framework Adjustment 29 to the Atlantic Sea Scallop/Northeast Multispecies FMPs, its Environmental Assessment (EA), and regulatory impact review are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA, 01906–1097.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Jon C. Rittgers, Acting Regional Administrator, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: On December 12, 1994, NMFS implemented an emergency action that closed three large areas with historically high concentrations of several multispecies: Two Georges Bank closures (Closed Area I and Closed Area II), and one closure in southern New England (Nantucket Lightship Closed Area). These areas were closed to all vessels capable of catching groundfish, including scallop vessels, because of their ability to catch significant amounts of juvenile flatfish, and because of concern that scallop dredge gear disrupts groundfish spawning activity. The emergency action was subsequently implemented on a continuous basis through measures included in Framework 9 to the Northeast Multispecies FMP (60 FR 19364, April 18, 1995).

In March 1997, results from the 23rd Stock Assessment Workshop determined that the Atlantic sea scallop resource was at a low level of biomass and that catches were driven primarily by variations in the number of recruits entering the fishery. However, the report also noted that for Georges Bank, abundance and fishing mortality were at moderate levels due to half the primary scallop area on Georges Bank and in the Great South Channel being closed since December 1994. In fact, at the time of the assessment, i.e., after 20 months of protection, biomass increases in the closed areas were approximately three-fold and increasing.

In 1998, the Center for Marine Science and Technology of the University of Massachusetts, Dartmouth (CMAST) requested an experimental fishery to determine the abundance and distribution of sea scallops in Closed Area II. A cooperative experimental research fishery was conducted by NMFS' Northeast Fisheries Science Center, CMAST, and the fishing industry, using commercial sea scallop vessels.

At its April 14–15, 1999, meeting, the Council voted to limit sea scallop access to Closed Area II for one fishing year and selected a sea scallop target TAC based on an intermediate harvestable biomass estimate (4,300 mt) for this area. The Council also voted to recommend opening only certain portions of Closed Area II to minimize the possible impact on finfish bycatch and habitat. Detailed information on finfish bycatch levels caught by scallop dredge vessels during the 1998 cooperative experimental research fishery showed that during the months August through October, the time period when this experiment was conducted, virtually no cod or haddock—two of the three primary groundfish species of particular concern—were caught. However, results from the experiment demonstrated significant bycatch levels of yellowtail flounder, the third primary groundfish species. Although recent information indicates that some rebuilding of Georges Bank cod, haddock, and yellowtail flounder stocks has occurred, recruitment remains poor and the most recent scientific advice is to keep fishing mortality at or below the multispecies Amendment 7 objective for these stocks.

After deliberating three different area options developed to address habitat and bycatch concerns, the Council recommended to open that portion of Closed Area II south of 41°30' N. lat., an option recommended by the Habitat Committee, where scallop dredge vessels are considered to have the least impact on the bottom. Although data from the cooperative experimental fishery demonstrated that this alternative had a slightly higher bycatch of yellowtail flounder when compared to the other area options, bycatch of all species combined was lowest for this area.

This action adopts a sea scallop target TAC of 4,300 mt of meat weight for vessels fishing under the Georges Bank Sea Scallop Exemption Program (Exemption Program). Of this target TAC, a total of 4,257 mt will be designated for use as a directed sea scallop allocation. Forty-three mt of the 4,300 mt (1 percent) will be set aside for funding research of this fishery, if research programs are adopted, and an additional 43 mt, over and above the 4,300 mt allocated, will be set aside to help fund the cost of observers.

To minimize groundfish bycatch and habitat impacts, this action opens the portion of Closed Area II that lies south of 41°30'N. lat. from June 15, 1999, through December 31, 1999. In addition,

this framework sets a TAC of 387 mt for yellowtail flounder that may be harvested from this area, 15 percent of the 1999 yellowtail flounder target TAC. This provision requires that when the yellowtail flounder TAC for the Exemption Program is projected to be reached, access by scallop dredge vessels into this exempted area must be discontinued.

This action implements a buffer zone adjacent to that portion of Closed Area II south of 41°30'N. lat., comprising a larger zone referred to as the Georges Bank Sea Scallop Exemption Area. This buffer zone is established at 67°40'W. long. and has a northern boundary line of 42°12' N. lat., intersecting with Closed Area II, and a southern boundary line of 40°24' N. lat., intersecting the outer boundary of the exclusive economic zone, respectively. Vessels fishing under the Exemption Program may not fish for or harvest sea scallops outside of the Exemption Area during that trip, nor may they enter the Exemption Area more than once per trip. Scallop vessels fishing under a scallop DAS, but that are not fishing under this Exemption Program, will be prohibited from entering the Exemption Area, unless transiting for safety reasons in accordance with the provisions of § 648.81(e).

All limited access scallop vessels, including vessels that hold a scallop Confirmation of Permit History, will be eligible to fish for the sea scallop target TAC in the Exemption Area. Full-time and part-time scallop vessels will each be allowed up to three trips into the Exemption Area of up to 10,000 lb (4,536.0 kg) of meats per trip, and occasional vessels will be allowed one trip of up to 10,000 lb (4,356.0 kg) of meats. Note that the 10,000 lb (4,356.0 kg) of meats per trip is a possession limit rather than a landing limit to help ensure the enforceability of this measure.

All scallop vessels fishing in the Exemption Program must have installed on board an operational Vessel Monitoring System (VMS) unit that meets the minimum performance criteria as specified in the regulations (occasional permitted vessels are the only limited access scallop vessels not currently required to have a VMS). Scallop vessels planning to fish on an Exemption Area trip must so declare by notifying the Administrator, Northeast Region, NMFS (Regional Administrator), through the VMS. Vessels will be provided with instructions on procedures for this notification requirement. For each trip declared, a minimum of 10 DAS will automatically be deducted. A fundamental objective of this action is to ensure that the 1999 fishing year target fishing mortality of 0.83, established by Amendment 7 to the Atlantic Sea Scallop FMP, will not be exceeded. Analysis indicates that by assessing each exemption trip a minimum of 10 DAS, conservation neutrality will be maintained, i.e., fishing mortality should not increase beyond status quo.

On or after October 1, 1999, after taking into account data on the number of eligible vessels participating and the total number of trips taken, the Regional Administrator may adjust the scallop possession limit, if necessary, and/or allocate one or more additional trips, if enough of the sea scallop target TAC remains to warrant such an adjustment or allocation, for full- and part-time permitted vessels that declared a trip under the Exemption Program prior to September 1. Occasional vessels would not be allocated an additional trip, regardless of whether they declared a trip under the Exemption Program before September 1.

At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops (not to exceed a cumulative total of 43 mt) for each trip on which an observer is taken in order to help defray costs. The vessel owner will be responsible for paying for the cost of the observer.

This action increases the regulated multispecies incidental catch allowance from 300 lb (136.1 kg) to 500 lb (226.8 kg) per trip for scallop vessels when fishing under the Exemption Program and authorizes the Regional Administrator to make mid-season adjustments, if necessary, to reduce regulatory discards. Because vessels are expected to catch more groundfish (specifically yellowtail flounder) in the Exemption Area, increasing the allowance of regulated species will help reduce discards. In addition, vessels that have an observer on board would be allowed to retain all regulated species caught, provided the fish caught in excess of the possession limit is donated to charity.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Exemption Area on a monthly basis through the VMS e-mail system to facilitate placement of observers. This and the following information must be reported prior to the 15th of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the month in question. In addition, any vessel selected for observer coverage must provide 5 working days notice prior to departure of any trip declared under the Exemption Program. Vessels will be provided with additional information by mail regarding all notification requirements.

Each vessel participating in this program is required to report information on a daily basis through the VMS. On all trips to the Exemption Area, vessels must report their daily pounds (kilograms) of scallop meats kept. In addition, vessels on observed trips must provide a separate report of the daily pounds (kilograms) of scallop meats kept and the pounds (kilograms) of yellowtail flounder caught on tows that were observed.

Vessels that have declared a trip under the Exemption Program are prohibited from possessing more than 50 U.S. bushels (400 lb (181.4 kg) of meats) of shell stock when outside of the designated Exemption Area specified in this framework. This 400–lb (181.4 kg) scallop meat limit for shell stock is considered part of the 10,000–lb (4,536.0–kg) meat weight possession limit. A limit on the amount of sea scallops landed in the shell is a necessary enforcement tool for purposes of monitoring the 10,000– lb (4,536.0–kg) meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, live scallops, yet not compromise the enforceability of the possession limit.

All scallop vessels, including those currently fishing with nets, that are fishing under the Exemption Program must use scallop dredge gear that conforms to the current sea scallop dredge vessel gear restrictions specified in § 648.51, with the exception of the twine top mesh size restrictions. For vessels fishing in the Exempted Area, twine tops must have a minimum mesh size of 10–inch (25.40–cm) square or diamond mesh. Vessels not fishing in the Exempted Area and fishing under a scallop DAS are required to have a minimum mesh twine top of 8–inch (20.32–cm) square or diamond mesh. This 8–inch (20.32–cm) minimum mesh twine top requirement does not expire at the end of the fishing year, but continues indefinitely. It has a delayed effective date of December 16, 1999, to allow industry time to order and purchase this gear. The purpose of increasing the twine top measurement is to reduce bycatch of groundfish and other finfish. Recent research demonstrates that this increase may significantly reduce bycatch of certain species, especially flatfish species.

Vessels fishing under the Exemption Program are prohibited from off-loading their scallop catch at more than one location. This measure will help in monitoring the TAC as well as aid enforcement in tracking landings and in enforcing the trip limit.

Disapproved Measure

The framework action proposed to restrict vessels to a maximum of 10 DAS when fishing east of a buffer zone established at 67°40' W. long. This restriction would require additional compliance monitoring to ensure vessels remain within the 10 DAS limit. With certain exceptions, current regulations at § 648.51(c) limit crew size to a maximum of seven persons, including the operator. However, some vessel operators are considering taking fewer crew as a cost saving measure. Fewer crew may require longer trips that could possibly exceed 10 DAS if it were allowed. Therefore, because this measure would disrupt alternative approaches by some vessel owners or operators to reduce costs and increase efficiency, while having no discernable conservation benefit, it violates national standard 5 and national standard 7 of the Magnuson-Stevens Fishery Conservation and Management Act. National standard 5 requires conservation and management measures consider efficiency in the harvesting of fishery resources. National standard 7 requires conservation and management measures minimize costs where practicable. Therefore, this measure is disapproved.

In addition to disapproving this measure, NMFS is unable to guarantee observer coverage to the degree that the Council recommends in the framework document. At its April 1999 meeting, the Council voted to include a statement in the document that observer coverage should occur on at least 25 percent of the scallop trips in the Exemption Area. By this statement, the Council clearly is sending a strong message about its serious concerns regarding the need to monitor this fishery for compliance purposes, including accurate finfish bycatch reports. NMFS shares this concern but cannot, at this time, fund a domestic observer program to the level recommended by the Council. NMFS is currently exploring several options that would fund observer coverage, including the 43–mt set aside recommended by the Council for this purpose.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

The public was provided the opportunity to express comments on allowing access by scallop vessels into the multispecies closed areas at numerous meetings. The following list includes all meetings, including plan development team meetings, at which this action was on the agenda, discussed, and public comment was heard:

Date	Meeting
1997:	
October 17	Scallop and Multispecies PDT
1998:	
June 17	Scallop Advisory Panel
July 28–29	Scallop Oversight Committee
1999:	
January 8	Scallop PDT
January 25–26	Scallop PDT
January 27–28	Council
February 4	Habitat Committee and Habitat Advisory Panel
February 8	Scallop Advisory Panel
February 9	Scallop Oversight Committee
February 11	Multispecies Oversight Committee
February 11	Scallop PDT
February 12	Gear Conflict Committee
February 23	Science and Statistical Committee
February 24–25	Council
March 9	Habitat Committee and Habitat Advisory Panel
March 16	Multispecies PDT
March 17–18	Scallop PDT
March 22–23	Joint Multispecies Oversight Committee/Multispecies Advisory Panel
March 29	Enforcement Oversight Committee
April 8–9	Scallop Oversight Committee
April 14–15	Council

Documents summarizing the Council's proposed action, and the analysis of biological and economic impacts of this and alternative actions, were available for public review 1 week prior to the final Council meeting, as is required under the framework adjustment process. Written comments were accepted up to, and during that meeting.

Comments and Responses

Comment 1: Several commenters stated that this action should remain conservation neutral, i.e., there should be no net increase in fishing mortality for sea scallops.

Response: The framework analyses demonstrate that total fishing mortality will not increase, except in the unlikely event that a large portion of inactive vessels, including vessels that hold a Confirmation of Permit History, begin fishing.

Comment 2: Many industry participants requested that this framework serve as a cornerstone for a more permanent rotational scallop fishing strategy.

Response: The framework action's intent is to allow temporary access to Closed Area II to scallop fishing while the Council develops an amendment that may, as a portion of the management plan, include a formal area rotation strategy. The scallop fishery for Closed Area II will provide an opportunity to collect needed information to make this strategy possible.

Comment 3: Some industry members commented that the sea scallop management measures proposed for Closed Area II are too restrictive and that fishing effort, consequently, would remain in the open areas.

Response: The Council has accounted for the benefits, costs, and risks associated with the closed area fishery when choosing this action. The EA shows that, currently, it would be more economical for scallopers to fish in the Exemption Program than in the existing open areas.

Comment 4: Several comments were received regarding the shortsightedness of reopening Closed Area II regarding several important fishery resources.

Response: As noted earlier, the EA concludes that there will be no net increase in fishing mortality for scallops. One of the more critical groundfish stocks, Georges Bank yellowtail, has recovered considerably from its once highly depleted condition. While continued rebuilding is necessary, this action takes the necessary steps to protect this valuable resource through implementation of a TAC, which, when reached, will result in eliminating access to Closed Area II by scallop vessels. The action also promotes fishing effort reduction in

areas where scallops are depleted and increases yield, while at the same time minimizing habitat impacts by keeping some important areas closed. This action will thus promote rebuilding of the scallop resource by reducing effort on small, fast-growing scallops and minimize impacts on other rebuilding stocks. This action, therefore, takes a meaningful step toward achieving optimum yield, considering both the Sea Scallop and the Multispecies FMPs.

Comment 5: Some commenters expressed concern regarding the destruction to the ocean floor that could be caused by scallop dredge vessels in Closed Area II.

Response: This action re-opens only those areas in Closed Area II that are believed to have the lowest habitat value within this area. The bottom of the re-opened portion primarily consists of a high-energy sand and shell bottom. While not devoid of other species, the habitat in this area is not as complex and diverse as the habitats to the north within Closed Area II, which will remain closed to scallop fishing.

Although the proposed action will increase impacts in the area to be opened for scallop fishing, the compensating effect will be to reduce scallop fishing effort in areas that are now open. Some of these presently open areas have significantly more complex and diverse habitat than that found in the southern portion of Closed Area II. The biological impacts of this trade- off are discussed in the EA. On balance, therefore, this action was determined to be consistent with Essential Fish Habitat objectives.

A portion of the scallop target TAC has been set aside as a source of funding for experiments that may help to identify more selective fishing gears or gears that have less habitat impacts.

Comment 6: Several commenters noted that the Georges Bank closed areas were closed to scallop dredge gear partly because this gear disrupts spawning activity of groundfish.

Response: This action restricts access by scallop dredge vessels into Closed Area II to a time frame when groundfish spawning activity is considered to be minimal; i.e., June 15, 1999, to December 31, 1999. Scallop vessel access to Closed Area I and the Nantucket Lightship Closed Area are not allowed under this action at this time because of concern regarding issues such as groundfish spawning activity.

Comment 7: Some commenters stated that any economic gain derived from scallop fishing in Closed Area II will be offset or lost by the setback to cod, yellowtail flounder, and other recovering species.

Response: This action sets a yellowtail flounder TAC, which, when reached, results in termination of the Exemption Program. The yellowtail TAC will ensure that the proposed closed area fishery will not cause a setback to the species' rebuilding schedule. Cod and haddock do not appear to be vulnerable to scallop fishing with dredges within Closed Area II during the proposed fishing season. Furthermore, increasing the twine top mesh and the expected effort transfers from areas now open to scallop fishing will limit the impacts on other species. By suspending the fishery when certain thresholds are exceeded and by requiring different fishing gear, this action will mitigate the negative impacts on species even though a net increase in mortality is expected.

Comment 8: Several industry members commented that the yellowtail flounder TAC will likely force an early closure of the Georges Bank Sea Scallop Exemption Program.

Response: This action includes a 10–inch (25.40–cm) twine top mesh for scallop dredge vessels that declare into the Exemption Program. This larger mesh is expected to reduce yellowtail flounder bycatch substantially. If coupled with voluntary industry efforts to change fishing methods to avoid bycatch, these actions could delay suspension of the fishery due to excess bycatch.

Comment 9: Questions were raised about barndoor skate and how this exemption program may further impact this species.

Response: NMFS is currently considering a petition to list the barndoor skate as an endangered species. Although bycatch information on this species was derived from the 1998 experimental fishery, until the barndoor skate population is assessed and more information becomes available, the Council and NMFS are unable to determine the impacts on the population.

Comment 10: Industry commented that the groundfish closure areas compromise approximately half of the Georges Bank scallop grounds by area and that scallop vessels should be able to regain access to these areas.

Response: Under current conditions, the biomass within the closed areas on Georges Bank includes much more than half of the scallop biomass of the Georges Bank stock. This imbalance has arisen mainly due to the excessively high fishing mortality on scallops within areas now open to scallop fishing.

The Council and NMFS agree that access by scallopers could be allowed into the closed areas if it does not jeopardize the rebuilding schedule for groundfish or scallops and minimizes impacts on habitat as much as possible. Since these issues have been adequately addressed for Closed Area II, this action allows access to a portion of this area under certain conditions.

Comment 11: Industry commented that gear research for the purposes of reducing bycatch should be encouraged and suggested that a portion of the TAC used to fund this.

Response: This action sets aside 1 percent of the scallop target TAC (43 mt) as a means to fund research projects such as new gears or gear modifications that would reduce bycatch by scallop dredge vessels.

Comment 12: Several industry members requested that the northeast corner of the Nantucket Lightship Closed Area be open for scallop fishing.

Response: This action does not reopen the Nantucket Lightship Closed Area or portions of this area due to uncertainty about the scallop and habitat resources in this area and, more particularly, because of concern regarding the poor condition of the Southern New England yellowtail flounder stock.

Comment 13: Due to the potential of gear conflicts, lobster industry members requested that the closed area(s) to be reopened be modified in such a way as to avoid areas with concentrations of lobster pot gear.

Response: Smaller area options within Closed Area II were rejected to give the scallop industry maximum flexibility to avoid stationary gear and research experiments, as well as avoid finfish bycatch. Fortunately, the experimental fishery showed that there are relatively fewer scallops in most areas with dense concentrations of lobster pot gear. The Council believes, and NMFS concurs, that it is better to let the industry develop working arrangements in small, specific areas where lobster gear might temporarily coincide with areas of higher scallop abundance.

Comment 14: One commenter asked why the intermediate harvestable sea scallop biomass estimate (4,300 mt) was selected over the high biomass estimate (6,300 mt).

Response: The Council chose, and NMFS is implementing by this action, a target scallop TAC that represents an intermediate harvestable biomass estimate provided by scientists. These biomass figures were based on different dredge efficiency estimates. Because of uncertainty surrounding the correct dredge efficiency to use, combined with a Scallop Plan Development Team recommendation against choosing the high biomass figure because of risk

factors associated with historically high catch levels, this action adopts the intermediate estimate of 4,300 mt.

Comment 15: Safety issues were raised regarding the concentration of scallop vessels into small reopened portions of Closed Area II.

Response: This action allows access to the largest area that was under consideration during the development of Framework Adjustment 11/29. This larger area gives the fleet the most flexibility to avoid bycatch and reduces the potential for problems caused by crowding.

Comment 16: Concern was expressed that this exemption program would encourage a ''derby-style'' fishery.

Response: Although a derby-style fishery could ensue, the scallop possession limit to some extent addresses this concern.

Comment 17: Many people have commented that the high biomass of scallops in Closed Area II represents an important opportunity to learn how to manage an essentially rebuilt stock for optimum yield, as national standard 1 requires.

Response: Additional data collected during the closed area scallop fishery could be an important source of information for developing an area rotation management strategy, contemplated for Amendment 10 to the Atlantic Sea Scallop FMP.

Comment 18: Industry commented that they cannot accommodate the required gear modification in time for the planned implementation of the framework adjustment. The proposed action will cause substantial amounts of inventory to become obsolete and the gear cannot be used for other purposes.

Response: A primary reason for requiring 8-inch (20.32–cm) mesh twine tops in all areas outside of the Exemption Area is to compensate for the increased bycatch expected in the closed area scallop fishery. Although only limited studies of its effectiveness are available, preliminary indications are that substantial bycatch reductions can be expected (especially for flounders), without losing many scallops in areas now open to fishing. This gear is expected to have additional, but unquantified long-term benefits that will be realized through reducing unwanted bycatch or bycatch that cannot be legally landed. Implementation of the 8-inch (20.32–cm) twine top requirement will be delayed until December 16, 1999, to allow time to obtain adequate supplies.

The cost of purchasing new twine tops is minimal when compared to the benefits and increased profits expected from this measure. Vessels that are not able to obtain 10-inch (25.40–cm) mesh twine tops will be able to take their three closed area trips later in the season, provided that the fishery is not suspended for exceeding the yellowtail flounder target TAC.

Comment 19: Industry commented that early access to the closed area is necessary to avoid adverse fall weather and corresponding safety issues, as well as to improve scallop yield.

Response: This action will allow access for scallop fishing in Closed Area II starting June 15, 1999. Although full-time scallop vessels generally fish year-round, part-time and occasional vessels, which tend to be smaller, less seaworthy vessels, would benefit from this early opening since it will allow them to take all of their trips during the summer months when weather is often favorable and scallop yield is high.

Classification

Notice and opportunity for public comment were provided to discuss the management measures implemented by this rule. Comments were received from members of the fishing industry and are responded to in the preamble of this rule. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds for good cause that additional prior notice and additional opportunity for public comment is unnecessary and for the reasons set forth below it would be contrary to the public interest to delay this rule in order to provide further notice and further opportunity for public comment.

Recently, Amendment 7 to the Atlantic Sea Scallop FMP became effective (64 FR 14835, March 29, 1999). This amendment, which addresses the new Sustainable Fisheries Act requirements, substantially reduces the level of fishing for scallops through the year 2008 by revising the current fishing effort reduction schedule. Although a less severe reduction is proposed for fishing year 1999, failure to allow scallop vessels access to Closed Area II as soon as finfish bycatch concerns would be mitigated to the largest extent possible, i.e., June 15, will increase costs to scallop vessels fishing in currently open areas where scallop biomass is low and where the stock is dominated by small scallops. Furthermore, an earlier opening date will allow more time for smaller vessels to fish their allotted trips during good weather. Accordingly, the AA also finds that under 5 U.S.C. 553(d), the need to have this regulation in place by June 15, 1999, is good cause to waive part of the 30-day delay in effectiveness of this regulation.

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 533 is not being published as explained above, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a regulatory flexibility analysis is not required and none has been prepared, the socioeconomic impacts on affected fishers and alternatives to mitigate such impacts were considered by the Council and NMFS. The primary intent of this action is to allow scallop vessels an opportunity to remain economically viable, while ensuring that the fishing mortality for the entire sea scallop stock does not exceed the F target of F=0.83 in the FMP for 1999.

This final rule has been determined to be significant for the purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains three new collection-of-information requirements and revises three current collection-of-information requirements. The collection of this information has been approved through emergency clearance by OMB under OMB control number 0648–0385. The estimated response times are as follows:

New Collection-of-Information Requirements

1. Monthly reporting of intention to fish in the Georges Bank Sea Scallop Exemption Program through the VMS e-mail messaging system (§ 648.58(c)(3)(i))(10 minutes/response).

2. Daily reporting of sea scallops kept and, for observed trips, sea scallops kept and yellowtail flounder caught on observed tows through the VMS e-mail messaging system for vessels fishing in the Georges Bank Sea Scallop Exemption Program (§ 648.58(c)(10))(10 minutes/response).

3. Notice requirements for observer deployment (§ 648.58(c)(3)(iii))(2 minutes/response).

Revised Collection-of-Information Requirements 1. Documentation of installation of a VMS unit (§ 648.10(b)) (2 minutes/response).

2. Declaration into the Georges Bank Sea Scallop Exemption Program through the VMS prior to leaving the dock (§ 648.58(c)(3)(ii))(2 minutes/response)

3. Installation of a VMS unit on board the vessel (§ 648.10(b))(1 hour/response).

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, NationalMarine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.10, paragraph (b) introductory text is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification*. Multispecies vessels issued an Individual DAS or Combination Vessel permit, scallop vessels issued a full-time or part-time limited access scallop permit, and scallop vessels issued an occasional limited access permit when fishing under the Georges Bank Sea Scallop Exemption Program specified in § 648.58, or scallop vessels fishing under the small dredge program specified in § 648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VMS notification of this paragraph (b), unless otherwise authorized or required by the Regional Administrator under § 648.10(d), must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS installed on board that meets those criteria. If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the an operational VMS unit that meets the criteria to be installed on board the vessel and for the owner to provide documentation of such installation to the Regional Administrator. Vessels that are required to or have elected to use a VMS unit shall be subject to the following requirements and presumptions:

* * * * *

3. In § 648.14, paragraphs (a)(39) and (h)(13) are revised and paragraphs (h)(27) and (h)(28) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of Closed Area II specified in § 648.58 or 648.81(b)(2).

* * * * *

(h) * * *

(13) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear that uses net or net material, or any other material, on the top half of the dredge with a mesh size smaller than that specified in § 648.51(b)(2), unless otherwise prohibited under paragraph (h)(27) of this section.

* * * * *

(27) Enter or be in the area described in § 648.58(b) when fishing under a scallop DAS, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in § 648.58(c)(7).

(28) Fail to comply with any of the provisions and specifications of § 648.58.

* * * * *

4. In § 648.51, paragraph (b) introductory text, and paragraph (b)(2) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) *Dredge vessel gear restrictions*. All dredge vessels fishing for or in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, all trawl vessels fishing for scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS program with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

* * * * *

(2) *Minimum mesh size*. (i) From June 15, 1999, through December 15, 1999, for vessels fishing under a scallop DAS, unless otherwise restricted under § 648.58, and from June 15, 1999, and beyond, for all vessels not fishing under the scallop DAS program, the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm) square or diamond mesh.

(ii) Starting December 16, 1999, unless otherwise restricted under § 648.58, the mesh size of a net, net material, or any other material on the top of a scallop dredge possessed or used by vessels fishing under a scallop DAS shall not be smaller than 8–inch (20.32–cm) square or diamond mesh.

(iii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

* * * * *

5. In § 648.52, paragraph (c) is added to read as follows:

§ 648.52 Possession limits.

* * * * *

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Georges Bank Sea Scallop Exemption Program as described in § 648.58 are prohibited from possessing or landing per trip more than the sea scallop possession limit specified in § 648.58(c)(6).

6. Section 648.58 is added to read as follows:

§ 648.58 Georges Bank Sea Scallop Exemption Program.

(a) *Eligibility*. (1) During the period June 15, 1999, through December 31, 1999, all scallop vessels issued a limited access scallop permit may fish in the Georges Bank Sea Scallop Exemption Area, defined in paragraph (b) of this section, when fishing under a scallop DAS, provided the vessel complies with the requirements of paragraph (c) of this section.

(2) Except for scallop vessels fishing under a scallop DAS that have not declared a fishing trip into the Georges

Bank Sea Scallop Exemption Program, as specified under paragraph (c)(3)(i) of this section, vessels may fish in that portion of the exemption area described in paragraph (b) of this section that lies outside of Closed Area II, as described in § 648.81(b), provided the vessel complies with all applicable regulations.

(b) *Georges Bank Sea Scallop Exemption Area.* The Georges Bank Sea Scallop Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GEORGES BANK SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
DA1	40°24.000'	67°40.000'
DA2	40°24.000'	65°43.121'(on U.S./Canada Maritime Boundary)
G6	41°30.000'	66°34.728'(on U.S./Canada Maritime Boundary)
G7	41°30.000'	67°20.000'
DA4	42°12.000'	67°20.000'
DA5	42°12.000'	67°40.000'
DA1	40°24.000'	67°40.000'

(c) *Requirements.* To fish in the Georges Bank Sea Scallop Exemption Area under the Georges Bank Sea Scallop Exemption Program an eligible vessel must comply with the following requirements:

(1) *Season.* The vessel may only fish in the Georges Bank Sea Scallop Exemption Area under the Georges Bank Sea Scallop Exemption Program only from June 15 through December 31, 1999, unless otherwise specified by notification in the **Federal Register**.

(2) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a).

(3) *Declaration.* (i) The vessel must submit a monthly report through the VMS e-mail messaging system, prior to the 15th of the month preceding the month in question, of its intention to fish in the exemption area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the month in question.

(ii) In addition, on the day the vessel leaves port to fish under the Georges Bank Sea Scallop Exemption Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to leaving port.

(iii) A vessel selected for observer coverage must provide notice to NMFS, in accordance with the notification requirements specified under § 648.11(b), as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Georges Bank Sea Scallop Exemption Program.

(4) *Number of trips.* If the vessel is a full or part-time scallop vessel, it must not fish more than three trips in the Georges Bank Sea Scallop Exemption Area during the season described in paragraph (c)(1) of this section, unless otherwise specified by notification in the **Federal Register**. If the vessel is an occasional scallop vessel, it must not fish more than one trip in the Georges Bank Sea Scallop Exemption Area during the season described in paragraph (c)(1) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Georges Bank Sea Scallop Exemption Program must not fish for, catch, or harvest scallops from outside of the Georges Bank Sea Scallop Exemption Area and must not enter or exit the Exemption Area more than once per trip.

(6) *Possession limits.* (i) Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, a vessel declared into the Georges Bank Sea Scallop Exemption Program may possess and land up to 10,000 lb (4,536.0 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (176.1 L) of in-shell scallops.

(ii) The vessel may possess and land up to 500 lb (226.8 kg) of regulated multispecies, unless otherwise restricted under § 648.86(a)(2)(i) or (b), or the vessel is carrying a NMFS approved sea sampler or observer on board the vessel. A vessel carrying an approved sea sampler or observer may possess all regulated multispecies caught, provided the regulated multispecies in excess of 500 lb (226.8–kg) are donated to charity. A vessel subject to the 500–lb (226.8–kg) possession limit must separate all regulated multispecies onboard from other species of fish so as to be readily available for inspection.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge gear only in accordance with the dredge vessel restrictions specified under § 648.51(b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting.* When transiting to and from the Georges Bank Sea Scallop Exemption Area, all gear on board must be properly stowed and not available for immediate use in accordance with the provisions of § 648.81(e).

(9) *Off-loading restrictions.* The vessel may not off-load its sea scallop catch at more than one location.

(10) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Georges Bank Sea Scallop Exemption Program. The reports must be submitted in 24–hour intervals, beginning at 0000 hours and ending at 2400 hours each day, and include the following information:

(i) Total pounds/kilograms of scallop meats kept; and

(ii) For each trip that the vessel has a NMFS approved observer on board, the total pounds/kilograms of scallop meats kept and total pounds/kilograms of yellowtail flounder caught on tows that were observed by a NMFS approved observer.

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Georges Bank Sea Scallop Exemption Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Possession limit increase.* The Regional Administrator may increase the sea scallop possession limit specified under paragraph (c)(6) of this section for a vessel that has declared a

fishing trip into the Georges Bank Sea Scallop Exemption Program and on which a NMFS approved sea sampler or observer is on board the vessel, or on which a NMFS approved research project is being conducted. Notification of this increase of the possession limit will be provided to the vessel with the observer selection notification. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer and/or defraying the cost of the research project, whichever is applicable, regardless of whether the vessel lands or sells sea scallops on that trip.

(f) *In-season adjustments.* (1) *Adjustment process for sea scallop possession limit and number of trips under the Georges Bank Sea Scallop Exemption Program.* On or after October 1, 1999, the Regional Administrator may adjust the sea scallop possession limit, and/or allocate one or more additional trips for full and part-time limited access sea scallop vessels that declared into and began a trip under the Georges Bank Sea Scallop Exemption Program prior to September 1, 1999. Occasional permitted vessels would not be allocated an additional trip regardless of whether or not they declared or began an exempted trip before September 1, 1999.

(2) *Termination of Georges Bank Sea Scallop Exemption Program because of yellowtail flounder bycatch/incidental catch.* NMFS shall publish notification in the **Federal Register** that the Georges Bank Sea Scallop Exemption Program is terminated as of the date the Regional Administrator projects that the 387 mt of yellowtail flounder will be caught by vessels fishing in the Georges Bank Sea Scallop Exemption Program described in this section.

(g) *Transiting.* Limited access sea scallop vessels intending to fish for scallops under a scallop DAS that have not declared a trip into the Georges Bank Sea Scallop Exemption Program may not enter, fish, or be in the area known as the Georges Bank Sea Scallop Exemption Area described in paragraph (b) of this section, unless:

(1) The operator has determined that there is a compelling safety reason; and

(2) The vessel's fishing gear is stowed in accordance with the requirements of § 648.81(e).

7. In § 648.80, paragraph (h)(1) is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(h) * * * (1) Except as provided in paragraph (h)(2) of this section and in § 648.58(c)(6)(ii), a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

* * * * *

8. In § 648.81, paragraph (b)(1) introductory text is revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(b) * * * (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a map depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section, or unless exempt under the Georges Bank Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area II described in § 648.58(b):

* * * * *

9. In § 648.86, the section heading and paragraphs (a)(2)(iii) and (c) are revised to read as follows:

§ 648.86 Possession restrictions.

* * * * *

(a) * * *

(2) * * *

(iii) Except for vessels fishing under the Georges Bank Sea Scallop Exemption Program from July 1 through December 31, 1999, as provided in § 648.58(c)(6)(ii), scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(c) *Other possession restrictions.* Vessels are subject to all other applicable possession limit restrictions as specified under § 648.58(c)(6), § 648.82(b)(3), § 648.83(b)(1), § 648.88(a) and (c), and § 648.89(c).

10. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Open access permit restrictions.

* * * * *

(c) *Scallop multispecies possession limit permit.* Unless otherwise prohibited in § 648.86(b), and except as provided in § 648.58(c)(6)(ii) for vessels fishing under the Georges Bank Sea Scallop Exemption Program, a vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 060499C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Regulatory Area in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the amount of the 1999 Pacific cod total allowable catch (TAC) allocated to vessels catching Pacific cod for processing by the offshore component in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 7, 1999, through 2400 hours, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12904, March 11, 1999) and subsequent reserve apportionment (64 FR 16362, April 5, 1999) established the amount of the Pacific cod TAC allocated to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area as 2,363 metric tons (mt), determined in accordance with § 679.20(c)(4)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the Pacific cod TAC allocated to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,163 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained for the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 Pacific cod TAC allocated to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: June 7, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–14746 Filed 6–7–99; 2:35 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 111
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–2 PR]

Almonds Grown in California; Revisions to Requirements Regarding Credit for Promotion and Advertising Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revising the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule would revise the requirements regarding the activities for which handlers may receive such credit. The changes would make the promotion program more effective and efficient, clarify the regulations, and improve program administration.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revising the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the order. The order is funded through the collection of assessments from almond handlers. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule would revise the requirements regarding the activities for which handlers may receive such credit. It would provide for more effective promotion programs and improved clarity to the regulations, resulting in improved program administration and more efficient and effective use of industry promotion funds. This proposal was unanimously recommended by the Board at meetings on December 2, 1998, and March 5, 1999.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 989.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising, that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion including paid advertising activities. Those regulations are prescribed in § 981.441.

The Board has proposed the following changes to those regulations.

Revising Time Frames for Submitting Documentation

Section 981.441(a) provides that, in order for handlers to receive credit against their assessment obligation for their own promotional expenditures, the Board must determine that such expenditures meet applicable requirements. Currently, credit may be granted in the form of a payment from the Board, or as an offset to the Board's assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to assessment billings. This 2-week period is also currently specified in § 981.441(e)(6)(ii). Assessments are typically billed in four installments for a crop year near the end of the following months—November, January, April, and August.

Based on past experience with the program, the majority of handlers file claims for credit for their promotional activities during the later months of a crop year. The vast majority of claims are thus received at the Board offices near the third and fourth filing deadlines. Because of this, the Board's staff has found that it needs more time to review and process handler documentation for promotional claims submitted during this time to grant credit against handlers' assessment obligations at the time assessment notices are issued. Thus, the Board recommended that, in order for handlers to receive credit for their promotional activities on their third and fourth assessment billings (April and August), the documentation for such activities must be submitted to the Board three weeks, rather than two weeks, prior to those billings. Appropriate changes are proposed to paragraphs (a) and (e)(6)(ii) of § 981.441.

Section 981.441(e)(6)(iv) currently provides that final claims for credit-back advertising be submitted to the Board within 105 days after the close of the crop year, in situations when handlers have filed a statement of credit-back commitments outstanding as of the close of the crop year. The Board recommended changing this 105-day time frame for several reasons. First, the deadline can cause confusion among handlers because it overlaps with the time frame for filing the first claims of the new crop year. In addition, the overlap creates program administration problems for Board staff with regard to reviewing claims and applying credit for two separate years during the same time period. Finally, the current deadline causes a delay in completion of the Board's year-end accounting practices and annual financial audit. Thus, the Board recommended that this deadline be reduced from 105 to 76 days after the close of the end of the crop year. This would eliminate confusion and program administration problems associated with the overlap period for filing claims, and would allow the Board's end-of-year financial audit to be completed by December or earlier of the following crop year, as opposed to January or later. Section 981.441(e)(6)(iv) is proposed to be modified accordingly.

When handlers have not filed a statement of credit-back commitments outstanding at the close of a crop year, the deadline for filing final promotional claims with the Board is two weeks prior to the final assessment notice (mid-August). However, this deadline date is not clearly specified in the current regulations and has caused some confusion in the past. Therefore, the Board recommended establishing August 15 as the deadline for filing final claims in this situation. This would provide more clarity and reduce confusion regarding the deadline for filing final claims. Section 981.441(e)(6)(iv) is proposed to be modified accordingly.

Redefining Growing Region

Section 981.441(e)(3) currently does not generally allow handlers to receive credit against their assessment obligation for outdoor advertising or sponsorships that are conducted in the major growing regions of California. The major growing regions currently listed in the regulation are the following 11 almond-growing counties: Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare counties. The rationale for this exclusion is that historically, much of the outdoor advertising and sponsorship activities in the major growing areas have been to encourage growers to do business with specific handlers rather than encouraging consumption of almonds. This is contrary to the intent of this program, which is to promote the sale, consumption, or use of almonds.

The Board recommended removing this list of counties from the regulations and adding substitute language. Production and new acreage planted in the almond industry have increased significantly in recent years, and production areas have been shifting within the State. The current regulations do not take this into account, and the aforementioned list of counties no longer accurately reflects the major growing areas.

The Board believes a more flexible approach would be to revise the regulations to specify that no credit be given for outdoor advertising activities conducted in any California county with more than 1,000 bearing acres of almonds. This approach would adequately define the major growing regions, and accommodate production shifts in the future. This would, in effect, remove Sacramento County as a major growing area and would thus allow outdoor advertising in that county. Sacramento County contains a major metropolitan area, which lends itself to the use of outdoor advertising, and is a minor almond growing area, with only 110 acres compared to an industry total of over 400,000 acres. The other 10 counties listed above would continue to be regions ineligible for this type of credit. Other counties with significant almond acreage such as Kings, San Luis Obispo, Solano, Sutter, Tehama, Yolo, and Yuba would also be classified as major almond growing areas under the proposal, and outdoor advertising in those counties, would, thus, be considered ineligible for credit-back.

The Board further believes that modifying the regulations in this manner would better reflect the original intent of the regulation, and would allow more flexibility for shifts in production within the growing area. Section 981.441(e)(3) is proposed to be modified accordingly. The Board also recommended that sponsorship be completely eliminated as a credit-back activity; this recommendation is discussed below.

Revisions to List of Credit-Back Activities

Section 981.441(e)(4)(ii) lists 13 other market promotion activities for which credit may be granted. These activities currently include marketing research (except pre-testing and test-marketing of paid advertising); trade and consumer product publicity; printing costs for promotional material; direct mail printing and distribution; retail in-store demonstrations; point-of-sale materials (not including packaging); sales and marketing presentation kits; trade fairs and exhibits; trade seminars; 50/50 advertising with retailers; couponing (printing, distribution, and handling costs only); purchase of Board-produced promotional materials; and sponsorships.

The Board recommended revising the requirements regarding trade and consumer product publicity. Trade and consumer product publicity includes disseminating information through various communications media to

attract public attention. Handlers often hire an outside agency to conduct such activities. Usually, such an agency charges a fee for its work. In the past, this agency fee has been included as part of the credit-back activity, as agency fees for paid advertising are. However, in the case of trade and consumer product publicity, the Board has encountered difficulties in associating agency fees to particular credit-back activities, and determining whether this fee is appropriate, because there is no standard fee or guidelines for such fees. For paid advertising, this does not pose a problem because there is a standard agency fee that can easily be associated directly to a particular activity. Thus, the Board recommended that agency fees for publicity no longer be included as a credit-back activity. All of the other allowable activities associated with publicity (such as materials) which can be directly tied to a specific publicity campaign would still be eligible for credit.

The Board also recommended that trade seminars be removed from this list of credit-back activities. Trade seminars include special events designed to educate the trade about the almond industry and its products. Although Board records indicate there has been no use of this area as a credit-back activity by handlers, the Board believes that there is a high possibility of misuse in this area. Trade seminars are not well defined and standardized activities; thus, lavish entertainment or elaborate sales meetings could be characterized as trade seminars. Trade shows will remain as a credit-back activity, however. These events are widely used and the activities are well-defined and standardized, such as setting up booths to exhibit merchandise to customers. Thus, the Board recommended that trade seminars be removed from the list of credit-back activities.

The Board also recommended that handlers' purchases of Board-produced promotional materials be removed from the list of credit-back activities. Board funds are used to develop various promotional materials that are made available to handlers. In the past, handlers could purchase such materials from the Board and receive promotion credit. However, the Board has recently developed an allocation system whereby handlers may receive a certain percentage of promotional material produced by the Board free of charge. Each handler's allocation for a crop year is based on the percentage of almonds handled during the prior year. Handlers may purchase additional material at cost. This new system, not covered by the credit-back regulations, allows Board staff to plan more effectively and to purchase materials more cost effectively, while maintaining a promotional tool for handlers. Since this new system was developed, the Board determined that continuing to allow credit for purchase of Board-produced promotional material would result in overlap of two similar programs. Therefore, the Board recommended that purchase of such material be removed from the list of credit-back activities.

In addition, the Board recommended that sponsorship be removed from the list of credit-back activities. Sponsorship includes the financial support of an event or person carried out by another group or person. Sponsorship can be targeted towards consumers, the trade, or may be undertaken for general goodwill. A review of sponsorship claims submitted in the past indicates several claims appear to fall into the category of general goodwill rather than to promote the sale and consumption of almonds as the primary purpose. Further, Board staff has had difficulty in determining a reasonable rate for crediting some of the activities due to a lack of an industry standard. Finally, Board staff has found that many of the most effective activities typically claimed as sponsorship can be applicable under other credit-back areas in the regulations. Thus, the Board recommended that sponsorship be removed from the list of credit-back activities.

The Board also recommended that a new credit-back activity be added to the regulations concerning use of the Internet. Several handlers have or are developing web-sites to promote their almonds. This is a rapidly developing communication medium becoming widely recognized as a valuable promotional tool. Thus, the Board believes handlers should be allowed credit for development and use of the Internet for promotional purposes. Because of the vast array of uses of the Internet, however, the Board believes guidelines should be implemented regarding crediting handlers' expenditures in this area. Thus, the Board recommended that handlers be allowed up to $5,000 credit against their assessment obligation for the development and use of a web-site on the Internet for advertising and public relations purposes. No credit would be given for costs regarding E-commerce (which is equivalent to opening a store), Extranet (private web sites within the Internet), or portions of a web-site that target the farming or grower trade. The Board believes these types of activities lend themselves to potential abuses and may not necessarily advance the intent of the program, which is to promote the sale, use, and consumption of almonds.

Appropriate changes are proposed to be made to the list of credit-back activities specified in § 981.441(e)(4)(ii) to incorporate all of these changes.

Recommendation Regarding Credit-Back for Almond Products

Section 981.441(a) specifies that handlers may be granted credit against their assessment obligation for an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities. Section 981.441(e)(iv) provides that when products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. For example, if a handler paid $1,000 in advertising costs to promote a product which contained 60 percent almonds by weight, such handler would be able to file a claim for credit against his or her assessment obligation of 60 percent of $1,000, or $600. The amount of credit would be 66⅔ percent of $600, or $400. If the product contained 70 percent almonds by weight, the handler would be eligible to receive a credit against his or her assessment of 66⅔ percent of the 70 percent, or $467.

The Board recommended adding an exception to this portion of the regulations. Specifically, handlers who own almond-containing ''unique'' or ''non-traditional'' products would be allowed to request that the Board grant them a one-year exemption from this ''percentage rule.'' Thus, in the above example, a handler could request from the Board an exemption and receive credit for 66⅔ percent of his or her advertising costs for the product, or $667, regardless of the weight of the almonds in the product. The Board believes that this special exception would provide handlers incentive to produce and advertise unique almond products, resulting in increased almond sales for the industry. The Board members would be responsible for reviewing such requests from handlers and determining whether an exception would be granted on a case-by-case basis.

The Department has concerns with this recommendation. Although there was support for this concept at the industry meetings which led to the recommendations, those participating in the meetings were not able to develop criteria to define a ''unique'' or ''non-traditional'' product. Thus, there would be no specific parameters for Board staff to review claims against. Because of

this, the recommendation calls for the Board itself, rather than staff, to determine what products would qualify (Board staff currently reviews all promotion claims). It is unclear how the Board would make such determinations. The lack of criteria could potentially lead to subjective decision making and Board members reviewing claims could create potential conflicts of interest. The purpose of these regulations is to provide a clear set of guidelines that can be applied uniformly by Board staff to avoid these situations. While the Department supports the concept of providing incentive for new product development, it is not proceeding with this recommendation at this time because of the aforementioned concerns.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule would revise § 981.441 of the order's administrative rules and regulations regarding credit-back promotion and advertising. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain of their direct expenditures for marketing promotion activities, including paid advertising. This rule would make several revisions to the requirements regarding the activities for which handlers may receive such credit. These revisions include: Revising the time frames and clarifying deadlines for when handlers must submit documentation to the Board on activities conducted; redefining the growing region eligible for credit for certain types of outdoor advertising; revising the list of creditable activities by eliminating credit for fees charged by advertising and public relations agencies for publicity, trade seminars, purchase of Board-produced promotional material, and sponsorships; and adding use of the Internet as a promotional tool as a new, credit-back activity.

Regarding the impact of this rule on affected entities, the changes proposed herein are designed to provide for a more effective and efficient use of the industry's advertising and promotion funds, and to improve program administration. Requiring handlers to submit documentation to the Board 3 weeks, as opposed to 2 weeks, prior to the Board's April and August assessment billings would change the timing, but not the frequency, of the filings submitted by handlers. This change is not expected to increase the reporting burden on handlers, but rather provide the Board's staff sufficient time to review the material and credit handlers' accounts in a more timely manner. Clarifying the deadline for filing claims at the end of a crop year would eliminate confusion among handlers and would allow the Board to complete its year end accounting practices more timely. Redefining the growing region eligible for credit for outdoor advertising to include only counties with less than 1,000 bearing acres of almonds would help ensure that credit only be given for outdoor advertising that encourages consumers to buy almonds (as opposed to such advertising done in larger bearing counties directing growers to specific handlers). It would also add flexibility to the regulations to accommodate production shifts in the future. Adding the Internet as a credit-back activity would allow handlers to take advantage of a new communication medium and to provide them with a new promotional opportunity that can be used to offset a portion of their assessment obligation. Removing certain activities available for credit-back is not expected to negatively impact handlers, as numerous promotional activities remain for them to offset a portion of their assessment obligation. The activities proposed to be removed have received little use in the past, and in some cases lend themselves to potential abuses that result in ineffective use of promotional funds. The changes proposed are expected to be equally beneficial to all handlers who conduct their own promotional activities and to the industry as a whole.

Several alternatives to the proposed changes were considered. The first alternative in all cases is to leave the regulations as they currently exist. However, this does not address the changes in the industry, technology, or promotional practices. Nor does it address the administrative inefficiencies and the potential program abuses that have been identified. Alternatives to the recommendations concerning removing certain activities from the list of credit-back activities included leaving the activities in the regulations, with further definition and clarification added. However, it was determined that this would lead to increased regulations and guidelines, with no assurance of solving the problems. In addition, most of the activities being removed have been used very infrequently by handlers. The removal of credit for purchase of Board-produced promotional materials was replaced by an alternative system whereby handlers are provided a free allocation of such materials, with the option of purchasing additional materials at cost.

Regarding the changing of dates for submitting documents to the Board, different dates were considered. However, it was determined that the dates ultimately recommended would allow the minimum amount of time necessary for Board staff to review documents, apply credit to handlers' assessment accounts, and to complete year-end accounting practices in a timely manner. Alternatives to changing the growing region definition included using a different acreage number as a threshold to defining a producing county. However, the industry agreed for purposes of the credit-back program, 1,000 acres was appropriate. Another alternative considered removing the restriction of outdoor advertising in almond growing counties, but that does not address the problem of handlers advertising to growers.

It was determined that the proposed changes are the best way to address the situation at this time. These regulations were designed to reflect the industry's practices, and these proposed revisions

are intended to respond to an evolving marketplace and changing promotional practices. Changes have been and will continue to be recommended based on industry and program experiences.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Additionally, the Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, the December 2, 1998, and March 5, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board formed a task force in July 1998 to review its credit-back advertising program. The task force met periodically during the following months to review the program and consider appropriate changes. The task force presented its recommendations to the Board's Public Relations and Advertising Committee on November 13, 1998, and that committee presented its recommendations to the Board on December 2, 1998. The March 5, 1999, meeting was held to finalize the Board's recommendations. All of these meetings were open to the public, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested parties to respond to this proposal. Thirty days is deemed appropriate because any changes resulting from this proposed rule need to be in place prior to the beginning of the 1999–2000 crop year, which begins on August 1, 1999, so handlers can be given adequate notice to plan their promotional activities accordingly. All written comments received timely will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.441 is amended by revising the second sentence in paragraph (a), paragraphs (e)(3), (e)(4)(ii), the first sentence in paragraph (e)(6)(ii), and paragraph (e)(6)(iv) to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) * * * Credit will be granted either in the form of a payment from the Board, or as an offset to the assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to the Board's first and second assessment billings, and at least 3 weeks prior to the Board's third and fourth assessment billings in a crop year. * * *

* * * * *

(e) * * *

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising in California almond growing counties with more than 1,000 bearing acres: *Provided*, That outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) * * *

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity: *Provided*, That no Credit-Back shall be given for related fees charged by an advertising or public relations agency;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) 50/50 advertising with retailers;

(J) Couponing (printing, distribution, and handling costs only); and

(K) Development and use of web-site on the Internet for advertising and public relations purposes; *Provided*, That Credit-Back shall be limited to $5,000 per year, and no credit shall be given for costs for E-commerce (mail ordering through the Internet), Extranet (restricted web sites within the Internet), or portions of a web-site that target the farming or grower trade.

* * * * *

(6) * * *

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided*, That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year. * * *

(iii) * * *

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims pertaining to such commitments outstanding must be submitted within 76 days after the close of that crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

* * * * *

Dated: June 4, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–14690 Filed 6–9–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–99–03]

Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would decrease by sixteen-hundredths of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1998 five-market average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These proposed changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250–0251. Comments will be available for public inspection during regular business hours at the above office in Room 2627 South Building; 14th and Independence Avenue, SW.; Washington, D.C. 20250–0251.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register**. (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 1,000 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.601).

This proposed rule would decrease the amount of assessments on imported pork and pork products subject to assessment by sixteen-hundredths of a cent per pound, or as expressed in cents per kilogram, thirty-three-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1998. The average annual market price decreased from $51.30 per hundredweight in 1997 to $31.82 per hundredweight in 1998, a decrease of about 38 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of $888,000 over a 12-month period. Assessments collected for 1998 were $3,834,656. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29962, 60 FR 33681 and 60 FR 58501) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would decrease the assessments on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule August 28, 1998, and effective on September 28, 1998; (63 FR 45935). Based on information reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch, this decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1998. This decrease in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.45 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal**

Register at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Statistical Bulletin No. 697 ''Conversion Factors and Weights and Measures.'' These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts based on information reported by USDA, AMS, LGMN Branch. Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price decreased from $51.30 per hundredweight in 1997 to $31.82 per hundredweight in 1998, a decrease of about 38 percent. This decrease would result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110, 63 FR 45935; August 28, 1998, of an amount equal to sixteen-hundredths of a cent per pound, or as expressed in cents per kilogram, thirty-three hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1998, through December 31, 1998, the proposed decrease in assessment amounts would result in an estimated $888,000 decrease in assessments over a 12-month period.

This proposed rule provides for a 30-day comment period. This comment period is appropriate because the proposed rule simply provides for an adjustment in the per pound assessment levels on imported pork and pork products to reflect changes in live hog prices which occurred from 1997 to 1998. These live hog prices form the basis for the assessments. This adjustment, if adopted, should be made effective as soon as possible to promote optimum equity.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. In § 1230.110 paragraph (b) is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

* * * * *

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.0000	.20	.440920
0203.12.1010	.20	.440920
0203.12.1020	.20	.440920
0203.12.9010	.20	.440920
0203.12.9020	.20	.440920
0203.19.2010	.24	.529104
0203.19.2090	.24	.529104
0203.19.4010	.20	.440920
0203.19.4090	.20	.440920
0203.21.0000	.20	.440920
0203.22.1000	.20	.440920
0203.22.9000	.20	.440920
0203.29.2000	.24	.529104
0203.29.4000	.20	.440920
0206.30.0000	.20	.440920
0206.41.0000	.20	.440920
0206.49.0000	.20	.440920
0210.11.0010	.20	.440920
0210.11.0020	.20	.440920
0210.12.0020	.20	.440920
0210.12.0040	.20	.440920
0210.19.0010	.24	.529104
0210.19.0090	.24	.529104
1601.00.2010	.28	.617288
1601.00.2090	.28	.617288
1602.41.2020	.31	.683426
1602.41.2040	.31	.683426
1602.41.9000	.20	.440920
1602.42.2020	.31	.683426
1602.42.2040	.31	.683426
1602.42.4000	.20	.440920
1602.49.2000	.28	.617288
1602.49.4000	.24	.529104

Dated: June 4, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–14689 Filed 6–9–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

[Notice 1999–8]

11 CFR Part 110

Candidate Debates

AGENCY: Federal Election Commission.

ACTION: Petition for rulemaking; notice of availability.

SUMMARY: On May 25, 1999, the Commission received a Petition for Rulemaking from Mary Clare Wohlford, William T. Wohlford and Martin T. Mortimer urging the Commission to amend its rules so that the objective criteria for inclusion in Presidential and Vice Presidential debates is established by the Commission itself, and not left to the discretion of debate staging organizations. This petition is available for inspection in the Commission's Public Records Office.

DATES: Statements in support of or in opposition to the petitions must be filed on or before July 12, 1999.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Senior Attorney, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to debates@fec.gov, and should include the full name, electronic mail address and postal service address of the commenter. Additional information on electronic submission is provided below.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Senior Attorney, or Paul Sanford, Staff Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On May 25, 1999, the Commission received a Petition for Rulemaking from Mary Clare Wohlford, William T. Wohlford and Martin T. Mortimer regarding the Commission's candidate debate regulations at 11 CFR 110.13. Paragraph (c) of that section states, *inter alia,* that ''[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate.'' *Id*. The petitioners assert that the objective criteria for inclusion in Presidential and Vice Presidential debates should be established by the Commission itself, and not left to the discretion of debate staging organizations. Therefore, the petition urges the Commission to revise this paragraph to set forth ''mandatory criteria for participation in Presidential and Vice Presidential Debates.'' Petition at 1.

Specifically, the petition recommends that the debates be open to any candidate that (1) has the mathematical potential to win the election in that he or she is on the ballot in enough states to earn 270 Electoral College votes; and (2) has proven his or her viability by having spent at least $500,000 on the campaign by the end of the month preceding the date of the first scheduled debate held on or after September 1 of the election year. In addition, the petition recommends that candidates have equal access to debates held before September 1 without regard to the above requirements.

Copies of the petitions are available for public inspection in the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Copies of the petitions can also be obtained at any time of the day and week from the Commission's home page at www.fec.gov, or from the Commission's FlashFAX service. To obtain copies of the petitions from FlashFAX, dial (202) 501–3413 and follow the FlashFAX service instructions. Request document # 239 to receive the petition.

All statements in support of or in opposition to the petitions should be addressed to Rosemary C. Smith, Senior Attorney, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to debates@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. All comments, regardless of form, must be submitted by July 12, 1999.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: June 4, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–14714 Filed 6–9–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket No. 99–09]

RIN 1557-AB69

Community Development Corporations, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend part 24, the regulation governing national bank investments that are designed primarily to promote the public welfare. This proposal simplifies the prior notice and self-certification requirements that apply to national banks' public welfare investments; expands the types of investments that a national bank may self-certify by removing geographic restrictions; and permits eligible national banks with assets of less than $250 million to self-certify any public welfare investment. The OCC is also seeking comment on whether to modify the methods of demonstrating community support or participation currently prescribed by part 24, and whether the OCC could simplify or streamline the procedures and standards contained in part 24. The proposal encourages national banks to make public welfare investments by making it easier to comply with the applicable procedures.

DATES: Comments must be received on or before August 9, 1999.

ADDRESSES: Please direct comments to: Docket No. 99–09, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219. Comments are available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874-5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: David Lewis, Community Development Investments Manager, Community Development Division, (202) 874–4930; Michael S. Bylsma, Director, Community and Consumer Law Division, (202) 874–5750; or Heidi M. Thomas, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC is proposing to amend 12 CFR part 24, which contains the rules relating to national banks' investments in community development corporations (CDCs), community development (CD) projects, and other public welfare investments. Part 24 implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities and families, subject to certain percentage of capital limitations. (The investments authorized pursuant to 12 U.S.C. 24(Eleventh) are collectively referred to in this proposal as ''public welfare investments''). The purpose of this proposal is to make burden-reducing changes that will make it easier for national banks to use the public welfare investment authority that the statute and regulation provide.

The OCC originally adopted part 24 in 1993 and substantially revised the regulation, pursuant to its Regulation Review Program, in 1996. *See* 58 FR 68464 (Dec. 27, 1993) (final regulation); 61 FR 49654 (Sept. 23, 1996) (1996 amendments). The 1996 amendments encouraged national banks to make public welfare investments by eliminating unnecessarily burdensome provisions and streamlining the part 24 procedures. Among other things, the 1996 amendments: modified the test for determining whether an investment primarily promotes the public welfare; streamlined the investment self-certification and prior approval

procedures; and expanded the list of activities eligible for self-certification.

The OCC is committed to continually reevaluating its rules to reduce unnecessary regulatory burden and simplify compliance, consistent with the safe and sound operation of national banks. This proposal addresses several issues regarding national bank compliance with part 24 that have arisen since 1996. Specifically, the proposal further simplifies the prior notice and self-certification requirements that apply to national banks' public welfare investments; further expands the types of investments a national bank may self-certify by removing geographic restrictions; and permits an eligible community bank to self-certify any public welfare investment. An eligible community bank is an eligible bank [1] with assets of less than $250 million.

Description of the Proposal

Community Benefit Information Requirement (§ 24.3(c))

Current § 24.6 lists certain public welfare investments that an eligible bank may make by submitting a self-certification letter to the OCC within 10 working days after it makes the investment. No prior notification or approval is required. For all other public welfare investments, a national bank must submit an investment proposal to the OCC for prior approval. Unless otherwise notified in writing by the OCC, the proposed investment is deemed approved 30 calendar days from the date on which the OCC receives the bank's investment proposal.

Regardless of which procedure applies, § 24.3(c) currently requires a national bank making a public welfare investment to demonstrate the extent to which the investment benefits communities otherwise served by the bank. (The requirement of § 24.3(c) is referred to in this proposal as the community benefit information requirement.) Section 24.5 requires the bank to provide a statement in its self-certification letter or investment proposal certifying that it has complied with this requirement.

The OCC is proposing to remove the community benefit information requirement, because this requirement is not mandated by statute and may constrict national banks from making otherwise qualifying and beneficial public welfare investments. Moreover, the OCC's experience in implementing 12 CFR part 24 suggests that national banks are seeking more public welfare investment opportunities across broader geographic markets than previously. Enhanced interstate operations and the increasing availability of Internet banking and other forms of remote banking limit the value of the community benefit information requirement for the OCC's evaluation of investment proposals.

Although, as a matter of law, a bank's authority to make public welfare investments pursuant to 12 U.S.C. 24(Eleventh) and 12 CFR part 24 is independent of its obligation to serve the credit needs of its entire community under the Community Reinvestment Act (CRA), the OCC recognizes that banks may want the OCC to consider a public welfare investment for CRA purposes. Retention of the community benefit information requirement is not necessary, however, to facilitate the identification of a public welfare investment that a bank believes should be considered for CRA purposes. Instead, the OCC proposes to amend § 24.5 to provide that a national bank that wants the OCC to consider a specific public welfare investment during a CRA examination may include a simple statement to that effect in its public welfare investment proposal or self-certification letter.[2]

Demonstration of Community Support (§ 24.3(d))

Under section 24.3(d), a national bank may make investments pursuant to part 24 if it demonstrates that it has non-bank community support for, or participation in, the investment. Section 24.3(d) provides that a national bank may demonstrate this support or participation in a number of ways, including:

(1) In the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;

(2) Establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

(3) Formation of a formal business relationship with a community-based organization in connection with the proposed investment;

(4) Contractual agreements with community partners to provide services in connection with the proposed investment;

(5) Joint ventures with local small businesses in the proposed investment; and

(6) Financing for the proposed investment from the public sector or community development organizations.

Prior to the 1996 amendments, part 24 required the affected primary beneficiaries and representatives of local or State government to have endorsed and demonstrated support for the investment. In the case of a CDC, a bank had to demonstrate support through non-bank community participation on the organization's board of directors. 12 CFR 24.4(a)(3) (1993). The OCC modified the community support/participation requirement in the 1996 amendments to provide banks and community groups more flexibility in structuring community partnerships under part 24. The OCC added the nonexclusive list of examples of community support or participation to the final rule in response to comments on the 1996 proposal.

The OCC has not changed § 24.3(d) in this proposal, but invites comment on whether the approach adopted in the 1996 amendments is effective in encouraging community involvement in national banks' public welfare investments. For example, is the current non-bank community support or participation requirement appropriate? Are there other ways of demonstrating support or participations? In particular, commenters addressing these issues are invited to discuss whether:

(1) The current community participation prong of the public welfare test has been sufficient in obtaining evidence of adequate community support and involvement in national banks' community development investments;

(2) General letters of support from community groups or local officials, without other evidence of community support or participation, should be considered sufficient to satisfy this requirement;

(3) Stricter requirements for community support or participation will have the effect of discouraging public welfare investments pursuant to part 24; and

(4) Institutions should demonstrate community support for, or participation in, investments in national or regional

[1] Part 24 defines an ''eligible bank'' as a national bank that is well capitalized, has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (the CAMELS rating), has a Community Reinvestment Act rating of ''Outstanding'' or ''Satisfactory,'' and is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive. 12 CFR 24.2(e).

[2] The OCC's approval of a public welfare investment made pursuant to 12 CFR part 24 does not affect how the investment is evaluated for CRA purposes, and an investment approved under part 24 is not necessarily a qualified investment for purposes of CRA.

community development investment vehicles, and if so, what form this demonstration should take.

Self-Certification of Public Welfare Investments by an Eligible Community Bank (§ 24.5(a))

An eligible national bank may make public welfare investments listed in § 24.6 without prior OCC approval by submitting a self-certification letter to the OCC that satisfies the requirements in the regulation. 12 CFR 24.5(a). Investments eligible for self-certification include certain investments relating to low- and moderate-income housing, small businesses located in low- and moderate-income areas, employment or job training for low- or moderate-income individuals, or technical assistance services for non-profit community development organizations; investments as a limited partner in certain low-income housing tax credit projects; investments in national banks with a community development focus; investments approved by the Federal Reserve Board under 12 CFR 208.21; and investments previously determined by the OCC to be permissible under part 24. 12 CFR 24.6. Other investments require application to, and approval by, the OCC.

Because community banks operate with more limited resources than larger institutions, the tasks associated with the prior approval process for public welfare investments place a greater burden on them. In addition, the OCC recognizes that smaller community banks may serve as the only source of investments for some CDCs and CD projects located in small towns or rural areas and that the prior approval process may inhibit community banks from making these investments. The proposal therefore amends § 24.5(a) to permit eligible community banks (national banks with less than $250 million in assets) to self-certify *all* public welfare investments, not only those investments listed in § 24.6. This change will reduce the regulatory burden and costs associated with the part 24 prior approval process for eligible community banks in particular and may encourage more community banks to make public welfare investments in local CDCs and CD projects that might not be able to attract investments from other sources.

This change is consistent with 12 U.S.C. 24 (Eleventh), which does not require a national bank to receive prior OCC approval before making a public welfare investment within the 5 percent of capital aggregate limit. Moreover, the change does not raise safety and soundness concerns because the application process is eliminated only for investments by eligible community banks. The eligibility standard in § 24.2(e) ensures that only well-capitalized, well-run community banks can take advantage of this streamlined approach. In addition, these public welfare investments are subject to review during the examination process pursuant to § 24.7. Finally, as set forth in § 24.7, if the OCC finds that an investment violates law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to the deposit insurance fund, it may require the bank to take appropriate remedial action.

The Local Community Investment Requirement for Self-Certification (§ 24.6(b)(2))

Currently, part 24 does not permit a national bank to self-certify an investment if, among other things, more than 25 percent of the investment is used to fund projects that are located in a State or metropolitan area other than the States or metropolitan areas in which the bank maintains its main office or has branches. 12 CFR 24.6(b)(2). If any portion of a bank's investment funds projects outside of its local areas, the bank must include in its self-certification letter a statement that no more than 25 percent of the investment funds these projects. 12 CFR 24.5(a)(3)(vii).

The OCC proposes to remove this local community investment requirement in § 24.6(b) so that a national bank can use the less burdensome self-certification process to make eligible public welfare investments in *any* area. This change removes a requirement that is not necessary to implement the statute because, as discussed in connection with the removal of the community benefit information requirement, 12 U.S.C. 24 (Eleventh) does not require that a bank link its public welfare investments to the communities it serves. In addition, this change permits national banks to use the self-certification process for investments in national community development investment vehicles. Because these vehicles often provide funds for projects located throughout the United States, it has not always been possible for a bank to certify that not more than 25 percent of the bank's investment will support projects in States or metropolitan areas other than those in which the bank's main office or branches are located. Thus, this change should expand the opportunities for banks to fund worthwhile public welfare projects.

As with the proposal to remove the community benefit information requirement, the OCC recognizes that, in some cases, the local community investment requirement for self-certification has served as a way for banks to identify investments that they believe may be eligible for CRA credit. For the same reasons as discussed in connection with that change, a bank that wants the investment to be considered for CRA purposes may include a statement to that effect in its self-certification letter. This information will be provided to supervisory staff in connection with the bank's CRA examination. The OCC notes that this change affects only the eligibility of the investment for self-certification. It does not modify either the part 24 standards for permissible public welfare investments or the CRA standards set forth in 12 CFR Part 25.

Comments

The OCC requests comment on all aspects of this proposal, including the extent to which these proposed changes will encourage national banks to make public welfare investments. Commenters are also invited to suggest other revisions that would simplify the standards or streamline the procedures currently contained in part 24.

In addition, the OCC seeks comment on the impact of this proposal on community banks. As discussed in connection with certain of the proposed changes, the OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comment on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

Finally, the OCC solicits comment on whether the proposal is written clearly and is easy to understand. On June 1, 1998, the President issued a Memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. The OCC invites comment on how to make this proposal clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposal would not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The proposal would reduce regulatory burden on national banks by simplifying the prior approval process and simplifying and expanding the self-certification process for part 24 investments. The economic impact of this proposal on national banks, regardless of size, is expected to be minimal.

Paperwork Reduction Act

For purposes of compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the OCC invites comment on:

(1) Whether the proposed collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

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

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this notice of proposed rulemaking have 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 collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557–0194, Washington, D.C. 20503, with copies to Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Attention: Paperwork Reduction Project 1557–0194, Washington, D.C. 20219.

The proposal is expected to reduce annual paperwork burden for recordkeepers because it eliminates certain application and self-certification requirements. The collection of information requirements in this proposal are found in 12 CFR 24.5. This information is required for the public welfare investment self-certification and prior approval procedures. The likely respondents are national banks.

Estimated average annual burden hours per recordkeeper: 1.9. Start-up costs: None.

Executive Order 12866 Determination

The Comptroller of the Currency has determined that this proposal does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an 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 the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule is limited to the prior notice and self-certification process for part 24 investments. The OCC therefore has determined that the proposal will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 24 of chapter I of title 12 of the Code of Federal Regulations to read as follows:

PART 24—COMMUNITY DEVELOPMENT CORPORATIONS, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

1. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24 (Eleventh), 93a, 481 and 1818.

2. In § 24.2, paragraphs (f), (g), (h) and (i) are redesignated as paragraphs (g), (h), (i) and (j), and a new paragraph (f) is added to read as follows:

§ 24.2 Definitions.

* * * * *

(f) *Eligible community bank* means an eligible bank that, as of December 31 of either of the prior two calendar years had total assets of less than $250 million.

* * * * *

§ 24.3 [Amended]

3. In § 24.3, paragraph (c) is removed, and paragraph (d) is redesignated as paragraph (c).

4. In § 24.5, paragraph (a)(1) and paragraph (a)(3)(iii) are revised, paragraph (a)(3)(v) is amended by adding the word ''and'' at the end of the paragraph, paragraph (a)(3)(vi) is amended by removing the term ''; and'' and adding a period in its place at the end of the sentence, paragraph (a)(3)(vii) is removed, paragraph (a)(4) is redesignated as paragraph (a)(5), a new paragraph (a)(4) is added, paragraph (b) is amended by redesignating paragraph (b)(3) through (b)(6) as paragraphs (b)(4) through (b)(7), and a new paragraph (b)(3) is added to read as follows:

§ 24.5 Public welfare investment self-certification and prior approval procedures.

(a) * * *

(1) Subject to § 24.4(a), an eligible bank may make an investment described in § 24.6(a) and an eligible community bank may make any investment that satisfies the requirements of § 24.3 without prior notification to, or approval by, the OCC if the bank follows the self-certification procedures in this section.

* * * * *

(3) * * *

(iii) The type of investment (equity or debt), the investment activity listed in § 24.3(a) or § 24.6(a), as applicable, that the investment supports, and a brief description of the particular investment;

* * * * *

(4) If the bank wants the OCC to consider the investment during an examination under the CRA (12 U.S.C. 2901 *et seq.*) and to determine whether

it meets the criteria for a qualified investment set forth in 12 CFR part 25, the bank may include a brief statement to that effect in its letter of self-certification.

* * * * *

(b) * * *

(3) If the bank wants the OCC to consider the investment during an examination under the CRA and to determine whether it meets the criteria for a qualified investment set forth in 12 CFR part 25, the bank may include a brief statement to that effect in its investment proposal.

* * * * *

§ 24.6 [Amended]

5. In § 24.6, paragraph (b)(1) is amended by adding an ''or'' at the end, paragraph (b)(2) is removed, and paragraph (b)(3) is redesignated as paragraph (b)(2).

Dated: May 27, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–14754 Filed 6–9–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 99N–1309]

Obstetrical and Gynecological Devices; Proposed Classification of Female Condoms

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify the preamendments female condom intended for contraceptive and prophylactic purposes. Under this proposal, the preamendments female condom would be classified into class III (premarket approval). The agency is publishing in this document the March 7, 1989, recommendations of FDA's Obstetrics-Gynecology Devices Panel (the Panel) regarding the classification of this device. After considering public comments on this classification proposal, FDA will publish a final rule classifying this device. This action is being taken to establish regulatory controls that will provide reasonable assurance of the safety and effectiveness of this device.

DATES: Written comments by Septmeber 8, 1999. See section IV of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies on a 3.5'' diskette of the draft guidance entitled ''Premarket Testing Guidelines for Female Barrier Contraceptive Devices Also Intended to Prevent Sexually Transmitted Diseases, April 4, 1990'' to the Division of Small Manufacturers Assistance (DSMA) (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 401–443–8818. In order to receive this draft guidance via your fax machine, call the CDRH Facts-On-Demand (FOD) System at 800–899–0381 or 301–827–0111 from a touch-tone-telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (384) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

A. Classification of Medical Devices

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendations for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final rule under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and regulations, FDA consulted with the Obstetrical and Gynecological Device Classification Panel regarding the classification of this device. This panel was subsequently terminated, rechartered, and renamed the Obstetrics-Gynecology Devices Panel (the Panel).

B. Regulatory History of Female Condoms

In the **Federal Register** of April 3, 1979 (44 FR 19894), FDA published a proposed rule classifying all known obstetrical and gynecological preamendments devices, including condoms. The proposed rule described the methods used by the agency to identify such preamendments devices, e.g., FDA's 1972 survey of device manufacturers, FDA's searches of published literature, and the activities of the Panel. Subsequently, in the

Federal Register of February 26, 1980 (45 FR 12710), FDA published a final rule classifying certain obstetrical and gynecological preamendments devices, including classifying the condom into class II (§ 884.5300 (21 CFR 884.5300)). The condom encompasses preamendments barrier-type sheaths that cover the entire shaft of the penis for purposes of contraception (preventing pregnancy), prophylaxis (preventing transmission of sexually transmitted diseases (STD's)), or semen collection (diagnostic testing). Preamendments devices characteristically falling within this classification are generally referred to as condoms.

Following classification of the condom into class II, FDA received two 510(k) notifications for ''female condoms'' intended to be inserted into the vagina and held in place to line the vaginal walls for purposes of contraception and prophylaxis. These 510(k) notifications claimed substantial equivalency to the condom identified in § 884.5300. Initially, in late 1987, in response to a 510(k) notification submitted by the Energy Basin Clinic to market a ''barrier female condom,'' FDA concurred that this condom, later called the Bikini Condom, was substantially equivalent to the class II condom (Ref. 1). Subsequently, in 1989, the agency received a 510(k) notification from the Wisconsin Pharmacal Co. for the WPC–333 female use condom-like device (WPC–333 device), later called the Femshield/Reality (Intra-) Vaginal Pouch and Reality Female Condom. This 510(k) submission brought new information to the agency's attention concerning the existence of a preamendments female use condom-like device.

The Wisconsin Pharmacal Co. claimed in its 510(k) notification that its WPC–333 device was substantially equivalent to the condom identified in § 884.5300 as well as to another preamendments device known as the Gee Bee Ring. Documentation in the 510(k) notification indicated that the Gee Bee Ring was a double-ringed pouch-type preamendments device intended for insertion into the vagina to line the walls of the vagina for contraceptive (pregnancy prevention) and prophylactic (prevention of STD's transmission) purposes (Ref. 2).

Upon receiving this information, FDA verified the existence, commercial distribution, and uses of the Gee Bee Ring, as best it could, through an affidavit and review of a May 1934 booklet printed contemporaneously with the distribution of the product (Refs. 2 and 3). The booklet entitled *A New Method for the Profession*, states on page 12, ''[T]he technique with this method (the modified Gee Bee technique) has a factor of safety equal to, if not better than, the diaphragm. It overcomes all the objections to the rubber condom * * *.'' These statements are taken by the agency to mean that the device was indicated as a contraceptive product (by reference to the diaphragm), and as a prophylactic product (by reference to the condom, which at that time (1934) was solely indicated as a prophylactic, i.e., for preventing the transmission of sexually related diseases). Subsequently, the agency presented this Gee Bee Ring information to the Panel as new information about a preamendments device not previously known to the agency.

During an open meeting held on March 7, 1989, (Ref. 14) the Panel reviewed all available information concerning the classification of a barrier-type pouch device that is inserted into the vagina prior to coitus and lines the vaginal wall and external cervix. Such available information indicated that the preamendments device, known as the Gee Bee Ring, was distributed, beginning in the 1930's and for some years thereafter, as a female condom, i.e., as a ''modified condom placed in the hands of the female * * * for proper insertion and use.'' (See Ref. 2.) The Panel determined that this particular device represented a generic type of preamendments device that the Panel identified as the vaginal pouch, rather than the condom, noting that the classification regulation for the condom device (§ 884.5300) identifies the condom as ''a sheath *which completely covers the penis* with a *closely fitting membrane*'' (emphasis added). The regulation also states that the condom is used ''for contraceptive and for prophylactic purposes (preventing transmission of sexually transmitted disease)'' and ''to collect semen to aid in the diagnosis of infertility.'' Because an intravaginal pouch loosely lines the interior of the vagina, rather than closely fitting the penis, and because there is no data to establish the safe and effective use of the intravaginal pouch, the Panel recommended that FDA not include the intravaginal pouch in the condom classification (§ 884.5300), but classify this generic type of device as a device that is distinct from condoms.

Subsequently, in April 1989, in response to the Wisconsin Pharmacal Co. 510(k), FDA advised the firm that its WPC–333 device is not substantially equivalent to either the condom identified in § 884.5300 or the Gee Bee Ring, due to design differences. As a result, in accordance with section 513(f) of the act, the device was automatically classified into class III (Ref. 4). In April 1989, FDA also advised the Energy Basin Clinic that the agency's response to the firm's 510(k) was incorrect, in that the firm's ''barrier female condom'' is not substantially equivalent to the condom as defined in § 884.5300 and that commercial marketing would misbrand the device under section 502(f) and (o) of the act (21 U.S.C. 352(f) and (o)) (Ref. 5).

During an August 25, 1989, open Panel meeting, FDA, the Panel, other Federal health agency experts, and interested parties discussed premarket testing requirements for female barrier contraceptives that also claim prevention of STD's transmission. Currently, postamendments female condoms are classified automatically by statute (section 513(f) of the act) into class III and in the **Federal Register** of June 7, 1990 (55 FR 23299), FDA has made available draft guidance describing the studies needed to support a PMA application for female condoms that also claim to prevent STD's (Ref. 6). This draft guidance describes the preclinical, clinical feasibility, and clinical safety and effectiveness studies needed to expedite the study and evaluation of PMA's for female condom devices that also claim prevention of STD's transmission. See the **ADDRESSES** section of this document for the guidance's availability.

On August 29, 1990, FDA responded to another 510(k) notification for a ''female condom'' which was submitted by MD Personal Products, Inc. (hereinafter referred to as MD Products). In response to the 510(k), FDA advised MD Products that its pouch-type device intended to line the vagina is not substantially equivalent to either the condom identified in § 884.5300 or the Gee Bee Ring, due to differences in technological characteristics and design (Ref. 7).

On May 29, 1993, FDA approved the PMA for the Wisconsin Pharmacal Co. ''Reality'' Female Condom (Ref. 8).

II. Recommendations of the Panel

During a public meeting held on March 7, 1989, the Panel made the following recommendations with respect to the classification of the intravaginal pouch:

A. Identification

The Panel recommended that the device be identified as follows: An intravaginal pouch is a sheath-like device that lines the vaginal wall and is inserted into the vagina prior to the initiation of coitus. It is indicated for

contraceptive and prophylactic (preventing the transmission of STD's) purposes.

The Panel cautioned against the use of the term condom in the generic type of device because a condom is defined as ''a sheath which completely covers the penis with a closely fitting membrane,'' and use of the term to identify this generic type of device may be misunderstood by some persons to suggest that products in this group have the same performance characteristics as traditional full-sheath male condoms.

B. Recommended Classification of the Panel

The Panel recommended that the intravaginal pouch be classified into class III (premarket approval). The Panel unanimously recommended assigning a high priority to premarket approval because of the absence of testing and clinical medical data regarding the safety and effectiveness of the device and because device failure could result in release of semen into the vagina leading to unwanted pregnancies and transmission of disease, such as acquired immune deficiency syndrome (AIDS) caused by the human immunodeficiency virus (HIV) from HIV-infected semen. For women for whom pregnancy is contraindicated due to medical conditions such as heart disease or diabetes mellitus, the risk of an unwanted pregnancy can be severe, even life threatening.

C. Summary of Reasons for Recommendation

After reviewing the information provided by FDA, and after consideration of the open discussions during the Panel meeting and the Panel members' personal knowledge of and clinical experience with the device system, the Panel gave the following reasons in support of its recommendation to classify the intravaginal pouch into class III.

The Panel recommended that the intravaginal pouch be classified into class III because no published laboratory or clinical study data could be found that demonstrate the safety and effectiveness of the device. Reference to this type of device in past literature is limited (Ref. 2). More recent literature affirms the preliminary nature of certain studies; the need for in vitro and in vivo preclinical studies, including permeability studies of the device materials with respect to bacterial and viral STD-causing organisms; and the need for microbiological and clinical data that demonstrate the safety and contraceptive and prophylactic efficacy of this generic type of device (Ref. 9).

The Panel believed that the intravaginal pouch should be classified into class III because general controls and special controls would not provide reasonable assurance of the safety and effectiveness of the device, and the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. Although the safety of some device characteristics, such as the biocompatibility of device substances contacting the body, could be controlled through materials tests and specifications, the Panel believes there is insufficient evidence that a performance standard could be established to provide reasonable assurance of the safe and effective performance of the device. For example, no valid scientific evidence demonstrates whether, how often, or to what degree, the intravaginal pouch dislodges or becomes displaced during intercourse.

D. Summary of Data on Which the Recommendation is Based

The Panel based its recommendation on information provided by FDA, data and information contained in references 2 and 9, and on the Panel members' personal knowledge of, and experience with, contraceptive methods of birth control, including barrier-type contraceptives. Additionally, the Panel found no data in the literature or in studies discussed before the Panel to support the safety and effectiveness of the devices.

The Panel noted that failure of intravaginal pouches because of breakage, leakage, dislodgement, or displacement that leads to the release of semen, could result not only in undesired pregnancies, but also in the transmission of STD's, such as AIDS. Therefore, the Panel recommended that the labeling of these devices contain use effectiveness information, particularly, pregnancy rate information, and adequate indications and directions for use. The Panel believed that the device must be subject to premarket approval to assure that manufacturers demonstrate the satisfactory performance of the device for its intended use or uses, thereby providing reasonable assurance of its safety and effectiveness.

E. Risks to Health

The Panel identified the following risks to health associated with use of the device:

1. Pregnancy

Leakage, breakage, dislodgement, or displacement of the device during sexual intercourse could result in the occurrence of an undesired pregnancy.

2. Disease Transmission

If the device fails due to leakage, breakage, dislodgement, or displacement, contact with infected semen or vaginal secretions or mucosa could result in the transmission of STD's, including HIV (causing AIDS).

3. Adverse Tissue Reaction

Unless the biocompatibility of materials and substances comprising the device are tested, local tissue irritation, and sensitization or systemic toxicity could occur when the vaginal pouch contacts the vaginal wall and cervical mucosa, and the penis.

4. Ulceration and Other Physical Trauma

III. Proposed Classification

On its own initiative, FDA is proposing to change the name of the generic type of device identified by the Panel from ''intravaginal pouch'' to ''female condom.'' FDA agrees with the Panel's finding that the female condom represents a type of preamendments device that has different technological characteristics than the preamendments condom identified in § 884.5300 and concurs with the Panel's recommendation that the female condom not be considered a type of device that falls within the classification category of condom (§ 884.5300).

FDA believes that the proposed name, ''female condom,'' better connotes the intended female use and purposes of the device than does the term, ''intravaginal pouch,'' i.e., female usage of the pouch-like device to line the vaginal walls for purposes of preventing pregnancy and STD's transmission. Adequate labeling for female condoms, including adequate directions for use, and actual usage by female users will make clear to sexual partners the differences between female condoms and male condoms.

FDA disagrees with the Panel's concern that the use of the term ''condom'' to describe or make reference to the female condom may imply that the female condom will have the same contraceptive and prophylactic effectiveness as a condom, as defined in § 884.5300, in preventing undesired pregnancy and protecting against STD's, including AIDS. The agency believes any such misconception can be dispelled by requiring that the labeling of the female condom device clearly and adequately state the contraceptive failure rates pertinent to any claims made for preventing undesired pregnancy and adequately describe clinical effectiveness data, including

pertinent information on the impermeability of the device to sexually transmitted viral or bacterial disease, associated with any prophylactic claims for protection against STD's, including AIDS.

FDA notes that differences in technological characteristics and design among devices within the same generic type of device may raise new questions of safety and effectiveness that prevent the devices from being substantially equivalent to one another. Such was the case for the 510(k) notifications for certain postamendments female condoms claiming substantial equivalence to the preamendments female condom, the Gee Bee Ring. In the preamble of the final rule setting forth classification procedures (43 FR 32988 at 32989, July 28, 1978), FDA noted that ''The term 'generic type of device' describes FDA's grouping, for reasons of administrative convenience, of devices that are to be regulated in the same way because they present *similar safety and effectiveness concerns*. A generic type of device will include devices that may or *may not be* 'within a type' and 'substantially equivalent' to each other.'' (Emphasis added.)

FDA believes the female condom should be classified into class III because general controls and special controls would not provide reasonable assurance of the safety and effectiveness of the device and the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. FDA believes that the calling for PMA's for this device should be a high priority.

FDA agrees with the Panel's conclusions and recommendations regarding the unproven contraceptive effectiveness of the preamendments female condom and its indeterminate efficacy in protecting against the transmission of STD's. The agency has neither received nor found in the literature valid scientific evidence from laboratory tests, preclinical studies, or clinical investigations that does the following: (1) Demonstrates the biocompatibility of materials used in the preamendments female condom; (2) measures performance characteristics, such as displacement, dislodgement, bursting, and tearing; (3) assesses the contraceptive safety and effectiveness of the preamendments device in preventing pregnancy, in terms of reported failure or pregnancy rates based upon usage (Refs. 2, 9, and 10); or (4) demonstrates the prophylactic efficacy of the preamendments device in protecting against the transmission of STD's, including HIV (Refs. 10 through 13). The agency believes that the present voluntary industry standard and the agency's methodology for testing conventional condoms for pinhole leaks are not suitable for testing the female condom for leaks without significant modification and validation.

FDA notes that the labeling of certain marketed barrier contraceptive devices, such as the contraceptive diaphragm and accessories (21 CFR 884.5350), and the cervical cap (21 CFR 884.5250), identify pregnancy rates associated with the use of the devices. The expected failure or pregnancy rates for use of the conventional full-sheath condom are widely published. Such information is not available for the preamendments female condom device. Consequently, the agency agrees with the Panel that pregnancy rate information, derived from valid clinical study data, should be included in female condom labeling. Otherwise, the labels would fail to disclose a material fact regarding the consequences which may result from using the female condom.

IV. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) 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.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). 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). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA believes that there is likely no interest at this time in marketing the device to be classified by this rule. FDA is taking this action because it has determined that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device, if there is any interest in marketing one in the future. Without this rule (and a subsequent requirement for PMA's), a person could market a device by claiming substantial equivalence to the Gee Bee Ring. All premarket submissions for ''female condom'' type devices that FDA has received to date have been for devices that have been found to be not substantially equivalent to the Gee Bee Ring and, therefore, those devices are not preamendments devices and are not to be classified by this rule. If a final rule is issued classifying these devices in class III, FDA would be required to undertake subsequent notice and comment rulemaking to establish an effective date by which PMA's would be required for this device. Under section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), a rule requiring PMA's for this device could not take effect any sooner than 30 months after the effective date of a final rule classifying the device or 90 days after publication of the final rule requiring the PMA's, whichever is later.

The agency therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule requires no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Submission of Comments

Interested persons may, on or before September 8, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments

are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from the Office of Device Evaluation, CDRH, FDA, to the Energy Basin Clinic regarding substantially equivalent determination for the Barrier Condom, August 3, 1987.

2. Beadle, E. L., ''A New Method for the Profession: Outline of Successful Prophylactic Program,'' The Hemingway Press, Waterbury, CN, 1934.

3. Affidavit from Richard Beadle to FDA regarding the Gee Bee Ring, its labeling, and its distribution, July 17, 1989.

4. Letter from the Office of Device Evaluation, CDRH, FDA, to the Wisconsin Pharmacal Co. regarding the not substantially equivalent determination for the WPC–333 Vaginal or Female Condom, April 14, 1989.

5. Letter from the Office of Device Evaluation, CDRH, FDA, to the Energy Basin Clinic regarding the not substantially equivalent determination for the Barrier Condom, April 26, 1989.

6. CDRH, FDA guidance document entitled ''Premarket Testing Guidelines for Female Barrier Contraceptive Devices Also Intended to Prevent Sexually Transmitted Diseases,'' April 4, 1990.

7. Letter from the Office of Device Evaluation, CDRH, FDA, to MD Personal Products, Inc., regarding the not substantially equivalent determination for the Women's Choice Brand Condom,'' August 29, 1990.

8. Letter from the Office of Device Evaluation, CDRH, FDA, to the Wisconsin Pharmacal Co. regarding PMA approval for the ''Reality'' Female Condom, May 7, 1993.

9. Bounds, W., J. Guillebaud, L. Stewart, and S. Steele, ''A Female Condom (Femshield™); A Study of its User-Acceptability,'' *British Journal of Family Planning*, 14:83, 1988.

10. Bounds, W., ''Male and Female Condoms,'' *British Journal of Family Planning*, 15:14, 1989.

11. Connell, E. B., ''Barrier Contraceptives,'' *Clinical Obstetrics and Gynecology*, 32:377, 1989.

12. Harris, J. R., L. W. Kanagas, and J. D. Shelton, ''Role of Condoms in Preventing HIV Transmission in Developing Countries,'' *Heterosexual Transmission of AIDS*, ch. 32, p. 399, Alan R. Liss, Inc., 1990.

13. Gregersen, E., and B. Gregersen, ''The Female Condom—A Pilot Study of the Acceptability of a New Female Barrier Method,'' *Acta Obstetricia ET Gynecologica Scan*, 69:73, 1990.

14. Obstetrics-Gynecology Devices Panel, transcript and meeting minutes, March 7, 1989.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5330 is added to subpart F to read as follows:

§ 884.5330 Female condom.

(a) *Identification*. A female condom is a sheath-like device that lines the vaginal wall and is inserted into the vagina prior to the initiation of coitus. It is indicated for contraceptive and prophylactic (preventing the transmission of sexually transmitted diseases) purposes.

(b) *Classification*. Class III (premarket approval).

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required*. No effective date has been established of the requirement for premarket approval for the devices described in paragraph (b) of this section. See § 884.3 for effective dates of requirement for premarket approval.

Dated: May 28, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–14653 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI72–01–7280; FRL–6357–2]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to disapprove a revision to Michigan's State Implementation Plan (SIP) which would change the State's definition of volatile organic compound (VOC). The Michigan Department of Environmental Quality (MDEQ) submitted this revision on August 20, 1998 and supplemented it with a November 3, 1998, letter.

DATES: Comments on this proposed action must be received by July 12, 1999.

ADDRESSES: You may send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312)886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

A. Background Information
B. Contents of State Submittal and EPA's Evaluation
C. EPA's Proposed Action

A. Background

On August 20, 1998, the MDEQ submitted to EPA a proposed revision to the Michigan SIP. MDEQ supplemented the proposed revision with a November 3, 1998, letter from Robert Irvine. The submittal included a revision to the State's definition of VOC, as well as other rule revisions and rescissions. In this document EPA is proposing action only on the revision to the definition of VOC, R 336.1122(f). We will address the remaining rule revisions and rescissions in separate rulemaking actions.

B. Contents of State Submittal and EPA's Evaluation

The State's definition of the term ''volatile organic compound'' is ''any compound of carbon, or mixture of compounds of carbon that participates in photochemical reactions, excluding the following materials, all of which do not contribute appreciably to the formation of ozone: * * * *'' The definition goes on to list the exempt compounds. The wording of the State definition is ambiguous, in that it could

imply that there are compounds, other than those listed, which arguably do not ''participate in photochemical reactions,'' and therefore may be excluded from the definition of VOC. Instead, the State should define the term VOC as all organic compounds except those that EPA has listed as negligibly photochemically reactive. (See 40 CFR 51.100(s).) As worded, the definition is unacceptable.

The State has added the following substances as materials excluded from the State definition of VOC: acetone; cyclic, branched, or linear completely-methylated siloxanes; parachlorobenzotriflouride; trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC–142b); chlorodifluoromethane (HCFC–22); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); trifluoromethane (HFC–23); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); and perfluorocarbon compounds which fall into these classes: cyclic, branched, or linear, completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds are on the list of compounds exempted from the Federal definition of VOC in 40 CFR 51.100(s), and their exclusion is acceptable.

In addition to the compounds listed above, however, the State has included as an exempt compound, ''ingredient compounds in materials other than surface coatings that have a vapor pressure less than or equal to 0.1 millimeters of mercury at the temperature at which they are used.'' This is unacceptable because it contradicts established EPA policy and is inconsistent with the Federal definition of VOC found in 40 CFR 51.100(s).

In the past, MDEQ has cited EPA's similar treatment of certain VOCs in our Consumer Products rule to justify its proposed change. However, we noted in our proposed Consumer Products rule (61 FR 14531) that the we adopted the volatility threshold specifically for consumer products, to differentiate between products containing ingredients with higher volatility. Many consumer products would contain 100 percent VOC by definition, making all of them subject to rules designed to reduce VOCs from consumer products, unless we devised a means to distinguish them. To address this problem, we examined the possibility of targeting only those consumer products with relatively higher volatility. We also noted in the proposed rule for Consumer Products that it did not alter our overall VOC policy, which does not allow vapor pressure cutoffs, such as 0.1 mm Hg, to exempt compounds from the definition of VOC. Thus, the proposed Consumer Products rule did not redefine VOC, it proposed to adopt an applicability threshold based on pressure for that specific source category only.

Michigan has proposed a change to the definition of VOC which would allow the State to use ''other methods and procedures acceptable to the department'' to determine compliance with emission limits if the methods listed in rules 336.2004 and 336.2040 do not result in accurate or reliable results. This represents unacceptable State discretion. The State must submit any change in test methods to EPA for our approval as a SIP revision.

C. EPA's Proposed Action

To determine a rule's approvability, we must evaluate the rule for consistency with the requirements of the Clean Air Act, EPA regulations and the our interpretation of these requirements as expressed in EPA policy guidance documents. We have found Michigan's proposed SIP revision to be inconsistent with the Federal definition of VOC in 40 CFR 51.100(s). The proposed revision is also inconsistent with EPA policy guidance documents, including: ''Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' dated May 25, 1988; EPA's policy memorandum dated June 8, 1989, from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, entitled ''Definition of VOC: Rationale;'' EPA's policy memorandum dated April 17, 1987, from G. T. Helms, Chief, Control Programs Operations Branch, entitled ''Definition of VOC;'' and EPA's policy memorandum dated April 17, 1987, from G. T. Helms, Chief, Control Programs Operations Branch, entitled ''Definition of Volatile Organic Compounds (VOC's).'' Therefore, we are proposing to disapprove Michigan's SIP revision request.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under 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 funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective 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.'' This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

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

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA's disapproval of the State request under Section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements

F. Unfunded Mandates

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

The EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal disapproval action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 28, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–14763 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6358–2]

Report to Congress on Fossil Fuel Combustion Wastes; Response to Requests for Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Response to requests for extension of public comment period.

SUMMARY: The Environmental Protection Agency published a notice of availability on April 28, 1999 (64 FR 22820) for the Agency's Report to Congress on Fossil Fuel Combustion Wastes that is required by section 8002(n) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(n). That notice also announced a 45-day public comment period on the report. The Agency has received numerous requests to extend the public comment period by up to six months. Because the Agency is currently subject to a court-approved consent decree to issue its regulatory determination by October 1, 1999, EPA is not able, at this time, to grant an extension of the comment period, since any extension would leave insufficient time for EPA to complete a regulatory determination by that date. However, the Agency is currently discussing the possibility of an extension of this deadline with the parties to the consent decree. Such an extension would allow the Agency to grant an extension of the public comment period. Pending the conclusion of those discussions and any extension of the consent decree deadline, the closing date for the comment period on the Report remains June 14, 1999.

DATES: The comment period on the Report to Congress on Fossil Fuel Combustion Wastes closes June 14, 1999.

ADDRESSES: Those persons wishing to submit public comments must send an original and two copies of their comments referencing EPA docket number F–1999–FF2P–FFFFF to: RCRA Docket Information Center (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC, 20460. Hand deliveries of comments should be made to the Arlington, VA address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also identify the docket number F–1999–FF2P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I Building, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that the public make an appointment by calling (703) 603–9230.

The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The Report to Congress is also available electronically. See the Supplementary Information section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of the Report to Congress, contact Dennis Ruddy, U.S. Environmental Protection Agency (5306W), 401 M Street, SW., Washington, DC 20460, at (703) 308–8430, or e-mail: ruddy.dennis@epa.gov.

SUPPLEMENTARY INFORMATION: Copies of the full report, titled Report to Congress: Wastes from the Combustion of Fossil Fuels; Volume 2—Methods, Findings, and Recommendations (EPA publication number EPA 530–R–99–010), are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: http://www.epa.gov/epaoswer/other/fossil/index.htm. Printed copies of Volume 2 and the executive summary, titled Report to Congress: Wastes from the Combustion of Fossil Fuels; Volume 1—Executive Summary (EPA publication number EPA 530–S–99–010), can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810. The Executive Summary is also available in electronic format at the EPA Web site identified above.

I. Background

The Environmental Protection Agency published a notice of availability on April 28, 1999 (64 FR 22820) for the Agency's Report to Congress on Fossil Fuel Combustion Wastes that is required by section 8002(n) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(n). Please see the April 28, 1999 notice for particulars on the purpose and content of the Report to Congress.

The April 28, 1999 notice also announced a 45-day public comment period on the Report to Congress, which was to end on June 14, 1999. In response to that notice, numerous parties have requested that EPA extend the public comment period by up to six months. EPA is, however, currently required by a court-approved consent decree in *Gearhart* v. *Reilly*, Civil No. 91–2345 (D.D.C.) to complete the regulatory determination by October 1. EPA would not be able to meet this deadline if the Agency granted any extension to the comment period. The Agency is currently discussing the possibility of an extension of this deadline with the parties to the consent decree. Such an extension would in turn allow the Agency to grant an extension of the public comment period. However, unless and until the court-approved schedule is modified, the Agency is bound to work towards completing the regulatory determination under the current schedule. Therefore, interested parties should be prepared to submit their comments by the current June 14, 1999 deadline for the receipt of public comments.

In the event the current court-ordered schedule for completing the regulatory determination is extended, the Agency will promptly publish a notice in the **Federal Register** extending the deadline for the receipt of public comments.

Dated: June 4, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–14768 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–207; RM–9626]

Radio Broadcasting Services; Kuna, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 247C to Kuna, Idaho, as that locality's first local aural transmission service. Petitioner is requested to provide additional engineering showings to demonstrate that its proposal could comply with the city grade coverage requirements of Section 73.315 of the Commission's Rules. Coordinates used for this proposal are 43–04–26 NL and 116–59–54 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–207, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14732 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–208; RM–9627]

Radio Broadcasting Services; Melba, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 260C2 to Melba, Idaho, as that locality's

first local aural transmission service. Petitioner is requested to provide additional engineering showings to demonstrate that its proposal could comply with the city grade coverage requirements of Section 73.315 of the Commission's Rules. Coordinates used for this proposal are 43–08–21 NL and 116–45–25 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–208, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14733 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–209; RM–9628]

Radio Broadcasting Services; Buras, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 279C2 to Buras, Louisiana, as that community's first local aural transmission service. Petitioner is requested to provide additional engineering showings to demonstrate the availability of a suitable area for tower construction as the site restriction required to accommodate the proposal appears to be located in marshland. Coordinates used for this proposal are 29–18–15 NL and 89–32–00 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–209, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14734 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–210; RM–9629]

Radio Broadcasting Services; Flagstaff, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 279C3 to Flagstaff, Arizona, as that community's fifth local FM transmission service. A separate request, filed by Mark S. Haughwout to allot Channel 279A to Flagstaff will be considered as comments in support of the instant proposal, as Commission policy is to allot the highest class channel requested to a community that meets the technical provisions of our rules. Coordinates used for this proposal are 35–17–19 NL and 111–38–26 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–210, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC's Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14735 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–211; RM–9630]

Radio Broadcasting Services; Winona, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 242C3 to Winona, Arizona, as that locality's first local aural transmission service. Information is requested regarding the attributes of Winona, Arizona, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 35–12–12 NL and 111–24–24 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–211, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14736 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–212; RM–9640]

Radio Broadcasting Services; Amelia, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 249C3 to Amelia, Louisiana, as that community's first local aural transmission service. Petitioner is requested to provide additional engineering showings to demonstrate the availability of a suitable area for tower construction as the site restriction required to accommodate the proposal appears to be located in marshland. Coordinates used for this proposal are 29–30–21 NL and 91–03–46 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–212, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14737 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–213; RM–9641]

Radio Broadcasting Services; Kootenai, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 294A to Kootenai, Idaho, as that locality's first local aural transmission service. As Kootenai is located within 320 kilometers (200 miles) of the U.S.-Canada border, concurrence of the Canadian government to this proposal is required. Coordinates used for this proposal are 48–18–37 NL and 116–30–45 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–213, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14738 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–202; RM–9620]

Radio Broadcasting Services; Mountainaire, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 293A to Mountainaire, Arizona, as that locality's first local aural transmission service. Information is requested regarding the attributes of Mountainaire, Arizona, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 35–13–00 NL and 111–42–01 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–202, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14739 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–203; RM–9621]

Radio Broadcasting Services; Dove Creek, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 273C3 to Dove Creek, Colorado, as that locality's first local aural transmission service. Coordinates used for this proposal are 35–45–54 NL and 108–54–18 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to

filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–203, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14740 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–204; RM–9623]

Radio Broadcasting Services; Grand View, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 228A to Grand View, Idaho, as that locality's first local aural transmission service. Coordinates used for this proposal are 42–53–47 NL and 116–05–30 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–204, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14741 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–205; RM–9624]

Radio Broadcasting Services; Hazelton, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 232C3 to Hazelton, Idaho, as that locality's first local aural transmission service. Coordinates used for this proposal are 42–35–54 NL and 114–07–54 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–205, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14742 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–206; RM–9625]

Radio Broadcasting Services; Kimberly, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 291C3 to Kimberly, Idaho, as that locality's first local aural transmission service. Coordinates used for this proposal are 42–30–22 NL and 114–21–45 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–206, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–14743 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 111
Thursday, June 10, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Chief Economist; Notice of Intent To Establish an Advisory Committee on Small Farms and Solicit Nominations for the Committee

AGENCY: Office of the Chief Economist, USDA.

ACTION: Notice of intent to establish and solicitation of nominations for Advisory Committee on Small Farms.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to establish an Advisory Committee on Small Farms. The purpose of the Committee is to gather and analyze information regarding small U.S. farms and ranches and recommend to the Secretary of Agriculture actions to take to ensure their continued viability and to enhance their economic livelihood. The Committee is in the public interest and within the duties and responsibilities of the Department of Agriculture. Establishment of the Committee also ensures the continued implementation and consideration of the recommendations made by the National Commission on Small Farms in its report, ''A Time to Act.''

DATES: Written comments and nominations must be received on or before June 25, 1999.

ADDRESSES: Comments and nominations should be sent to Alfonzo Drain, Deputy Director of Small Farms, Office of the Chief Economist, U.S. Department of Agriculture, Room 112–A, Jamie L. Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250–3810. Telephone: 202–720–3238; Fax: 202–690–4915.

FOR FURTHER INFORMATION CONTACT: Alfonzo Drain, 202/720–3238. E-mail address: adrain@nass.usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Secretary of Agriculture intends to establish the Advisory Committee on Small Farms, hereinafter referred to as the Committee.

The Committee will monitor government and private sector actions and policy and program proposals that relate to small farms and ranches, including limited-resource farms and ranches; evaluate the impact such actions and proposals may have upon the growth and continuation of small farms and ranches; review USDA programs and strategies to implement small farm policy; advise the Secretary on actions to strengthen USDA programs; and evaluate other approaches that the Committee would deem advisable or which the Secretary of Agriculture or the Director of Sustainable Development and Small Farms may request the Committee to consider.

The Committee will have 15 members, one of whom will serve as chair and be appointed by the Secretary of Agriculture, and one of whom will serve as a vice-chair and be appointed by the Committee. Members will represent small farms and ranches, and the diverse groups USDA programs serve, including but not limited to, finance, commerce, conservation, cooperatives, nonprofit organizations, rural communities, academia, state and local governments, Native Americans, farm workers, and other interests as the Secretary determines. USDA will follow equal opportunity practices in making appointments to the Committee. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The Secretary of Agriculture shall make all appointments to the Committee and the members will serve at the Secretary's discretion. Members will serve staggered terms. Initially, the Secretary will appoint 5 members to one-year terms, 5 members to two-year terms, and 5 members to three-year terms. As vacancies expire, the Secretary will appoint members as appropriate. The Committee may establish subcommittees as it determines necessary subject to the provisions of the Federal Advisory Committee Act and the approval of the chair or the chair's designee.

Persons nominated for the Advisory Committee on Small Farms will be required to complete and submit an Advisory Committee Membership Background Information Questionnaire (form AD 755).

The duties of the Committee are solely advisory. The Committee will meet at least once a year and make recommendations to the Secretary of Agriculture regarding USDA's small farms program and other matters related to small farms. The first meeting is planned for September 1999, and all meetings will be open to the public. Committee members will be reimbursed for official travel expenses only.

Nominations are being sought through the media, the **Federal Register**, and other appropriate methods. Nominations should include the following information: name, title, address, telephone number, and organization, and may be submitted by e-mail to: adrain@nass.usda.gov or faxed to (202) 690–4915. The required Advisory Committee Membership Information Questionnaire is also available on the Internet (see instructions below) and may be requested by telephone, fax, or e-mail using the information above. The completed questionnaire may be faxed to the number above, mailed, or e-mailed directly from the Internet web site.

All mailed correspondence should be sent to Alfonzo Drain, Office of the Chief Economist, U.S. Department of Agriculture, Room 112–A, Jamie L. Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250–3810. You may access the Advisory Committee Membership Background Information Questionnaire (form AD 755) on-line at: *http://www.usda.gov/oce/osfsd/advisorynotice.htm*. You will have a choice of completing and submitting the Questionnaire on-line or printing it from an Adobe PDF file and mailing or faxing the completed Questionnaire to the above address or fax number.

Signed at Washington, DC, June 1, 1999.

Keith Collins,

Chief Economist, Office of the Chief Economist.

[FR Doc. 99–14777 Filed 6–9–99; 8:45 am]

BILLING CODE 3410–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 17, 1999; 8:30 a.m.

PLACE: Sheraton Chicago Hotel, 301 East North Water Street, Parlor C (lobby level), Chicago, Illinois 60611.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: June 7, 1999.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 99–14837 Filed 6–8–99; 11:07 am]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:45 p.m. on July 1, 1999, at the JC Penney Government Relations Office (Suite 1015), 1156 15th Street NW, Washington, DC 20036. The purpose of the meeting is to invite representatives from the financial services industry to discuss current issues in the mortgage lending discrimination debate including credit scoring, community outreach by lending institutions, and lending to minority owned businesses. The Committee will continue planning future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lewis Anthony, 202–483–3262, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–14662 Filed 6–9–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 4 p.m. on June 29, 1999, at the Frederick County Commission, Winchester Hall, First Floor Hearing Room, 12 East Church Street, Frederick, Maryland 21701. The purpose of the meeting is to review the status of the current project on Korean American store owners in Baltimore, discuss alternatives and select the next project, and hear presentations by invited speakers on civil rights developments.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–14663 Filed 6–9–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 18, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of May 14, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. Racial and Ethnic Tensions in American Communities: The New York Report
VI. State Advisory Committee Report ''Alaskan Natives and Other Minorities in the Special Education Program of Four Alaskan Districts'' (Alaska)
VII. Future Agenda Items.

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–14926 Filed 6–8–99; 3:29 pm]

BILLING CODE 6750–06–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Antidumping Duty Administrative Review of Heavy Forged Hand Tools From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on Heavy Forged Hand Tools from the People's Republic of China. The review covers four manufacturers/exporters of the subject merchandise to the United

States for the period February 1, 1997 to January 31, 1998.

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Frank Thomson, Office 4, Office of the AD/CVD Enforcement, Import Administration. U.S. Department of Commerce, 14th St. and Constitution Ave., NW Washington, DC 20230, telephone: (202) 482–3601, or (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the final results of the this review within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the final results until July 7, 1999. *See* Memorandum from Bernard T. Carreau to Robert LaRussa, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building (June 1, 1999).

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A).

Dated: June 4, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–14780 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final determination of antidumping duty investigation.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final determination in the antidumping duty investigation of hot-rolled flat-rolled carbon-quality steel (Hot-Rolled Steel) from the Russian Federation (Russia).

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski or Rick Johnson at (202) 482–3208 or 482–3818, respectively; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Postponement of Final Determination and Extension of Provisional Measures

On February 25, 1999, the affirmative preliminary determination was published in this proceeding (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 9312). Pursuant to section 735(a)(2) of the Act, on March 4, 1999, respondent JSC Severstal (Severstal) requested that the Department extend the final determination in this case for the full sixty days permitted by statute. Severstal also requested an extension of the provisional measures (*i.e.,* suspension of liquidation) period from four to six months in accordance with the Department's regulations (19 CFR 351.210(e)(2)). Therefore, in accordance with 19 CFR 351.210(b)(2)(ii), on May 6, 1999, we partially extended this final determination until June 10, 1999 (*see Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation,* 64 FR 24329). Due to complex and contentious issues associated with this final determination, this notice serves to fully extend this final determination until no later than 135 days after the date of publication of the preliminary determination as originally requested by the respondents, *i.e.,* until July 10, 1999. Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: June 4, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–14781 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–802]

Final Determination of Sales at Less Than Fair Value: Uranium From the Republic of Kazakhstan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: James C. Doyle, Sally C. Gannon or Juanita H. Chen, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–3793.

SUMMARY: After the Republic of Kazakhstan (''Kazakhstan'') terminated the suspension agreement on uranium from Kazakhstan, the U.S. Department of Commerce (''Department'') resumed its antidumping investigation on uranium from Kazakhstan. The Department determines that imports of uranium from Kazakhstan are being sold, or are likely to be sold, in the United States at less than fair value, as provided in Section 735 of the Tariff Act of 1930, as amended (1994) (''the Act'').

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective in 1994. In addition, unless otherwise indicated, all citations to the Department's regulations are citations to the regulations at 19 CFR Part 353 (1994).

Case History

On November 29, 1991, the Department initiated an antidumping investigation on uranium from the Union of Soviet Socialist Republics (''Soviet Union''). *See Initiation of Antidumping Duty Investigation: Uranium from the Union of Soviet Socialist Republics,* 56 FR 63711 (December 5, 1991). On December 25, 1991, the Soviet Union dissolved and the United States subsequently recognized the twelve newly independent states (''NIS'') which emerged, one of which was the Republic of Kazakhstan. On January 16, 1992, the Department presented an antidumping duty questionnaire to the Embassy of the Russian Federation, the only NIS which had a diplomatic facility in the United States at that time, for service on Kazakhstan. On January 30, 1992, the Department sent questionnaires to the

United States Embassy in Moscow, which served copies of the questionnaire on the permanent representative to the Russian Federation of each NIS. The questionnaires were served on February 10 and 11, 1992. On March 25, 1992, the Department stated that it intended to continue its antidumping duty investigation with respect to the NIS of the former Soviet Union. *See Postponement of Preliminary Antidumping Duty Determination: Uranium from the Former Union of Soviet Socialist Republics (USSR)*, 57 FR 11064 (April 1, 1992).

On June 3, 1992, the Department issued its preliminary determination, in its antidumping duty investigation on uranium from Kazakhstan, that imports of uranium from Kazakhstan were being, or were likely to be, sold in the United States at less than fair value, as provided for in the Act. *See Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380 (June 3, 1992). On October 16, 1992, the Department amended the preliminary determination to include highly enriched uranium (''HEU'') in the scope of the investigation. *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49221 (October 30, 1992). Also on this date, the Department also signed an agreement suspending the InvestigationInvestigation investigation. *See Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan*, 57 FR 49222 (October 30, 1992) (''Suspension Agreement''). The basis for the Suspension Agreement was an agreement by Kazakhstan to restrict exports of uranium to the United States.

On November 10, 1998, the Department received notice from Kazakhstan of its intent to terminate the Suspension Agreement. Section XII of the Suspension Agreement provides that Kazakhstan may terminate the Suspension Agreement at any time upon notice to the Department, and termination would be effective 60 days after such notice. Accordingly, on January 11, 1999, the Department terminated the Suspension Agreement, as requested by Kazakhstan, and resumed the iInvestigationnvestigation. *See Termination of Suspension Agreement, Resumption of Antidumping Investigation, and Termination of Administrative Review on Uranium From Kazakhstan*, 64 FR 2877 (January 19, 1999). On January 13, 1999, the Department issued a supplemental questionnaire for the original period of investigation (''POI'') to Kazakhstan. The supplemental questionnaire was issued to Kazakhstan as requests for separate rates were not submitted to the Department. On January 28, 1999, Kazakhstan requested a 60-day postponement of the date of the Department's final determination. On February 1, 1999, Kazakhstan submitted its response to Section A of the supplemental questionnaire. On February 3, 1999, Kazakhstan submitted minor corrections to its Section A response. On February 17, 1999, Kazakhstan submitted its response to Sections C and D of the supplemental questionnaire.

In reviewing Kazakhstan's response, the Department determined that Kazakhstan's response required significant additional information. Therefore, on March 5, 1999, the Department issued a second supplemental questionnaire. On March 12, 1999, the Department published a notice in the **Federal Register** postponing the final determination date to June 3, 1999 and postponing the hearing date to May 12, 1999. *See Notice of Postponement of Final Antidumping Determination: Uranium From Kazakhstan*, 64 FR 12287 (March 12, 1999). On March 17, 1999, Kazakhstan responded to the Department's second supplemental questionnaire. Kazakhstan stated that it has endeavored to the best of its ability to assemble the information, but complete data no longer exists for the POI. Kazakhstan argued that it should not be penalized for actions taken by parties, such as the Russian Federation Ministry for Atomic Energy (''MINATOM''), prior to the existence of Kazakhstan. Instead, Kazakhstan provided information from 1994, which it claimed was the earliest available data, and provided no translations for the documents previously submitted. On April 19, 1999, Kazakhstan submitted additional information to supplement its Section D response.

The Department conducted verification of the provided information. The Department conducted verification in Almaty, Kazakhstan, from May 4, 1999 through May 8, 1999. On May 5, 1999, the Department published a notice in the **Federal Register** extending the deadline for case briefs until May 17, 1999, rebuttal briefs until May 21, 1999, and extending the hearing date to May 25, 1999. *See Antidumping Investigation on Uranium from the Republic of Kazakhstan: Notice of Extension of Time for Briefs and Hearing*, 64 FR 24137 (May 5, 1999).

On May 17, 1999, the Department received case briefs from Kazakhstan and from the uranium coalition consisting of the Ad Hoc Committee of Domestic Uranium Producers (a petitioner), the Paper, Allied-Industrial-Chemical and Energy Workers International Union (the successor to petitioner Oil, Chemical, and Atomic Workers' Union), and USEC, Inc. (hereinafter collectively ''Uranium Coalition''). On May 21, 1999, the Department received rebuttal briefs from Kazakhstan and the Uranium Coalition. On May 26, 1999, the Department conducted a hearing on the issues.

Scope of the Investigation

The merchandise covered by this investigation constitutes one class or kind of merchandise. The merchandise covered by this investigation includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}. Both low enriched uranium (''LEU'') and HEU are included within the scope of this investigation. LEU is uranium enriched in U^{235} to a level of up to 20 percent, while HEU is uranium enriched in U^{235} to a level of 20 percent or more. The uranium subject to this investigation is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50, of the Harmonized Tariff Schedule (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive. HEU is also included in the scope of this investigation. ''Milling'' or ''conversion'' performed in a third country does not confer origin for purposes of this investigation. Milling consists of processing uranium ore into uranium concentrate. Conversion consists of transforming uranium concentrate into natural uranium hexafluoride (UF^6).

Since milling or conversion does not confer origin, uranium ore or concentrate of Kazakhstan origin that is subsequently milled and/or converted in a third country will be considered of Kazakhstan origin. The Department continues to regard enrichment of uranium as conferring origin.

Period of the Investigation

The POI is June 1, 1991 through November 30, 1991.

Verification

As provided in Section 776(b) of the Act, the Department conducted a verification of the information provided by Kazakhstan using standard verification procedures including, where possible, the examination of relevant sales and financial records and attempts to trace back to original source documentation containing relevant information, as well as the examination of 1994 documentation and other available information.

Best Information Available

The Department has determined, in accordance with Section 776(c) of the Act, that the use of best information available (''BIA'') is appropriate in this investigation. In deciding whether to use BIA, Section 776(c) provides that the Department may take into account whether the respondent provided a complete, accurate, and timely response to the Department's request for factual information. The Department requires a response which provides complete and accurate information on U.S. sales and factors of production in order to consider the response in its final determination. The responses which Kazakhstan submitted were severely deficient on their face: no U.S. sales data was provided, and factors of production information from the POI was so incomplete as to render the data useless for the Department's purposes. Furthermore, the Department was unable to verify the information which Kazakhstan did provide. Accordingly, the incomplete nature of Kazakhstan's responses and the failure of the data to verify requires the Department to use BIA. BIA is based on information submitted in the petition, detailed in the Department's initiation notice, and analyzed in the preliminary determination. *See* Comment 2, below.

Fair Value Comparisons

To determine whether sales of uranium from Kazakhstan to the United States were made at less than fair value, the Department sought to compare the United States prices to the foreign market value. *See* Comment 2, below.

Interested Party Comments

Comment 1: The Uranium Coalition argues that the Department's decision to issue a new questionnaire to Kazakhstan after termination of the Suspension Agreement, because Kazakhstan may not have had a full opportunity to respond to the original antidumping questionnaire, was inconsistent with the factual record and established legal precedent. The Uranium Coalition contends that record evidence indicates the Department gave Kazakhstan ample opportunity to respond in the preliminary segment of this Investigationinvestigation. The Uranium Coalition states that the Department exceeded the minimum requirements of delivering a public version of the petition to the Embassy for the Soviet Union in Washington, D.C., notifying Kazakhstan of the deadline for its response, providing Kazakhstan an opportunity to extend the deadline for its response, and ensuring Kazakhstan had adequate opportunity to comment on information submitted by other parties. *See* 19 C.F.R. Sections 353.12(g), 353.31(b)(2), and 353.31(c)(3). The Uranium Coalition notes that the Department delivered two copies of the petition, two copies of the questionnaire, extended the deadline for responses three times, issued a new service list, and remained in constant contact with the Deputy Trade Representative of the Trade Representation of the Russian Federation. The Uranium Coalition further notes that in the Department's cable requesting the Foreign Commercial Service deliver the questionnaire, the Department stated that its efforts in serving the questionnaires is to give each republic the opportunity to fully participate. The Uranium Coalition goes on to state that its arguments concerning the Department's efforts are supported by the findings of the court in the *Techsnabexport, Ltd.* v. *United States* proceedings (hereinafter collectively ''Tenex'' proceedings). See 795 F. Supp. 428 (Ct. Int'l Trade Ct. Int'l Trade1992) (''Tenex I''); 802 F. Supp. 469 (Ct.t. Int'lnt'l Traderade 1992) (''Tenex II''). The Uranium Coalition points out that it had been argued in the Tenex proceedings that the Department had violated the parties' procedural due process rights to notice and opportunity to participate, and the Court of International Trade (''CIT'') determined that the actions taken by the Department provided adequate process and the opportunity to participate in the Investigationinvestigation to the fullest extent, thus, the Department should not have been concerned about Kazakhstan's opportunity to respond to the questionnaire upon resumption of the Investigationinvestigation.

The Uranium Coalition notes that the Department's preliminary determination was based on BIA because Kazakhstan did not supply any requested information. The Uranium Coalition argues that the Department has consistently refused to accept new information submitted to remedy deficiencies that led to a BIA preliminary determination, citing *Certain Fresh Cut Flowers from Columbia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42855 (August 19, 1995); and *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Italy*, 58 FR 37152, 37153 (July 9, 1993). The Uranium Coalition also argues that 19 U.S.C. Section 1673c(i)(1)(B) directs the Department to treat the date on which the Suspension Agreement is terminated as the day on which the preliminary determination is issued. The Uranium Coalition argues that allowing submission of information after the preliminary determination will lead to abuse of the statutory provision for suspension agreements, in that initially non-cooperative parties could be afforded an additional opportunity to provide the required information, perhaps years later.

Finally, the Uranium Coalition argues that due process is compromised by the collection of new information after the preliminary determination, as the Department is left insufficient time to properly analyze the information, conduct verification, and interested parties are left insufficient time to review and comment on the information. The Uranium Coalition notes that due process concerns are particularly serious if the Department issues a final determination based on a data set different from that used in the preliminary determination.

Kazakhstan argues that the Department's decision to provide Kazakhstan an opportunity to submit information in the resumed Investigationinvestigation was correct and proper. Kazakhstan notes that the Department ''may request any person to submit factual information at any time during a proceeding.'' 19 CFR. Section 353.31(b)(1). Kazakhstan agrees that the Department made a valiant effort to serve the initial questionnaire, but argues that it was unable, not unwilling, to respond to the questionnaire. Kazakhstan argues that at the time of the initial questionnaire, Kazakhstan was

undergoing its creation and restructuring, including establishing a system to oversee uranium production in its territory. Kazakhstan notes that the National Joint-Stock Company of Atomic Energy and Industry (''KATEP'') was not created until after the questionnaires were served on the NIS. Kazakhstan notes that its willingness to respond is demonstrated by its full cooperation with the Department during the seven years of the suspension agreement. Kazakhstan argues that this indicates that it would have provided the information requested by the Department in the original Investigationinvestigation had it been in a position to do so at the time.

Kazakhstan disagrees with the Uranium Coalition's claim that the Department is creating bad precedent in suspension agreements by allowing Kazakhstan the opportunity to submit sales and factor information in the resumed investigation. Kazakhstan argues that because the circumstances in this investigation are exceptional, the only ''precedent'' established is that the Department has the discretion, under extreme circumstances and in the interest of fairness, to determine whether it is appropriate to provide an opportunity to submit information in a resumed investigation. Kazakhstan notes that the Department's decision to provide such an opportunity is in accordance with the Tenex proceedings, where the CIT stated that if presented with the question, it would ''decide in conjunction with review of the final determination whether the opportunity given [to provide republic-specific data] was statutorily sufficient.'' *See* 802 F. Supp. at 473

Kazakhstan also disagrees with the Uranium Coalition's claim that the domestic interested parties may not have had an adequate opportunity to review and comment on the information submitted in the resumed investigation. Kazakhstan notes that the Uranium Coalition had over three months to examine Kazakhstan's sales and factor information, none of which has materially changed since the date of initial filing. Accordingly, Kazakhstan argues that the Uranium Coalition cannot contend it had no opportunity to comment on the submitted information. Kazakhstan further notes that the Uranium Coalition has never offered material comments or submitted any sales or factor information specific to Kazakhstan during any point in the investigation.

In light of the circumstances, Kazakhstan argues that the Department appropriately provided Kazakhstan the opportunity to submit information in the resumed investigation. Kazakhstan argues that the supplemental questionnaires were all the more appropriate considering there was no republic-specific information on the record which would allow the Department to make a proper analysis of dumping in the resumed investigation.

Department's Position: The Department recognizes that the court in the Tenex proceedings determined that the actions taken by the Department provided adequate opportunity to participate in the investigation to the fullest extent. In discussing notice and opportunity to be heard and participate in the investigation, the CIT stated that the ''petition gave notice of intent to reach exports from the republics as well as the USSR, and the proceedings have been sufficiently delayed so that the plaintiffs have had adequate notice and opportunity to participate.'' *Tenex I* at 437. The Court further stated that ''although unionwide data was used at the outset, presumably the republics have been given the opportunity to provide republic-specific data. If presented with the question, the court will decide in conjunction with review of the final determination whether the opportunity given was statutorily sufficient.'' *Tenex II* at 473.

Given the unique circumstances of this case and the lapse of time since the original questionnaires were presented, Kazakhstan may have gained access to the data the Department originally requested. The Department determined that it was appropriate to give such additional opportunity to Kazakhstan to provide the originally-requested information at this time. The CIT noted that the ''[due process] test is one of fundamental fairness in light of the total circumstances.'' *Tenex I* at 436. Therefore, while the Department fulfilled its due process obligation given the circumstances at the beginning of this proceeding, the circumstances have changed, calling for a more accommodating opportunity to respond to the original questionnaire.

In essence, the Uranium Coalition argues that the Department gave Kazakhstan too much due process; yet fails to indicate a maximum limit on due process measures. The Department took such measures in light of the unique circumstances of this investigation. At the time of the preliminary investigation and issuance of the original questionnaire, the Soviet Union had just collapsed and the resulting NIS, including Kazakhstan, were struggling to establish themselves. Taking this into consideration, along with the fact that eight years have elapsed since initiation of the investigation, the Department considers it reasonable to have afforded Kazakhstan an additional opportunity to fully participate in the investigation.

Comment 2: The Uranium Coalition argues that the Department should use BIA and apply the 177.87 percent margin calculated for natural uranium in the preliminary determination. The Uranium Coalition notes that Section 776(c) of the Act mandates the Department to use BIA ''whenever a party * * * refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation * * *'' *See also* 19 U.S.C. Section1677e(c). The Uranium Coalition argues that application of BIA furthers the purpose of encouraging full disclosure by respondents, so that the Department can compute margins as accurately as possible. The Uranium Coalition argues that the Department must apply BIA even when a respondent's inability to provide requested information is due to circumstances outside the respondent's control. *See Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan,* 55 F.R. 34585 (August 23, 1990) (documents destroyed by fire); *NSK Ltd.* v. *United States,* 794 F. Supp. 1156, 1160 (Ct. Int'l Trade 1992) (corporate policy to destroy data after five years). The Uranium Coalition argues that the CIT has rejected a ''best efforts'' exception to the application of BIA. *See Tai Yang Metal Industrial Co., Ltd.* v. *United States,* 712 F. Supp. 973, 977–78 (Ct. Int'l Trade 1989); *Uddeholm Corp.* v. *United States,* 676 F. Supp. 1234, 1237 (Ct. Int'l Trade 1987). The Uranium Coalition further argues that Kazakhstan's inability to obtain information from third parties [1] is no exception to the requirement of a BIA determination. The Uranium Coalition argues that the Department has consistently applied BIA when information held by a third party has not been submitted. *See Fresh and Chilled Atlantic Salmon from Norway; Final Results from Antidumping Duty Administrative Review,* 58 FR 37912, 37915 (July 14, 1993); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 65527, 65538 (December 13, 1996). The Uranium Coalition also notes that the

[1] The Uranium Coalition notes that it is uncertain from the evidence whether Kazakhstan expended sufficient effort in obtaining information from third parties.

Department has determined that the fact that a third party might have incentive not to provide information is no exception to the application of BIA. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329, 24368 (May 6, 1999)[2].

The Uranium Coalition argues that the Department should apply total, not partial, BIA in calculating the final margin. The Uranium Coalition first argues that the Department should have proceeded to a final determination based on BIA due to Kazakhstan's failure to answer the original questionnaire. Disagreeing with the Department's decision to issue a supplemental questionnaire instead, the Uranium Coalition argues that, nevertheless, the Department should apply total BIA in its final determination as Kazakhstan's subsequent response is inadequate, untimely and not verifiable. The Uranium Coalition points to numerous deficiencies in Kazakhstan's response, including: (1) No U.S. sales information provided for its Section C response, which is necessary to calculate prices; (2) information based on 1994 and 1998 data, instead of 1991 data; (3) factors of production reported only for the in situ leaching production processes, despite the use of other processes during both 1991 and 1994; (4) incomplete factors of production data provided; (5) no financial or government documents provided; (6) no quantity and value of sales data provided for its Section A response; and (7) no supporting documentation for Section D provided, as requested by the Department. The Uranium Coalition argues that Kazakhstan should not be allowed to benefit from submitting self-selected information. While 1991 information may no longer be available, the Uranium Coalition argues that regardless of the passage of time, change in personnel, and destruction of relevant records, the Department should base its final determination on BIA. *See Koyo Seiko Co. Ltd.* v. *United States,* 796 F. Supp. 517, 525 (Ct. Int'l Trade 1992) (applying BIA where respondent was unable to provide 1974 information in 1986). The Uranium Coalition argues that not only is the Department unable to calculate foreign market value without factors of production data, overall, the submitted data is insufficient for the Department to calculate a margin.

As Kazakhstan is the sole respondent and a non-market economy, the Uranium Coalition argues the only rate the Department should use is the rate from the preliminary determination. The rate established in the preliminary determination was based upon the petition and information submitted by Petitioners and two parties from which the Department solicited information. *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, et al.* 57 FR at 23382.

The Uranium Coalition argues that Kazakhstan has not cooperated with the investigation from the start, beginning with its failure to respond to the original questionnaire. The Uranium Coalition notes that while Kazakhstan had 60 days to prepare for the resumed investigation after providing notice of its intent to terminate the Suspension Agreement, it nevertheless provided no information. Furthermore, the Uranium Coalition notes that the data untimely provided by Kazakhstan during verification could have been reviewed prior to the date its questionnaire responses were due. The Uranium Coalition argues that this demonstrates Kazakhstan's failure to cooperate; the Department should consider Kazakhstan's lack of cooperation in its final determination and apply the rate established in the preliminary determination.

While Kazakhstan disagrees with the continuation of the investigation, it argues that if the investigation is not terminated, the Department should use 1994 factor information in its final determination. Kazakhstan argues that it cooperated to the best of its ability, again noting that the original respondent named in the petition, the Soviet Union, no longer exists. Kazakhstan states that several third parties control the POI data on sales and production for the area in the Soviet Union now known as Kazakhstan. Kazakhstan notes that it attempted to obtain data from these third parties. Within MINATOM, Kazakhstan states that it contacted and requested information from the First Department, Atomredmetzoloto, which oversaw mining and milling in the Soviet Union during the POI, and Techsnabexport, which oversaw all uranium sales from the Soviet Union during the POI. Kazakhstan states that it received no information from these requests. Kazakhstan also states that while the regional departments that reported to Atomredmetzoloto (Uzhpolymetal, Vostokredmet, Tselliny and Prikaspiysky (a.k.a. Kaskor)) are possible sources of POI sales and production information, it is unclear what records they created and retained in the ordinary course of business as each followed different standards then. Furthermore, Kazakhstan notes that none of these records are under its control; Uzhpolymetal is in Kyrgyzstan and Vostokredmet is located in Tajikistan. As for Tselliny and Kaskor, Kazakhstan states that it explained during verification that neither regional department was under the direct control of KATEP or of Kazatomprom. Finally, Kazakhstan notes that because many of the third parties now compete with Kazakhstan in the uranium market, they have an incentive not to respond to requests for information.

Kazakhstan also argues that after the dissolution of the Soviet Union on December 25, 1991, there was no formal centralized management of uranium activities in Kazakhstan until the establishment of KATEP on February 12, 1992. Kazakhstan notes that while KATEP was created to take sole responsibility for all sales of subject merchandise from Kazakhstan, KATEP did not have full day-to-day management responsibility over all uranium production in Kazakhstan. Kazakhstan asserts that Kazatomprom, created on July 12, 1997, was the first entity with sole responsibility for the mining and marketing of uranium from Kazakhstan. Kazakhstan argues that the lack of formal oversight contributed to the incomplete nature of the 1991 and 1994 records.

Kazakhstan argues that the passage of time is another constraint on the availability of information. Kazakhstan notes that the individuals who recorded information during the POI are not the same individuals who helped prepare the questionnaire responses. Without the personal recollection of these individuals, Kazakhstan argues that reconstruction of the archived files was difficult. Kazakhstan also argues that because the POI is eight years ago, much of the 1991 (as well as the 1994) information has been destroyed in the ordinary course of business pursuant to document destruction policies, referencing the certificate of destruction produced during verification as examples of the policies. *See* May 13, 1999 Verification Report (''Verification Report''), at 13 and 26. Kazakhstan was also hindered in its efforts to locate data as much of the information on uranium was, and still is, considered state secrets. Kazakhstan states that knowledge on the material was limited and circulation of information was restricted. Only a limited number of

[2] The Uranium Coalition states that while that determination was made under the current antidumping statute, the principle of making an adverse inference when information is not provided applies to the pre-URAA use of BIA. *See Rhone Poulenc* v. *United States,* 899 F.2d 1185, 1190–91 (Fed. Cir. 1990).

documents on uranium were made and circulated among a small circle of officials. Accordingly, Kazakhstan argues that this made locating complete sets of documents difficult.

Kazakhstan argues that its efforts in light of the unusual and difficult situation indicates it cooperated to the best of its ability and, thus, the Department should use the 1994 factors information submitted by Kazakhstan in the final determination. Kazakhstan argues that the 1994 information it produced, despite the described obstacles, is as complete as possible, as well as verifiable. Kazakhstan states that it submitted 1994 factors information for four of the seven facilities operating during the POI. Kazakhstan argues that the Department has complete information on the total uranium output at these four facilities, and the inputs needed to produce one kilogram of uranium at each of those facilities. Kazakhstan argues that the main source documents provided for 1994, the technical reports, tied to other information available for 1994, such as the unit reports, monthly cost of production reports and the annual report filed with government authorities. Kazakhstan concedes that the Department was generally unable to trace the 1994 technical reports to a level of detail lower than the unit reports but argues that this was because more detailed information did not exist, and was not because of any inconsistency in the information.

Kazakhstan argues that the 1994 factors information is as representative of uranium production during the POI as any other source. Kazakhstan also argues that the 1994 factors information accurately represents possible uranium production today. Accordingly, Kazakhstan argues that an antidumping duty based on the provided 1994 factors information would be superior to one based on other sources. In comparing the 1994 information with the limited information available for 1991, Kazakhstan claims that similar inputs were consumed at similar levels and facility production levels were comparable. In fact, Kazakhstan suggests that 1994 data may be preferred over 1991 data as Kazakhstan controlled the 1994 facilities, whereas MINATOM controlled the 1991 facilities. Furthermore, Kazakhstan argues that the 1994 factors are based on actual production information in Kazakhstan at the same facilities operating in 1991, whereas the factors submitted by petitioners and used in the preliminary determination were estimates for Canadian facilities, where actual source documents were not used.

Kazakhstan notes that the Department has substantial discretion in selecting the source of BIA to use in its calculations. *See Magnesium Corp.* v. *United States,* 938 F. Supp. 885, 902 (Ct. Int'l Trade 1996). Kazakhstan asserts that the Uranium Coalition incorrectly contends that the Department must use information submitted in the petition as BIA. Kazakhstan notes that the Department may consider any and all information on the record in selecting BIA and argues that the final determination should be based on republic-specific data. Accordingly, Kazakhstan argues that the data it has submitted is far superior to the information submitted by the petitioners.

Department's Position: The Department continues to apply the overall rate of 115.82 percent as the BIA rate for the final determination. The Department notes that at verification none of the information provided, timely or otherwise, could be traced to annual report information at verification. Further, the Department was unable to check original well-site and factory information to tie to the few technical reports available for review. As a result, the record data can only be considered fragmentary. Without any verifiable data, the Department must resort to the rate established at preliminary determination. Additionally, while Kazakhstan asserts that it should not be held responsible for the failure of Tenex to provide data regarding U.S. shipments of subject merchandise during the POI, the Department notes that precedent to the contrary exists. Even where another party controls the information, the Department may rely on BIA if the information is not provided by the respondent. *See Helmerich & Payne, Inc.* v. *United States,* 24 F. Supp. 2d 304, n. 6 (Ct. Int'l Trade 1998).

The Department's practice is to base BIA on a simple average of the margins based on petition data, as opposed to the highest margin based on petition data, when the Department determines that the respondent has attempted to cooperate with the Department's Investigationinvestigation. In this instance, the Department calculated a natural and enriched uranium rate, modifying the original petition rates. Therefore, the Department considers it appropriate to apply the average rate of 115.82%. See e.g., Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan, 57 FR 17892 (April 28, 1992). The Department believes that Kazakhstan attempted to cooperate in this proceeding because, while the response lacks sufficient data to use in the calculation of a dumping margin, it nevertheless contains sufficient data for the Department to conclude that a serious and sustained effort was undertaken by Kazakhstan to provide data responsive to the Department's questionnaires for the POI. Therefore, the Department is basing the final margin on an average of the margins for uranium concentrate and enriched uranium derived from the petition. In this instance, the petition included margins for natural and enriched uranium, which the Department adjusted for purposes of the preliminary determination *See Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan,* 57 FR 17892 (April 28, 1992). The average of those rates, as adjusted, is 115.82 percent.

Comment 3: The Uranium Coalition asserts that the Department has the authority to clarify the scope of this Investigationinvestigation to include Kazakhstan origin natural uranium enriched in third countries in order to prevent the potential circumvention of any future antidumping duty order. The Uranium Coalition further asserts that such a clarification would be in accordance with the Department's substantial transformation analysis, the intent of the petition, and the purpose of the antidumping law. Regarding their circumvention concerns, the Uranium Coalition cites the potential cost savings for utilities purchasing Kazakhstan origin uranium at the unrestricted market price and claim that contracts permitting the foreign enrichment of Kazakhstan origin uranium are already in place. The Uranium Coalition notes that the Department's need to address potential circumvention in its substantial transformation analyses may result in a determination which differs from that of the United States Customs Service (''U.S. Customs'') and that, in this case, the elements of the Department's substantial transformation analysis require a determination that third-country enrichment does not change the country of origin of Kazakhstan uranium.

The Uranium Coalition asserts that, while the petition's scope did not specifically include uranium enriched in third countries, its intent was clearly to cover all forms of uranium products and to prevent circumvention. The Uranium Coalition argues that there was no reasonable basis in 1991 to foresee the increasing use of foreign enrichment by U.S. utilities and that the Suspension Agreement was subsequently modified to cover these third-country enrichment transactions. Finally, the Uranium

Coalition notes that the Department must clarify the scope of this Investigationinvestigation in order to achieve the antidumping law's purpose of remedying the negative impact on a U.S. industry of unfairly traded imports. The Uranium Coalition argues that, when the unfairly-priced Kazakhstan uranium is enriched abroad rather than in the United States, the injurious effect on the mining sector of the U.S. industry is not altered and that the adverse effects are in fact exacerbated because the enrichment sector of the U.S. industry is damaged.

Kazakhstan contends that the Uranium Coalition's request represents an untimely attempt to improperly expand the scope of the investigation and any resulting antidumping duty order to cover uranium produced in countries not subject to this Investigationinvestigation. Kazakhstan argues that all of the factors normally considered by the Department in its substantial transformation analysis confirm that enrichment does substantially transform and confer a new country of origin on enriched uranium. Thus, Kazakhstan asserts the Department does not have the authority to expand the scope of this proceeding. Kazakhstan further asserts that including uranium enriched, and therefore produced, in third countries in the scope of this case would violate the World Trade Organization's Agreement on Rules of Origin as well as ''circumvent'' the standards for circumvention established in the U.S. statute.

Department's Position: The Department agrees with Kazakhstan, in part. As an initial matter, there is no evidence on the record to indicate that there were any entries into the United States during the POI of Kazakhstan uranium enriched in a third country. In fact, the Uranium Coalition notes in its brief that the practice about which they are concerned evolved after the POI. The Uranium Coalition's concern clearly centers on current and future contracts involving third-country enrichment and, therefore, is unrelated to the calculation of a dumping margin on uranium from Kazakhstan during the POI. Thus, the Department need not decide in this final determination whether uranium from Kazakhstan enriched in a third country was sold at less than fair value during the POI.

With respect to the third-country enrichment issue, its importance and complexity is illustrated by the extensive argument contained in the Uranium Coalition's and Kazakhstan's briefs and in the time devoted to this issue at the hearing. However, Kazakhstan argues that the Uranium Coalition raised the third-country enrichment issue so late in the proceeding that its due process rights were prejudiced. The Department finds that neither the Department nor Kazakhstan could effectively examine the issue prior to issuance of the final determination. A review of the case schedule on and after the date of the Uranium Coalition's filing illustrates the point. The Uranium Coalition's submission was filed on April 26, 1999, one week prior to the beginning of verification. The Department conducted verification in Kazakhstan during the week of May 4, 1999 through May 8, 1999, and issued a verification report on May 13, 1999. Parties filed case briefs on May 17, 1999, and rebuttal briefs on May 21, 1999. The hearing was held on May 26, 1999, just eight days before the date of the final determination. This schedule simply did not permit the Department sufficient time to issue supplemental questionnaires, pose questions to the Uranium Coalition or engage in the other activities necessary to properly evaluate the law, arguments, and facts surrounding this issue. Additionally, the Uranium Coalition's filing on this issue was made in the context of an investigation resumed after an almost eight-year hiatus, during which the Government of Kazakhstan began rationalizing its uranium production. Furthermore, during the initial investigation, the respondent country became independent, further complicating the link between the initial 1991–92 phase of the investigation, the 1999 resumed investigation, and the third-country enrichment issue.

As a result of the above considerations, and to provide sufficient opportunity for full analysis of the law, argument and facts regarding this issue, the Department will initiate a scope inquiry on Kazakhstan uranium enriched in a third country simultaneously with the issuance of any antidumping order in this proceeding.

Comment 4: The Uranium Coalition contends that the Department should include uranium imported under a U.S. Customs temporary import bond (''TIB'') within the scope of this Investigationinvestigation in order to prevent certain ''swap'' transactions which may otherwise be used to circumvent a future antidumping duty order. The Uranium Coalition argues that, in this case, the Department has clear evidence, based on the past conduct of importers and domestic parties during the administration of the Suspension Agreement, that temporarily-imported merchandise can be, and has been, used to introduce dumped merchandise into U.S. commerce. The Uranium Coalition asserts that the Department has the authority to inform U.S. Customs that, due to the fungibility of the product and the nature of commercial activities in this particular industry, all Kazakhstan uranium entries, including TIB entries, must be subject to antidumping duty assessment to prevent circumvention of an order.

Alternatively, the Uranium Coalition urges the Department, at a minimum, to direct U.S. Customs to consider any entry of Kazakhstan uranium as a consumption entry subject to the antidumping order unless the TIB ''statement of use'' accompanying the TIB application under 19 CFR 10.31 includes a statement that the uranium to be imported under TIB will not be, and has not been, used as part of any swap, loan, or exchange transaction.

Kazakhstan argues that the Uranium Coalition's request to include Kazakhstan uranium entered under TIB in the scope of this proceeding is both untimely and improper and should be rejected by the Department. Kazakhstan notes that this issue was first raised in the Uranium Coalition's case brief, disallowing the Department the opportunity to make use of proper notice and comment procedures before departing from a prior practice with such broad implications. Furthermore, Kazakhstan notes the Uranium Coalition's concession that the Department has previously held, and the CIT upheld, that antidumping duty orders do not apply to merchandise entered under TIB.

Department's Position: The Department agrees with Kazakhstan. As noted by the Uranium Coalition, the Department has previously rejected a request to apply antidumping duties to merchandise imported under TIB procedures. *See Remand Determination: Titanium Metals Corp.* v. *United States*, Court No. 94–04–00236 (Apr. 17, 1995). The CIT then upheld this decision. See *Titanium Metals Corp.* v. *United States*, 901 F. Supp. 362 (Ct. Int'l Trade 1995). While the Department recognizes the Uranium Coalition's concerns regarding the atypical characteristics of uranium and the uranium industry, the Department reaffirms its prior finding that merchandise entered pursuant to TIB is not entered for consumption. As a result, antidumping duties cannot apply to TIB entries. In addition, the Department has no legal authority to instruct U.S. Customs to require an additional certification for such Kazakhstan TIB entries, as alternatively requested by the Uranium Coalition.

Comment 5: Kazakhstan notes that the respondent named in the original antidumping petition, the Soviet Union, was dissolved less than one month after initiation of the Investigationinvestigation and no longer exists. Kazakhstan stresses that while the courts sustained the determination to continue the Investigationinvestigation despite the dissolution of the Soviet Union, the final determination of the Investigationinvestigation must be based on facts involving Kazakhstan, not the Soviet Union. Kazakhstan argues that the distinction between Kazakhstan and the Soviet Union is critical to the Department's analyses of: (1) Whether the petition was filed on behalf of the domestic industry against Kazakhstan in particular; (2) whether there were sales of subject merchandise from Kazakhstan to the United States during the POI; and (3) the selection of surrogate values for Kazakhstan.

According to the Uranium Coalition, the fact that Kazakhstan is no longer a part of the Soviet Union does not change the Department's obligation to conduct an antidumping investigation of uranium produced during the POI in the territory which is now Kazakhstan. The Uranium Coalition argues that the Department reasonably construed the antidumping statute as authorizing continuation of this Investigationinvestigation, despite the fact that the petition leading to this Investigationinvestigation was filed against subject merchandise from the Soviet Union.

According to the Uranium Coalition, Section 731 of the Act instructs the Department to impose antidumping duties whenever foreign merchandise is sold at less than fair value in the United States, where the International Trade Commission determines that such imported merchandise causes injury to a domestic industry. The Uranium Coalition further argues that this statutory provision contains no requirement that the Department take changes in the political landscape of a foreign territory into account when determining whether the imposition of antidumping duties is warranted. According to the Uranium Coalition, it is the foreign merchandise—not the particular political configuration of the territory in which the merchandise originated—which is the critical aspect of the antidumping analysis. Thus, the Uranium Coalition concludes, changes in the geopolitical territory of the former Soviet Union are not relevant for purposes of determining whether uranium produced in any region of the former Soviet Union was traded unfairly in the United States.

In support of its conclusion, the Uranium Coalition cites to Tenex II. *See* 802 F. Supp. 469. According to the Uranium Coalition, the CIT held that the Department had full legal authority to continue its uranium investigation against the former Soviet republics, notwithstanding dissolution of the Soviet Union, because the antidumping statute did not require the Department to take into account changes in political structures in the course of its investigation. Further, according to the Uranium Coalition, since the Tenex proceedings, this rationale has been applied consistently by the Department. *See Transfer of the Antidumping Order on Solid Urea from the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment,* 57 Fed. Reg. 28828 (Jun. 29, 1992); *Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong,* 62 Fed. Reg. 42965 (Aug. 11, 1997); *Solid Urea from the German Democratic Republic,* 63 Fed. Reg. 7122, 7122–23 (Feb. 12, 1998); *Certain Cut-to-Length Carbon-Quality Steel Plate from the Former Yugoslav Republic of Macedonia,* 64 Fed. Reg. 12993 (Mar. 16, 1999).

Department's Position: The Department agrees with Kazakhstan, in part. The Department agrees that Kazakhstan is a different entity from the Soviet Union. In recognition of that fact, the Department attempted to collect and verify separate Kazakhstan-specific information. However, Kazakhstan failed to provide sufficient verifiable data which the Department could use in its analysis. As a result, the Department must use BIA, for the reasons discussed in Comment 2, above. The Department notes that the continuation of this investigation against Kazakhstan was challenged at the CIT, where the Department's decision to continue was upheld. *See* Tenex proceedings.

Comment 6: Kazakhstan argues that the investigation should be terminated as the Uranium Coalition does not have the support of the domestic industry and, thus, lacks standing to represent the industry in the resumed investigation. Kazakhstan claims that two of the original petitioners, Power Resources, Inc. (''PRI'') and Cogema, Inc. (''Cogema''), currently account for over half the production of uranium in the United States. Kazakhstan states that PRI expressed its opposition to the investigation in an April 15, 1999 letter and Cogema expressed its opposition in a May 5, 1999 letter. Kazakhstan argues that their opposition indicates that the investigation is not ''on behalf of'' the domestic uranium industry.

Kazakhstan argues that the Department has the power to rescind its decision to initiate an antidumping investigation where it is discovered that the petition is not being maintained on behalf of the industry. *See Gilmore Steel Corp.* versus *United States,* 585 F. Supp. 670, 674 (Ct. Int'l Trade 1984). Kazakhstan argues that when members of the domestic industry provide grounds to doubt a petitioner's standing, the Department should evaluate whether those parties which oppose the investigation represent a majority of the domestic industry, to determine whether the petition is properly filed on behalf of the domestic industry. *See Suramerica de Aleaciones Laminadas, C.A.* v. *United States,* 966 F.2d 660, 662–63 (Fed. Cir. 1992). Kazakhstan claims that PRI and Cogema account for a majority of the domestic industry and, since this majority of the domestic industry opposes the investigation, Kazakhstan argues that the Department should terminate the investigation immediately.[3]

The Uranium Coalition also states that the letters from PRI and Cogema were not properly filed, are therefore not on the record of this investigation and thus cannot be considered by the Department. Moreover, even if the letters had been properly placed on the record, the Uranium Coalition continues, Cogema and PRI are parties that are related to the producer through their joint ventures in Kazakhstan. Hence, neither PRI nor Cogema would be considered part of the domestic industry.

Department's Position: The Department agrees with the Uranium Coalition. The Department notes that the letters submitted by PRI and Cogema, as domestic uranium producers opposed to the investigation, were improperly submitted and cannot be considered. First, the letter from PRI, to which Kazakhstan refers, does not appear on the record for this investigation. Second, the courtesy copies of the PRI and Cogema letters provided separately to Department analysts show no certificate of service, and thus it appears that the parties were never properly served the letters. Pursuant to 19 CFR 353.31(g)(2), the Department ''will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served,

[3] As an alternative, Kazakhstan suggest that the Department survey all uranium producers in the United States to determine the producers' stance on the investigation.

and, for each, indicating the date and method of service.'' Third, neither letter contains a certification as to the contents of the letter, as required under 19 CFR 353.31(i).[4]

The PRI and Cogema letters were also untimely submitted. Pursuant to 19 CFR 353.31(c)(2), the Department ''will not consider any allegation in an investigation that the petitioner lacks standing unless the allegation is submitted, together with supporting factual information, not later than 10 days before the scheduled date for the Secretary's preliminary determination.'' The Department notes that while Pathfinder Mines Corporation (''Pathfinder''), a Cogema subsidiary, properly submitted a letter to the record in furtherance of Cogema's opposition, Pathfinder's letter was dated May 17, 1999, which is clearly past the regulatory deadline.

Finally, even if PRI and Cogema had properly expressed their opposition to this investigation, publicly available information indicates that PRI, a wholly owned subsidiary of Cameco, and Cogema, a foreign-owned producer, have certain joint ventures with Kazakhstan that mandate the Department to disregard their opposition to the investigation. *See* the Uranium Coalition's rebuttal brief, at Exhibit 3 (''The Reconstruction of the Uranium Industry in Kazakhstan''). Section 771(4)(A) defines the term industry to mean ''the domestic producers as a whole of a like product.'' Section 771(4)(B) provides that ''when some producers are related to the exporters * * * of the allegedly * * * dumped merchandise, the term ''industry'' may be applied in appropriate circumstances by excluding such producers from those included in that industry.'' As both PRI and Cogema have business relations with the foreign producer in this investigation, the Department is disregarding their positions for purposes of standing. For these aforementioned reasons, even if the objections had been properly and timely filed, the Department would continue this investigation.

Comment 7: Kazakhstan argues that it made no sales of subject merchandise to the United States during the POI as it did not exist during the POI. Kazakhstan argues that as part of the Soviet Union, the region's economy was under the guidance and control of Soviet authorities and companies existing in the region had no independent production or sales activities. Kazakhstan argues that during the POI, Tenex had sole authority for making sales of uranium produced in the Soviet Union, noting that Tenex is a wholly-owned and controlled subsidiary of MINATOM. Kazakhstan further notes that, pursuant to contracts between Tenex and the uranium producers for the region during the POI, the manner in which the uranium producers were compensated for uranium provided to Tenex reveal that the uranium producers had no control over sales. Accordingly, Kazakhstan states that even if there was any evidence of sales from Kazakhstan to the United States during the POI, and Kazakhstan asserts there is no such evidence, under the circumstances it is not reasonable to conclude that Kazakhstan or its uranium producers bore any responsibility for those sales.

Kazakhstan insists that ''where parties in the territory that is now the Republic of Kazakhstan were not even responsible for the sales of their merchandise at the time, proving the negative is virtually impossible.'' *See* Kazakhstan's Rebuttal Brief, at 17. Kazakhstan states that the Uranium Coalition has not disputed that no sales of subject merchandise produced in Kazakhstan were made to the United States during the POI. Kazakhstan argues that without sales, the Department has previously held that ''there are no United States prices with which to compare foreign market value, and, thus, no dumping margins.'' *See Final Determination of No Sales at Less Than Fair Value: Ferrosilicon from Argentina,* 58 FR 27534, 27535 (May 10, 1993). Kazakhstan argues that this conclusion flows directly from the definition of U.S. price. *See* 19 CFR 353.41(a). Kazakhstan argues there is no evidence of any sales, thus, the Department has no reasonable basis to conclude that there were any dumping margins and the investigation should be terminated.

The Uranium Coalition argues that Kazakhstan's assertion, that it made no sales of subject merchandise to the United States during the POI, is based on the incorrect assumption that the investigation covers material sold by Kazakhstan or by a ''Kazakh entity.'' The Uranium Coalition argues that Kazakhstan should properly be considering material from Kazakhstan that is sold in the United States, and not considering the party that controlled production or sold the uranium, noting that the Department's instructions to U.S. Customs was ''for all manufacturers, producers, and exporters of uranium from Kazakhstan.'' The Uranium Coalition notes that the burden of proof is on Kazakhstan to produce evidence that there were no sales of subject merchandise to the United States during the POI. *See Electrolytic Manganese Dioxide from Ireland; Final Determination of No Sales at Less Than Fair Value,* 54 FR 8776 (March 2, 1989); *see also, Final Determination of No Sales at Less Than Fair Value: Ferrosilicon from Argentina,* 58 FR 27534, 27535 (May 10, 1993). The Uranium Coalition argues that Kazakhstan has failed to meet its burden by failing to provide verified evidence, noting that the Department's verification report states that Kazakhstan did not provide any evidence that could have resolved whether there were any shipments to the United States during the POI. Furthermore, the Uranium Coalition contends that it is highly likely that there were sales of uranium from Kazakhstan to the United States during the POI as the region now known as Kazakhstan accounted for 50 percent of all uranium production by the former Soviet republics in 1991. *See* the Uranium Coalition's Rebuttal Brief at 32.

Department's Position: The Department agrees with the Uranium Coalition. The issue of continuing this proceeding with respect to the individual Republic was previously settled in court. *See* Tenex proceedings. Thus, the claim that Kazakhstan itself did not make any sales of uranium to the U.S. during the POI is irrelevant to this investigation. As the Uranium Coalition points out, Kazakhstan accounted for 50 percent of all uranium production of the Soviet Union. Furthermore, at verification, the Department found that Tenex and the Tselliny combinat had signed a commission agreement in 1990. *See* Verification Report at 3. This commission contract supports the contention that a regular channel of trade of natural uranium from Kazakhstan through Tenex to foreign locations had been established. The Department noted at verification that Kazakhstan's responses ''included shipping documents indicating that uranium produced in Kazakhstan may have been shipped to the United States by Tenex both before and during the POI.'' *See* Verification Report at 10–11. At verification, given this evidence, the Department attempted to confirm whether there were sales of subject merchandise to the United States during

[4] The Department notes that even had the letters been certified, the contents fail to substantiate Kazakhstan's claim that PRI and Cogema represent a majority of the domestic uranium industry by providing the evidence stipulated in the Department's regulations. Accordingly, the Department cannot assume that PRI and Cogema represent a majority of the domestic uranium industry.

the POI. While the Department requested additional data from Kazakhstan regarding U.S. sales, Kazakhstan failed to provide any data to clarify the existing evidence. Similarly, when the Department attempted to follow up on the Tenex-Tselliny combinat contract, Kazakhstan did not provide any supporting documentation, such as receipts or other documentation indicating payments received from Tenex pursuant to the contract. As a result, the Department was unable to examine key source data which could have supported Kazakhstan's claim of no shipments to the United States of subject merchandise during the POI. Evidence on the record indicates that uranium from what is now known as Kazakhstan was most likely shipped to the United States during the POI. Kazakhstan was unable to provide information countering this evidence. Accordingly, the Department must conclude as BIA that there were sales of subject merchandise to the United States during the POI and Kazakhstan did not provide data on those sales.

Comment 8: Kazakhstan argues that the Department should use South Africa as the primary surrogate country. Kazakhstan argues that its surrogate value submission to the record, dated April 28, 1999, demonstrates that South Africa satisfies the statutory criteria for selection as the primary surrogate country, pursuant to Section 773(c)(4) of the Act. Kazakhstan argues that the Department is permitted to select a different surrogate country in the final determination than selected in the preliminary determination, citing *Tehnoimportexport* v. *United States,* 766 F. Supp. 1169, 1175 (Ct. Int'l Trade 1991); and *Kerr McGee Chemical Corp.* v. *United States,* 985 F. Supp. 1166, 1180 (Ct. Int'l Trade 1997). Kazakhstan argues that in the preliminary determination, the Department used a single surrogate based on Soviet Union economic data because, lacking accurate or detailed information, the Department mistakenly assumed that the level of economic development of the former Soviet Union republics was essentially the same. However, Kazakhstan argues there is now enough information available to show the former republics' different levels of economic development, thus, the Department should not make the same assumption at the final determination. Kazakhstan argues that the Department has generally preferred using publicly available pricing information as the source of surrogate values as opposed to using proprietary information. Kazakhstan asserts that the only publicly available information on the record to value virtually every input used to produce subject merchandise is from South Africa. Accordingly, Kazakhstan argues that the Department should select South Africa as the primary surrogate country in the interest of calculating a fair and accurate margin in the final determination. Finally, Kazakhstan argues that the Department should not add freight charges to the valuation of any input for which freight-inclusive import values are used as surrogate values.

The Uranium Coalition rebuts Kazakhstan's contention that South Africa should be the primary surrogate country by stating that the Department does not change surrogate countries after the preliminary determination unless it finds compelling reasons to do so. The Uranium Coalition argues that, to date, Kazakhstan has not provided such information. Further, the Uranium Coalition cites to the *Addendum to Memorandum Regarding Choice of Surrogate Countries, Antidumping Investigation of Uranium from the Former Soviet Union* (March 24, 1992), where the Department determined that the most appropriate course of action was to use the surrogate countries decided upon for the Soviet Union, for the NIS. The Uranium Coalition also contends that Kazakhstan's premise that the Department did not perform a surrogate country analysis is incorrect. Furthermore, the Uranium Coalition states that Kazakhstan's assertion that because Kazakhstan is not the Soviet Union that the Department's prior analysis is incorrect. Finally, the Uranium Coalition argues that the information on the record for South Africa is incomplete and unreliable in many respects.

Department's Position: As the Department is relying on BIA for its calculation of the antidumping duty margin in this proceeding, this issue is moot. *See* Comment 2.

Suspension of Liquidation

In accordance with Section 735(d) of the Act, the Department is instructing U.S. Customs to continue suspending liquidation of all unliquidated entries of uranium from Kazakhstan, as defined in the Scope of the Investigation section of this notice, that are entered or withdrawn from warehouse for consumption on or after January 11, 1999 (the effective date of the termination of the Suspension Agreement). U.S. Customs shall continue to require a cash deposit or bond equal to 115.82 percent *ad valorem*, the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price, for all manufacturers, producers and exporters of uranium from Kazakhstan. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with Section 735(b)(2) of the Act, the Department has notified the International Trade Commission (''ITC'') of its final determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the United States uranium industry. The ITC shall make this determination before the latter of: (1) 120 days after the effective date of the preliminary determination; or (2) 45 days after publication of the Department's final determination. If the ITC determines that such injury does not exist with respect to uranium, this proceeding will be terminated and all securities will be refunded or canceled. If the ITC determines that such injury exists with respect to uranium, the Department will issue an antidumping duty order directing U.S. Customs officials to assess antidumping duties on all imports of uranium from Kazakhstan for the period discussed above in the Suspension of Liquidation section of this notice.

This determination is issued and published in accordance with Section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 C.F.R. 353.20(a)(4).

Dated: June 3, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–14782 Filed 6–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990416102–9102–01]

RIN 0648–ZA64

Notice and Request for Proposals

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Request for proposals.

SUMMARY: The Collaborative Science, Technology, and Applied Research (CSTAR) Program represents an NOAA/NWS effort to create a cost-effective continuum from basic and applied research to operations through

collaborative research between operational forecasters and academic institutions which have expertise in the environmental sciences. These activities improve the accuracy of forecasts and warnings of environmental hazards by applying scientific knowledge and information from the modernization of the NWS. The NOAA CSTAR Program is a contributing element of the U.S. Weather Research Program, which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Proposals must be received by the NWS no later than close of business, Friday, October 1, 1999. We anticipate review of full proposals will occur during October 1999 and funding should begin during early 2000 for most approved projects. January 1, 2000, should be used as the proposed start date on proposals, unless otherwise directed by the appropriate Program Officer. Applicants should be notified of their status within 3 months of the closing date. All proposals must be submitted in accordance with the guidelines below. Failure to follow these guidelines will result in proposals being returned to the submitter.

ADDRESSES: Proposals must be submitted to National Weather Service, NOAA; 1325 East-West Highway, Room 13316; Silver Spring, Maryland 20910–3283.

FOR FURTHER INFORMATION CONTACT: Sam Contorno at the above address, or at phone 301–713–1970 ext. 193, or fax to 301–713–1520, or on the Internet at samuel.contorno@noaa.gov.

SUPPLEMENTARY INFORMATION:

Funding Availability

NOAA/NWS believes its warning and forecast mission will benefit significantly from a strong partnership with outside investigators. Current program plans assume the total resources provided through this announcement will support extramural efforts through the broad academic community. Because of Federal budget uncertainties, it has not been determined how much money will be available through this announcement. Proposals should be prepared assuming an annual budget of no more than $125,000. It is expected between two and four awards will be made dependent on the availability of funds. This program announcement is for projects to be conducted by university investigators not to exceed a 3-year period. When a proposals for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for initial funding, the NWS has no obligation to provide additional funding in connection with that award in subsequent years. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress in relation to the stated goals of the proposal to address specific science needs and priorities of the NWS and the availability of funds. Applications should include a scope of work and a budget for the entire award period. Each funding period must be discrete and clearly distinguished from any other funding period. The funding instrument for extramural awards will be a cooperative agreement since one or more NOAA/NWS components—forecast offices, Centers, or regional headquarters—will be substantially involved in implementation of the project. Examples of substantial involvement may include, but are not limited to, proposals for collaboration between NOAA scientists and a recipient scientist and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement. Matching share is not required by this program.

Program Objectives

The long term objective of the CSTAR Program is to improve the overall forecast and warning capabilities of the operational hydrometeorological community by addressing the following national science priorities: Quantitative Precipitation Estimation (QPE) and Forecasting (QPF), including precipitation type and probabilistic QPF (PQPF); Flash flood and probabilistic river prediction; Prediction of seasonal-to-interannual and decadal climate variability, and the impacts of these variabilities on extreme weather events; Prediction of tropical cyclones near landfall, including track, intensity, and associated precipitation, and hazardous weather; Prediction of marine conditions, including fog, winds, coastal ocean, and open ocean waves; The effect of topography and other surface forcing on local weather regimes; Locally hazardous weather, especially severe convection, winter weather, and phenomena that affect aviation; Conditions conducive for the rapid development of wildfires and the dispersion of smoke and other air-quality hazards.

Individual NWS Regions and Centers have a subset of these science priorities due to differences in factors such as topography, weather regimes, and mission.

Program Priorities

NOAA will give sole attention to individual proposals addressing the identified science needs/priorities from NWS Regions and the National Centers for Environmental Prediction (NCEP) as listed below. It is anticipated one proposal will be funded addressing one or more of the science needs/priorities of both the NWS Eastern and Central Regions. Universities are also encouraged to submit proposals addressing any of the science needs/priorities of other NWS Regions and Centers. However, there is no guarantee funding will be available for these activities. Principal investigators must clearly describe collaborative activities and scientific interactions with NWS forecast offices, River Forecast Centers, National Centers, or regional headquarters throughout the course of the research proposal. A proposal must be submitted by multiple principle investigators and contain at least two distinct subtasks addressing one or more of the science needs/priorities listed by a single NWS Region or by NCEP. Investigators are asked to specify clearly which science priorities/needs are being pursued and to which region or center(s) they belong.

The names, affiliations and phone numbers of relevant NWS regional/NCEP focal points are provided. Prospective applicants should communicate with these focal points for information on priorities within regional science needs. Applicants should send proposals to the NOAA NWS program office identified earlier rather than to individual focal points.

NWS Central Region Science Needs/Priorities

The NWS Central Region science needs/priorities which can be addressed by proposals are as follows:

Improve severe weather warnings by:

(1) Developing more accurate conceptual models for tornado, hail, and wind events for different geographical locations in Central Region, including the Central Plains, Northern Plains, Ozark Plateau, mid and upper Mississippi Valley, lower Ohio Valley, and Great Lakes regions.

(2) Developing more accurate diagnostic strategies/methodologies to interrogate remote sensing data (radar, satellite, etc.) particularly for weaker and shorter lived severe thunderstorm and tornado events.

(3) Expanding our understanding of elevated nocturnal convection for

different geographical locations in Central Region.

Improve QPFs through a better understanding of:

(1) The climatology of precipitation, including subregional information stratified by day, season, and amount and time of occurrence.

(2) Cloud physics and micro-physical processes related to precipitation efficiency of stratiform and connective clouds.

(3) Water vapor distribution and transport.

(4) The initiation of convective precipitation (tropical, lake/sea breeze, complex terrain, etc.).

(5) The uniqueness of stratiform precipitation.

(6) The uniqueness of extreme heavy rain events.

(7) Precipitation estimation methods.

(8) Geographic and orographic influences. Improve winter weather forecasts by better understanding the development, intensification, and sudden acceleration northeastward of strong mid-west storm systems following lee side cyclogenesis.

Improve aviation forecasts by better understanding the development and dissipation of fog and stratus for the different geographical locations in Central Region. Develop more efficient and effective methodologies to review numerical model guidance in the forecast process. Develop innovative methodologies to improve weather services to the public.

FOR FURTHER INFORMATION CONTACT: Richard Livingston, NOAA/NWS/ Central Region Scientific Services Division, 816–426–5672 ext. 300, or on the Internet at Richard.Livingston@noaa.gov.

NWS Eastern Region Science Needs/ Priorities

NWS Eastern Region has listed the following science needs/priorities to be addressed by proposals:

Unique geomorphic influences on weather problems such as the type, amount, duration, and intensity of precipitation associated with the complex terrain of the Appalachian Mountains; or the formation, duration, and intensity of severe storms and winter weather phenomena along the Atlantic Seaboard and the Great Lakes. The relationship of land-falling tropical storms and hurricanes to severe weather, heavy precipitation, flooding, and flash flooding throughout the eastern United States. The development and enhancement of severe storms throughout the Middle Atlantic and the Piedmont regions due to the influence of small-scale thermal and moisture boundaries. The interaction of gravity waves and related phenomena with severe storms and winter weather systems throughout the East.

The primary factors causing high winds, waves, and flooding near the Atlantic Coast, Chesapeake Bay, and Great Lakes. Widespread river and localized flash flooding produced by synoptic and sub-synoptic scale weather systems interacting with the complex topography and expanding urbanization of the eastern United States.

Innovative approaches to formulate, produce, display, and deliver high-resolution hydrometeorological forecasts and products to meet the evolving needs of the user community throughout the heavily populated eastern United States.

FOR FURTHER INFORMATION CONTACT: Gary Carter, NOAA/NWS//Eastern Region Scientific Services Division, 516–524–5131, or on the Internet at gary.carter@noaa.gov.

NWS Western Region Service Needs/ Priorities

The science needs/priorities are based on Doppler weather surveillance radar (WSR–88D) measurements of convective and wintertime QPEs over complex terrain in the inter-mountain West area of the United States. In the arid inter-mountain West, water is a critical and closely managed resource. Complex terrain, the location of many NWS WSR–88D radars on mountain tops, and unique meteorological/orographic characteristics of western storms combine to limit the effectiveness of the current WSR–88D QPE algorithms. Proposals should be targeted at improving the capability of the WSR–88D to assist operational forecasters to: Make better summertime convective flash-flood warnings over inter-mountain West terrain.

Provide improved WSR–88D-based winter season rain and snow QPEs. These WSR–88D based QPEs are very dependent on complex terrain.

FOR FURTHER INFORMATION CONTACT: Andy Edman, NOAA/NWS/Western Region Scientific Services Division, 801–524–5131, or on the Internet at andy.edman@noaa.gov.

NWS Pacific Region Science Needs/ Priorities

The science needs/priorities of the NWS Pacific Region are as follows:

Optimizing the utility of new observing systems, especially satellite observations over the Pacific. Conducting observational synoptic climatological studies. Helping develop and enhance operational and off-line mesoscale modeling studies and capabilities aimed at improving Pacific Region model support.

FOR FURTHER INFORMATION CONTACT: Mark Jackson, NOAA/NWS/Pacific Region Regional Scientist, 808–532–6413, or on the Internet at mark.jackson@noaa.gov.

NWS National Centers for Environmental Prediction Science Needs/Priorities

The individual centers of NCEP have established the following science needs/ priorities which may be addressed in proposals:

Environmental Modeling Center

Atmospheric and ocean data assimilation.

Atmospheric and ocean numerical forecast modeling.

Hydrometerological Prediction Center

Ensemble models for PQPF.

Targeted observations for improvement of medium range forecasting(day 3–7).

Marine Prediction Center

Objective marine verification using all in-situ and remote data sources.

Improved use of surface marine observations from all sources in data assimilation.

Climate Prediction Center

Improve monthly and seasonal precipitation skill scores.

Improve coupled model and associated ensemble runs.

Aviation Weather Center

Improve prediction of locally hazardous weather (e.g., sever convection, winter weather, etc.) that affect aviation.

Improve predictions of icing and turbulence.

Storm Prediction Center

Development of technology to remotely sense the detailed vertical distribution of moisture in the atmosphere.

Development of a relocatable mesoscale model which has detailed boundary layer physics for improvement in forecasting hail, wind gusts, etc.

Tropical Prediction Center

Improve hurricane-intensity and wind-structure forecasts. Continue improving hurricane track forecasts.

FOR FURTHER INFORMATION CONTACT: Sondra Young, NOAA/NWS/National Centers for Environmental Prediction, 301–763–8000 ext. 7004, or on the Internet at sondra.young@noaa.gov.

Eligibility

All accredited U.S. colleges and universities are eligible for funding under this announcement. The restriction is needed because the results of the collaboration are to be incorporated in academic processes which ensure academic multidisciplinary peer review as well as Federal review of scientific validity for use in operations. Funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

The evaluation criteria and weighting of the criteria are as follows:

(1) Operational Applicability (30 percent): Importance and applicability of the proposed science activities to operational hydrometeorology. Are prospects good that the proposed science priorities can be transferred to weather forecast operations in a reasonable time frame?

(2) Scientific Merit (30 percent): Intrinsic scientific value of the subject and the study proposed as they relate to the specific science priorities.

(3) Experience of principal investigators collaborating and interacting with operational hydrometeorologists (20 percent): Principal investigators must clearly document past scientific collaborations with operational meteorologists.

(4) Cost Effectiveness (10 percent): Ability of researchers to leverage other resources; high ratio of operationally useful results versus proposed costs.

(5) Methodology (10 percent): Focused scientific objective and strategy, including data management considerations, project milestones, and timeliness; and final products.

Selection Procedures

All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer panel review, three to seven NWS experts representing NWS Regions and Centers and non-Federal experts may be used in this process. Their recommendations and evaluations will be considered, along with the program policy factors discussed below, by the selecting official who will select the proposals to be funded and determine the amount of funds available for each proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. Because the selecting official will take into account program policy factors, awards may not necessarily be made to the highest scored proposals.

Program Policy Factors

In deciding which applications are to be funded, the Selecting Official will choose at least one award which addresses the Central Region science needs and at least one award which addresses the Eastern Region science needs. Further, the selecting official may take into account the need to spread awards geographically and among universities. While a university may submit more than one application, the selecting official may limit the awards to only one per university. Finally, the amount of funds available and whether an application substantially duplicates other projects currently approved for funding or funded by NOAA or other Federal agencies may be considered by the Selecting Official.

Proposal Submission

The requirements for proposal preparation are provided below. Failure to follow these requirements will result in proposals being returned to the submitter.

Proposals

(1) Proposals submitted to the NOAA NWS CSTAR Program must include the original and two unbound copies of the proposal.

(2) Investigators are not required to submit more than three copies of the proposal. Investigators are encouraged to submit official proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5×11), or otherwise unusual materials submitted as part of the proposal. Only three copies of the federally required forms are needed.

(3) Proposals are limited to 30 pages (numbered), including budget, investigators vitae, and all appendices and should be limited to funding requests for 1- to 3-year duration. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count.

(4) Proposals should be sent to the NWS at the address listed earlier.

(5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements: All proposals should include the following elements:

(1) Signed title page. The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale, and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institutions investigators, total proposed cost, and budget period.

(3) Results from prior research. The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, PIs, period of award, and total award. The section should be a brief summary and should exceed two pages total.

(4) Statement of work. The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the priorities of the NWS Region or Center, and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. A year-by-year summary of proposed work must be included. The statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. In general, proposals from three or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions.

(5) Budget, Applicants must submit a Standard Form 424 ''Application for Federal Assistance,'' including a detailed budget using the Standard Form 424a, ''Budget Information—Non-Construction Programs.'' The form is included in the standard NOAA application kit. The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Additional text to justify expenses should be included as necessary.

(6) Vitae. Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last 3 years with up to five other relevant papers.

(7) Current and pending support. For each investigator, submit a list which includes project title, supporting agency with grant number, investigator months, dollar value, and duration. Requested values should be listed for pending support.

Other Requirements

(1) Applicants may obtain a standard NOAA application kit from the NOAA Office of Grants Management. Primary applicant Certification—All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' Applicants are also hereby notified of the following:

(2) Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies; to State and Local Governments, as applicable. Applications under this program are not subject to E.O. 12372, ''Intergovernmental Review of Federal Programs.''

(3) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(4) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(5) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) the delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to DOC.

(6) Buy American-Made Equipment or Products. Applicants who are authorized to purchase equipment or products with funding provided under this program are encouraged to purchase American-made equipment and products to the maximum extent feasible.

(7) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(8) Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

(9) Pre-award Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(10) Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

(11) Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(12) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

(13) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document. If an application is selected for funding, the DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the DOC.

In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA NWS. The NOAA NWS does not have a direct telephonic device for the deaf (TDD capabilities can be reached through the State of Maryland-supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The standard application forms required to be used have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

Authority: 15 U.S.C. 313; 49 U.S.C. 44720 (b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.* (CFDA No.11.468)—Applied Meteorological Research.

Classification: This notice has been determined to be not significant for purposes of E.O. 12866. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Dated: June 7, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–14783 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052799A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification

is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on May 4, 1999, to the Newfield Exploration Company and to BP Amoco; on May 7, 1999, to the Amerada Hess Corporation; and on June 3, 1999, to the Shoreline Exploration Corporation and the EEX Corporation, all from Houston, TX.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or David Bernhart, Southeast Region (727) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: June 3, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14786 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051899A]

Marine Mammals; File No. 930–1486

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that U.S. Geological Survey, Biological Resources Division, Western Ecological Research Center, 6924 Tremont Road, Dixon, CA 95620 (Principal Investigator: Mr. Dennis Orthmeyer) has been issued a permit to inadvertently harass various cetacean and pinniped species during aerial surveys for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562–980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 29, 1999, notice was published in the **Federal Register** (64 FR 14886) that a request for a scientific research permit to take marine mammals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

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 endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 3, 1999.

Jeannie Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14787 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Petition for Exemption From the Statutory Dual Trading Prohibition in the Ten-Year U.S. Treasury Note Futures Contract Traded on the Project A Electronic Trading System

AGENCY: Commodity Futures Trading Commission.

ACTION: Amended order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending its February 26, 1999 Order granting the Chicago Board of Trade (''CBT'') or ''Exchange'') an exemption from the statutory prohibition against dual trading in the U.S. Treasury Bond futures contract (''T-Bond'') traded on its Project A electronic trading system to include the Ten-Year U.S. Treasury Note (''Ten-Year T-Note'') futures contract traded on Project A.

DATES: This Order is to be effective June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansly, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st St., NW., Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On February 26, 1999, the Commission issued an Order granting CBT an exemption from the statutory dual trading prohibition for its T-Bond futures contract as traded on the Exchange's electronic trading system, Project A.[1] In issuing the Order, the Commission found that CBT met the standards for granting a dual trading

[1] 64 FR 10450 (March 4, 1999). A copy of this Order is attached as Appendix A.

exemption contained in section 4j(a) of the Commodity Exchange Act (''Act'') and Commission Regulation 155.5 with regard to Project A T-Bond futures.

By letter dated March 15, 1999, shortly after the Order was issued, CBT notified the Commission that its Ten-Year T-Note futures contract traded on Project A had become an affected contract market as well, and supplemented its Petition for Exemption from the Dual Trading Prohibition to include that contract.[2] The Exchange has represented by letter dated April 20, 1999, that, with respect to the February 26, 1999 Order exempting Project A T-Bond futures from the dual trading prohibition, there have been no material changes concerning the operation of the Project A system or to CBT's trade monitoring system as applicable thereto. Therefore, the Commission finds that CBT meets all relevant standards for granting a dual trading exemption for the Ten-Year T-Note future contract as traded on Project A.

Accordingly, on this date, the Commission *hereby amends* its February 26, 1999 Order granting CBT's Petition for Exemption from the Dual Trading Prohibition for trading on Project A of its electronically traded U.S. Treasury Bond futures contracts to include an exemption for CBT's electronically traded Ten-Year U.S. Treasury Note futures contract.

For this exemption to remain in effect, CBT must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CBT's program.

The provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until its is revoked in accordance with section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). If other CBT contracts electronically traded on Project A become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

It is so ordered.

Dated: June 4, 1999.

Jean A. Webb,

Secretary to the Commission.

[2] An ''affected contract market'' is a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* section 4j(a)(4) of the Act. Under section 4(j(a) of the Act and Regulation 155.5(b), the dual trading prohibition applies to each affected contract market. The Commission, therefore, must consider separately each affected contract market. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading on a screen-based system such as Project A. *See* 58 FR 40335 (July 28, 1993).

APPENDIX A—COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Petition for Exemption From the Dual Trading Prohibition in the U.S. Treasury Bond Futures Contract Traded on the Project A Electronic Trading System

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is granting the petition of the Chicago Board of Trade (''CBT'' or ''Exchange'') for exemption from the prohibition against dual trading in the U.S. Treasury Bond futures contract traded on its Project A electronic trading system.

DATES: This Order is to be effective February 26, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew S. Baer, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On January 31, 1998, the Chicago Board of Trade (''CBT'' or ''Exchange'') submitted a Petition for Exemption From the Dual Trading Prohibition for its affected U.S. Treasury Bond (''T-Bond'') futures contract[1] as traded on the Exchange's electronic trading system, Project A. Upon consideration of this petition and other matters of record, the Commission hereby finds that CBT meets the standards for granting a dual trading exemption contained in section 4j(a) of the Act and Commission Regulation 155.5 with regard to Project A T-Bond futures.[2]

Subject to CBT's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds that CBT maintains a trade monitoring system for Project A which is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading and, to the full extent feasible, other violations involving the making of trades and execution of customer orders, as required by section 5a(b) of the Act and Commission Regulation 155.5. The Commission further finds that CBT's trade monitoring system for Project A T-Bonds includes audit trail and recordkeeping systems that satisfy sections 4j(a)(3) and 5a(b) of the Act and Commission Regulations 1.35 and 155.5.[3]

With respect to each required component of the trade monitoring system, the Commission finds as follows:

(a) Physical Observation of Trading Areas—The requirements of section 5a(b)(1)(A) of the Act are not relevant to Project A trading, insofar as Project A is a computerized, screen-based system and therefore has no floor.

(b) Audit Trail and Recordkeeping Systems—The Exchange's trade monitoring system for Project A T-Bonds satisfies the audit trail standards of section 5a(b)(1)(B) of the Act in that it is capable of capturing essential data on the terms, participants, and

[1] An ''affected contract market'' is a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* section 4j(a)(4) of the Commodity Exchange Act (''Act''). Under section 4j(a) of the Act and Regulation 155.5(b), the dual trading prohibition applies to each affected contract market. The Commission, therefore, must consider separately each affected contract market. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading on a screen-based system such as Project A. *See* 58 FR 40335 (July 28, 1993). Therefore, Project A T-Bonds must be considered independently of the CBT's floor-traded T-Bond contract market, which was included in the Exchange's exemption petition for its affected open outcry contract markets.

[2] The burden to prove that the exemption standards of the Act and Commission regulations are met rests exclusively on the contract market. The dual trading provisions set forth in section 4j of the Act and the standards for trade monitoring systems provided in section 5a(b) of the Act were enacted as part of the Futures Trading Practices Act of 1992 (''FTPA''). Pub. L. 102–546, 101, 106 Stat. 3590 (1992). The FTPA's legislative history makes clear that the burden to prove that the exemptions standards are met rests upon the contract market. For instance, the 1992 House-Senate Conference Committee stated that ''a board of trade may satisfy the initial burden of demonstrating that each of its designated contract markets complies with trade monitoring system requirements of section 5a(b) of the Act, subject to requests for further information by the Commission, by showing that it has maintained an ongoing record of compliance with those requirements.'' H.R. Conf. Rep. No. 102–978 at 53 (1992). The Conference Committee adopted the 1991 House Bill's (H.R. 707) dual trading provisions, with amendments relating to exemptions. *Id.* at 50. The 1991 Senate Bill (S. 207) similarly placed on the exchange the burden to demonstrate the ability of its systems to meet the standards and reiterated the view, previously expressed in the 1989 Senate Bill (S. 1729), that an exchange has the best access to its own records and therefore is in the best position to show that its systems are effective and satisfactory. S. Rep. No. 102–22 at 32 (1991); S. Rep. No. 101–191 at 39–40 (1989).

[3] 17 CFR 1.35, 155.5. Section 4j(a)(3) requires the Commission to exempt a contract market from the prohibition against dual trading upon finding that the monitoring system in place at the contract market satisfies the requirements of section 5a(b), governing audit trails and trade monitoring systems, with regard to violations attributable to dual trading at such contract market. If the trade monitoring system does not satisfy the requirements, section 4j(a)(3) requires the Commission to deny the exemption or in the alternative to exempt a contract market from the prohibition against dual trading on stated conditions upon finding that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing and that corrective actions are sufficient and appropriate to bring the contract market into compliance with the standards set forth in section 5a(b). Regulation 155.5(b) prohibits floor brokers from dual trading in an affected contract market unless that contract market is exempted under Regulation 155.5(d).

sequence of transactions. The requirements of that Section regarding the capture of relevant data on unmatched trades and outtrades are not relevant to Project A trading, as unmatched trades and outtrades cannot occur on the Project A system. The Commission further finds that CBT accurately and promptly records the essential data on terms, participants, times (in increments of no more than one minute in length), and the sequence of Project A trades through a means that is unalterable, continual, independent, reliable, and precise, as required by section 5a(b)(3) of the Act. This includes the real-time submission of trades to clearing as they are matched by the system. Consistent with the guidelines to Commission Regulation 155.5, the Commission also finds that CBT has demonstrated the use of Project A T-Bond trade timing data in its surveillance systems for dual trading-related and other abuses.

The audit trail produced by Project A for T-Bond futures includes trade execution times that are presumptively 100 percent accurate (barring computer malfunction) and precise to within 1/100th of a second. All trades are also recorded in the exact sequence of occurrence. Among other things, the order ticket timestamps required by Regulation 1.35(a–1) are automatically furnished by the system, independent of the person making the trade, as is the order number. Project A also automatically records the time at which a terminal operator enters an order, the time when an order is matched to make a trade, the time the system generates a confirmation message to a terminal operator, and the time of any changes to an order. Once entered, orders and records of changes to orders are unalterable and cannot be deleted. If an order cannot be entered immediately upon its receipt by a terminal operator, the order is recorded on a written order ticket, timestamped, and then entered when possible. For every Project A order, either this order ticket timestamp or the order entry time recorded by the system acts as the broker receipt time required by section 5a(b)(3)(B) of the Act.

CBT satisfies the requirements of section 5a(b)(1)(B) of the Act by maintaining an adequate recordkeeping system that is able to capture essential data on the terms, participants, and sequence of transactions executed on Project A. The Exchange uses such data as well as information on violations of such requirements on a consistent basis to bring appropriate disciplinary actions relating to Project A trading.

(c) Surveillance Systems and Disciplinary Action—As required by sections 5a(b)(1)(C), (D), and (F) of the Act, CBT uses information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders on Project A. In addition, CBT assesses meaningful penalties against violators.

On a daily basis, CBT reviews computerized surveillance exception reports to detect dual trading-related and other trading abuses on Project A. All relevant trade data are included in these reports. The exception reports are designed to identify such suspicious activity as trading ahead, frontrunning, trading against, crossing orders, and wash trading. Since the introduction of side-by-side (simultaneous Project A and open outcry) trading of T-Bonds in September 1998, CBT has begun using a specialized exception report designed to identify certain trading ahead violations that use both the Project A and open outcry markets. The CBT has stated that it intends to develop systems and programs that integrate survelliance of its Project A and open outcry markets. The Exchange should be diligent in pursuing this process.

From January, 1997 through December, 1998, the Exchange initiated 21 investigations into all types of possible abuses on Project A, nine of which had been closed as of December, 1998. One of those nine was closed within the four-month objective set forth in Commission Regulation 8.06, and another three were closed within four to six months. Thus, only 44 percent of those Project A investigations opened and closed during 1997–98 were closed within six months. If CBT cannot complete its Project A investigations within the objective set by Regulation 8.06, it should provide the reasons why such investigations require more than four months to complete. Based on examination of its computerized surveillance reports, CBT initiated four dual trading-related investigations during that period, one of which resulted in referral to a disciplinary committee. As of December 1998 that case was still pending. In other Project A-related disciplinary actions, the Exchange levied $20,000 in fines, imposed one ten-day suspension, and issued four reprimands.

(d) Commitment of Resources—The Commission finds that CBT meets the requirements of section 5a(b)(1)(E) by committing sufficient resources for its trade monitoring system relating to Project A, including automating elements of such trade surveillance system, to be effective in detecting and deterring violations. CBT also maintains an adequate staff to investigate and to prosecute disciplinary actions.

Accordingly, on this date, the Commission *hereby grants* CBT's Petition for exemption from the dual trading prohibition for trading on Project A of its electronically traded U.S. Treasury Bond futures contracts.

For this exemption to remain in effect, CBT must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CBT's program.

The provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). If other CBT contracts electronically traded on Project A become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

It is so ordered.

Dated: February 26, 1999.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 99–14712 Filed 6–9–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Alternative Executive, or Block Trading, Procedures for the Futures Industry

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') will consider contract market proposals to adopt alternative executive execution, or block trading, procedures for large size or other types of orders on a case-by-case basis under a flexible approach to the requirements of the Commodity Exchange Act (''Act'') and the Commission's regulations. The Commission continues to be open to further comments on the various issues surrounding potential alternative execution procedures from industry participants.

EFFECTIVE DATE: This Advisory is effective upon issuance.

FOR FURTHER INFORMATION CONTACT:

Rebecca L. Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

After careful consideration of public comments and interviews with interested securities and futures industry participants, the Commission has decided to evaluate contract market proposals to adopt alternative execution, or block trading, procedures for large size or other types of orders on a case-by-case basis. As discussed below, the Commission believes that the appropriate terms and conditions governing such execution procedures are best addressed in the context of specific proposals. The Commission stands ready to consider any rule proposal submitted by a contract market that expressly allows such transactions to be executed using any combination of competitive and noncompetitive execution procedures. The Commission plans to take a flexible approach in considering such proposals.

II. The Commission Solicited Comments on Alternative Execution, or Block Trading Procedures in its Concept Release Concerning the Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market

On January 26, 1998, the Commission published a Concept Release in the **Federal Register** for public comment concerning the regulation of noncompetitive transactions executed on or subject to the rules of a contract market.[1] Among other things, the Concept release discussed a wide range of issues concerning alternative execution procedures.[2] Specifically, the Commission wished to explore whether certain alternative execution procedures for large size or other types of orders could be developed to satisfy the needs of market participants while furthering the policies and purposes of the Act and the Commission's regulations. Through the questions posed in the Concept Release, commenters were asked whether the Commission should permit alternative execution procedures pursuant to the rules of a contract market; what general qualifying standards should govern a proposal's eligibility for approval by the Commission; and whether additional regulatory requirements should be imposed on these procedures to maintain integrity and to provide guidance to self-regulatory entities.[3] Of the sixty-four comment letters the Commission received in response to the Concept Release, fifty-seven specifically addressed such execution procedures.[4]

These comment letters revealed two divergent viewpoints concerning the adoption of alternative execution procedures by contract markets. Eleven commenters generally supported such procedures, while forty-nine commenters generally opposed them. The supporting comment letters indicated that alternative execution procedures should be implemented in order to alleviate the current difficulties faced by institutional market participants in executing large futures and option orders. These commenters stated that execution procedures could be structured in such a way as to minimize any negative impact on market volume, liquidity, price discovery, transparency, or customer protection. Conversely, the opposing comment letters generally stated that alternative execution procedures would divert order flow away from the centralized, competitive marketplace, thereby reducing liquidity and jeopardizing the price discovery and hedging functions of the futures markets. These commenters stated that such execution procedures would prevent floor traders and certain other entities from participating in large transactions between institutions and that customers ultimately would be harmed by the lack of transparency associated with these procedures.

A. Current Contract Market Large Order Execution Procedures

Under the Act and the Commission's regulations, all futures and option transactions generally must be executed openly and competitively by open outcry, by posting of bids and offers, or by equally open and competitive methods in the trading pit or ring or similar place provided by a designated contract market.[5] As noted in the Concept Release, the Commission has approved or allowed into effect various contract market rules which establish procedures for the execution of large orders.[6] These procedures generally preserve the competitive forces available on a centralized market and thereby comply with the open and competitive execution requirement. The Commission also has taken steps to streamline its own regulations to facilitate the adoption of large order execution (''LOX'') procedures by contract markets.[7]

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[1] 63 FR 3708 (January 26, 1998).

Throughout the Concept Release and in this Advisory, the Commission uses the term ''noncompetitive transaction'' to refer to those transactions that are negotiated and executed by counterparties other than through open outcry or other competitive means, but in accordance with the written rules of a contract market that have been submitted to and approved by the Commission. The noncompetitive transactions discussed in the Concept Release are distinguishable from those abusive trading practices prohibited by section 4c(a) of the Act, such as wash sales, cross trades, accommodation trades, and fictitious sales. Moreover, as noted by many of the commenters responding to the Concept Release, these noncompetitive transactions might be structured in such a manner that promotes competitive pricing, transparency, or other beneficial goals.

The Commission recognizes, however, that new execution procedures for large size or other types of orders might utilize a combination of competitive and noncompetitive trading practices. The term ''alternative execution procedures'' is intended to embrace the entire range of potential execution procedures that might be proposed by a contract market including those referred to in the Concept Release and comments thereon as block trading procedures. This includes those procedures that provide some degree of exposure of large size orders to the competitive pressures of the centralized futures marketplace as well as those that are purely noncompetitive.

[2] The Release also included questions concerning the oversight of: (1) Exchanges of futures contracts for physicals (''EFPs''), which are authorized under the Act and the Commission's regulations; (2) other potential noncompetitive transactions, including exchanges of futures contracts for qualifying swap agreements (''EFS transaction'') and exchanges of option contracts for physicals (''EOPs''); and (3) the use of execution facilities for noncompetitive transactions. The overall purpose of the Concept Release was to solicit comments on the current regulatory structure governing noncompetitive transactions and whether this approach should be modified in light of recent developments in the marketplace.

On January 7, 1999, the Commission approved the New York Mercantile Exchange's (''NYMEX'') proposal to adopt new Rule 6.21A, which authorize EFS transactions pursuant to the terms and conditions of a three-year pilot program. *See* Commission Press Release No. 4228–99. Any contract market which is interested in allowing EFS transactions in their designated markets may submit a proposal to the Commission for its consideration, pursuant to Section 5a(a)(12)(A) of the Act and Commission Regulation 1.41.

[3] The comment period on the Concept Release originally was scheduled to run from January 26, 1998, through March 27, 1998, but was extended by the Commission until April 27, 1998. 63 FR 13640 (March 20, 1998). At the request of the Futures Industry Association, the Commission further extended the comment period on those parts of the Release that related to alternative execution procedures until September 1, 1998. 63 FR 24164 (May 1, 1998).

[4] Several comments submitted multiple and/or joint comment letters.

[5] *See* sections 4(a) and 4b of the Act; Commission Regulation 1.38(a). There are, however, certain limited exceptions to this requirement. Section 4c(a) of the Act prohibits certain types of noncompetitive or otherwise abusive trading practices, such as wash sales, cross trades, accommodations trades, and fictitious sales, but provides an exception for EFPs that are executed in accordance with contract market rules that have been approved by the Commission. An EFP involves simultaneous transactions in the futures and cash commodity markets. One party buys the physical commodity and simultaneously sells (or gives up long) futures contracts while the other party sells the physical commodity and simultaneously buys (or receives long) futures contracts. Subject to applicable contract market rules, the futures transaction is negotiated privately by the parties rather than being executed openly and competitively on a centralized market. All domestic contract markets permit EFPs, although there is some variation among the specific contract market rule which govern these transactions.

[6] *See, e.g.*, Chicago Mercantile Exchange (''CME'') Rule 521 (''All-Or-None Transactions''); New York Cotton Exchange (''NYCE'') Rule 1.10–B (''Block Order Execution''); New York Futures Exchange (''NYFE'') Rule 312 (''Block Order Execution'').

CME also has developed request for quote (''RFQ'') procedures which allow market participants to solicit transactions of a particular size for any of the contracts traded through Globex2, its electronic trading system. In addition, CMD allows firms to engage in pre-execution discussions regarding Globex2 trades as long as the solicited counterparty waits a reasonable period of the time before entering an order opposite that of the initiating party.

[7] Commission Regulation 1.39 generally sets forth the conditions and requirements governing the crossing of simultaneous buying and selling orders of different principals. Under Regulation 1.39(a), when trading is conducted in a pit or ring, a contract market member may execute buying and selling orders from different principals for the same commodity directly between such principals at the market price, pursuant to the written rules of such contract market which have been approved by the Commission, provided that the member first offers both orders to the pit. In 1991, the Commission amended Regulation 1.39 to allow a contract market member to follow alternative procedures for the

There is some debate, however, as to whether the existing procedures meet the needs of futures market participants. Several commenters responding to the Concept Release stated that the availability of alternative execution procedures is crucial to attracting and retaining institutional participation in the futures markets: These participants increasingly need to trade large quantities of futures contracts in connection with their securities activities. According to commenters, such transactions would severely tax the available liquidity of the centralized futures marketplace. These commenters stated that alternative execution procedures would allow large futures transactions, which require size and price certainty, to be implemented in an efficient and cost effective manner.

B. Potential Alternative Execution Procedures Discussed in the Concept Release

Pursuant to section 4(a) of the Act and Commission Regulation 1.38(a), the Commission has broad authority to approve contract market rules which allow futures and option transactions to be executed in the noncompetitive manner.[8] The text of these provision does not limit the types of noncompetitive transactions that may be approved by the Commission. In light of this authority, the Concept Release sought to identify new execution procedures that go beyond those that already exist in the futures industry and to encourage debate on such procedures. The Release described several scenarios which departed from the usual open and competitive execution requirement in various degrees. Certain examples envisioned market participants being allowed to alert potential counterparties of their general interest in trading a particular contract at a particular time, to divulge specific information about quantity and price to potential counterparties, or to negotiate the specific terms of futures and option transactions. Another variation would adjust execution procedures to confer a degree of priority on particular orders, such as market maker orders, that they might not attain in the open and competitive trading environment.[9] Finally, the Release noted that market participants might be permitted to execute certain transactions bilaterally, away from the centralized marketplace, and to report them to the relevant contract market and clearing organization in a manner similar to the way EFPs are handled currently. These examples, while not exhaustive, were intended to illustrate a range of possible execution procedures that could be adopted by contract markets.

The Concept Release also discussed how block trading procedures operate in the securities markets.[10] Generally speaking, with respect to securities exchanges, the specific terms of a block transaction are negotiated ''upstairs'' away from the exchange floor. Exchange rules govern the manner in which such transactions ultimately are brought to the floor for execution. Typically, a brokerage firm will arrange the block transaction for its customer. After receiving a customer's order to purchase or sell a block of securities, the firm must decide whether to contact the exchange specialist.[11] By contacting the specialist, the firm can determine the prevailing price of the stock and as well as the needs of the specialist. If the specialist is interested in taking the opposite side of the entire block at a mutually agreeable price, there is no need to utilize the block trading procedures.

If block trading procedures are necessary, the brokerage firm must then decide whether to ''position'' the block for its house account, to ''shop the block'' by contacting potential customers to take the opposite side of the transaction, or to combine these strategies. Upon agreement to a price for the block,[12] the customer's order is transmitted to the floor where it is crossed against the firm's house account and/or against other customer orders, subject to applicable exchange rules.[13]

crossing of orders if these procedures comply with contract market LOX rules that have been approved by the Commission. 56 FR 12336 (March 25, 1991).

CME adopted, and the Commission approved, Rule 549 which established LOX procedures for transactions involving 300 or more futures contracts in the Standard & Poor's 500 Stock Price Index or the Nikkei Stock Average. Despite allowing the pre-execution solicitation of interest and discussion of price, these LOX procedures were used by market participants on only one occasion in the several years they were available. Ultimately, CME terminated these procedures in April 1998.

[8] Section 4(a) makes it unlawful for any person to enter into a contract for the purchase or sale of a commodity for future delivery ''unless such transaction is conducted on or subject to the rules of board of trade which has been designated by the Commission as a contract market for such commodity.'' Commission Regulation 1.38(a) provides that the open and competitive execution requirement ''shall not apply to transaction which are executed noncompetitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive execution of such transactions.'' As noted previously, the Commission exercised this authority in approving NYMEX's proposal of EFS transactions.

[9] The Commission already has approved several contract market proposals establishing market maker programs. These programs, which aim to encourage market participation in specified new or low volume contracts, often provide market makers with certain trading priorities that they would not otherwise obtain under traditional open and competitive execution methods. *See, e.g.,* Coffee, Sugar & Cocoa Exchange (''CSCE'') Registered Market Maker Program (approved by the Commission on April 30, 1991); Chicago Board of Trade (''CBOT'') Modified Market Maker Program for the Wilshire Small Cap Index Future Contract (allowed into effect without prior Commission approval on June 18, 1993); CME Principal Market Maker Program (approved by the Commission on April 10, 1995); NYMEX Specialist Market Maker Program (approved by the Commission on July 8, 1998).

[10] In the securities industry, a block trade is commonly defined as a transaction involving 10,000 or more shares. Blocks may be traded on securities exchanges, in over-the-counter markets, or through ''principal-to-principal'' trade execution venues. 63 FR 3708, 3717–3718 (January 26, 1998).

[11] Under New York Stock Exchange (''NYSE'') Rule 127(a), a member organization that receives an order for the purchase or sale of a block of stock is obligated to explore the market to determine whether ti can absorb the order without a significant impact on price. Unless professional judgment dictates otherwise, this research should include contacting the specialist to ascertain the extent of the specialist's interest in participating in the block at a specific price or prices.

Each stock listed on the NYSE is allocated to a specialist. The specialist, through his or her many roles, is responsible for maintaining the market's fairness, competitiveness and efficiency. At the beginning of each trading day, the specialist establishes a fair market price for each of his or her assigned stocks. The specialist also provides current market quotations to other brokers throughout the day. The specialist executes limit and stop orders for other brokers on a commission basis and maintains the limit order book. Moreover, the specialist is obligated to maintain ''orderly markets'' in his or her assigned stocks by making sure that trading occurs throughout the day with minimal price fluctuations. Finally, the specialist acts as a dealer by buying stocks from the trading crowd when other bids are available or selling stocks to the trading crowd when other offers are not made. The specialist's goal is to minimize the temporary imbalance between public supply and demand.

[12] When positioning a block, the brokerage firm quotes a tentative price for the stock. Barring an extreme and unexpected movement in the price of the stock, the customer may be reasonably assured of execution at the quoted price. In ''shopping the block,'' the firm contacts potential customers to take the opposite side at a specified price. The firm might be willing to negotiate this price depending on how interested other investors are in participating in the transaction. The firm continues to contact potential customers until there is a sufficient quantity of orders for the opposite side at a single price. At this point, the firm returns to its original customer to confirm his or her interest in the block transaction at the negotiated price, also known as the ''clean-up price.

[13] A block transaction that is proposed to be priced within the current market bid-ask spread is subject to NYSE Rule 76, which governs cross trades. Under this rule, when the floor broker has an order to buy and an order to sell in the same security, the broker must ''publicly offer such security at a price which is higher than his bid by the minimum variation permitted in such security before making a transaction with himself.'' All such bids and offers must be clearly announced to the trading crowd before the floor broker can proceed with the cross transaction.

A block transaction that is proposed to be priced outside of the current market quotation is subject to NYSE Rule 127. Under this rule, the floor broker

Continued

The success of the block trading procedures described above is dependent upon the particular market structure of the securities industry. As noted above, the specialist plays an extremely important role in managing the entire process. Moreover, the trading crowd for a particular stock may be substantially smaller than the floor population surrounding a designated contract market. Over the years, as well as in response to the Commission's Concept Release, certain market participants have suggested that the open and competitive execution requirement be relaxed to permit block trading procedures similar to those found in the securities industry. These commenters assert that such procedures can be adopted by contract markets with minimal adverse effects on market volume, liquidity, transparency, or customer protection. However, given the significant differences in market structure that exist between the securities and futures markets, it is questionable whether securities block trading procedures could be easily transferred to contract markets. Although the supporting comment letters generally urged the Commission to allow block trading procedures, they did not specify how these procedures should be implemented, whether the specialist's role should be replicated on the futures side, or the extent to which the trading crowd should be allowed to participate in a block transaction.

III. The Commission's Approach to Alternative Execution Procedures

Given the lack of consensus among the commenters responding to the Concept Release and among industry participants regarding the appropriate terms and conditions which should govern alternative execution procedures for large size or other types of orders, the Commission has decided to evaluate such procedures on a case-by-case basis. Under this approach, each contract market would, of course, retain the discretion whether to permit alternative execution procedures. Additionally, each contract market would have the ability to develop procedures that reflect the particular characteristics and needs of its individual markets and market participants. For example, a contract market might decide to employ different execution procedures for each of the individual contracts for which it is designated.

The Commission will consider proposals from contract markets to permit alternative execution procedures. The Commission encourages contract markets to solicit the input of, and coordinate with, various interested parties in the development of such execution procedures for large orders, including its membership, futures commission merchants, end-users, and industry associations. The Commission also notes that the ideas discussed in and the specific questions asked by the Concept Release provide general guidance as to the various issues that should be addressed by a contract market seeking Commission approval of particular alternative execution procedures. For example, a contract market should discuss the impact of its proposal on the usefulness of the contract market as a vehicle for price discovery and risk transfer, whether its proposal represents the least anticompetitive means of achieving its objective,[14] whether the proposed transactions fulfill some need of market participants that traditional open outcry cannot fulfill as well, and whether the transaction are structured in such a way as to complement the competitive market.

Based on its experience in reviewing contract market proposals for alternative execution procedures, the Commission will determine whether any further Commission action is appropriate. As stated above, the Commission remains open to further written comments on the various topics surrounding potential alternative execution procedures. Moreover, Commission staff stands ready to discuss these issues with industry representatives.

Issued in Washington, DC on June 4, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–14713 Filed 6–9–99; 8:45 am]

BILLING CODE 6351–01–M

must: (1) Inform the specialist of his or her intention to cross the block orders at a specific price; (2) probe the market to determine whether more stock would be lost to orders in the trading crowd than is reasonable under the circumstances; (3) fill at least a portion of the limit orders previously entered at the trading post from the block orders; and (4) cross the remaining block orders at the negotiated clean-up price. NYSE Rule 127 sets forth the broker's obligation to fill the limit orders of the specialist and the trading crowd. Such obligations depend, in part, on whether the broker is handling agency orders for both sides of the block transaction or whether all or a part of one side of the block is for the brokerage firm's house account.

The Chicago Board Options Exchange (''CBOE'') also has procedures which allow potential counterparties to negotiate the terms and conditions of certain complex and large size option orders prior to the time such orders are brought down to the trading floor. Under CBOE Rule 6.9, a member or member organization representing an order for an option traded on CBOE (''original order''), including spread, combination, straddle, or stock-option orders, may solicit a member, member organization, customer, or broker-dealer to transact in person or by order (''solicited order'') with the original order. The priority of the solicited order is dependent upon the degree of disclosure of the original order to the trading crowd and upon whether the solicited order improves the market price.

[14] *See* section 15 of the Act.

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps (ROTC) Program Subcommittee

AGENCY: U.S. Army Cadet Command, DOT.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Reserve Officers' Training Corps (ROTC) Program Subcommittee.

Dates of Meeting: July 12, 1999 thru July 13, 1999.

Place of Meeting: Executive Inn West, 830 Phillips Lane, Louisville, Kentucky 40209–1387.

Time of Meeting: 0830 to 1100 on July 12, 1999 and 0830–1430 on July 13, 1999.

Proposed Agenda: Review and discussion of the status of Army ROTC since the February 1999 meeting at the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Spadafora, U.S. Army Cadet Command, ATCC–TE, Fort Monroe, Virginia 23651–5000; phone (757) 727–4595.

SUPPLEMENTARY INFORMATION: 1. The Subcommittee will review the significant changes in ROTC scholarships, missioning, advertising strategy, marketing, camps and on-campus training, the Junior High School Program and ROTC Nursing.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management office in writing at least five days prior to the meeting of their intent to attend the meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits, the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding the July 1999 meeting of the ROTC Program Subcommittee should be addressed to Mr. Roger Spadafora, U.S. Army Cadet

Command, ATCC–TE, Fort Monroe, Virginia 23651–5000, telephone number (757) 727–4595.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–14776 Filed 6–9–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; ECR Technology Limited

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to ECR Technology Limited, a revocable, nonassignable, exclusive license in the United States, to practice the Government-Owned invention described in U.S. Patent No. 5,651,976 entitled ''Controlled Release of Active Agents Using Inorganic Tubules'' issued July 29, 1997.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 9, 1999.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR part 404).

Dated: May 26, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–14664 Filed 6–9–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 12, 1999.

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 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.*

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 Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 4, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1999–2000 Private School Survey.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 45,000.

Burden Hours: 16,667.

Abstract: The National Center for Education Statistics (NCES) collects information on private schools, both religious-affiliated and independent, every two years in order to maintain a universe frame of private schools that is of sufficient accuracy and completeness to serve as a sampling frame for NCES surveys of private schools and to generate biennial data on the total number of private schools, teachers, and students. Since 1980, this Elementary/Secondary data collection has formed the basis for national statistical data on private schools.

[FR Doc. 99–14687 Filed 6–9–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Waivers Granted of Certain Federal Program Requirements

ACTION: Notice of waivers granted by the U.S. Secretary of Education under the waiver authority in the Elementary and Secondary Education Act.

SUMMARY: The Elementary and Secondary Education Act (ESEA), as reauthorized by the Improving America's Schools Act (Pub. L. 103–382) permits the Secretary of Education to grant waivers of certain Federal program requirements in order to further effective innovation and improvements in teaching and learning in accordance with specific local needs.

As of December 31, 1998, the U.S. Department of Education had approved 355 requests for waivers. This notice, published as provided for in section 14401(g) of the ESEA, identifies the 115 waivers approved by the Department of Education from January 1, 1998 through December 31, 1998.

(A) *Waivers Approved Under the General Waiver Authority in Section 14401 of the ESEA:*

(1) Applicant: New York State Education Department, Albany, NY.

Requirement Waived: Section 14201(a) of the ESEA.
Duration of Waiver: Three years.
Date Granted: January 8, 1998.

(2) Applicant: District of Columbia Public Schools, Washington D.C.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1998.
Date Granted: February 2, 1998.

(3) Applicant: Florida Department of Education, Tallahassee, FL.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: February 2, 1998.

(4) Applicant: Mississippi Department of Education, Jackson, MS.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through August 1998.
Date Granted: February 2, 1998.

(5) Applicant: New York State Education Department, Albany, NY.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: February 2, 1998.

(6) Applicant: West Virginia Department of Education, Charleston, WV.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through June 1999.
Date Granted: February 2, 1998.

(7) Applicant: Seminole County Public Schools, Sanford, FL.
Requirement Waived: Section 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: February 3, 1998.

(8) Applicant: Tucson Unified School District, Tuscon, AZ.
Requirement Waived: Sections 1113(a)(4) of the ESEA.
Duration of Waiver: Three years.
Date Granted: February 9, 1998.

(9) Applicant: Alabama Department of Education, Montgomery, AL.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1998.
Date Granted: April 17, 1998.

(10) Applicant: Fleetwood Area School District, Blandon, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: April 17, 1998.

(11) Applicant: Miles City Elementary School District No. 1, Miles City, MT.
Requirement Waived: Sections 1113(b)(1)(A) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: April 17, 1998.

(12) Applicant: Utah State Office of Education, Salt Lake City, UT.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through July 1999.
Date Granted: April 17, 1998.

(13) Applicant: Washington State Department of Education, Olympia, WA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1999.
Date Granted: May 2, 1998.

(14) Applicant: Bellevue School District, Bellevue, WA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: May 13, 1998.

(15) Applicant: Minot Public School District No. 1, Minot, ND.
Requirement Waived: Section 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: May 13, 1998.

(16) Applicant: Seminole County Public Schools, Sanford, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: May 13, 1998.

(17) Applicant: California Department of Education, Sacramento, CA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through August 1998.
Date Granted: June 10, 1998.

(18) Applicant: Nebraska Department of Education, Lincoln, NE.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through August 1998.
Date Granted: June 10, 1998.

(19) Applicant: Hawaii Department of Education on behalf of Sunset Beach Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.

(20) Applicant: Hawaii Department of Education on behalf of Kihei Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.

(21) Applicant: Hawaii Department of Education on behalf of Makalapa Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.

(22) Applicant: Hawaii Department of Education on behalf of Salt Lake Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.

(23) Applicant: Hawaii Department of Education on behalf of Kipapa Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.

(24) Applicant: El Centro School District on behalf of Margaret Hedrick School District, El Centro, CA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.

(25) Applicant: Hawaii Department of Education on behalf of Waihe'e Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 24, 1998.

(26) Applicant: Hawaii Department of Education on behalf of Pearl City Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 24, 1998.

(27) Applicant: Hawaii Department of Education on behalf of Hale Kula Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 24, 1998.

(28) Applicant: Sweetwater Union High School District, Chula Vista, CA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 24, 1998.

(29) Applicant: Buncombe County Schools, Weaverville, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 30, 1998.

(30) Applicant: Northeast Bradford School District on behalf of Northeast Bradford Elementary School, Rome, PA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 30, 1998.

(31) Applicant: Warwick School District, Lititz, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.

Duration of Waiver: Three years.
Date Granted: June 30, 1998.

(32) Applicant: Belle Vernon Area School District, Belle Vernon, PA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 10, 1998.

(33) Applicant: Decatur Township School District, Indianapolis, IN.
Requirement Waived: Sections 1113(a) and 1113(c) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 10, 1998.

(34) Applicant: Laurel Highlands School District, Uniontown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 10, 1998.

(35) Applicant: Meriwether County School District, Greenville, GA.
Requirement Waived: Section 1113(c)(1) of the ESEA.
Duration of Waiver: One year.
Date Granted: July 10, 1998.

(36) Applicant: Trinity Area School District, Washington, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 10, 1998.

(37) Applicant: Brevard County Public Schools, Viera, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1998.

(38) Applicant: Madison Metropolitan School District, Madison,WI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1998.

(39) Applicant: Oak Harbor School District, Oak Harbor, WA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1998.

(40) Applicant: West Chester Area School District, Chester, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1998.

(41) Applicant: Carteret County Schools, Beaufort, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 14, 1998.

(42) Applicant: Okaloosa County School District, Fort Walton Beach, FL.
Requirement Waived: Section 1113(a)(4) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 14, 1998.

(43) Applicant: San Bernardino City Unified School District on behalf of Palm Avenue Elementary School, San Bernardino, CA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 14, 1998.

(44) Applicant: Taylor County Elementary School, Campbelleville, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 14, 1998.

(45) Applicant: South Eastern School District, Fawn Grove, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 18, 1998.

(46) Applicant: Clay County District Schools, Green Cove Springs, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 24, 1998.

(47) Applicant: DuBois Area School District, DuBois, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 24, 1998.

(48) Applicant: McKeesport Area School District, McKeesport, PA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 24, 1998.

(49) Applicant: Northern Lehigh School District, Slatington, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 24, 1998.

(50) Applicant: Amherst County Schools, Amherst, VA.
Requirement Waived: Sections 1113(c)(1) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 2, 1998.

(51) Applicant: Clay County District Schools, Green Cove Springs, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 2, 1998.

(52) Applicant: Huntingdon Area School District, Huntingdon, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 2, 1998.

(53) Applicant: Maine School Union 122, Caribou, ME.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 2, 1998.

(54) Applicant: Puerto Rico Department of Education, San Juan, PR.
Requirement Waived: Section 1113(a)(5) of the ESEA.
Duration of Waiver: Through June 2001.
Date Granted: August 2, 1998.

(55) Applicant: Middletown Area School District, Middletown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 4, 1998.

(56) Applicant: Owensboro Independent School District, Owensboro, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 4, 1998.

(57) Applicant: Port Angeles School District, Port Angeles, WA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 4, 1998.

(58) Applicant: Keene School District, Keene, NH.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 6, 1998.

(59) Applicant: Northampton Area School District, Northampton, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 6, 1998.

(60) Applicant: White Plains Public Schools, White Plains, NY.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 6, 1998.

(61) Applicant: Conestoga Valley School District, Lancaster, PA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113 (c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.

(62) Applicant: Hempfield School District, Landisville, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.

(63) Applicant: Highlands School District, Natrona Heights, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.

(64) Applicant: Juniata County School District, Miffintown, PA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(1) of the

ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.

(65) Applicant: Kentucky Department of Education on behalf of Pikeville Elementary School, Frankfort, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.

(66) Applicant: Franklin Area School District, Harrisburg, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 10, 1998.

(67) Applicant: Minnesota Department of Education, Saint Paul, MN.
Requirement Waived: Sections 7302 and 7134(c) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 10, 1998.

(68) Applicant: Cumberland County Schools, Fayetteville, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 12, 1998.

(69) Applicant: Henderson County Public Schools, Hendersonville, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 12, 1998.

(70) Applicant: Edgecombe County Schools, Tarboro, NC.
Requirement Waived: Section 1113(c)(1) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 16, 1998.

(71) Applicant: Millcreek School District, Edinboro, PA.
Requirement Waived: Section 1113(a)(1)(B) of the ESEA.
Duration of Waiver: One year.
Date Granted: August 16, 1998.

(72) Applicant: Mount Pleasant Area School District, Mount Pleasant, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 16, 1998.

(73) Applicant: Scranton School District, Scranton, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 16, 1998.

(74) Applicant: Los Angeles Unified School District, Los Angeles, CA.
Requirement Waived: Section 421(b) of the General Education Provisions Act.
Duration of Waiver: One year.
Date Granted: August 22, 1998.

(75) Applicant: Arizona Department of Education, Phoenix, AZ.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through June 1999.
Date Granted: August 26, 1998.

(76) Applicant: Arkansas Department of Education, Little Rock, AR.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1999.
Date Granted: August 26, 1998.

(77) Applicant: Delaware Department of Education, Dover, DE.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through October 1999.
Date Granted: August 26, 1998.

(78) Applicant: Hawaii Department of Education, Honolulu, HI.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(79) Applicant: Iowa Department of Education, Des Moines, IA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(80) Applicant: Louisiana Department of Education, Baton Rouge, LA.
Requirement Waived: 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(81) Applicant: Massachusetts Department of Education, Malden, MA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(82) Applicant: Minnesota Department of Education, Saint Paul, MN.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(83) Applicant: Montana Office of Public Instruction, Helena, MT.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(84) Applicant: New York State Education Department, Albany, NY.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(85) Applicant: North Dakota Department of Public Instruction, Bismarck, ND.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(86) Applicant: Tennessee Department of Education, Nashville, TN.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(87) Applicant: Virginia Department of Education, Richmond, VA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.

(88) Applicant: Eau Claire Area School District, Eau Claire, WI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 28, 1998.

(89) Applicant: Kansas State Department of Education, Topeka, KS.
Requirement Waived: Section 1003(a) of the ESEA.
Duration of Waiver: One year.
Date Granted: August 31, 1998.

(90) Applicant: Maine Department of Education, Augusta, ME.
Requirement Waived: Comprehensive School Reform Demonstration Program—eligible grade spans.
Duration of Waiver: Three years.
Date Granted: August 31, 1998.

(91) Applicant: Virginia Department of Education, Richmond, VA.
Requirement Waived: Comprehensive School Reform Demonstration Program—eligible grade spans.
Duration of Waiver: Three years.
Date Granted: September 1, 1998.

(92) Applicant: Alaska Department of Education, Juneau, AK.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: September 23, 1998.

(93) Applicant: Carlynton School District, Carnegie, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: September 23, 1998.

(94) Applicant: Georgia Department of Education, Atlanta, GA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: September 23, 1998.

(95) Applicant: Florida Department of Education, Tallahassee, FL.

Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: September 24, 1998.

(96) Applicant: Kutztown Area School District, Kutztown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 1, 1998.

(97) Applicant: Southern York County School District, Glen Rock, PA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(1) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 1, 1998.

(98) Applicant: Valley Grove School District, Franklin, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 1, 1998.

(99) Applicant: District of Columbia Public Schools, Washington D.C.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: November 2, 1998.

(100) Applicant: Kentucky Department of Education, Frankfort, KY.
Requirement Waived: Section 1116(c)(1)(C) and 1116(d)(3)(A)(ii) of the ESEA.
Duration of Waiver: Two years.
Date Granted: November 2, 1998.

(101) Applicant: Nevada Department of Education, Carson City, NV.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: November 2, 1998.

(102) Applicant: School District of Haverford Township, Havertown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: November 2, 1998.

(103) Applicant: Upper Dublin School District, Dresher, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: November 2, 1998.

(104) Applicant: Idaho Department of Education, Boise, ID.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through December 1999.
Date Granted: November 2, 1998.

(105) Applicant: West Virginia Department of Education, Charleston, WV.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through June 1999.
Date Granted: November 2, 1998.

(106) Applicant: Utah State Office of Education, Salt Lake City, UT.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through July 1999.
Date Granted: November 5, 1998.

(107) Applicant: New Jersey Department of Education, Trenton, NJ.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through December 1999.
Date Granted: November 10, 1998.

(108) Applicant: Mississippi Department of Education, Jackson, MI.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through December 1999.
Date Granted: November 12, 1998.

(109) Applicant: School District of Fort Atkinson, Fort Atkinson, WI.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 1, 1998.

(110) Applicant: Crawford School District, Meadville, PA.
Requirement Waived: Section 1113 (a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 9, 1998.

(111) Applicant: Laurel Public Schools, Laurel, MT.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 9, 1998.

(112) Applicant: School District of Philadelphia, Philadelphia, PA.
Requirement Waived: Section 5108 and 7307 of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 9, 1998.

(113) Applicant: Orange County Public Schools, Orange, VA.
Requirement Waived: Sections 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 14, 1998.

(114) Applicant: Owens Valley Career Development Center, Bishop, CA.
Requirement Waived: 34 CFR 75.533.
Duration of Waiver: One year.
Date Granted: December 14, 1998.

(B) *Waivers Approved Under the Waiver Authority in Section 1113(a)(7) of the ESEA:*

(1) Applicant: San Diego City Schools, San Diego, CA.
Requirement Waived: Sections 1113(a) and (c) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 9, 1998.

APPLYING FOR A WAIVER: Requests for waivers that would be implemented and affect school-level activities beginning with the semester immediately following January 1, 2000 must be submitted to the Department in substantially approvable form no later than October 1, 1999. Request for waivers that would be implemented and affect school-level activities beginning with the 2000–2001 school year must be submitted to the Department of Education in substantially approvable form no later than April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Carla Kirksey at the Department's Waiver Assistance Line, (202) 401–7801. The Department's Waiver Guidance, which provides examples of waivers, explains the waiver authorities in detail, and describes how to apply for a waiver, is also available at this number. The Guidance and other information on flexibility are available at the Department's World Wide Web site at *http://www.ed.gov/flexibility*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Dated: June 3, 1999.

Judith Johnson,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 99–14661 Filed 6–9–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[FE Docket No. PP–197, DOE/EIS–0307]

Notice of Reopening Scoping Period and Schedule for Public Scoping Meetings; Public Service Company of New Mexico

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that it is reopening the scoping period and will hold additional public scoping meetings for the environmental impact statement (DOE/EIS–0307) that is being prepared in connection with an application for a Presidential permit filed by Public Service Company of New Mexico (PNM). An EIS is being prepared because DOE has determined that the issuance of the Presidential permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). PNM has applied for a Presidential permit to construct electric transmission lines across the U.S.-Mexican border. The previous public scoping period extended from February 12, 1999, to April 14, 1999, during which time DOE conducted seven public meetings to obtain comments on the three alternative transmission corridors that were proposed in PNM's Presidential permit application. The purpose of this notice is to open a new scoping period to obtain additional comments, particularly on three additional alternative transmission corridors that have been identified subsequent to the original scoping period.

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The second scoping period starts with the publication of this notice in the **Federal Register** and will continue until July 14, 1999. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by July 14, 1999, in defining the scope of the EIS. Comments received or postmarked after that date will be considered to the extent possible. Additional information on the scoping process is available in the scoping notice published in the **Federal Register** on February 12, 1999 (64 FR 7173).

Dates, times, and locations for the public scoping meetings are:

1. June 29, 1999, 1 to 3 P.M., Desert Hills Social Center, 2980 S. Camino del Sol, Green Valley, Arizona.
2. June 29, 1999, 6 to 8 P.M., St. Ann's Hall, 18 Baca, Tubac, Arizona.
3. June 30, 1999, 10 to 12 P.M., Meeting Room, Buenos Aries National Wildlife Refuge, Sasabe, Arizona. (Directions: From Tucson, take I–19 S to Ajo Way/Highway 86, go W on Ajo Way 20 miles to Three Points/Robles Junction. Proceed S on Route 286 approximately 37 miles. Follow signs to headquarters 3 miles E.)
4. June 30, 1999, 3 to 5 P.M., Mary E. Dill Primary School, Multi Purpose Room 10451 South Sasabe, Three Points (Robles Junction), Arizona.
5. June 30, 1999, 7 to 9 P.M., Plaza Hotel and Conference Center (Wildcat I and II), 1900 E. Speedway Boulevard, Tucson, Arizona.

Requests to speak at a public scoping meeting(s) should be received by Mrs. Russell, the NEPA Document Manager, at the address indicated below on or before June 25, 1999. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, NEPA Document Manager, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or electronic mail at Ellen.Russell@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy 1000 Independence Avenue, SW, Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, connected, operated, or maintained at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR 205.320–205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On December 28, 1998, PNM, a regulated public utility, filed an application for a Presidential permit with the Office of Fossil Energy of DOE. PNM proposes to construct two transmission lines on a single right-of-way extending approximately 140 to 230 miles from the electric switchyard near the Palo Verde Nuclear Generating Station (PVNGS), located approximately 30 miles west of Phoenix, Arizona, to the U.S.-Mexico border in the vicinity of Nogales or Sasabe, Arizona. South of the border, PNM would extend the lines approximately 60 to 120 miles to the Santa Ana Substation, located in the City of Santa Ana, Sonora, Mexico, and owned by the Comision Federal de Electricidad (CFE), the national electric utility of Mexico. In its application for a Presidential permit, PNM identified three alternative corridors for construction of the cross-border transmission lines. These corridors, Alternatives 1, 2 and 3 below, were the subject of public meetings conducted in Nogales, Tucson, Patagonia, Sells, Ajo, Gila Bend, and Casa Grande, Arizona, in March 1999.

During these meetings, residents and interested groups provided comments that have led to the identification of three additional alternative corridors (Alternatives 4, 5, and 6) that will be studied in the EIS. The purpose of this notice is to reopen the scoping period for the EIS and to announce additional public scoping meetings to collect additional comments, particularly on Alternatives 4, 5, and 6. To assist the first time reader, a description of each of the corridors follows. Oral and written comments previously submitted on Alternatives 1, 2, and 3 have been entered in the official record of this proceeding and need not be resubmitted.

Alternative 1

This alternative corridor begins at the electrical switchyard near the Palo Verde Nuclear Generating Station (PVNGS), continues south, following existing transmission lines, past Gila Bend and across the Barry M. Goldwater Air Force Range to Ajo where it turns southeast to the vicinity of Why and continues across the western boundary of the Tohono O'odham Nation and then southeast to the international border (145 miles in the U.S., 264 miles total).

Alternative 2

This alternative corridor proceeds south and east from the electrical switchyard near the PVNGS to the vicinity of Mobile where it turns south crossing the middle to eastern area of the Tohono O'odham Nation and then proceeds southeast to the international border in the vicinity of San Miguel (158 miles in the U.S., 240 miles total).

Alternative 3

This alternative corridor extends southeasterly from the electrical switchyard near the PVNGS to Interstate 10, approximately three miles north of Red Rock. From this point, the corridor continues in a southeasterly direction, following I–10 and existing transmission lines, through Tucson, to Arizona Highway 83. East of Highway 83 the corridor turns south, following a designated utility corridor (that does not contain transmission lines) to Sonoita, then southwest to Patagonia, crossing the border in the vicinity of Nogales (234 miles in the U.S., 301 miles total).

Alternative 4

This alternative corridor extends southeasterly from the electrical switchyard near the PVNGS to I–10, approximately three miles north of Red Rock. From this point, the line continues in a southeasterly direction, following I–10 and existing transmission lines to Marana. At Marana, this alternative corridor turns south, following an existing powerline corridor west of the Saguaro National Park, across the eastern edge of the Tohono O'odham Nation Schuk Toak District (known as the Garcia Strip) to an area just north of Three Points (Robles Junction). From Three Points, this alternative corridor heads southwest toward the Baboquivari Mountains on new right-of-way. This alternative corridor remains west of the Buenos Aires National Wildlife Refuge and east of the Baboquivari Mountains, crossing into Mexico near Sasabe (209 miles in the U.S., 288 miles total).

Alternative 5

This alternative corridor extends southeasterly from the electrical switchyard near the PVNGS to I–10, approximately three miles north of Red Rock. The corridor continues in a southeasterly direction, following I–10 and existing transmission lines, through Tucson. Near the intersection of I–10 and Business Route 19, the corridor turns south, paralleling Business Route 19 and I-19, passing Sahuarita and Green Valley. The corridor remains well east of I–19, gradually approaching I–19 near Amado and Tubac, and continuing south crossing the border in Nogales (216 miles in the U.S., 283 miles total).

Alternative 6

This alternative corridor is the same as Alternate 4 from the electrical switchyard near the PVNGS to an area north of three Points (Robles Junction.). From Three Points, this alternative corridor would turn southeast, following an existing powerline corridor across the southwestern corner of the San Xavier District of the Tohono O'odham Nation and then east, across an area south of ASARCO's Mission Complex Mine Area. This alternative corridor continues east, following an existing transmission corridor, across I–19 and Business Route 19 to a point east of Sahuarita. This corridor then turns south following the same route as Alternative 4, crossing the border in Nogales (229 miles in the U.S., 296 miles total).

Battelle Memorial Institute is assisting DOE in preparation of the EIS. Battelle is also maintaining an EIS web site for DOE at: www.battelle.org/projects/pnmeis. From this site, the PNM Presidential permit application can be downloaded, as well as the project fact sheet, verbatim transcripts from the March 1999 public scoping meetings, and other project-related information.

Issued in Washington, DC, on June 4, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 99–14658 Filed 6–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation for Applications of Petroleum Technologies on Non-Allotted Native American Lands

AGENCY: National Petroleum Technology Office through the Federal Energy Technology Center, Pittsburgh, Department of Energy.

ACTION: Issuance of financial assistance solicitation.

SUMMARY: The U. S. Department of Energy's (DOE) National Petroleum Technology Office (NPTO) through the Federal Energy Technology Center (FETC) announces that it intends to issue a competitive Program Solicitation (PS), No. DE-PS26–99BC15184 for the program entitled ''Applications of Petroleum Technologies on Non-allotted Native American Lands''. Through this solicitation, NPTO seeks to support applications conducting applied research for development, exploration and environmental solutions for problems on Native American and Alaskan Native Corporation lands whose mineral rights are held in common for the benefit of the tribe. Applications will be subjected to a comparative merit review by a DOE technical panel, and awards will be made to a limited number of applicants on the basis of the scientific merit, application of relevant program policy factors, and the availability of funds.

DATES: The solicitation is expected to be ready for release by June 17, 1999 and will have two (2) separate closing dates for submission of applications. The first closing date will be on or about August 17, 1999 and the second closing date on or about October 19, 1999. It should be noted that applications will only be considered for the closing date for which they are submitted. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation and prior to submitting applications, check for any changes (i.e. closing date of solicitation) and/or amendments, if any through the Internet at FETC's Home Page <http://www.fetc.doe.gov/business>.

FOR FURTHER INFORMATION CONTACT: Mr. Larry D. Gillham, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 3628, Tulsa, OK 74101–3628; (Telephone: (918) 699–2034, FAX: (918) 699–2038, E-mail: gillham@npto.doe.gov).

ADDRESSES: The solicitation will be available through the Internet at FETC's Home Page <http://www.fetc.doe.gov/business>. TELEPHONE REQUESTS WILL NOT BE ACCEPTED FOR ANY FORMAT VERSION OF THE SOLICITATION.

SUPPLEMENTARY INFORMATION: Through Program Solicitation No. DE-PS26–99BC15184, the Department of Energy seeks applications for innovative technical approaches to apply research for development, exploration and

environmental solutions for problems on non-allotted Native American lands. In cooperation with the Tribal management, proposed efforts must be economically and environmentally viable. This solicitation will have three categories of grant awards and they are described below:

The Development program is directed toward technologies to improve the development of a known oil field on Native American and Alaskan Native Corporation lands.

The Exploration program is directed toward technologies to promote the exploration of undiscovered oil reserves on Native American and Alaskan Native Corporation lands.

The Environmental program is directed toward technologies to reduce the cost of effective environmental oil field compliance.

Eligibility: Eligibility for participation in this Program Solicitation is considered to be full and open and all interested parties may apply. However, to be considered for evaluation, each applicant must provide written proof that the applicant has both access to and the permission of the tribe to perform on non-allotted Native American or Alaskan Native Corporation lands. The tribe must also agree that data and information generated during the performance of the project will be transferred to the public. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. While national laboratories may not participate as a prime they may participate as a sub-contractor.

Areas of Interest: A variety of approaches is sought: (1) For the Development program, the types of technologies to be considered are not limited to but may include reservoir characterization, completion or stimulation, secondary or tertiary oil recovery, artificial lift, well workovers, well drilling, field studies and production management; (2) for the Exploration program, the types of technologies to be considered are not limited to but may include non-invasive exploration techniques, computer-based modeling for exploration and well drilling and evaluation; and (3) for the Environmental program, the types of technologies to be considered are not limited to but may include soil remediation and remediation due to past operational practices or problems, air emissions, innovative waste and produced water management.

Awards: DOE currently has available $2.0 million for this solicitation. Out-year funding shall depend upon availability of future year appropriations. DOE anticipates multiple awards (i.e., between three (3) and six (6)) with a project duration of 3 years or less. A minimum 20% non-federal cost-share is required for all applications. Collaboration between industry, university, and DOE National Laboratories is strongly encouraged.

Issued in Pittsburgh, Pennsylvania on June 2, 1999.

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–14778 Filed 6–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 24, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: Massachusetts Institute of Technology; Plasma Science and Fusion Center (Room NW17–213); 77 Massachusetts Avenue; Cambridge, MA 02139.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: The Committee will hear presentations on fusion research at the Massachusetts Institute of Technology and tour the facilities there.

Tentative Agenda

Thursday, June 24, 1999

8:45 a.m.
MIT/Plasma Science Fusion Center Overview
9:15 a.m.
C-Mod Program
Lower Hybrid Current Drive Upgrades
9:45 a.m.
Levitated Dipole Experiment
11:00
Technology Programs
11:50 a.m.
Spin-Offs from Fusion
1:30 p.m.
Tour of Laboratories
2:30 p.m.
Public Comments
3:00 p.m.
FESAC Business
5:00 p.m.
Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@science.doe.gov (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190; Forrestal Building; 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 3, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–14660 Filed 6–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. 98–33–NG; et al.]

Avista Corporation (Formerly the Washington Power Company); et al.; Orders Granting, Amending, and Vacating Authorizations To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending, and vacating natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on June 2, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX.—ORDERS GRANTING, AMENDING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Import volume	Export volume	Comments
1381–A	05–11–99	Avista Corporation (Formerly The Washington Power Company) 98–33–NG.			Name change.
1480	05–19–99	Cascade Natural Gas Corporation 99–29–NG.	100 Bcf		Import from Canada beginning July 1, 1999, and extending through June 30, 2001.
754–A	05–19–99	Kamine/Besicorp Natural Dam L.P. 92–04–NG.			Vacate long-term import authority.
1481	05–19–99	Pawtucket Power Associates Limited Partnership 99–31–NG.	10.584 Bcf		Import from Canada beginning on May 31, 1999, and extending through May 30, 2001.
1482	05–19–99	Dartmouth Power Associates Limited Partnership 99–32–NG.	11.68 Bcf		Import from Canada beginning on May 7, 1999, and extending through May 6, 2001.
1483	05–20–99	AEC Marketing (USA) Inc. 99–30–NG	200 Bcf		Import from Canada beginning on June 30, 1999, and extending through June 29, 2001.
745–A	05–20–99	Kamine/Besicorp Syracuse L.P. 92–90–NG.			Vacate long-term import authority.
377–A	05–20–99	Kamine/Besicorp Syracuse L.P. 89–47–NG.			Vacate long-term import authority.
389–B	05–20–99	Kamine/Besicorp Syracuse L.P. 89–48–NG.			Vacate long-term import authority.
1485	05–24–99	Enron International Gas Sales Company 99–33–LNG.	600 Bcf		Import of liquefied natural gas from various sources beginning on the date of first import over a two-year term.

[FR Doc. 99–14659 Filed 6–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–319–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of June 1, 1999:

Thirty-Seventh Revised Sheet No. 8
Thirty-Seventh Revised Sheet No. 9
Thirty-Sixth Revised Sheet No. 13
Forty-Fourth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.4 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that this filing also includes the annual restatement of the ''Eligible MDQ'' used to design the reservation surcharge. ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2.5 million to $2.4 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. this filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14672 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–320–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective June 1, 1999:

Forty-Fifth Revised Sheet No. 18

ANR states that the above-referenced tariff sheet is being filed by ANR to reflect the impact of the annual update of the Eligible MDQ that is used to calculate its currently effective Gas Realignment (GSR) Reservation Surcharges, as required by and consistent with ANR's transition cost recovery mechanism set forth in its tariff. ANR advises that the Eligible MDQ has increased by approximately eleven percent (11%), thereby reducing the level of the GSR surcharges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14673 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–538–000]

B–R Pipeline Company Portland General Company; Notice of Application

June 4, 1999.

Take notice that on May 28, 1999, B–R Pipeline Company (B–R), P.O. Box 806278, 125 South Franklin Street, Chicago, Illinois 60680–4124, and Portland General Electric Company (PGE), One World Trade Center, Suite 1300, Portland, Oregon 97204 (jointly referred to as Applicants), filed in Docket No. CP99–538–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, requesting the following authorizations: (1) permission and approval to abandon by sale to B–R a 10. per cent tenancy-in-common share (12 per cent of PGE's interest) of a pipeline known as the ''Kelso-Beaver Pipeline'' (KBP); (2) certificate authority for B–R to acquire, own, and operate this 10.5 percent tenancy-in-common interest in the KBP; (3) certificate authority for B–R to construct, own, and operate, at B–R's expense, a delivery point for interstate transportation service consisting of a tap, meter, appurtenant facilities (collectively the Delivery Point) located near the terminus of the KBP in Columbia County, Oregon, which will connect with a non-jurisdictional pipeline to be built and owned by United States Gypsum Company (Gypsum) as an extension of Gypsum's new wallboard manufacturing plant in Rainier, Oregon; (4) certificate authority for B–R to transport natural gas on behalf of Gypsum from the existing KBP's interconnect with Northwest Pipeline Corporation (Northwest) in Kelso, Washington, to the interconnect with Gypsum's facilities extending from Gypsum's new plant; and (5) waiver of the Commission's requirements to file annual reports, rates, tariffs, and contracts involving service by B–R for Gypsum, all as more fully set forth in the application which is on file with the Commission and open to public inspection. this filing may be viewed on the web at: http:///www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Applicants state that on October 24, 1991, the Commission issued a certificate authorizing PGE and KB Pipeline Company (KB) to construct and operate 17 miles of twenty-inch diameter pipeline with a capacity of 193 MMcf/day (the KBP) and other facilities. It is indicated that the KBP extends from an interconnection with Northwest in Kelso, Washington, to a delivery point at PGE's Beaver Generating Station in Columbia County, Oregon and to an interconnection with KB's local distribution affiliate and only customer, Northwest Natural Gas Company (Northwest Natural). Applicants further state that neither PGE nor KB was required to offer open access transportation for third parties or to file open access tariffs.

Applicants request authority for PGE to abandon by sale to B–R its right, title, and interest in and to a 10.5 per cent tenancy-in-common of the KBP, and Applicants request corresponding certificate authority for B–R to acquire this 10.5 per cent interest as tenant-in-common so the B–R may transport and deliver natural gas belonging to Gypsum for use at a new Gypsum wallboard plant in Rainier, Oregon. Applicants assert that as part of that sale, PGE will assign to Gypsum and B–R, with respect to such 10.5 per cent interest, all transportation and other rights, and Gypsum and B–R will assume all obligations that accompany such an ownership share under the original joint ownership agreement. Applicants further assert that B–R's ownership of 10.5 per cent tenancy-in-common will not alter the total capacity or the maximum allowable operating pressure that applies currently to the KBP.

In addition to the proposed purchase and ownership of the 10.5 per cent interest in the KBP, B–R seeks certificate authority to construct, own, and operate for the purpose of transporting natural gas to Gypsum a Delivery Point, which will be located near the terminus of the existing KBP within existing rights-of-way. Applicants assert that B–R would build no other facilities; rather, Gypsum, an affiliate of B–R, plans to extend an eight-inch pipeline from its new plant in Rainier, Oregon to the Delivery Point. Applicants further assert that Gypsum's pipeline will be built and operated as an extension of Gypsum's new plant and will not be subject to the Commission's jurisdiction under either the NGA or NGPA. Applicants indicate that apart from the $2.5 million to be paid to PGE to purchase a share of the KBP, the cost of B–R's new Delivery Point is estimated to be $65,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14668 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–321–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of July 1, 1999:

Twenty-Second Revised Sheet No. 31
Forty-Eighth Revised Sheet No. 32

CNG states that the purpose of this filing is to terminate the surcharge established under Section 18.2.A of the General Terms and Conditions of CNG's FERC Gas Tariff, effective as of July 1, 1999. Article III, Section F of the September 30, 1999 Stipulation and Agreement in Docket Nos. RP97–406–000, et al., determined the currently-effective level of this surcharge (as detailed in Appendix C of the Stipulation and Agreement), and established that CNG would continue its collection of this surcharge through and including June 30, 1999. The Commission approved the Stipulation and Agreement by order dated November 24, 1998. 85 FERC ¶61,261 (1998).

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14674 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–6–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 4, 1999.

Take notice that on May 28, 1999, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Thirteenth Revised Sheet No. 11A, reflecting an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 1.32% to 1.53% effective July 1, 1999.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14677 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–16–000]

Dow Interstate Gas Company; Petition for Rate Approval

June 4, 1999.

Take notice that on June 1, 1999, Dow Intrastate Gas Company (DIGCO), tendered for filing pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval for interruptible transportation service performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). The petition is filed to comply with a Commission letter order dated March 12, 1997, in Docket No. PR96–10–000, which approved DIGCO's current rates, and required a filing on or before June 1, 1999, to justify such rates or establish new system rates. DIGCO is an intrastate pipeline organized and operating solely within Louisiana. Its mailing address is c/o The Dow Chemical Company, 400 W. Sam Houston Pkwy. S., Houston, TX 77042–1299.

DIGCO proposes, as fair and equitable, a maximum system-wide interruptible transportation rate of $.0615 per MMBtu, plus 0.3% in-kind fuel reimbursement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14679 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–033]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on June 1, 1999, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet, to become effective June 1, 1999:

Sixteenth Revised Sheet No. 31

El Paso states that the above tariff sheet is being filed to implement one negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14671 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–5–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on July 1, 1999:

Twentieth Revised Sheet No. 21
Twenty-first Revised Sheet No. 22

According to Granite State, the foregoing tariff sheets propose a revised Power Cost Adjustment (PCA) surcharge applicable to its firm transportation services during the third quarter of 1999 to reimburse Granite State for certain electric power costs that it is obligated to pay Portland Pipe Line Corporation pursuant to the terms of a lease of a pipeline from Portland Pipe Line.

Granite State further states that the total surcharge of $1.3318 consists of the sum of two components: the Quarterly Forecast PCA factor of $1.7294 which is based on projected incremental electric power costs to be billed to Granite State during the third quarter of 1999 and the Reconcilable PCA factor of $<0.3976> which reconciles the accumulated over/under past surcharge collections in the Deferred Account on a quarterly basis. The method for developing the surcharge in the foregoing manner was approved by the Commission in orders issued in Docket Nos. RP98–155–003 and TM98–4–4–001, according to Granite State.

Granite State further states that copies of its filing have been served on its firm transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14676 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–17–001]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

June 4, 1999.

Take notice that on June 2, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective April 7, 1999:

Original Sheet No. 22
Original Sheet No. 60
Original Sheet No. 71
Original Sheet No. 72
Original Sheet No. 73
Original Sheet No. 75
Original Sheet No. 176
Original Sheet No. 177
Original Sheet No. 179
Original Sheet No. 192
Original Sheet No. 195

HIOS asserts that the purpose of the filing is to comply with the Commission's May 3, 1999 letter order in the captioned proceeding in regard that a Delaware LLC has members, not partners.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

This filing may be viewed on the web at http://www.ferc.fed.us.online/rims.htm (call 202–298–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14669 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–22–000]

Nautilus Pipeline Company, L.L.C. Notice of Filing

June 4, 1999.

Take notice that on May 28, 1999, Nautilus Pipeline Company, L.L.C. filed standards of conduct under Order Nos. 497 *et al.*[1] 566 *et al.*[2] and 599.[3]

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 21, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at ttp://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14678 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992(; Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirement for Transportation and Affiliate Transactions. Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, order on *rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–322–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, Northern Border Pipeline Company (Northern Border), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective on July 1, 1999:

Fifth Revised Sheet Number 108
Fifth Revised Sheet Number 117

The proposed changes would, on an illustrative basis, increase revenues from jurisdictional service by $30 million during the first year that such changes are in effect.

By this filing, Northern Border is proposing a return on equity of 15.25 percent. For the twelve months ending June 30, 2000, this request equates to a pre-tax return on total capital of approximately 13.5 percent. Northern Border is also proposing to increase the provision in 426.1, Donations, not to exceed $200,000 a year. Northern Border's filing also reflects an amortization period of 60 months for a regulatory asset resulting from Docket No. FA93–45. In Pro Forma Sheet Number 118, Northern Border proposes to modify the number of months between the mandatory periodic review of its equity rate of return from 36 months to 60 months. Based upon revenue and cost analyses, Northern Border additionally supports the conclusion that the at-risk conditions contained in the certificates for facilities placed in-service during 1991 and 1992 at Docket Nos. CP89–576 and CP91–967–002 should not be triggered.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14675 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–76–000, et al.]

Phibro Inc., et al.; Electric Rate and Corporate Regulation Filings

June 3, 1999.

Take notice that the following filings have been made with the Commission:

1. Phibro Inc.

[Docket No. EC99–76–000]

Take notice that on May 28, 1999, Phibro Inc. (Phibro) tendered for filing an application for authorization under section 203 of the Federal Power Act to transfer its Rate Schedule FERC No. 1 and associated active contracts and other jurisdictional facilities to its affiliate Phibro Power LLC. Phibro requests expeditious approval of the application.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC

[Docket No. EC99–77–000]

Take notice that on May 28, 1999, pursuant to Section 203 of the Federal Power Act, El Segundo Power, LLC (El Segundo), Long Beach Generation LLC (Long Beach), Cabrillo Power I LLC (Cabrillo I) and Cabrillo Power II LLC (Cabrillo II) (jointly, the Applicants) filed a joint application for approval of a corporate reorganization. Each of the Applicants owns electric generation facilities located in the State of California. The proposed corporate reorganization will not change the ultimate ownership or control of the facilities.

A copy of the application has been served on the California Public Utilities Commission.

The Applicants have requested waivers of the Commission's regulations so that the filing may become effective at the earliest possible date, but no later than June 25, 1999.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Colorado Power Partners

[Docket No. EG99–152–000]

Take notice that on May 28, 1999, Colorado Power Partners (CPP), 1001 Louisiana Street, Houston, Texas 77002, (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the commission's regulations and section 32 of the Public Utility Holding Company Act, as amended.

Colorado Power Partners is a Colorado general partnership which owns the Brush Cogeneration Facility consisting of Brush 1 and Brush 3 (Facility), located in Brush, Colorado and is engaged exclusively in the generation of electric energy for sale at wholesale. The Facility is a topping cycle cogeneration facility consisting of two gas turbines, a heat recovery steam generator, an extraction-condensing steam turbine, a waste-heat steam boiler, a steam-heat exchanger and waste-heat hot water boilers. The Facility is operated by Colorado Cogen Operators Limited Liability Company pursuant to an operation and maintenance agreement. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992.

Copies of this application have been served upon the Colorado Public Utility Commission and the Securities and Exchange Commission.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Western Energy Marketers, Inc., Environmental Resources Trust, Inc., CET Marketing, L.P., Cogen Energy Technologies, L.P.

[Docket No. ER98–537–002, Docket No. ER98–3233–003, Docket Nos. ER98–4412–001, and ER98–4412–002, Docket Nos. ER98–4423–001, and ER98–4423–002]

Take notice that on May 28, 1999 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER99–1981–000, Docket No. ER99–2013–000]

Take notice that on May 28, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP Companies), tendered for filing a response to the April 30, 1999, deficiency letter in the above-captioned dockets. The response constitutes an amendment to the NSP Companies' filings, which were submitted in compliance with ordering paragraphs (D) and (E) of the Commission's Order on Petition for Declaratory Order issued December 16, 1998 in North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998).

The NSP Companies state they have served a copy of the filing on the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin and all parties to the underlying proceedings. NSP also states it has served a courtesy copy on NERC and the Mid-Continent Area Power Pool.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER99–3075–000]

Take notice that on May 28, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Avista Energy, Inc., under Delmarva's market rate sales tariff.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER99–3076–000]

Take notice that on May 28, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Transaction Letter dated May 26, 1999 with Horizon Energy Company d/b/a Exelon Energy (EXELON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Transaction Letter.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER99–3079–000]

Take notice that on May 28, 1999, the New England Power Pool (NEPOOL or Pool), Executive Committee tendered for filing a request for termination of membership in NEPOOL, with an effective date of June 1, 1999, of LG&E Energy Marketing Inc. (LEM). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by LEM. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of LEM with an effective date of June 1, 1999, would relieve this entity, at LEM's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove LEM from membership in the Pool.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER99–3080–000]

Take notice that on May 28, 1999, the New England Power Pool Executive Committee for filing for acceptance a signature page to the New England

Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Providence Energy Services, Inc., (Providence Energy). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Providence Energy's signature page would permit NEPOOL to expand its membership to include Providence Energy. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Providence Energy a member in NEPOOL.

NEPOOL requests an effective date of June 1, 1999, for commencement of participation in NEPOOL by Providence Energy.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER99–3084–000]

Take notice that on May 28, 1999, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy Gulf States, Inc., Entergy Arkansas, Inc., and Entergy New Orleans, Inc., tendered for filing changes to Interconnection Agreements with Georgia Gulf Corporation; Huntsman Petrochemical Corporation; Tenaska Frontier Partners, Ltd.; LSP Energy Limited Partnership; Tennessee Valley Authority; Union Carbide Corporation; PPG Industries, Inc.; CII Carbon, L.L.C.; PanEnergy Lake Charles Generation; South Mississippi Electric Power Authority; Louisiana Energy and Power Authority; and Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn G & T, Inc., and Sam Rayburn Municipal Power Agency.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Avista Corp.

[Docket No. ER99–3085–000]

Take notice that on May 28, 1999, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with PP&L EnergyPlus Co.

AVA requests the Service Agreement be given the respective effective date of May 24, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. American Atlas #1, Ltd., L.L.L.P.

[Docket No. ER99–3086–000]

Take notice that on May 28, 1999, American Atlas #1, Ltd., L.L.L.P. (American Atlas), tendered for filing pursuant to Rules 205 and 207 an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective June 1, 1999, and accepting its power purchase agreement with Tri-State Generation and Transmission Association, Inc., to be effective the same date.

In transactions where American Atlas will sell electric energy and/or capacity at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed with the purchasing party.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER99–3087–000]

Take notice that on May 28, 1999, Commonwealth Edison Company (ComEd), tendered for filing a revised Firm Service Agreement with Alliant Bulk Power under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of May 1, 1999, for the revised service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Alliant.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER99–3088–000]

Take notice that on May 28, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with PECO Energy Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Electric Power Company

[Docket No. ER99–3089–000]

Take notice that on May 28, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with PG&E Energy Trading-Power, L.P. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Maine Electric Power Company

[Docket No. ER99–3090–000]

Take notice that on May 28, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with PP&L EnergyPlus Co. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Maine Electric Power Company

[Docket No. ER99–3091–000]

Take notice that on May 28, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with Select Energy, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Maine Power Company

[Docket No. ER99–3092–000]

Take notice that on May 28, 1999, Central Maine Power Company (CMP), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's regulations, 18 CFR Part 35, a Service Agreement for Local Network Transmission Service by and between CMP and Fox Islands Electric Cooperative, Inc. (the Service Agreement).

CMP has requested that the Service Agreement become effective on May 1, 1999.

Copies of this filing have been served upon the Maine Public Utilities Commission and Fox Islands Electric Cooperative, Inc.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER99–3093–000]

Take notice that on May 28, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Louisiana, Inc. (ELI), Entergy Mississippi, Inc. (EMI), and Entergy Gulf States, Inc. (EGSI), tendered for filing Generator Imbalance Agreements with South Mississippi Electric Association, Tennessee Valley Authority, LSP Energy Limited Partnership, CII Carbon, L.L.C., Union Carbide Corporation, Georgia Gulf Corporation, Louisiana Energy and Power Authority, Huntsman Petrochemical Corporation, Tenaska Frontiers Partners, Ltd., PPG Industries, Inc., PanEnergy Lake Charles, and Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn Municipal Power Agency, and Sam Rayburn G&T, Inc.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Central Maine Power Company

[Docket No. ER99–3094–000]

Take notice that Central Maine Power Company (CMP), on May 28, 1999, tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's regulations, 18 CFR Part 35, a Service Agreement for Local Network Transmission Service by and between CMP and Kennebunk Light & Power District (the Service Agreement).

CMP has requested that the Service Agreement become effective on May 1, 1999.

Copies of this filing have been served upon the Maine Public Utilities Commission and Kennebunk Light & Power District.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Avista Corporation

[Docket No. ER99–3095–000]

Take notice that on May 28, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, with Cogentrix Energy Power Marketing, Inc.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of April 30, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. PJM Interconnection, L.L.C.

[Docket No. ER99–3097–000]

Take notice that on May 28, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing an unexecuted interconnection service agreement between PJM and Statoil Energy/Paxton, L.P.

PJM requests a waiver of the Commission's 60-day notice requirement and an effective date of May 1, 1999.

Copies of this filing were served upon Statoil Energy/Paxton, L.P., and the Pennsylvania Public Utility Commission.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. EGC 1999 Holding Company, L.P.

[Docket No. ER99–3098–000]

Take notice that on May 28, 1999, EGC 1999 Holding Company, L.P. (1999 Holdco), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting 1999 Holdco's FERC Electric Rate Schedule No. 1 to be effective on July 1, 1999.

1999 Holdco intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where 1999 Holdco sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Ameren Services Company

[Docket No. ER99–3099–000]

Take notice that on May 28, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Dayton Power and Light Company, The Energy Authority, Public Service Company of Colorado, and Utilicorp United, Inc. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Ameren Services Company

[Docket No. ER99–3100–000]

Take notice that on May 28, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Dayton Power and Light Company, The Energy Authority, Public Service Company of Colorado, and Utilicorp United, Inc., (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Electric Power Company

[Docket No. ER99–3101–000]

Take notice that on May 28, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and FirstEnergy Corporation (FirstEnergy). The Transmission Service Agreements allow FirstEnergy to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on FirstEnergy, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Prairieland Energy, Inc.

[Docket No. TX99–2–000]

Take notice that on May 21, 1999, Prairieland Energy, Inc. (Prairieland), tendered for filing an application with the Federal Energy Regulatory Commission requesting the Commission to order Commonwealth Edison Company (Edison) to provide transmission service pursuant to Section 211 of the Federal Power Act.

Prairieland had requested 12 Megawatts (MW) of firm point-to-point transmission service for a term of five years commencing October 1, 1998.

Copies of Prairieland's application were served upon representatives of Edison and the Illinois Commerce Commission.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 99–14667 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–171 Oklahoma]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

June 4, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application for approval of additional marina facilities. Grand River Dam Authority proposes to permit Dennis Blakemore, d/b/ a Honey Creek Landing, Ltd. (permittee), to modify an existing commercial marina facility located on Grand Lake's Honey Creek adjacent to the Honey Creek Bridge (US Highway 59). The proposed modifications include the relocation of a fuel dock from its approved location, about 845 feet from the northern shoreline to a new (present) location, about 130 feet from the northern shoreline. Further, the permittee proposes to replace four existing boat slips with a building containing a business office, bathhouse, and laundromat. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA and be obtained by calling the Commission's Public Reference Room at (202) 208–1371. In the DEA, staff concludes that approval of the proposed action, alternative actions, or the no-action alternative would not constitute a major Federal action significantly affecting the quality of the human environment.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to: Mr. David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1494–160 to all comments. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14670 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements " (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for renewal.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for renewal: Criteria for Classification of Solid Waste Disposal Facilities and Practices—40 CFR Part 258, OMB No. 2050–0122, current expiration date is January 31, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection described below.

DATES: Comments must be submitted on or before August 9, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–99–FC2P–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: *rcradocket@epamail.epa.gov*. Comments in electronic format should also be identified by the docket number F–99–FC2P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov/epaoswer/XXXX.htm*
FTP: *ftp.epa.gov*
Login: anonymous
Password: your Internet address
Files are located in/pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic

comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking contact Dwight Hlustick, EPA, Office of Solid Waste (5306W), Municipal and Industrial Solid Waste Division, 401 M Street, SW, Washington, D.C. 20460, phone 703 308–8647, e-mail address hlustick.dwight@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Criteria for Classification of Solid Waste Disposal Facilities and Practices, 40 CFR Part 258.

OMB No.: 2050–0122.

Current expiration date: January 31, 2000.

Affected entities: Owners or operators of new MSWLFs, existing MSWLFs, and lateral expansions of existing MSWLFs. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in SIC codes 922, 495, 282, 281, and 287 may be affected by this rule.

Abstract: Under statutory authority found in RCRA, EPA established mandatory regulations (See 40 CFR Part 258) that established the Criteria for Municipal Solid Waste Landfills (MSWLFs) for landfills that co-dispose of household waste with sewage sludge and that receive ash from municipal waste combustion (MWC) facilities (including ash monofills). EPA believes these requirements mitigate potential hazards to human health and the environment from the potential mismanagement by owners or operators of MSWLFs. This information will be used by the State Director to confirm owner or operator compliance with the regulations under Part 258. The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and the clarity of the information to be collected; and

(iv) 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 of other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The burden to respondents for complying with the Part 258 information collection requirements is approximately 222,680 hours per year, with an annual cost of $8,034,720. The estimated number of respondents is 2300 with an average annual burden of approximately 97 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, precessing 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.

Dated: June 2, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–14766 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6357–1]

Agency Information Collection Activities; Health and Safety Data Reporting; Submission of ICR No. 0575.08 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: ''TSCA Section 8(d) Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies,'' [EPA ICR No. 0575.08; OMB Control No. 2070–0004] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on July 31, 1999. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 14, 1999 (64 FR 2488). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or download a copy of the ICR off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 0575.08.

ADDRESSES: Send comments, referencing EPA ICR No. 0575.08 and OMB Control No. 2070–0004, to the following addresses:

Ms. Sandy Farmer,
U.S. Environmental Protection Agency,
Regulatory Information Division (Mail Code: 2137),
401 M Street, S.W.,
Washington, DC 20460;

And to:

Office of Information and Regulatory Affairs,
Office of Management and Budget (OMB),
Attention: Desk Officer for EPA,
725 17th Street, N.W.,
Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 0575.08; OMB Control No. 2070–0004.

Current Expiration Date: Current OMB approval expires on July 31, 1999.

Title: TSCA Section 8(d) Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies.

Abstract: Section 8(d) of the Toxic Substances Control Act (TSCA) and regulations at 40 CFR part 716 requires manufacturers and processors of chemicals to submit lists and copies of health and safety studies relating to the health and/or environmental effects of certain chemical substances and mixtures. In order to comply with the reporting requirements of section 8(d), respondents must search their records to identify any health and safety studies in their possession, copy and process relevant studies, list studies that are

currently in progress, and submit this information to EPA.

EPA uses this information to construct a complete picture of the known effects of the chemicals in question, leading to determinations by EPA of whether additional testing of the chemicals is required. The information enables EPA to base its testing decisions on the most complete information available and to avoid demands for testing that may be duplicative. EPA will use information obtained via this collection to support its investigation of the risks posed by chemicals and, in particular, to support its decisions on whether to require industry to test chemicals under section 4 of TSCA.

Responses to the collection of information are mandatory (see 40 CFR part 716). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between 2 hours and 32 hours per response, depending upon the requirements that the collection places on each respondent, for an estimated 1,203 respondents making one or more submissions of information annually. These estimates include 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. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated No. of Respondents: 1,203.

Estimated Total Annual Burden on Respondents: 4,542 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is a decrease (from 9,668 hours to 4,542 hours) in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB. This decrease reflects updated analyses of information related to the historical reporting patterns and the numbers of chemicals listed on the TSCA section 8(d) reporting rule, and EPA's revisions to section 8(d) reporting requirements.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: June 4, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–14764 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6357–8]

Adequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy Status.

SUMMARY: In this notice, we are publicizing the list of submitted state implementation plans (SIPs) with motor vehicle emissions budgets that we have found adequate or inadequate for transportation conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate.

Areas can use the SIPs that we have found adequate in conformity determinations, and any conformity determination already made using a SIP that is adequate will remain valid. SIPs that we have found inadequate cannot be used for further conformity determinations.

FOR FURTHER INFORMATION CONTACT: Regarding this notice or future guidance: Laura Voss, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105. *voss.laura@epa.gov* (734) 214–4858.

Regarding specific areas listed in the table: see the EPA Regional contact person listed in the table.

SUPPLEMENTARY INFORMATION:

Background

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved when reviewed with the entire SIP submission.

The list in this notice is not a complete list of all SIPs that have been submitted to EPA. This is merely a list of those pending SIP submissions that we have found adequate or inadequate to date. We have approved some SIPs, and we are still reviewing the adequacy of others. We've described our future process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We will be revising our conformity rules shortly to codify this guidance. You can obtain a copy of this guidance from EPA's conformity website: *http://www.epa.gov/oms/transp.htm*, or by calling the contact name listed in **FOR FURTHER INFORMATION CONTACT** section. Future adequacy determinations will also be announced in the **Federal Register**.

Status of Submitted Budgets:

State	Pollutant	Area	Submitted SIP	Date of finding	Adequate/inadequate
Region 1: Contact Donald Cooke, U.S. EPA Region 1, Suite 1100 (CAQ), One Congress Street, Boston, MA 02114–2023, cooke.donald@epa.gov (617) 918–1668					
ME	Ozone	Portland Area	15%	April 28, 1999	Adequate.
NH	Ozone	Boston-Lawrence-Worcester Area	Post-96 rate of progress.	April 29, 1999	Adequate.
			Attainment demonstration.	August 19, 1998	Adequate.
NH	Ozone	Portsmouth-Dover-Rochester Area	Post-96 rate of progress.	April 29, 1999	Adequate.
			Attainment demonstration.	August 19, 1998	Adequate.
MA	Ozone	Boston-Lawrence-Worcester (E. Mass) Area	15%	June 5, 1997	Adequate.
			Post-96 rate of progress.	June 5, 1997	Adequate.
MA	Ozone	Boston-Lawrence-Worcester (E. Mass) Area	Attainment demonstration.	February 19, 1999	Adequate.
MA	Ozone	Springfield (W. Mass) Area	Attainment demonstration.	February 19, 1999	Adequate.
Region 2: Contact Rudolph Kapichak, U.S. EPA Region 2, Air Programs Branch, 290 Broadway, New York, NY 10007, kapichak.rudolph@epa.gov (212) 637–3804					
NY	Ozone	New York Portion of the NY–NJ–CT severe ozone nonattainment area.	Post-96 rate of progress.	September 17, 1997	Adequate.
Region 3: Contact Paul Wentworth (Maryland, Virginia, and D.C. areas); Larry Budney (Delaware areas); U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103, wentworth.paul@epa.gov (215) 814–2183; budney.larry@epa.gov (215) 814–2184					
DC	Ozone	Washington DC	Post-96 rate of progress.	December 31, 1997	Adequate.
MD	Ozone	Maryland portion of DC area	Post-96 rate of progress.	February 27, 1998	Adequate.
VA	Ozone	Northern Virginia portion of DC area	Post-96 rate of progress.	February 27, 1998	Adequate.
MD	Ozone	Baltimore	Post-96 rate of progress.	April 28, 1999	Adequate.
MD	Ozone	Cecil County	Post-96 rate of progress.	April 28, 1999	Adequate.
DE	Ozone	New Castle County	Post-96 rate of progress.	April 29, 1999	Adequate.
DE	Ozone	Kent County	Post-96 rate of progress.	April 29, 1999	Adequate.
Region 4: Contact Kay Prince, U.S. EPA Region 4, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street S.W., Atlanta, GA 30303, prince.kay@epa.gov (404) 562–9026					
KY	Ozone	Louisville	15%	April 29, 1999	Adequate.
TN	Ozone	Memphis	Maintenance plan	August 7, 1998	Adequate.
Region 5: Contact Ryan Bahr, U.S. EPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, AR–18J, Chicago, IL 60604–3590, bahr.ryan@epa.gov (312) 353–4366					
IN	Ozone	Lake and Porter County	Post-96 rate of progress.	February 2, 1998	Adequate.
IL	Ozone	Chicago area	Post-96 rate of progress.	February 3, 1998	Adequate.
Region 6: Contact Jahan Behnam, U.S. EPA Region 6, Fountain Place 12th Floor Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, behnam.jahanbakhsh@epa.gov (214) 665–7247					
LA	Ozone	Baton Rouge	Attainment demonstration.	April 28, 1999	Adequate.
TX	Ozone	El Paso	Section 179B international border plan.	January 12, 1998	Adequate.
Region 8: Contact Jeff Houk, U.S. EPA Region 8, 999 18th Street Suite 500, Denver, CO 80202–2466, houk.jeff@epa.gov (303) 312–6446					
CO	Carbon monoxide.	Colorado Springs	Maintenance plan	April 29, 1999	
			1998—2009 budgets		Inadequate.
			2010 budget and beyond.		Adequate.

State	Pollutant	Area	Submitted SIP	Date of finding	Adequate/inadequate
CO	Carbon monoxide.	Longmont	Maintenance plan	May 14, 1999	Inadequate.
UT	Carbon monoxide.	Ogden	Maintenance plan	April 29, 1999	Adequate.
UT	Carbon monoxide.	Provo	Attainment demonstration.	May 14, 1999	Inadequate.
Region 9: Contact Karina O'Connor, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, oconnor.karina@epa.gov (415) 744–1247.					
AZ	Carbon monoxide.	Phoenix	Attainment demonstration.	May 5, 1999	Inadequate.
AZ	Ozone	Phoenix	Attainment demonstration and 15%.	May 5, 1999	Inadequate.
CA	PM 10	San Joaquin Valley	Attainment demonstration.	May 5, 1999	Inadequate.
NV	Carbon monoxide.	Las Vegas	Attainment demonstration.	May 5, 1999	Inadequate.
Region 10: Contact Wayne Elson, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, elson.wayne@epa.gov (206) 553–1463.					
AK	Carbon monoxide.	Anchorage	Attainment demonstration.	May 14, 1999	Inadequate.
AK	Carbon monoxide.	Fairbanks	Attainment demonstration.	May 14, 1999	Inadequate.
WA	Carbon monoxide.	Spokane	Attainment demonstration.	May 14, 1999	Inadequate.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 3, 1999.

Robert Perciasepe,

Assistant Administrator for Office of Air and Radiation.

[FR Doc. 99–14769 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–8]

Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice of charter renewal.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) is renewing the Charter for the Urban Wet Weather (UWW) Flows Advisory Committee (and its two subcommittees) for an additional 2-year period. This Committee serves the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. appl. 2 section 9(c). The purpose of the Urban Wet Weather Flows Federal Advisory Committee is to provide advice and counsel to the Administrator of EPA on issues associated with urban wet weather discharges, including municipal and industrial storm water runoff, combined sewer overflows, and sanitary sewer overflows. It is determined that the Urban Wet Weather Flows Federal Advisory Committee is in the public interest in connection with the performance of duties imposed on the Agency by law.

FOR FURTHER INFORMATION: Contact Kevin Weiss, Office of Wastewater Management, USEPA, at (202) 260–9524, or Internet: weiss.kevin@epa.gov

Dated: May 18, 1999.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 99–14767 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6358–1]

Environmental Laboratory Advisory Board, Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Protection Agency (EPA) will convene an open meeting of the Environmental Laboratory Advisory Board (ELAB) on June 30, 1999, from 1:00 p.m. to 5:00 p.m. to be held at the Sheraton Hotel located at 534 Broadway, Saratoga Springs, New York.

Topics for discussion will include at a minimum reporting on the status of ELAB's previous recommendations, a review of activities by the Third Party Assessors Workgroup, proposed changes to the National Environmental Laboratory Accreditation Conference standards, and the findings of the Scope of Accreditation Workgroup. The public is encouraged to attend. Time will be allotted for public comment.

Written comments on the meeting agenda should be directed to Ms. Elizabeth Dutrow; Designated Federal Officer; USEPA; 401 M Street, SW (8724R); Washington, DC 20460. If questions arise, please contact Ms. Dutrow by phone at (202) 564–9061, by facsimile at (202) 565–2441 or by email at dutrow.elizabeth@epa.gov.

Dated: May 18, 1999.

Nancy W. Wentworth,

Director, Quality Assurance Division.

[FR Doc. 99–14758 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–7]

National Drinking Water Advisory Council; Small Systems Implementation Working Group; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on June 23 and June 24, 1999 at the Hyatt on Printer's Row, 500 S. Dearborn, Chicago, Illinois. The meeting will begin at 1:00 p.m. and conclude at 5:00 p.m. on June 23, and will begin at 8:30 a.m. and conclude at 4:00 p.m. on June 24. The meeting is open to the public to observe, but seating will be limited.

The purpose of this meeting is to analyze relevant issues and facts related to small systems. Working group members will begin to propose stategic options for U.S. EPA and States to consider in assisting small systems in meeting the public health objectives of the Safe Drinking Water Act. Statements will be taken from the public at this meeting, as time allows.

For more information, please contact Peter E. Shanaghan, Designated Federal Officer, Small Systems Implementation Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street, S.W., Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epamail.epa.gov.

Dated: May 26, 1999.

Elizabeth Fellows,

Acting Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–14765 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, June 22, 1999 (1st Session 10:00 a.m., 2nd Session 2:00 p.m., Central Daylight Time).

PLACE: Thurgood Marshall School of Law, Texas Southern University, 3100 Cleburne Street, Houston, Texas 77004.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes, and
2. Panels on Employment Discrimination as it Affects Low Wage Earners.

Note: Any matters not discussed or concluded may be carried over to a later meeting. (In addition to published notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission meetings). Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: June 8, 1999.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 99–14927 Filed 6–8–99; 3:29 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 3, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0718.

Title: Part 101 governing the Terrestrial Microwave Fixed Radio Services.

Form Number: Not applicable.

Type of Review: Extension of existing collection.

Respondents: Businesses; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 1,025 respondents and 19,000 recordkeepers.

Estimated Time Per Response: 1.77 hours per response and 120 hours per recordkeepers. This reflects an annual estimate of 1,025 respondents making various filings and an estimated 19,000 licensees maintaining records.

Frequency of Response: Recordkeeping Reporting, on occasion.

Total Annual Burden: 1489 hours.

Total Annual Cost: $90,624.

Needs and Uses: The information requirements are used to determine technical, legal, and other qualifications of applicants to operate a station in the public and private operational fixed services. The information is also used to ensure the applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act, 47 U.S.C. Section 310. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14720 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 4, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as

required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0207.

Title: Section 11.35, Equipment Operational Readiness; Section 11.51 EAS Code and Attention Signal Transmission Requirements; Section 11.52, EAS Code and Attention Signal Monitoring Requirements; Section 11.61, Participating Broadcasting Stations to Test EAS Equipment Requirement.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 15,000.

Estimate Time Per Response: 10 sec. (156 responses annually/respondent)

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 6,500 hours.

Total Annual Costs: None.

Needs and Uses: The Commission adopted Rules that require the weekly testing of all Emergency Alert System (EAS) by broadcasting stations including cable television across the United States. Records of this information is necessary to document compliance with this Rule and to enhance awareness and participation in the national, state and local EAS. Accurate recordkeeping of this data is vital in determining the location and nature of possible equipment failure on the part of the transmitting or receiving entity. Furthermore, since the national level EAS is solely for the use of the President of the United States, its proper operation must be assured.

The purpose of the information is to ensure that the emergency alert systems throughout the United States are in good working condition thus ensuring that communities will have access to communications systems in time of national emergency and/or local weather related or man made disasters.

OMB Control Number: 3060–0059.

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 5,077.

Estimate Time Per Response: 1 to 5 mins. (330 responses annually/respondent)

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 28,030 hours.

Total Annual Costs: None.

Needs and Uses: Radio frequency (RF) devices (examples: microwaves, computer microprocessor, computers, computer peripherals, telephones with memory or other advanced features, video cameras, recorders, transmitters, electronic musical instruments, video games and radio remote control toys.) imported into the United States are capable of causing harmful interference (safety of life) to radio systems. The FCC working in conjunction with U.S. Customs is responsible for the regulations of both authorized radio services and devices that can cause interference. FCC Form 740 must be completed for each radio frequency device as defined in 47 U.S.C. 302 and D.F.R. 2.802, which is imported into the Customs territory of the United States. Purpose of this information is to keep non-compliant devices from being distributed to the general public thereby reducing the potential for harmful interference being caused to authorized communications. Form can be filed electronically.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14721 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 3, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC 316.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2700.

Estimated Time Per Response: 2.5 hours (1 hour respondent; 1.5 hours contract attorney).

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 2700.

Total Annual Cost: $1,054,000.

Needs and Uses: Filing of the FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of corporation holding broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; where there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; and where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder. The data is used by FCC staff to determine if the applicant is qualified to become a Commission licensee or permittee of a commercial or noncommercial broadcast station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14744 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2333]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

June 3, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 25, 1999. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations (WT Docket No. 98–229).

Number of Petitions Filed: 4

Subject: Streamlining of Radio Technical Rules in Part 73 and 74 of the Commission's Rules (MM Docket No. 98–93).

Numbers of Petitions Filed: 1.

Subject: 1998 Biennial Regulatory Review—Review of International Common Carrier Regulatory (IB Docket No. 98–118).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14648 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

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, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Transpac Services Inc., 360A West Merrick Road, 2/Fl., Valley Stream, NY 11580, Officers: Samuel K. Ma, President (Qualifying Individual), Josephine W. Ma, Vice President

Admiral Overseas Shipping Company, Inc., 41 W. Yokuts Avenue Suite 233, Stockton, CA 95207, Officers: Romeo B. Dilla, Jr., President (Qualifying Individual), Christen P. Della, Vice President Finance

AGI Logistics (Los Angeles) Inc., 754 S. Glasgow Avenue, Inglewood, CA 90301, Officers: Chi-Wing Wong, Chief Executive Officer (Qualifying Individual), Yung-Heung Wong, Director, Jane T. Gee, Director

Amasia Group, Inc., 156–15 146TH Avenue Room 214, Jamaica, NY 11434, Officer: Dick Mao, President (Qualifying Individual)

Amos Cargo Service, Inc., 901 W. Victoria Street Unit B–2, Compton, CA 90220, Officer: Chong W. Kim, President (Qualifying Individual)

Delta Line International Inc., 9164 NW 150 Terrace, Miami, FL 33018, Officer: Ana M. Vega, President (Qualifying Individual)

Edco Export & Ocean Freight Corporation, 5220 NW, 163rd Street, Miami Lakes, FL 33014, Officers: Cory Diaz, President, (Qualifying Individual), Edgar Callander, Vice President

ENI Shipping Inc., 500 Carson Plaza Drive, #217, Carson, CA 90746, Officer: Kevin Hangduck Lee, President (Qualifying Individual)

Everexcel International Freight Forwarding Co., 2075 S. Atlantic Blvd., #C, Monterey Park, CA 91754, Officers: Bonnet Fan, Director (Qualifying Individual), Ginette S.H. Fan, Secretary, Lian Hai Li, Chief Executive Officer

Global Container Line, Inc., 10540 N.W. 26th Street, Suite G–150, Miami, FL 33172, Officer: Alicia Arocha, President (Qualifying Individual)

Global Shipping, Inc., Parlway One, Suite 201, 2697 International Parkway, Virginia Beach, VA 23452, Officers: R. Timothy Jones, Vice President (Qualifying Individual), J. Michael Gatchell, President

Golden Gate Shipping, Inc., 405 North Oak Street, Inglewood, CA 90302, Officers: Julio Almario, Vice President (Qualifying Individual), Wenceslao Villaluz, President, Isabel Villaluz, Vice President Administration

Inter-Americas Transport Inc., 5647 Cartagena Street, Houston, TX 77035, Officers: Armando Miralles, President (Qualifying Individual), Sharon L. Gray, Officer, Board of Directors, Irene Sadkowski Cosme, Officer, Board of Directors

Jecc Management, Inc., 22339 Harbor Ridge Lane, Unit 5, Torrance, CA 90502, Officers: Jack C. Wu, President (Qualifying Individual), Ellen L. Wu, Vice-President, Christina L. Wu, Secretary

Neptune International Group, Inc., 17890 Castleton Street, #105, City of Industry, CA 91748, Officers: Ke Chang Tan, President (Qualifying

Individual), Min Yi Zhu, Financial Officer, Hak Man Tam, Director

North American Cargo Inc., 140–55 34th Avenue, #4M, Flushing, NY 11354, Officers; Mohan Krishnamurti, President (Qualifying Individual), Jacob T. Puthenparambil, Secretary

Oconca Shipping (Lax) Inc., 229 S. Glasgow Avenue, Inglewood, CA 90301, Officers: Mimi Mak, President (Qualifying Individual), Michael Wong, Vice President

Palumbo International Freight Forwarders, Inc., Calle Nebraska 2–8 Ext. Parkville, Guaynabo, PR 00969, Officers: Margarota G. Casseres, Secretary (Qualifying Individual), Filippo Palumbo, President, Mauro Moretti, Treasurer

Pan Star Express Corporation, 353 North Oak Street, Inglewood, CA 90302, Officers: Joe Pan, Chief Executive Officer (Qualifying Individual), Ken Chen, Secretary, Ivy Wang, Chief Financial Officer

Sea Way International, Inc., 350 7th Avenue, Suite 2202, New York, NY 10001, Officers: C. Kim, President (Qualifying Individual), Jay Lee, Managing Director

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Multitrans, Inc., 9024 N.W. 12th Street, Suite #1, Miami, FL 33172, Officers: Jairo A. Gomez, Jr., President, Luis F. Gomez, Vice President (Qualifying Individual)

U.S. Intermodal Maritime Inc., 1330 Broadway, Suite 1054, Oakland, CA 94612, Officers: Dong Ho Lee, President, Sung Wook Lee, Treasurer (Qualifying Individual)

Pro Logistics, Inc., 736 N. Delphia, Park Ridge, IL 60068, Officer: Charles H. Trulls, President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Narita Line, Inc., 24412 S. Main Street, Suite 104, Carson, CA 90745, Officers: Matthew Leung, President (Qualifying Individual), Herbert Lo, Vice President

Global Access, 1510 Interstate 45 North, Suite 200, Conroe, TX 77301, Lisa A. Barragan, Sole Proprietor

John P. Coston & Company, Inc., 2425 Brockton, Suite 103, San Antonio, TX 78217, Officers: Patricia Ann Coston Spradling, President (Qualifying Individual), Mary Kathryn Coston, Vice President

Shipping Solutions International, LLC, 12345 SW Spring Ct., Portland, OR 97225, Officer: Tamra Gay Keeler-Parr, Manager (Qualifying Individual)

Seajet Express Inc. d/b/a Seajet, 10 Summit Avenue, Suite 3, Berkley Heights, NJ 07922, Officers: Michael Caseley, President (Qualifying Individual), Andreas Bauermeister, Exec. Vice President

ARO Cargo Services, Inc., 51–22 Skillman Avenue, Suite 2R, Woodside, NY 11377, Officer: Olga Hernandez, President (Qualifying Individual)

RCL Agencies, Inc., 842 Clifton Avenue, Suite #1, Clifton, NJ 07013, Officers: Patrick Costin, President (Qualifying Individual), Joseph Cuccurullo, Vice President

Trans AM Air and Sea Freight (ORD) Inc., 755 Route 83, Suite 216, Bensenville, IL 60106, Officers: Lam Yuen Sum, President, Raymond Fok, Vice President (Qualifying Individual)

Dated: June 7, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–14718 Filed 6–9–99; 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 July 6, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Cardinal Financial Corporation, Fairfax, Virginia; to acquire 100 percent of the voting shares of Cardinal Bank - Dulles, NA, Reston, Virginia.

2. Cardinal Financial Corporation, Fairfax, Virginia; to acquire 100 percent of the voting shares of Cardinal Bank - Manassas/Prince William, NA, Manassas, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Banks, Inc., Creve Coeur, Missouri; to acquire 100 percent of the voting shares of Century Bank, Beverly Hills, California.

Board of Governors of the Federal Reserve System, June 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14784 Filed 6–9–99; 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 June 25, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Independent Bankers Financial Corp., Irving, Texas, and Community Financial Services, Inc., Atlanta, Georgia; to engage *de novo* through their subsidiary, Internet Banking Communications, LLC, Atlanta, Georgia, in the development and marketing of software products and related services to financial institutions, § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14785 Filed 6–9–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

[Docket No. JFMIP–SR–99–7]

Joint Financial Management Improvement Program (JFMIP)–Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft titled, ''Seized Property and Forfeited Assets System Requirements'' dated June 2, 1999. The draft is being issued to update a May 1993 document. The draft incorporates: (1) Statutory and regulatory changes; (2) technological changes; and (3) JFMIP documentation changes. The document is designed to provide financial managers with Governmentwide mandatory requirements for financial systems in order to process and record financial events effectively and efficiently, and to provide complete, timely, reliable, and consistent information for decision makers and the public.

DATES: Comments are due by August 13, 1999.

ADDRESSES: Copies of the exposure draft have been mailed to agency senior financial officials and are available on the JFMIP website: *http://www.financenet.gov/financenet/fed/jfmip/jfmipexp.htm*.

Comments should be addressed to JFMIP, 441 G Street NW, Room 3111, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Doris Chew, 202–512–9216 or via Internet: *chewd.jfmip@gao.gov*.

SUPPLEMENTARY INFORMATION: The Federal Financial Management Improvement Act (FFMIA) of 1996 mandated that agencies implement and maintain systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial systems requirements documents as a key benchmark that agency systems must meet in order to be substantially in compliance with systems requirements provisions under FFMIA. To support the requirements outlined in the FFMIA, we are updating requirements documents that are obsolete and publishing additional requirements documents.

Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 99–14652 Filed 6–9–99; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99145]

Hepatitis Education for Inmates and Correctional Staff; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement with one or more national voluntary organizations involved with correctional facilities to develop and distribute materials to educate inmates and correctional staff about the risks of transmission and acquisition of viral hepatitis, as well as prevention, counseling, testing, and treatment of viral hepatitis, with an emphasis on hepatitis A, B, and C prevention and counseling. This program addresses the ''Healthy People 2000'' priority area of Immunization and Infectious Diseases.

The purpose of the program is to provide assistance for the development of educational materials that address the prevention, testing, counseling, and treatment of viral hepatitis (focus on the prevention of hepatitis A, B, and C virus infection including hepatitis B vaccination) in correctional settings in the United States. Specifically, applications are solicited for projects aimed at developing and distributing educational materials on viral hepatitis to inmates, and correctional staff.

B. Eligible Applicants

Applications may be provided only to organizations currently providing health education materials to correctional populations and health related training materials to staff of correctional institutions at a national or regional level.

Since the purpose of the program is to provide assistance for the development of educational materials that address the prevention, testing, counseling, and treatment of viral hepatitis in correctional settings in the United States, only applications from organizations that develop and distribute educational materials on viral hepatitis to inmates and correctional staff are solicited.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $100,000 is available in FY 1999 to fund up to 3 awards. It is expected that the average award will be $35,000, ranging from $25,000 to $40,000. It is expected that the award(s) will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

A preference will be given to applicants with access to inmates and corrections staff at local, state, and/or federal (public and private) corrections programs with a demonstrated high concentration of inmates and corrections staff at high risk for viral hepatitis infection.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. below, and CDC will be

responsible for the activities listed under 2. below:

1. Recipient Activities.

a. Conduct a needs assessment to demonstrate a genuine and compelling need for educational materials for inmates and correctional staff. At the conclusion of the needs assessment, begin to develop appropriate educational materials.

b. Develop educational materials on prevention, testing, counseling, and treatment for inmates in all types of correctional settings. The applicant may include formative research and focus group testing of materials. The central focus of these educational materials should be the prevention of hepatitis A, B, and C virus infection including hepatitis B vaccination.

c. Develop appropriate materials specific to the needs of this inmate and correctional staff population and correlate with the needs assessment done in the first year.

d. Develop an inmate education curriculum emphasizing risk-reduction, specific to the prevention of viral hepatitis.

e. Evaluate the program established to determine pre- and post-education knowledge about the prevention of hepatitis.

2. CDC Activities.

a. Provide technical information for all forms of viral hepatitis including information about current testing, modes of transmission, treatment, vaccinations, and complications.

b. Provide assistance in the development and distribution of the educational materials for both inmates and correctional staff.

c. Provide the source of information for these educational materials.

d. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially an or at least on an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced 12 cpi font.

Include the following in the narrative section of your application:

1. Program objectives that respond to the program requirements outlined in this announcement.

2. An operational plan that describes how the objectives will be achieved.

3. An evaluation plan that includes qualitative and quantitative measures to assess the effectiveness of the program in accomplishing your program objectives.

4. A projected time line for conducting the proposed program and evaluation activities.

5. A description of personnel that includes current and proposed staff with position titles, position descriptions, and percentage of time staff person will devote to assigned project responsibilities. Also, include a curriculum vitae of new staff.

6. A detailed, line-item budget for the project and a budget narrative that justifies each line-item.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit. On or before July 23, 1999, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time prior to the submission to the review panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Objectives

The degree to which the project objectives are capable of achieving the specific requirements defined in the program announcement. (25 points)

2. Plan

The degree to which the proposed activities described in the plan of operation, if well executed, are capable of attaining project objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (25 points)

3. Evaluation

The degree to which the proposed plan of evaluation will adequately measure the objectives. (10 points)

4. Staff

The degree to which the current and proposed staff are appropriate for executing the project activities. (10 points)

5. Capacity

a. The degree to which organization demonstrates expertise in representing both the security and health aspects of a broad range of correctional facilities and activities (e.g., pre-release). (15 points)

b. Evidence of experience/history working with corrections in health, security, education, and training of inmates and staff. (15 points)

6. Budget

The degree to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

7 . Human Subjects

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (Not Scored)

____ YES ____ NO

Comments: _____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Quarterly Progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic

Assistance Number

This program is authorized under sections 301(a) and 317(k)(1)of the Public Health Service Act, (42 U.S.C. sections 247b(k)(1) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance (CFDA) number is 93.283.

J. Where To Obtain Additional Information

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 you name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (404) 842–2749, Email address: lxt1@cdc.gov.

See also the CDC homepage on the Internet to obtain a copy of this announcement: http://www.cdc.gov

For program technical assistance, contact: Linda Moyer, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Rickettsial Diseases, Hepatitis Branch, 1600 Clifton Rd, NE., Atlanta, GA 30333, Telephone: (404) 639–2709, E-mail address: lam1@cdc.gov.

Dated: June 4, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14700 Filed 6–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1590]

Merck & Co., Inc., et al.; Withdrawal of Approval of 32 New Drug Applications and 48 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 32 new drug applications (NDA's) and 48 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: JULY 12, 1999.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 5–620	Mannitol Injection	Merck & Co., Inc., P.O. Box 4, BLA–20, West Point, PA 19486.
NDA 6–903	Milibis (glycobiarsol) Tablets	Sanofi Pharmaceuticals, Inc., 90 Park Ave., New York, NY 10016.
NDA 7–542	Tromexan Tablets	Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, NJ 07936–1080.
NDA 8–153	Dramamine (dimenhydrinate) Injection	G.D. Searle & Co., 4901 Searle Pkwy., Skokie, IL 60077.
NDA 8–843	Pro-Banthine (propantheline bromide) Injection	Do.
NDA 10–126	VapoSteam	Richardson-Vicks, 1 Far Mill Crossing, Shelton, CT 06484.
NDA 11–316	Temaril (trimeprazine tartrate) Tablets, Syrup, and Capsules	Allergan, 2525 Dupont Dr., P.O. Box 19534, Irvine, CA 92623–9534.
NDA 11–583	Hydeltrasol Injection	Merck & Co., Inc.
NDA 12–575	Actifed with Codeine (pseudoephedrine hydro-chloride, 30 milligrams (mg)/5 milliliters (mL), triprolidine hydrochloride, 25 mg/5 mL, codeine phosphate, 10 mg/5 mL)	Glaxo Wellcome Inc. 5 Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709.
NDA 13–553	Esimil (guanethidine monosulfate/hydro-chlorothiazide) Combination Tablets	Novartis Pharmaceuticals Corp.
NDA 15–865	Levoprome (methotrimeprazine) Injection	Immunex Corp., 51 University St., Seattle, WA 98101–2936.
NDA 16–349	10% Dextrose Injection	Baxter Healthcare Corp., Rte. 120 and Wilson Rd., Round Lake, IL 60073–0490.
NDA 16–717	10% Travert (invert sugar) Injection in PL 146 Container	Do.
NDA 16–938	Catarase (chymotrypsin intraocular solution) 1:5000 Ophthalmic Intraocular Solution	Ciba Vision Ophthalmics, 11460 John Creek Pkwy., Duluth, GA 30097–1556.
NDA 17–796	Byrel (piperazine citrate) Syrup	Sanofi Pharmaceuticals, Inc.

Application No.	Drug	Applicant
NDA 17–916	Stannous Macro-aggregated Albumin (SnMAA)	Syncor Pharmaceuticals, Inc., 1313 Washington Ave., Golden, CO 80401.
NDA 17–954	Bretylol (bretylium tosylate) Injection, 50 mg/mL	Faulding Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
NDA 18–115	Triaminic-12 (phenyl-propanolamine hydro-chloride 75 mg and chlorpheniramine maleate 12 mg) Sustained-release Tablets	Novartis Consumer Health, Inc., 560 Morris Ave., Summit, NJ 07901–1312.
NDA 18–193	Velosulin (Regular purified pork insulin) Injection	Novo Nordisk Pharmaceuticals Inc., 100 Overlook Ctr., suite 200, Princeton, NJ 08540–7810.
NDA 18–194	Insulatard (NPH purified pork isophane insulin suspension) Injection	Do.
NDA 18–195	Mixtard 70/30 (70% purified pork isophane suspension and 30% purified pork insulin) Injection	Do.
NDA 18–580	Yutopar (ritodrine hydrochloride) Injection	Astra USA Inc., P.O. Box 4500, Westborough, MA 01581–4500.
NDA 18–698	Thallous Chloride TL–201 Injection	Syncor Pharmaceuticals, Inc.
NDA 18935	Pseudoephedrine Hydrochloride 120 mg/Chlorpheniramine Maleate 12 mg Extended-release Capsules	Schwarz Pharma, P.O. Box 2038, Milwaukee, WI 53201.
NDA 19–381	Ten-K Tablets (Potassium Chloride Extended-release Tablets USP)	Novartis Pharmaceuticals Corp.
NDA 19–580	Osmovist (iotrolan) Injection	Berlex Laboratories, Inc., 340 Changebridge Rd., P.O. Box 1000, Montville, NJ 07450–1000.
NDA 19–585	Mixtard Human 70/30 (70% human insulin isophane suspension and 30% human insulin (semisynthetic)) Injection	Novo Nordisk Pharmaceuticals Inc.
NDA 20–755	Caverject (alprostadil injection) aqueous, 5 microgram (mcg)/mL (only those portions of NDA that deal with 5 mcg/mL strength)	Pharmacia & Upjohn, 7000 Portage Rd., Kalamazoo, MI 49001–0199.
NDA 50–031	RONDOMYCIN (methacycline hydrochloride) Syrup	Pfizer Inc., 235 East 42d St., New York, NY 10017–5755.
NDA 50–073	Coly-Mycin M Diagnostic (sodium colistimethate for diagnostic use)	Parke-Davis Pharmaceutical Research, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 50–075	Polycillin (ampicillin trihydrate)	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000.
NDA 50–287	TERRAMYCIN (oxytetra-cycline) Tablets	Pfizer Inc.
ANDA 40–097	Hydrocortisone and Acetic Acid Otic Solution USP, 1%/2%	Bausch & Lomb Pharmaceuticals, Inc., 8500 Hidden River Pkwy., Tampa, FL 33637.
ANDA 63–163	Clindamycin Phosphate Injection USP, 150 mg/mL)	Bedford Laboratories, Div. of Ben Venue Laboratories, Inc., 270 Northfield Rd., Bedford, OH 44146.
ANDA 70–107	PROPACET 100 (Propoxyphene Napsylate and Acetaminophen Tablets USP), 100 mg/650 mg	Teva Pharmaceuticals USA, 1510 Delp Dr., Kulpsville, PA 19443.
ANDA 70–691	Methyldopate Hydrochloride Injection USP, 50 mg/mL	Faulding Pharmaceutical Co., 11 Commerce Dr., Cranford, NJ 07016.
ANDA 70–732	Propoxyphene Napsylate and Acetaminophen Tablets USP, 100 mg/650 mg	Teva Pharmaceuticals USA Do.
ANDA 70–849	Methyldopate Hydrochloride Injection USP, 50 mg/mL	Faulding Pharmaceutical Co.
ANDA 70–969	Thiothixene Hydrochloride Oral Solution USP (Concentrate) 5 mg/mL	Alpharma, U.S. Pharmaceuticals Div., 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
ANDA 71–990	Metoclopramide Injection USP, 5 mg/mL	Faulding Pharmaceutical Co.
ANDA 72–155	Metoclopramide Injection USP, 5 mg/mL	Bedford Laboratories.
ANDA 72–244	Metoclopramide Injection USP, 5 mg/mL	Do.
ANDA 72–247	Metoclopramide Injection USP, 5 mg/mL	Do.
ANDA 72–383	Sulfamethoxazole and Trimethoprim for Injection Concentrate USP	Do.
ANDA 72–427	Potassium Chloride Extended-release Capsules USP, 10 milliequivalents (mEq)	Savage Laboratories, 60 Baylis Rd., Melville, NY 11747.
ANDA 72–966	Albuterol Sulfate Tablets USP, 2 mg	Copley Pharmaceutical, Inc., 25 John Rd., Canton, MA 02021.
ANDA 72–967	Albuterol Sulfate Tablets USP, 4 mg	Do.
ANDA 73–307	Albuterol Sulfate Inhalation Solution, 0.5%	Do.
ANDA 73–398	Potassium Chloride Extended-release Capsules USP, 8 mEq	Savage Laboratories Do.
ANDA 73–495	Albuterol Sulfate Inhalation Solution, 0.083%	Copley Pharmaceutical, Inc.
ANDA 74–285	Diflunisal Tablets USP, 250 mg and 500 mg	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 74–406	Sufentanil Citrate Injection USP, 50 mcg/mL	Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705.
ANDA 74–665	Inapamide Tablets USP, 1.25 mg and 2.5 mg	Novopharm N.C. Inc., U.S. Agent for Novopharm Ltd., 4700 Novopharm Blvd., Wilson, NC 27893.
ANDA 80–763	Hydramine (diphenhydramine hydrochloride) Elixir 12.5 mg/5 mL	Alpharma.
ANDA 83–296	Aeroseb-DEX (dexamethasone 0.01%) Topical Aerosol Spray	Allergan Herbert, P.O. Box 19534, Irvine, CA 92623–9534.
ANDA 84–055	ELDECORT (Hydro-cortisone Cream USP) 2.5%	ICN Pharmaceuticals, Inc., 3300 Hyland Ave., Costa Mesa, CA 92626.
ANDA 85–482	LIBRITABS (Chlordiazepoxide Tablets USP)	Do.

Application No.	Drug	Applicant
ANDA 85–805	Aeroseb-HC (hydrocortisone 0.5%) Topical Aerosol Spray	Allergan Herbert.
ANDA 86–164	Nitrol Ointment (Nitroglycerin Ointment, 2%)	Savage Laboratories.
ANDA 86–604	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 5 mg	Forest Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 87–171	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 2.5 mg	Do.
ANDA 87–286	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 1 mg	Do.
ANDA 87–322	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 1.5 mg	Do.
ANDA 87–323	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 2 mg	Do.
ANDA 87–615	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 3 mg	Do.
ANDA 87–782	Nitrol Ointment (Nitroglycerin Ointment, 2% unit-dose)	Savage Laboratories.
ANDA 87–998	Spironolactone Tablets USP, 25 mg	Purepac Pharmaceutical Co.
ANDA 88–421	Amitriptyline Hydro-chloride Tablets USP, 10 mg	Copley Pharmaceutical Inc.
ANDA 88–422	Amitriptyline Hydro-chloride Tablets USP, 25 mg	Do.
ANDA 88–423	Amitriptyline Hydro-chloride Tablets USP, 50 mg	Do.
ANDA 88–424	Amitriptyline Hydro-chloride Tablets USP, 75 mg	Do.
ANDA 88–425	Amitriptyline Hydro-chloride Tablets USP, 100 mg	Do.
ANDA 88–426	Amitriptyline Hydro-chloride Tablets USP, 150 mg	Do.
ANDA 89–817	DEY-LUTE (Isoetharine Inhalation Solution USP) Sulfite-Free, 0.08%	Dey, L.P., 2751 Napa Valley Corporate Dr., Napa, CA 94558.
ANDA 89–818	DEY-LUTE (Isoetharine Inhalation Solution USP) Sulfite-Free, 0.1%	Do.
ANDA 89–819	DEY-LUTE (Isoetharine Inhalation Solution USP) Sulfite-Free, 0.17%	Do.
ANDA 89–820	DEY-LUTE (Isoetharine Inhalation Solution USP) Sulfite-Free, 0.25%	Do.
ANDA 89–932	Theophylline Extended-Release Capsules, 300 mg	F.H. Faulding & Co., Ltd., U.S. Agent: Faulding Inc., 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 89–976	Theophylline Extended-Release Capsules, 100 mg	Do.
ANDA 89–977	Theophylline Extended-Release Capsules, 200 mg	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective July 12, 1999.

Dated: May 24, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–14656 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Annual Comprehensive List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing an annual comprehensive list of all guidance documents currently in use at the agency. FDA committed to publishing this list in its February 1997 ''Good Guidance Practices'' (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to inform the public of the existence and availability of all current guidance documents.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Information on where to obtain a single copy of listed guidance documents is provided for each agency Center individually in the specific Center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: Lisa M. Helmanis, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publish an annual comprehensive list of guidance documents and quarterly updates that list all guidance documents that were issued and withdrawn during that quarter, including ''Level 2'' guidance documents.

On June 1, 1998, the President instructed all Federal agencies to ensure the use of ''plain language'' in all new documents. As part of this initiative,

FDA uses the principles of ''plain language'' set forth by the President when writing its guidance documents. The agency seeks public comment on the clarity of its guidances.

The following comprehensive list of guidance documents represents all guidances currently in effect. This comprehensive list is maintained on the FDA World Wide Web home page. This list will be updated and published annually in the **Federal Register**. The guidance documents on this comprehensive list are organized by the issuing Center or Office within FDA, and are further grouped by the intended users or regulatory activities to which they pertain. Dates provided in the following list refer to the date of issuance or, where applicable, the date of last revision of the document. Document numbers are provided where available.

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Requirements for Infrequent Plasmapheresis Donors	August 27, 1982	FDA regulated industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), CBER, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet: http://www.fda.gov/cber
Recommendations to Decrease the Risk of Transmitting AIDS from Plasma Donors	March 24, 1983	Do	Do
Deferral of Blood Donors Who Have Received the Drug Accutane (isotretinoin/Roche); 13-cis-retinoic acid)	February 28, 1984	Do	Do
Equivalent Methods for Compatibility Testing	December 14, 1984	Do	Do
Plasma Derived from Therapeutic Plasma Exchange	December 14, 1984	Do	Do
Reduction of the Maximum Platelet Storage Period to 5 Days in an Approved Container	June 2, 1986	Do	Do
Deferral of Donors Who Have Received Human Pituitary-Derived Growth Hormone	November 25, 1987	Do	Do
Recommendations for the Management of Donors and Units That Are Initially Reactive for Hepatitis B Surface Antigen (HBsAg)	December 2, 1987	Do	Do
Extension of Dating Period for Storage of Red Blood Cells, Frozen	December 4, 1987	Do	Do
To Licensed In-Vitro Diagnostic Manufacturers: Handling of Human Blood Source Materials	December 23, 1987	Do	Do
Recommendations for Implementation of Computerization in Blood Establishments	April 6, 1988	Do	Do
Control of Unsuitable Blood and Blood Components	April 6, 1988	Do	Do
Discontinuance of Prelicensing Inspection for Immunization Using Licensed Tetanus Toxoid and Hepatitis B and Rabies Vaccines	July 7, 1988	Do	Do
Physician Substitutes	August 15, 1988	Do	Do
To Licensed Manufacturers of Blood Grouping Reagents: Criteria for Exemption of Lot Release	August 26, 1988	Do	Do
To Manufacturers of HTLV–I Antibody Test Kits: Antibody to Human T–Cell Lymphotropic Virus, Type I (HTLV–I) Release Panel I	October 18, 1988	Do	Do
HTLV–1 Antibody Testing	November 29, 1988	Do	Do
Use of Recombigen HIV–1 LA Test	February 1, 1989	Do	Do
Guidance for Autologous Blood and Blood Components	March 15, 1989	Do	Do
HTLV–I Antibody Testing	July 6, 1989	Do	Do
Use of Recombigen HIV–1 Latex Agglutination (LA) Test	August 1, 1989	Do	Do
Requirements for Computerization of Blood Establishments	September 8, 1989	Do	Do
Abbott Laboratories' HIVAG–1 Test for HIV–1 Antigen(s) Not Recommended for Requirements for Computerization of Blood Establishments	October 4, 1989	Do	Do
Autologous Blood Collection and Processing Procedures	February 12, 1990	Do	Do
Use of Genetic Systems HIV–2 EIA	June 21, 1990	Do	Do
Deficiencies Relating to the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Responsibilities of Blood Establishments Related to Errors & Accidents in the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do
Revision to October 26, 1989 Guideline for Collection of Blood or Blood Products from Donors with Positive Tests for Infectious Disease Markers (High Risk Donors)	April 17, 1991	Do	Do
FDA Recommendations Concerning Testing for Antibody to Hepatitis B Core Antigen (Anti-HBc)	September 10, 1991	Do	Do
Disposition of Blood Products Intended for Autologous Use That Test Repeatedly Reactive for Anti-HCV	September 11, 1991	Do	Do
Clarification of FDA Recommendations for Donor Deferral and Product Distribution Based on the Results of Syphilis Testing	December 12, 1991	Do	Do
Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products	April 23, 1992	Do	Do
Use of Fluorognost HIV–1 Immunofluorescent Assay (IFA)	April 23, 1992	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	April 23, 1992	Do	Do
Exemptions to Permit Persons with a History of Viral Hepatitis Before the Age of Eleven Years to Serve as Donors of Whole Blood and Plasma; Alternative Procedures (21 CFR 640.120)	April 23, 1992	Do	Do
Changes in Equipment for Processing Blood Donor Samples	July 21, 1992	Do	Do
Nomenclature for Monoclonal Blood Grouping Reagents	August 19, 1993	Do	Do
Volume Limits for Automated Collection of Source Plasma	November 4, 1992	Do	Do
Revision of October 7, 1988 Memo Concerning Red Blood Cell Immunization Programs	December 16, 1992	Do	Do
Recommendations Regarding License Amendments and Procedures for Gamma Irradiation of Blood Products	July 22, 1993	Do	Do
Deferral of Blood and Plasma Donors Based on Medications	July 28, 1993	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	August 19, 1993	Do	Do
Changes in Administrative Procedures	September 9, 1993	Do	Do
Guidance Regarding Post Donation Information Reports	December 10, 1993	Do	Do
Donor Suitability Related to Laboratory Testing for Viral Hepatitis and a History of Viral Hepatitis	December 22, 1993	Do	Do
Recommendations for the Invalidation of Test Results When Using Licensed Viral Marker Assays to Screen Donors	January 3, 1994	Do	Do
Recommendations for Deferral of Donors for Malaria Risk	July 26, 1994	Do	Do
Use of and FDA Cleared or Approved Sterile Docking Device (STCD) in Blood Bank Practices (transmittal memo 8/12/94) (corrects 7/29/94 Memo)	August 5, 1994	Do	Do
Recommendations to Users of Medical Devices That Test for Infectious Disease Markers by Enzyme Immunoassay (EIA) Test Systems	December 20, 1994	Do	Do
Timeframe for Licensing Irradiated Blood Products	February 3, 1995	Do	Do
Revision of 8/27/82 FDA Memo: Requirements for Infrequent Plasmapheresis Donors	March 10, 1995	Do	Do
To All Establishments Performing Red Blood Cell Immunizations: Revised Recommendations for Red Blood Cell Immunization Programs for Source Plasma	March 14, 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Recommendations for the Deferral of Current and Recent Inmates of Correctional Institutions as Donors of Whole Blood, Blood Components, Source Leukocytes and Source Plasma	June 8, 1995	Do	Do
Disposition of Products Derived from Donors Diagnosed with, or at Known High Risk for, Creutzfeldt-Jakob Disease	August 8, 1995	Do	Do
Recommendations for Labeling and Use of Units of Whole Blood, Blood Components, Source Plasma, Recovered Plasma or Source Leukocytes Obtained from Donors with Elevated Levels of Alanine Aminotransferase (ALT)	August 8, 1995	Do	Do
Precautionary Measures to Further Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease by Blood and Blood Products	August 8, 1995	Do	Do
Recommendations for Donor Screening with a Licensed Test for HIV–1 Antigen	August 8, 1995	Do	Do
Guidance Concerning Conversion to FDA-Reviewed Software Products	November 13, 1995	Do	Do
Donor Deferral Due to Red Blood Cell Loss During Collection of Source Plasma by Automated Plasmapheresis	December 4, 1995	Do	Do
Additional Recommendations for Donor Screening With a Licensed Test for HIV–1 Antigen	March 14, 1996	Do	Do
Additional Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leucocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	May 16, 1996	Do	Do
Recommendations and Licensure Requirements for Leukocyte-Reduced Blood Products	May 29, 1996	Do	Do
Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human T–Lymphotropic Virus Type I (HTLV–I)	July 19, 1996	Do	Do
Interim Recommendations for Deferral of Donors at Increased Risk for HIV–1 Group O Infection	December 11, 1996	Do	Do
Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) by Blood and Blood Products	December 11, 1996	Do	Do
Interstate Shipment of Interferon for Investigational Use in Laboratory Research Animals or Tests in Vitro	November 21, 1983	Do	Do
Alternatives to Lot Release	July 20, 1993	Do	Do
Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Therapy Products; Notice	October 14, 1993	Do	Do
Home Specimen Collection Kit Systems Intended for Human Immunodeficiency Virus (HIV–1 and/or HIV–2) Antibody Testing; Revisions to Previous Guidance	February 23, 1995	Do	Do
Interim Definition and Elimination of Lot-by-Lot Release for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products	December 8, 1995	Do	Do
Draft Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation; Notice	September 23, 1996	Do	Do
The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents	February 27, 1997	Do	Do
Preclearance of Promotional Labeling; Clarification	March 5, 1997	Do	Do
Draft Guidance for Industry: Computerized Systems Used in Clinical Trials; Availability	June 18, 1997	Do	Do
Recommended Methods for Short Ragweed Pollen Extracts	November 1, 1985	Do	Do
Information Relevant to the Manufacture of Acellular Pertussis Vaccine	August 23, 1989	Do	Do
Recommended Methods for Blood Grouping Reagents Evaluation	March 1, 1992	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Recommended Methods for Evaluating Potency, Specificity and Reactivity of Anti-Human Globulin	March 1, 1992	Do	Do
Methods of the Allergenic Products Testing Laboratory	October 1, 1993	Do	Do
Guide to Inspections of Blood Banks, Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs	September 1, 1994	FDA personnel	Do
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1, 1996	Do	Do
Guide to Inspections of Source Plasma Establishments (Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs)	June 1, 1997	Do	Do
Notification Process for Transfusion Related Fatalities and Donation Related Deaths (revised telephone number)	October 7, 1997	FDA regulated industry	Do
Submission Requirements for Requesting Certificates for Exporting Products to Foreign Countries	October 15, 1997	Do	Do
CBER Refusal to File (RTF) Guidance for Product and Establishment License Applications	July 12, 1993	Do	Do
OELPS, Advertising and Promotional Labeling Staff Procedural Guidance Document (Draft)	August 1, 1994	Do	Do
Guidance on Alternatives to Lot Release for Licensed Biological Products	October 27, 1994	Do	Do
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products	November 1, 1995	Do	Do
Computer Assisted Product License Application (CAPLA) Guidance Manual	March 1, 1996	Do	Do
FDA Guidance Concerning Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-Derived Products	April 26, 1996	Do	Do
Guidance for Industry—The Content and Format for Pediatric Use Supplements	May 23, 1996	Do	Do
Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair of Reconstruction	May 24, 1996	Do	Do
Guidance for Industry for the Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA-Derived Product or a Monoclonal Antibody Product for In Vivo Use	August 15, 1996	Do	Do
Draft Guidance for Industry: Manufacture, Processing or Holding of Active Pharmaceutical Ingredients	September 20, 1996	Do	Do
Draft Guidance for Industry; Submitting Application Archival Copies in Electronic Format	November 4, 1996	Do	Do
Draft Guidance for Industry; Electronic Submission of Case Report Forms and Case Report Tabulations	November 4, 1996	Do	Do
Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products	January 10, 1997	Do	Do
Proposed Approach to Regulation of Cellular and Tissue-Based Products	February 28, 1997	Do	Do
Tables 1 and 2 from Proposed Approach to Regulation of Cellular and Tissue-Based Products	March 4, 1997	Do	Do
Guidance for Industry—Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	March 13, 1997	Do	Do
Guidance for Industry for the Evaluation of Combination Vaccines for Preventable Diseases: Production, Testing and Clinical Studies	April 10, 1997	Do	Do
Guidance for Industry—Changes to an Approved Application: Biological Products	July 24, 1997	Do	Do
Guidance for Industry—Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products	July 24, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry—Screening and Testing of Donors of Human Tissue Intended for Transplantation	July 29, 1997	Do	Do
Guidance for Industry—Donor Screening for Antibodies to HTLV–II	August 15, 1997	Do	Do
Draft Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts	August 25, 1997	Do	Do
Guidance for Industry—Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report	August 27, 1997	Do	Do
Draft Guidance for Industry Efficacy Evaluation of Hemoglobin-and Perfluorocarbon-Based Oxygen Carriers	September 1, 1997	Do	Do
Guidance for Industry—The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) in FDA—Regulated Products for Human Use	October 7, 1997	Do	Do
FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics	November 25, 1992	Do	Do
FDA Guidance Document Concerning Use of Pilot Manufacturing Facilities for the Development and Manufacture of Biological Products; Availability	July 11, 1995	Do	Do
Advertising and Promotion; Guidance; Notice	October 8, 1996	Do	Do
Interpretative Guidelines of the Source Plasma (Human) Standards	October 2, 1973	Do	Do
Guidelines for Reviewing Amendments to Include Plasmapheresis of Hemophiliacs	July 20, 1976	Do	Do
Package Insert: Immune Serum Globulin (Human)	March 30, 1978	Do	Do
Guidelines for Interpretation of Potency Test Results for All Forms of Adsorbed Diphtheria and Tetanus Toxoids	April 12, 1979	Do	Do
Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances	June 1, 1980	Do	Do
Collection of Human Leukocytes for Further Manufacturing (Source Leukocytes)	January 28, 1981	Do	Do
Platelet Testing Guidelines—Approval of New Procedures and Equipment	July 1, 1981	Do	Do
Revised Guideline for Adding Heparin to Empty Containers for Collection of Heparinized Source Plasma (Human)	August 1, 1981	Do	Do
Guidelines for Meningococcal Polysaccharide Vaccines	July 17, 1985	Do	Do
Guideline for the Uniform Labeling of Blood and Blood Components	August 1, 1985	Do	Do
Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline On General Principles of Process Validation	May 1, 1987	Do	Do
Guideline On Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	Do	Do
Guideline On Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Revised Guideline for the Collection of Platelets, Pheresis	October 7, 1988	Do	Do
Draft Guideline for the Design of Clinical Trials for Evaluation of Safety and Efficacy of Allergenic Products for Therapeutic Uses	November 1, 1988	Do	Do
Guidelines for Release of Pneumococcal Vaccine, Polyvalent	February 1, 1989	Do	Do
FDA Regulated Industries for Drug Master Files	September 1, 1989	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
FDA Regulated Industries for Collection of Blood or Blood Products from Donors With Positive Tests for Infectious Disease Markers (''High Risk'' Donors)	October 26, 1989	Do	Do
Guideline for Determination of Residual Moisture in Dried Biological Products	January 1, 1990	Do	Do
Guideline on the Preparation of Investigational New Drug Products (Human & Animal)	March 1, 1991	Do	Do
Draft Guideline for the Validation of Blood Establishment Computer Systems	September 28, 1993	Do	Do
Guideline for Adverse Experience Reporting for Licensed Biological Products	October 15, 1993	Do	Do
Guideline for Quality Assurance in Blood Establishments	July 11, 1995	Do	Do
To In Vitro Diagnostic Reagent Manufacturers: Guidance On the Labeling of Human Blood Derived In Vitro Diagnostic Devices In Regard to Labeling for HTLV–III/LAV Antibody Testing	December 6, 1986	Do	Do
To Biologic Product Manufacturers—Controlling Materials of Bovine or Ovine Origin	May 3, 1991	Do	Do
To Sponsors of INDs Using Retroviral Vectors	September 20, 1993	Do	Do
To Manufacturers: Bovine Derived Materials (BSE)	December 17, 1993	Do	Do
To Blood Establishment Computer Software Manufacturers	March 31, 1994	Do	Do
To Sponsors of INDs for Human Immunoglobulin Products	May 23, 1994	Do	Do
To Manufacturers of Licensed Anti-HIV Test Kits	May 26, 1994	Do	Do
Letter to Manufacturers of Immune Globulin Intravenous (Human) (IGIV), Aseptic Meningitis Syndrome	October 3, 1994	Do	Do
To Manufacturers of Immune Globulin Products: Testing for Hepatitis C Virus RNA Immunoglobulin	December 27, 1994	Do	Do
To Blood Establishment Computer Software Manufacturers	February 10, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: HCV RNA Testing by PCR	March 3, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: Additional Information Regarding HCV RNA Testing by PCR	March 13, 1995	Do	Do
To Health Professionals: Implementation of Testing for HCV RNA by PCR for Immune Globulin Products for Intramuscular Administration	March 14, 1995	Do	Do
Dear Colleague: Regarding Reverse Transcriptase Activity in Viral Vaccines Produced in Chicken Cells	January 4, 1996	Do	Do
To Manufacturers of FDA-Regulated Drug/Biological/Device Products, Bovine Spongiform Encephalopathy (BSE)	May 9, 1996	Do	Do
To Manufacturers: Implementation of Testing for Hepatitis C Virus RNA by Manufacturers: Implementation of Testing for Hepatitis C Virus RNA by Polymerase Chain Reaction (PCR) of Intramuscular Immune Globulin Preparations	June 13, 1996	Do	Do
To Manufacturers: HIV–1 Group O	July 31, 1996	Do	Do
To All Plasma Derivative Manufacturers and to ABRA: Warning Statement for Plasma Derivative Product Labeling	October 7, 1996	Do	Do
To Biologic Product Manufacturers: Revised Procedures for Internal Labeling Review Number Assignment	December 3, 1996	Do	Do
To Plasma Fractionators—CBER's View on Product Recalls Conducted by the Plasma Fractionation Industry	May 29, 1997	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products Subject to Licensure	June 20, 1983	Do	Do
Draft PTC in the Production and Testing of Interferon Intended for Investigational Use in Humans (Interferon Test Procedures)	July 28, 1983	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology	April 10, 1985	Do	Do
Draft PTC in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to Human Immunodeficiency Virus Type 1 (1989)	August 8, 1989	Do	Do
PTC in the Collection, Processing and Testing of Ex Vivo Activated Mononuclear Leukocytes for Administration to Humans	August 22, 1989	Do	Do
Cytokine and Growth Factor Pre-Pivotal Trial Information Package	April 2, 1990	Do	Do
PTC in the Safety Evaluation of Hemoglobin-Based Oxygen Carriers	August 21, 1990	Do	Do
PTC in the Design and Implementation of Field Trials for Blood Grouping Reagents and Anti-Human Globulin	March 1, 1992	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products for Further Manufacturing into Blood Grouping Reagent and Anti-Human Globulin	March 1, 1992	Do	Do
Supplement to the PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability	April 6, 1992	Do	Do
Draft PTC in the Characterization of Cell Lines Used to Produce Biologicals	July 12, 1993	Do	Do
PTC in the Manufacture and Testing of Therapeutic Products for Human Use Derived from Transgenic Animals	August 22, 1995	Do	Do
PTC on Plasmid DNA Vaccines for Preventive Infectious Disease Indications	December 22, 1996	Do	Do
PTC in the Manufacture and Testing of Monoclonal Antibody Products for Human Use	February 28, 1997	Do	Do
Reviewer Guidance, Computer Software	April 26, 1995	FDA Personnel	Do
Informed Consent for Plasmapheresis/Immunization	October 1, 1995	Do	Do
Draft Reviewers' Guide: Changes in Personnel	October 1, 1995	Do	Do
Disease Associated Antibody Collection Program	October 1, 1995	Do	Do
Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software	January 13, 1997	Do	Do
Compliance Program Guidance Manual (Drugs and Biologics)	1994	Do	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–605–6050 (Publication No. 94–920699)
Guidance for Industry: Industry-Supported Scientific and Educational Activities	November 1997	FDA regulated industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), CBER, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet: http://www.fda.gov/cber
To Biologic Product Manufacturers—Withdrawal of Human Blood-Derived Materials Because Donors Diagnosed With, or At Increased Risk For, CJD	December 11, 1997	Do	Do
To Allergenic Extract Manufacturers—Standardized Grass Pollen Extracts	December 23, 1997	Do	Do
Draft Guidance for Industry: Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMS)	December 1997	Do	Do
Dear Doctor Letter—Difficulty in Obtaining Immune Globulin Intravenous (Human)	January 28, 1998	Health care providers	Do
Guidance for Industry: Year 2000 Date Change for Computer Systems and Software Applications Used in the Manufacture of Blood Products	January 1998	FDA regulated industry	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use	January 1998	Do	Do
Draft Guidance for Industry: Container and Closure Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products	January 1998	Do	Do
Draft Guidance for Industry: Clinical Development of Programs for Drugs, Devices and Biological Products Intended for Treatment of Osteoarthritis (OA)	February 1998	Do	Do
Draft Guidance for Industry: Manufacturing, Processing or Holding Active Pharmaceutical Ingredients	March 1998	Do	Do
Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy	March 1998	Do	Do
Dear Doctor Letter—Standardized Grass Pollen Extracts	May 11, 1998	Health care providers	Do
Draft Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research	May 1998	FDA regulated industry	Do
Draft Guidance for Industry: Pilot Program for Electronic Investigational New Drug (eIND) Applications for Biological Products	May 1998	Do	Do
Draft Guidance for Industry: Electronic Submissions of Case Report Forms (CRFs), Case Report Tabulations (CRTs) and Data to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Draft Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/ Establishment License Application (ELA) to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds	May 1998	Do	Do
Guidance for Industry: Classifying Resubmissions in Response to Action Letters	May 1998	Do	Do
Guidance for Industry: Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis and Impact on Dosing and Labeling	May 1998	Do	Do
Guidance for Industry: Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 1998	Do	Do
Guidance for Industry: Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products	May 1998	Do	Do
Draft Guidance for Industry: Stability Testing of Drug Substances and Drug Products	June 1998	Do	Do
ICH Draft Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	June 9, 1998	Do	Do
ICH Guidance on Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	Do	Do
Draft Guidance for Industry: Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996	June 12, 1998	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	June 1998	Do	Do
Guidance for Industry: Errors and Accidents Regarding Saline Dilution of Samples Used for Viral Marker Testing	June 1998	Do	Do
Draft Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Virus Type 1	July 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and for the Completion of the FDA Form 356h ''Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use''	July 1998	Do	Do
Guidance for Industry: Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements	July 1998	Do	Do
Guidance for Industry: Environmental Assessment of Human Drug and Biologics Applications	July 1998	Do	Do
Draft Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods	July 1998	Do	Do
Dear Colleague Letter—Use of Haemophilus influenzae Conjugate Vaccines in Combination With DTaP in Infants	August 12, 1998	Health care providers	Do
Dear Doctor Letter—Albumin Use in Seriously Ill Patients	August 19, 1998	Do	Do
Draft Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test	August 1998	FDA regulated industry	Do
Draft Guidance for Industry: Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	August 1998	Do	Do
ICH Guidance on Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
ICH Guidance on Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
ICH Guidance on Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin	September 24, 1998	Do	Do
Change to the Guidance Entitled ''Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) by Blood and Blood Products''—Information Sheet	September 8, 1998	Do	Do
Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV	September 1998	Do	Do
Draft Guidance for Industry: Submitting Debarment Certification Statements	September 1998	Do	Do
Guidance for Industry: How to Complete the Vaccine Adverse Reporting System Form (VAERS–1)	September 1998	Do	Do
Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review	September 1998	Do	Do
CBER's Year 2000 Letter	October 27, 1998	Do	Do
Draft Guidance for Industry: Developing Medical Imaging Drugs and Biologics	October 1998	Do	Do
Dear Blood Bank/Transfusion Service Director Letter: Hepatitis C Virus Risk	November 3, 1998	Do	Do
Dear Doctor Letter—Important Drug Warning: Immune Globulin Intravenous (Human)	November 13, 1998	Health care providers	Do
Draft Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product	November 1998	FDA regulated industry	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis and Recommendations for Dosing and Labeling	November 1998	Do	Do
Draft Document: United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128	December 1997 (released November 1998)	Do	Do
Draft Guidance for Industry: General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products	November 1998	Do	Do
To Viral Vaccine IND Sponsors—Use of PCR-Based Reverse Transcriptase Assay	December 18, 1998	Do	Do
Guidance for Industry: FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	December 1998	Do	Do
Draft Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing	December 1998	Do	Do
Draft Guidance for Industry: Content and Format of Geriatric Labeling	December 1998	Do	Do
Dear Healthcare Provider: Important Drug Warning: Safety Information Regarding the use of Abbokinase (Urokinase)	January 25, 1999	Health care providers	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product	January 1999	FDA regulated industry	Do
Guidance on Amended Procedures for Advisory Panel Meetings	January 1999	Do	Do
Guidance for Industry: Providing Regulatory Submissions in Electronic Format—General Considerations	January 1999	Do	Do
Guidance for Industry: Population Pharmacokinetics	February 1999	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products	February 1999	Do	Do
Guidance for Industry: Clinical Development Programs for Drugs, Devices and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	February 1999	Do	Do
Dear Colleague Letter: Voluntary Recall of Tripedia, DTaP Vaccine	February 4, 1999	Health care providers	Do

III. Guidance Documents Issued by the Center for Devices and Radiological Health (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance on Medical Device Tracking (Docket No. 98D–0132)	February 19, 1998	Office of Compliance (OC)	Division of Small Manufacturers Assistance, CDRH, Food and Drug Administration, 1–800–638–2041 or 301–827–0111 or (FAX) Facts on Demand at 1–800–899–0381 or Internet at http://www.fda.gov/cdrh
Guidance on Lead Wires and Patient Cables	March 9, 1998	OC	Do
Global Harmonization Task Force: Draft Document on the Essentials Principles of Safety and Performance of Medical Devices on a Global Basis	October 28, 1998	OC	Do
Medical Devices: Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance (Draft)	July 16, 1998	OC	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Letter to Medical Device Manufacturer on Pentium Processors	February 14, 1995	OC	Do
Guideline for Preparing Notices of Availability of Investigational Medical Devices	November 1, 1985	OC/Bioresearch Monitoring (BIMO)	Do
All Diagnostic Ultrasound Manufacturers and Importers-Exemption from Reporting Under 21 CFR 1002	February 24, 1986	OC/Division of Enforcement I (DOEI)	Do
General Principles of Software Validation; Draft Guidance	June 9, 1997	OC/DOEI	Do
Exemption from Reporting and Recordkeeping Requirements for Certain Sunlamp Product Manufacturers	September 16, 1981	OC/DOEI	Do
Clarification of Radiation Control Regulations for Diagnostic X-ray Equipment (FDA 89–8221)	March 1, 1989	OC/DOEI	Do
A Guide for the Submission of Abbreviated Radiation Safety Reports on Cephalometric X-ray Devices: Defined as Dental Units with an Attachment for Mandible Work that Holds a Cassette and Beam Limiting Device	March 1, 1996	OC/DOEI	Do
A Guide for the Submission of Abbreviated Radiation Safety Reports on Image Receptor Support Devices for Mammographic X-ray Systems	March 1, 1996	OC/DOEI	Do
A Guide for the Submission of an Abbreviated Radiation Safety Report on X-ray Tables, Cradles, Film Changers or Cassette Holders Intended for Diagnostic Use	March 1, 1996	OC/DOEI	Do
Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and their Major Components	January 1, 1982	OC/DOEI	Do
Guideline for the Manufacture of In Vitro Diagnostic Products	January 10, 1994	OC/DOEI	Do
Letter to Medical Device Industry on Endoscopy and Laparoscopy Accessories (Galdi)	May 17, 1993	OC/DOEI	Do
Manufacturers/Assemblers of Diagnostic X-ray Systems: Enforcement Policy for Positive-Beam Limitation (PBL) Requirements in 21 CFR 1020.31(g)	October 13, 1993	OC/DOEI	Do
Retention of Records Required by 21 CFR 1002	August 24, 1981	OC/DOEI	Do
All U.S. Condom Manufacturers, Importers and Repackagers	April 7, 1987	OC/Division of Enforcement II (DOEII)	Do
Letter to Ophthalmologists about Lasers for Refractive Surgery	June 27, 1997	OC/DOEII	Do
Manufacturers and Initial Distributors of Hemodialyzers	May 23, 1996	OC/DOEII	Do
Manufacturers and Users of Lasers for Refractive Surgery	October 10, 1996	OC/DOEII	Do
Shielded Trocars and Needles Used for Abdominal Access During Laparoscopy	August 23, 1996	OC/DOEII	Do
Prospective Manufacturers of Barrier Devices Used During Oral Sex for STD Protection	October 31, 1996	OC/DOEII	Do
Condoms: Inspection and Sampling at Domestic Manufacturers and of all Repackers; Sampling from all Importers (Damaska Memo to Field on 4/8/87)	April 8, 1987	OC/DOEII	Do
Guide for Preparing Product Reports for Lasers and Products Containing Lasers	September 1, 1995	OC/DOEII	Do
Hazards of Volume Ventilators and Heated Humidifiers	September 15, 1993	OC/DOEII	Do
Latex Labeling Letter (Johnson)	March 18, 1993	OC/DOEII	Do
Letter—Condom Manufacturers and Distributors (included in Condom Packet #398)	April 5, 1994	OC/DOEII	Do
Letter to Industry, Powered Wheelchair Manufacturers from R. M. Johnson	May 10, 1993	OC/DOEII	Do
Letter to Manufacturers/Repackers Using Cotton	April 22, 1994	OC/DOEII	Do
Manufacturers and Initial Distributors of Sharps Containers and Destroyers Used by Health Care Professionals	February 3, 1994	OC/DOEII	Do
Compliance Guide for Laser Products (FDA 86–8260)	September 1, 1985	OC/DOEII	Do
Dental Handpiece Sterilization (Dear Doctor Letter)	September 28, 1992	OC/DOEII	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Ethylene Oxide; Ethylene Chlorohydrin; and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Levels of Exposure	June 23, 1978	OC/DOEII	Do
Letter—Manufacturers, Distributors and Importers of Condom Products (included in Condom Packet #K398)	February 23, 1994	OC/DOEII	Do
Letter—Manufacturers, Importers, and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention (Holt) (included in Condom Packet #398)	February 13, 1989	OC/DOEII	Do
Regulatory Requirements for Medical Gloves—A Workshop Manual FDA Publication No. 96–4257	September 1, 1996	OC/DOEII	Do
Standard Specification for Rubber Contraceptives (Condoms) (included in Condom Packet #398)	October 28, 1983	OC/DOEII	Do
Pesticide Regulation Notice 94–4 Interim Measures for the Registration of Antimicrobial Products/Liquid Chemical Germicides with Medical Device Use Claims	June 30, 1994	OC/DOEII	Do
Open Door Operation of Microwave Ovens as a Result of Oven Miswiring	March 28, 1980	OC/Division of Enforcement III (DOEIII)	Do
Guide for Preparing Abbreviated Reports of Microwave and RF Emitting Electronic Products Intended for Medical Use	September 1, 1996	OC/DOEIII	Do
Final Design Control Inspectional Strategy	March 1, 1997	OC/DOEIII	Do
Abbreviated Reports on Radiation Safety for Microwave Products (Other Than Microwave Ovens)—E.G. Microwave Heating, Microwave Diathermy, RF Sealers, Induction, Dielectric Heaters, Security Systems	August 1, 1995	OC/DOEIII	Do
Design Control Guidance for Medical Device Manufacturers	March 11, 1997	OC/DOEIII	Do
Abbreviated Reports on Radiation Safety of Non-Medical Ultrasonic Products	August 1, 1995	OC/DOEIII	Do
Application for a Variance from 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device	March 1, 1987	OC/DOEIII	Do
Computerized Devices/Processes Guidance—Application of the Medical Device GMP to Computerized Devices and Manufacturing Processes	May 1, 1992	OC/DOEIII	Do
Guidance for the Submission of Cabinet X–Ray System Reports Pursuant to 21 CFR 1020.40	February 1, 1975	OC/DOEIII	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Electronic Products (General)	October 1, 1987	OC/DOEIII	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps (replaces FDA 82–8127)	September 1, 1995	OC/DOEIII	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamps and Sunlamp Products (replaces FDA 82–8127)	September 1, 1995	OC/DOEIII	Do
Guide for Preparing Product Reports on Sunlamps and Sunlamp Products (21 CFR 1002)	September 1, 1995	OC/DOEIII	Do
Guide for Preparing Reports on Radiation Safety of Microwave Ovens	March 1, 1985	OC/DOEIII	Do
Guide for Submission of Information on Accelerators Intended to Emit X-Radiation Required Pursuant to 21 CFR 1002.10	April 1, 1971	OC/DOEIII	Do
Guide for Submission of Information on Analytical X-Ray Equipment Required Pursuant to 21 CFR 1002.10	April 30, 1974	OC/DOEIII	Do
Guide for Submission of Information on Industrial Radiofrequency Dielectric Heater and Sealer Equipment Pursuant to 21 CFR 1002.10 and 1002.12 (FDA 81–8137)	September 1, 1980	OC/DOEIII	Do
Guide for Submission of Information on Industrial X-Ray Equipment Required Pursuant to 21 CFR 1002.10	March 1, 1973	OC/DOEIII	Do
Guide for the filing of Annual Reports for X-Ray Components and Systems	July 1, 1980	OC/DOEIII	Do
Guide for the Submission of Initial Reports on Computed Tomography X-Ray Systems	September 1, 1984	OC/DOEIII	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Impact Resistant Lenses: Questions and Answers (FDA 87–4002) (see shelf # 460)	September 1, 1987	OC/DOEIII	Do
Imports Radiation-Producing Electronic Products (FDA 89–8008)	November 1, 1988	OC/DOEIII	Do
Information Requirements for Cookbooks and User and Service Manuals	October 31, 1988	OC/DOEIII	Do
Keeping Medical Devices Safe from Electromagnetic Interference	July 1, 1995	OC/DOEIII	Do
Keeping Up With the Microwave Revolution (FDA Pub No. 91–4160)	March 1, 1990	OC/DOEIII	Do
Laser Light Show Safety—Who's Responsibility (FDA 86–8262)	May 1, 1986	OC/DOEIII	Do
Letter to All Foreign Manufacturers and Importers of Electronic Products for Which Applicable FDA Performance Standards Exist	May 28, 1981	OC/DOEIII	Do
Letter to Trade Association: ReUse of Single-use or Disposable Medical Devices	December 27, 1995	OC/DOEIII	Do
Letter: Changes in Regulations Concerning Records and Reports on Radiation-Emitting Electronic Products	October 27, 1995	OC/DOEIII	Do
Medical Device Electromagnetic Interference Issues, Problem Reports, Standards, and Recommendations		OC/DOEIII	Do
Medical Devices and EMI: The FDA Perspective	January 1, 1995	OC/DOEIII	Do
Policy on Lamp Compatibility (sunlamps)	September 2, 1986	OC/DOEIII	Do
Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products	August 21, 1986	OC/DOEIII	Do
Policy on Warning Label Required on Sunlamp Products	June 25, 1985	OC/DOEIII	Do
Quality Assurance Guidelines for Hemodialysis Devices	February 1, 1991	OC/DOEIII	Do
Quality Control Guide for Sunlamp Products (FDA 88–8234)	March 1, 1988	OC/DOEIII	Do
Quality Control Practices for Compliance with the Federal Mercury Vapor Lamp Performance Standard	May 1, 1980	OC/DOEIII	Do
Reporting and Compliance Guide for Television Products including Product Report, Supplemental Report, Radiation Safety Abbreviated Report, Annual Report, Information and Guidance	October 1, 1995	OC/DOEIII	Do
Reporting Guide for Laser Light Shows and Displays (21 CFR 1002) (FDA 88–8140)	September 1, 1995	OC/DOEIII	Do
Reporting Guide for Product Reports on High Intensity Mercury Vapor Discharge Lamps (21 CFR 1002)	September 1, 1995	OC/DOEIII	Do
Reporting of New Model Numbers to Existing Model Families	June 14, 1983	OC/DOEIII	Do
Revised Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products (replaces FDA 82–8127)	September 1, 1995	OC/DOEIII	Do
Safety of Electrically Powered Products: Letter To Medical Device and Electronic Product Manufacturers From Lillian Gill & BHB correction memo	September 18, 1996	OC/DOEIII	Do
Suggested State Regulations for Control of Radiation—Volume II Nonionizing Radiation—Lasers (FDA Pub No. 83–8220)	January 1, 1982	OC/DOEIII	Do
Unsafe Patient Lead Wires and Cables	September 3, 1993	OC/DOEIII	Do
Guide for Preparing Annual Reports for Ultrasonic Therapy Products	September 1, 1996	OC/DOEIII	Do
Guide for Preparing Product Reports for Medical Ultrasound Products	September 1, 1996	OC/DOEIII	Do
Guide for Preparing Product Reports for Ultrasonic Therapy Products (physical therapy only)	August 1, 1996	OC/DOEIII	Do
Guide for Establishing and Maintaining a Calibration Constancy Intercomparison System for Microwave Oven Compliance Survey Instruments (FDA 88–8264)	March 1, 1988	OC/DOEI & III	Do
The FDA Export Reform and Enhancement Act of 1996/Export Certification	October 1, 1996	OC/Division of Program Operations (DPO)	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Sec. 300.600 Commercial Distribution with Regard to Premarket Notification (Section 510(k)) (CPG 7124.19)	September 24, 1987	OC/Office of the Director (OD)	Do
Global Harmonization Task Force: Availability of Draft Documents on Adverse Event and Vigilance Reporting of Medical Device Events	August 31, 1998	OC/Office of Surveillance and Biometrics (OSB)	Do
Commercial Distribution/Exhibit Letter (Use instead of Hile letter) (Display)	April 10, 1992	OC/Other (OT)	Do
Working Draft of the Current Good Manufacturing Practice (CGMP) Final Rule	July 1, 1995	OC/OT	Do
Guidance for the Medical Device Industry on PMA Shell Development and Modular Review	November 6, 1998	ODE	Do
Medical Devices Containing Materials Derived from Animal Sources (Except In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry	November 6, 1998	ODE	Do
Frequently Asked Questions on the New 510(k) Pardigm	October 22, 1998	ODE	Do
Guidance to Industry Supplements to Approved Applications for Class III Medical Devices: Use of Published Literature, Use of Previously Submitted Material, and Priority Review	May 20, 1998	ODE	Do
Convenience Kits Interim Regulatory Guidance	May 20, 1997	ODE	Do
Kit Certification for 510(k)s	July 1997	ODE	Do
Guidance for Industry—Contents of a Product Development Protocol	July 27, 1998	ODE	Do
Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices (replaces Reviewer Guidance for Computer-Controlled Medical Devices Undergoing 510(k) Review 8/29/91)	May 28, 1998	ODE	Do
New Model Medical Device Development Process	June 3, 1998	ODE	Do
Modifications to Devices Subject to Premarket Approval—the PMA Supplement Decision Making Process	August 6, 1998	ODE	Do
Guidance for Off-the-Shelf Software Use in Medical Devices	August 17, 1998	ODE	Do
PMA/510(k) Expedited Review—Guidance for Industry and CDRH Staff	March 20, 1998	ODE	Do
Guidance on Amended Procedures for Advisory Panel Meetings	March 30, 1998	ODE	Do
'Real-Time' Review Program for Premarket Approval Application (PMA) Supplements	April 22, 1997	ODE	Do
A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications	March 30, 1998	ODE	Do
Freedom of Information/510(K) Process Changes	May 15, 1997	ODE	Do
Guidance for Submitting Reclassification Petition	January 1, 2000	ODE	Do
Product Development Protocol	October 1, 1997	ODE	Do
Guidance on PMA Interactive Procedures for Day-100 Meetings and Subsequent Deficiencies—for Use by CDRH and Industry (Docket No. 98D–0079)	February 19, 1998	ODE	Do
Procedures for Class II Device Exemptions from Premarket Notification Guidance for Industry and CDRH Staff (Docket No. 98D–0083)	February 25, 1998	ODE	Do
New section 513(f)(2)—Evaluation of Automatic Class III Designation: Guidance for Industry and CDRH Staff (Docket No. 98D–0082)	February 19, 1998	ODE	Do
SMDA Changes—Premarket Notification; Regulatory Requirements for Medical Devices (510k) Manual Insert	April 17, 1992	ODE	Do
#D95–2, Attachment A (Interagency Agreement between FDA & HCFA)	September 15, 1995	ODE	Do
#D95–2, Attachment B (Criteria for Categorization of Investigational Devices (HCFA)	September 15, 1995	ODE	Do
30–Day Notices and 135–Day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH (Docket No. 98D–0080)	February 19, 1998	ODE	Do
510(k) Quality Review Program (blue book memo)	March 29, 1996	ODE	Do

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Distribution and Public Availability of PMA Summary of Safety and Effectiveness Data Packages	October 10, 1997	ODE	Do
Document Review by the Office of the Chief Counsel (Blue Book Memo G96–1))	June 6, 1996	ODE	Do
HCFA Reimbursement Categorization Determinations for FDA-approved IDEs	September 15, 1995	ODE	Do
ODE Executive Secretary Guidance Manual	August 7, 1987	ODE	Do
Determination of Intended Use for 510(k) Devices: Final Document (Docket No. 98D–0081)	February 19, 1998	ODE	Do
Letter—Vascular Graft Industry (Philip Phillips)	November 22, 1995	ODE	Do
Letter to Industry, Powered Wheelchair/Scooter or Accessory/Component Manufacturer from Susan Alpert, Ph.D., M.D.	May 26, 1994	ODE	Do
Preamendments Class III Strategy; SXAlpert	April 19, 1994	ODE	Do
4-of-A-Kind PMA's	October 1, 1991	ODE	Do
Application of the Device Good Manufacturing Practice (GMP) Regulation to the Manufacture of Sterile Devices	December 1, 1983	ODE	Do
CDRH's 510(k)/IDE/PMA Refuse to Accept/Accept/File Policies (see #D94–1, #K94–1, & #P94–1)	June 30, 1993	ODE	Do
Classified Convenience Kits	April 30, 1993	ODE	Do
Color Additive Petitions (p. II–19 of PMA Manual)	June 1, 1987	ODE	Do
Color Additive Status List (Inspection Operations Manual)	February 1, 1989	ODE	Do
Early Collaboration Meetings Under the FDA Modernization Act (FDAMA), Guidance for Industry and CDRH Staff, Final Document (Docket No. 98D–0078)	February 19, 1998	ODE	Do
Color Additives for Medical Devices (Snesko)	November 15, 1995	ODE	Do
Deciding When to Submit a 510(k) for a Change to an Existing Device (see CDRH F–O–D #1935)	January 10, 1997	ODE	Do
Device Specific Guidance Documents (List)	May 11, 1993	ODE	Do
FDA Clinical Investigator Information Sheets	May 1, 1989	ODE	Do
FDA Guide for Validation of Biological Indicator Incubation Time (Source: Sterilization Committee; through Virginia Ross; HFZ–332)	January 1, 1986	ODE	Do
FDA Policy For The Regulation Of Computer Products (DRAFT) (See 2099)	November 13, 1989	ODE	Do
Format for IDE Progress Reports	January 1, 2000	ODE	Do
Guidance for Preparation of PMA Manufacturing Information	August 1, 1992	ODE	Do
Guideline for the Monitoring of Clinical Investigations	January 1, 1988	OC/BIMO	Do
Guideline on General Principles of Process Validation	May 1, 1987	ODE	Do
Guideline on Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	ODE	Do
Guideline on Validation of the Limulus Amebocyte Lysate (LAL) Test as an End-Product Endotoxin Test	December 1, 1987	ODE	Do
Indications for Use Statement	January 2, 1996	ODE	Do
Industry Representatives on Scientific Panels	March 27, 1987	ODE	Do
Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance (see 1198)	April 1, 1996	ODE	Do
Limulus Amebocute Lysate; Reduction of Samples for Testing	October 23, 1987	ODE	Do
Master Files Part III; Guidance on Scientific and Technical Information	June 1, 1987	ODE	Do
Memorandum: Electromagnetic Compatibility for Medical Devices: Issues and Solutions	June 13, 1995	ODE	Do
Methods for Conducting Recall Effectiveness Checks	June 16, 1978	ODE	Do
Necessary Information for Diagnostic Ultrasound 510(k) (Draft)	November 24, 1987	ODE	Do
Perspectives on Clinical Studies for Medical Device Submissions (Statistical)	January 1, 2000	ODE	Do
PMA Review Statistical Checklist	January 1, 2000	ODE	Do

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Points to Consider in the Characterization of Cell Lines Used to Produce Biological Products (from John C. Petricciani, M.D.)	June 1, 1984	ODE	Do
Preamendment Class III Devices	March 11, 1992	ODE	Do
Premarket Notification [510(k)] Status Request Form, revised	March 7, 1994	ODE	Do
Premarket Submission Coversheet, Instructions, and Survey	January 19, 1995	ODE	Do
Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers (FDA 90–4236)	September 1, 1989	ODE	Do
Proposal for Establishing Mechanisms for Setting Review Priorities Using Risk Assessment and Allocating Review Resources (include with 926–930)	June 30, 1993	ODE	Do
Questions and Answers for the FDA Reviewer Guidance: Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities (see 198)	September 3, 1996	ODE	Do
Shelf Life of Medical Devices	March 1, 1991	ODE	Do
Substantial Equivalence (SE) Decision Making Documentation ATTACHED: 'SE' Decision Making Process (Detailed) i.e. the decision making tree	January 1, 1990	ODE	Do
Suggested Content for Original IDE Application Cover Letter—Version 4	February 27, 1996	ODE	Do
Suggestions for Submitting a Premarket Approval (PMA) Application	April 1, 1993	ODE	Do
Threshold Assessment of the Impact of Requirements for Submission of PMAs for 31 Medical Devices Marketed Prior to May 28, 1976	January 1, 1990	ODE	Do
Guidance on IDE Policies and Procedures	January 20, 1998	ODE	Do
Viable Bacteriophage in Co2 Laser Plume: Aerodynamic Size Distribution	January 1, 2000	ODE	Do
Deciding When to Submit a 510(k) for a Change to an Existing Device (blue book memo #K97–1) (see CDRH F–O–D #935)	January 10, 1997	ODE/blue	Do
Memorandum of Understanding Regarding Patient Labeling Review (blue book memo #G96–3))	August 9, 1996	ODE/blue	Do
Continued Access to Investigational Devices During PMA Preparation and Review (blue book memo)	July 15, 1996	ODE/blue	Do
510(k) Additional Information Procedures (blue book memo #K93–1)	July 23, 1993	ODE/blue/510k	Do
510(k) Refuse to Accept Procedures (blue book memo #K94–1)	May 20, 1994	ODE/blue/510k	Do
510(k) Sign-Off Procedures (blue book memo #K94–2)	June 3, 1994	ODE/blue/510k	Do
510(k) Sterility Review Guidance and Revision of 11/18/1994 (blue book memo #K90–1)	February 12, 1990	ODE/blue/510k	Do
Cover Letter: 510(k) Requirements During Firm-Initiated Recalls; Attachment A: Guidance on Recall and Premarket Notification Review Procedures During Firm-Initiated Recalls of Legally Marketed Devices (blue book memo #K95–1)	November 21, 1995	ODE/blue/510k	Do
Guidance on the Center for Devices and Radiological Health's Premarket Notification Review Program (blue book memo #K86–3)	June 30, 1986	ODE/blue/510k	Do
Premarket Notification—Consistency of Reviews (blue book memo #K89–1)	February 28, 1989	ODE/blue/510k	Do
Review of 510(k)s for Computer Controlled Medical Devices (blue book memo #K91–1)	August 29, 1991	ODE/blue/510k	Do
Executive Secretaries Guidance Manual ιG87–3	August 7, 1987	ODE/blue/gnrl	Do
Consolidated Review of Submissions for Diagnostic Ultrasound Equipment, Accessories and Related Measurement Devices (blue book memo #G90–2)	October 19, 1990	ODE/blue/gnrl	Do
Consolidated Review of Submissions for Lasers and Accessories (blue book memo #G90–1)	October 19, 1990	ODE/blue/gnrl	Do
Device Labeling Guidance (blue book memo Γ91–1)	March 8, 1991	ODE/blue/gnrl	Do
Documentation and Resolution of Differences of Opinion on Product Evaluations (blue book memo #G93–1)	December 23, 1993	ODE/blue/gnrl	Do

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ODE Regulatory Information for the Office of Compliance—Information Sharing Procedures (blue book memo #G87–2)	May 15, 1987	ODE/blue/gnrl	Do
PMA/510(k) Expedited Review (blue book memoG94–2)	May 20, 1994	ODE/blue/gnrl	Do
PMA/510(k) Triage Review Procedures (blue book memo #G94–1)	May 20, 1994	ODE/blue/gnrl	Do
Review of Laser Submissions (blue book memo #G88–1)	April 15, 1988	ODE/blue/gnrl	Do
Toxicology Risk Assessment Committee (blue book memo #G89–1)	August 9, 1989	ODE/blue/gnrl	Do
Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing' (blue book memo) (Replaces #G87–1 #8294)	May 1, 1995	ODE/blue/gnrl	Do
Delegation of IDE Actions (blue book memo #D88–1)	April 26, 1988	ODE/blue/ide	Do
Goals and Initiatives for the IDE Program (blue book memo #D95–1)	July 12, 1995	ODE/blue/ide	Do
IDE Refuse to Accept Procedures (blue book memo #D94–1)	May 20, 1994	ODE/blue/ide	Do
Implementation of the FDA/HCFA Interagency Agreement Regarding Reimbursement Categorization of Investigational Devices, Att. A Interagency Agreement, Att. B Criteria for Catergorization of Investigational Devices, & Att. C–List (blue book memo #D95–2)	September 15, 1995	ODE/blue/ide	Do
Overdue IDE Annual Progress Report Procedures (blue book memo) #D93–1	July 23, 1993	ODE/blue/ide	Do
Review of IDEs for Feasibility Studies (blue book memo #D89–1)	May 17, 1989	ODE/blue/ide	Do
Assignment of Review Documents (blue book memo #I90–2)	August 24, 1990	ODE/blue/integ	Do
Document Review Processing (blue book memo #I91–1)	February 12, 1992	ODE/blue/integ	Do
Integrity of Data and Information Submitted to ODE (blue book memo #I91–2)	May 29, 1991	ODE/blue/integ	Do
Meetings with the Regulated Industry (blue book memo #I89–3)	November 20, 1989	ODE/blue/integ	Do
Nondisclosure of Financially Sensitive Information (blue book memo #I92–1)	March 5, 1992	ODE/blue/integ	Do
Policy Development and Review Procedures (blue book memo #I90–1)	February 15, 1990	ODE/blue/integ	Do
Telephone Communications Between ODE Staff and Manufacturers (blue book memo #I93–1)	January 29, 1993	ODE/blue/integ	Do
Clinical Utility and Premarket Approval (blue book memo #P91–1)	May 3, 1991	ODE/blue/pma	Do
Criteria for Panel Review of PMA Supplements (blue book memo #P86–3)	January 30, 1986	ODE/blue/pma	Do
Panel Report and Recommendations on PMA Approvals (blue book memo #P86–5)	April 18, 1986	ODE/blue/pma	Do
Panel Review of 'Me-Too' Devices (blue book memo #P86–6)	July 1, 1986	ODE/blue/pma	Do
Panel Review of Premarket Approval Applications (blue book memo #P91–2)	May 3, 1991	ODE/blue/pma	Do
PMA Compliance Program (blue book memo #P91–3)	May 3, 1991	ODE/blue/pma	Do
PMA Filing Decisions (blue book memo #P90–2)	May 18, 1990	ODE/blue/pma	Do
PMA Refuse to File Procedures (blue book memo #P94–1)	May 20, 1994	ODE/blue/pma	Do
PMA Supplements: ODE's letter to manufacturers; identifies situations which may require the submission of a PMA supplement (when PMA Supplements are required) (blue book memo) #P90–1	April 24, 1990	ODE/blue/pma	Do
PMAs Early Review and Preparation of Summaries of Safety and Effectiveness (blue book memo #P86–1)	January 27, 1986	ODE/blue/pma	Do
Premarket Approval Application (PMA) Closure (blue book memo #P94–1)	July 8, 1994	ODE/blue/pma	Do

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Review and Approval of PMAs of Licensees (blue book memo #P86–4)	October 22, 1990	ODE/blue/pma	Do
Review of Final Draft Medical Device Labeling (blue book memo #P91–4)	August 29, 1991	ODE/blue/pma	Do
Distribution and Public Availability of Premarket Approval Application Summary of Safety and Effectiveness Data Packages (P98–1)	October 10, 1997	ODE/blue/pma	Do
PMA Summaries of Safety and Effectiveness and Federal Register Notices of PMA Approvals—Review by the Office of General Counsel (Revised) (P98–1)	June 11, 1993	ODE/blue/pma	Do
PMA Review Schedules (P87–1)	March 31, 1988	ODE/blue/pma	Do
Points to Consider Guidance Document on Assayed and Unassayed Quality Control Material	February 3, 1999	ODE/Division of Clinical Laboratory Devices (DCLD)	Do
Review Criteria for Assessment of Antimicrobial Susceptibility Test Discs	October 30, 1996	ODE/DCLD	Do
Guidance for Submission of Immunohistochemistry Applications to the FDA	June 3, 1998	ODE/DCLD	Do
In Vitro Diagnostic Creatinine Test System	July 2, 1998	ODE/DCLD	Do
In Vitro Diagnostic Bicarbonate/Carbon Dioxide Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Chloride Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Glucose Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Potassium Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Sodium Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Urea Nitrogen Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic C–Reactive Immunological Test System	July 20, 1998	ODE/DCLD	Do
In Vitro Diagnostic Calibrators	July 20, 1998	ODE/DCLD	Do
Points To Consider For Hematology Quality Control Materials	September 30, 1997	ODE/DCLD	Do
Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse to be Used by the Consumer	December 30, 1998	ODE/DCLD	Do
Review Criteria for Assessment of Professional Use Human Chorionic Gonadotropin (hCG) in Vitro Diagnostic Devices (IVDs)	November 6, 1996	ODE/DCLD	Do
Letter to IVD Manufacturers on Streamlined PMA	December 22, 1997	ODE/DCLD	Do
Guidance Document for the Submission of Tumor Associated Antigen Premarket Notification [510(k)] to FDA	September 19, 1996	ODE/DCLD	Do
Review Criteria for Assessment of Rheumatoid Factor (RF) In Vitro Diagnostic Devices Using Enzyme-Linked Immunoassay (EIA), Enzyme Linked Immunosorbent Assay (ELISA), Particle Agglutination Tests, and Laser and Rate Nephgelometry	February 21, 1997	ODE/DCLD	Do
Guidance for 510(k)s on Cholesterol Tests for Clinical Laboratory, Physicians' Office Laboratory, and Home Use	July 14, 1995	ODE/DCLD	Do
Assessing the Safety/Effectiveness of Home-use In Vitro Diagnostic Devices (IVDs): Draft Points to Consider Regarding Labeling and Premarket Submissions	October 1, 1988	ODE/DCLD	Do
Data for Commercialization of Original Equipment Manufacturer, Secondary and Generic Reagents for Automated Analyzers	June 10, 1996	ODE/DCLD	Do
DCLD Tier/Triage lists (include 931)	May 31, 1996	ODE/DCLD	Do
Draft Criteria for Assessment of In Vitro Diagnostic Devices for Drugs of Abuse Assays Using Various Methodologies	August 31, 1995	ODE/DCLD	Do
Draft Guidance Document for 510(k) Submission of Fecal Occult Blood Tests	July 29, 1992	ODE/DCLD	Do
Draft Guidance Document for 510(k) Submission of Glycohemoglobin (Glycated or Glycosylated) Hemoglobin for IVDs	September 30, 1991	ODE/DCLD	Do
Draft Guidance Document for 510(k) Submission of Immunoglobulins A, G, M, D and E Immunoglobulin System In Vitro Devices	September 1, 1992	ODE/DCLD	Do

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Draft Guidance for 510(k) Submission of Lymphocyte Immunophenotyping IVDs using Monoclonal Antibodies	September 26, 1991	ODE/DCLD	Do
Draft Review Criteria for Nucleic Acid Amplification Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms	June 14, 1993	ODE/DCLD	Do
Guidance Criteria for Cyclosporine PMAs	January 24, 1992	ODE/DCLD	Do
Draft: Premarketing Approval Review Criteria for Premarket Approval of Estrogen (ER) or Progesterone (PGR) Receptors In Vitro Diagnostic Devices Using Steroid Hormone	September 10, 1992	ODE/DCLD	Do
Points to Consider for Cervical Cytology Devices	July 25, 1994	ODE/DCLD	Do
Points to Consider for Collection of Data in Support of In-Vitro Device Submissions for 510(k) Clearance	September 26, 1994	ODE/DCLD	Do
Points to Consider for Portable Blood Glucose Monitoring Devices Intended for Bedside Use in the Neonate Nursery	February 20, 1996	ODE/DCLD	Do
Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Diagnostic Devices/Cover Letter dated 3/14/1996	February 1, 1996	ODE/DCLD	Do
Review Criteria for In Vitro Diagnostic Devices for the Assessment of Thyroid Autoantibodies Using Indirect Immunofluorescence Assay (IFA), Indirect Hemagglutination Assay (IHA), Radioimmunoasay (RIA), and Enzyme Linked Immunosorbent Assay (ELISA)	February 1, 1994	ODE/DCLD	Do
Review Criteria for Assessment of Alpha-Fetoprotein (AFP) In Vitro Diagnostic Devices for Fetal Open Neural Tube Defects Using Immunological Test Methodologies	July 15, 1994	ODE/DCLD	Do
Review Criteria for Assessment of Antimicrobial Susceptibility Devices	May 31, 1991	ODE/DCLD	Do
Review Criteria for Assessment of Cytogenetic Analysis Using Automated and Semi-Automated Chromosome Analyzers	July 15, 1991	ODE/DCLD	Do
Review Criteria for Assessment of Human Chorionic Gonadotropin (hCG) In Vitro Diagnostic Devices (IVDs)	September 27, 1995	ODE/DCLD	Do
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Chlamydiae in Clinical Specimens	January 1, 1992	ODE/DCLD	Do
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium Spp. (Tuberculosis (TB))	July 6, 1993	ODE/DCLD	Do
Review Criteria for Assessment of Laboratory Tests for the Detection of Antibodies to Helicobacter pylori	September 17, 1992	ODE/DCLD	Do
Review Criteria for Assessment of Portable Blood Glucose In Vitro Diagnostic Devices Using Glucose Oxidase, Dehydrogenase, or Hexokinase Methodology	February 14, 1996	ODE/DCLD	Do
Review Criteria for Blood Culture Systems	August 12, 1991	ODE/DCLD	Do
Review Criteria for Devices Assisting in the Diagnosis of C. Difficile Associated Diseases	May 31, 1990	ODE/DCLD	Do
Review Criteria for Devices Intended for the Detection of Hepatitis B 'e' Antigen and Antibody to HBe	December 30, 1991	ODE/DCLD	Do
Review Criteria for In Vitro Diagnostic Devices for Detection of IGM Antibodies to Viral Agents	August 1, 1992	ODE/DCLD	Do
Review Criteria for In Vitro Diagnostic Devices that Utilize Cytogenetic In Situ Hybridization Technology for the Detection of Human Genetic Mutations (Germ Line and Somatic)	February 15, 1996	ODE/DCLD	Do
Review Criteria For Premarket Approval of In Vitro Diagnostic Devices for Detection of Antibodies to Parvovirus B19	May 15, 1992	ODE/DCLD	Do
Review Criteria for the Assessment of Allergen-Specific Immunoglobulin E (IGE) In-Vitro Diagnostic Devices Using Immunological Test Methodologies	March 2, 1993	ODE/DCLD	Do

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Review Criteria for the Assessment of Anti-nuclear Antibodies (ANA) In-Vitro Diagnostic Devices Using Indirect Immunofluorescence Assay (IFA), Immunodiffusion (IMD) and Enzyme Linked Immunosorbant Assay (ELISA)	September 1, 1992	ODE/DCLD	Do
Non-Automated Sphygmomanometer (Blood Pressure Cuff) Guidance	November 19, 1998	ODE/DCRND	Do
Cardiac Monitor Guidance (including Cardiotachometer and Rate Alarm)	November 5, 1998	ODE/Division of Cardiovascular, Respiratory and Neurological Devices (DCRND)	Do
Diagnostic ECG Guidance (Including Non-Alarming ST Segment measurement)	November 5, 1998	ODE/DCRND	Do
Carotid Stent—Suggestions for Content of Submissions to the Food and Drug Administration in Support of Investigational Devices Exemption (IDE) Applications	October 26, 1996	ODE/DCRND	Do
Non-Invasive Blood Pressure (NIBP) Monitor Guidance	March 10, 1997	ODE/DCRND	Do
Guidance for Off-the-Shelf Software Use in Medical Devices; Draft Document	June 4, 1997	ODE/DCRND	Do
Draft Percutaneous Transluminal Coronary Angioplasty Package Insert Template	February 7, 1995	ODE/DCRND	Do
Medical Device Labeling—Suggested Format and Content; Draft Document	August 12, 1997	ODE/DCRND	Do
Draft Intravascular Brachytherapy—Guidance for Data to be Submitted to the Food and Drug Administration in Support of Investigational Device Exemption (IDE) Applications	May 24, 1996	ODE/DCRND	Do
510(k) Reviewer Guidelines—Tracheostomy Tubes 868.5800	January 1, 2000	ODE/DCRND	Do
Balloon Valvuloplasty Guidance For The Submission Of an IDE Application and a PMA Application	January 1, 1989	ODE/DCRND	Do
Rechargeable Battery Preliminary Guidance for Data to be Submitted to FDA in Support of Premarket Notification Applications	July 12, 1993	ODE/DCRND	Do
Review Guidance for Anesthesia Conduction Catheter	May 15, 1991	ODE/DCRND	Do
Coronary and Cerebrovascular Guidewire Guidance	January 1, 1995	ODE/DCRND	Do
Draft Guidance: Human Heart Valve Allografts	June 21, 1991	ODE/DCRND	Do
Draft Replacement Heart Valve Guidance	October 14, 1994	ODE/DCRND	Do
Draft Reviewer Guidance for Ventilators	July 1, 1995	ODE/DCRND	Do
Draft Reviewer Guidance on Face Masks and Shield for CPR	March 16, 1996	ODE/DCRND	Do
Draft Version Cardiac Ablation Preliminary Guidance (Data to be Submitted to FDA in Support Investigation Device Exemption Application	March 1, 1995	ODE/DCRND	Do
Draft Version Electrode Recording Catheter Preliminary Guidance (Data to be Submitted to FDA in Support of Premarket Notifications	March 1, 1995	ODE/DCRND	Do
Excerpts Related to EMI from November 1993 Anesthesiology and Respiratory Devices Branch (to be used with EMI standard)	November 1, 1993	ODE/DCRND	Do
General Guidance Document: Non-Invasive Pulse Oximeter	September 7, 1992	ODE/DCRND	Do
Guidance for Oxygen Conserving Device 510(k) Review 73 BZD 868.5905 Non-continuous Ventilator Class II	February 1, 1989	ODE/DCRND	Do
Reviewer Guidance for Premarket Notification (510(k)) Submissions—Labeling, Performance and Environmental Testing for Electronic Devices	July 19, 1995	ODE/DCRND	Do
Guidance for Peak Flow Meters for Over-the-Counter Sale	June 1, 1993	ODE/DCRND	Do
Guidance for the Preparation of the Annual Report to the PMA Approved Heart Valve Prostheses	April 1, 1990	ODE/DCRND	Do
Heated Humidifier Review Guidance	August 30, 1991	ODE/DCRND	Do
Implantable Pacemaker Lead Testing Guidance For The Submission of a Section 510(k) Notification	September 1, 1989	ODE/DCRND	Do
Implantable Pacemaker Testing Guidance	January 12, 1990	ODE/DCRND	Do
Policy for Expiration Dating (DCRND RB92–G)	October 30, 1992	ODE/DCRND	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Review Guidelines for Oxygen Generators and Oxygen Equipment	Undated	ODE/DCRND	Do
Reviewer Guidance for Nebulizers, Metered Dose Inhalers, Spacers and Actuators	November 9, 1990	ODE/DCRND	Do
Reviewer's Guidance for Oxygen Concentrator	August 30, 1991	ODE/DCRND	Do
Electrocardiograph (ECG) Electrode	February 11, 1997	ODE/DCRND	Do
Electrocardiograph (ECG) Lead Switching Adapter	February 11, 1997	ODE/DCRND	Do
Electrocardiograph (ECG) Surface Electrode Tester	February 11, 1997	ODE/DCRND	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Protective Restraints	December 1, 1995	ODE/Division of Dental Infection Control and General Hospital Devices (DDIGD)	Do
Guidance for the Preparation of Premarket Notifications for Dental Composites	November 27, 1998	ODE/DDIGD	Do
Neonatal and Neonatal Transport Incubators Premarket Notifications	September 18, 1998	ODE/DDIGD	Do
Reexamination of the Evaluation Process for Liquid Chemical Sterilant and High Level Disinfectants	May 19, 1997	ODE/DDIGD	Do
Further Information on the Regulation of Liquid Chemical Sterilants and High Level Disinfectants	August 5, 1997	ODE/DDIGD	Do
Guidance on the Content and Format of Premarket Notifications [510(k)] Submissions for Liquid Chemical Sterilants and High Level Disinfectants	December 18, 1997	ODE/DDIGD	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Surgical Masks	January 16, 1998	ODE/DDIGD	Do
Premarket Notification [510(k)] Submissions for Testing for Skin Sensitization to Chemicals in Natural Rubber Products (Replaces: Guidance on the Content and Format of Premarket Notifications [510(k)] Submissions for Testing for Skin Sensitization to Chemicals in Natural Rubber Products—2/13/98)	January 13, 1999	ODE/DDIGD	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions of Washers and Washer-Disinfectors	August 4, 1998	ODE/DDIGD	Do
Devices for the Treatment and/or Diagnosis of Temporomandibular Joint Dysfunction and/or Orofacial Pain	June 10, 1998	ODE/DDIGD	Do
Dental Impression Materials—Premarket Notification	August 17, 1998	ODE/DDIGD	Do
OTC Denture Cushions, Pads, Reliners, Repair Kits, and Partially Fabricated Denture Kits	August 18, 1998	ODE/DDIGD	Do
Dental Cements—Premarket Notification	August 18, 1998	ODE/DDIGD	Do
Groups Capable of Testing for Latex Skin Sensitization (Addendum to #944)	July 28, 1997	ODE/DDIGD	Do
Addendum to: Guidance on Premarket Notification [510(k)] Submissions for Sterilizers Intended for Use in Health Care Facilities	September 19, 1995	ODE/DDIGD	Do
Guidance Document on Dental Handpieces	July 1, 1995	ODE/DDIGD/Dental Devices Branch (DDB)	Do
510(k) Guidance for Screw Type Endosseous Implants for Prosthetic Attachment	August 11, 1992	ODE/DDIGD/DDB	Do
510(k) Information Needed for Hydroxyapatite Coated Titanium Endosseous Implants	July 6, 1993	ODE/DDIGD/DDB	Do
510(k) Information Needed for Metallurgical Endosseous Implants	August 12, 1993	ODE/DDIGD/DDB	Do
510(k) Information Needed for Ti-Powder Coated Titanium Endosseous Implants	July 13, 1993	ODE/DDIGD/DDB	Do
Draft Guidance Document for the Preparation of Premarket Notification [510(k)'s] for Dental Alloys	March 3, 1997	ODE/DDIGD/DDB	Do
Guidance Document for the Preparation of Premarket Notifications (510(k)'s) for Temporomandibular Joint Implants	January 23, 1995	ODE/DDIGD/DDB	Do
Guidance for the Arrangement and Content of a Premarket Approval (PMA) Application For An Endosseous Implant For Prosthetic Attachment	May 16, 1989	ODE/DDIGD/DDB	Do
Guidance for the Preparation of Premarket Notification [510(k)] for Resorbable Periodontal Barriers	January 1, 2000	ODE/DDIGD/DDB	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Information Necessary for Premarket Notification Submissions for Screw-Type Endossesous Implants	December 9, 1996	ODE/DDIGD/DDB	Do
Outline of Recommended Procedures for a Clinical Investigation of Endosseous Implants Under a 510(k)	January 1, 2000	ODE/DDIGD/DDB	Do
Outline of Recommended Procedures for Animal Laboratory Studies of Endosseous Implants	January 1, 2000	ODE/DDIGD/DDB	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Piston Syringes	April 1, 1993	ODE/DDIGD/General Hospital Devices Branch (GHDB)	Do
Draft Supplementary Guidance on the Content of Premarket Notification [510(k)] Submissions for Medical Devices with Sharps Injury Prevention Features (Antistick)	March 1, 1995	ODE/DDIGD/GHDB	Do
Guidance on 510(k) Submissions for Implanted Infusion Ports	October 1, 1990	ODE/DDIGD/GHDB	Do
Guidance on Premarket Notification [510(k)] Submissions for Short-Term and Long-Term Intravascular Catheters	March 16, 1995	ODE/DDIGD/GHDB	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Clinical Electronic Thermometers	March 1, 1993	ODE/DDIGD/GHDB	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for External Infusion Pumps	March 1, 1993	ODE/DDIGD/GHDB	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Hypodermic Single Lumen Needles	April 1, 1993	ODE/DDIGD/GHDB	Do
Guidance on Premarket Notification [510(k)] Submissions for Automated Endoscope Washers, Washer/Disinfectors, and Disinfectors Intended for Use in Health Care Facilities	August 1, 1993	ODE/DDIGD/Infection Control Devices Branch (ICDB)	Do
Guidance on Premarket Notification [510(k)] Submissions for Surgical Gowns and Surgical Drapes	August 1, 1993	ODE/DDIGD/ICDB	Do
Guidance on the Content and Format of Premarket Notification 510(k) Submissions for Liquid Chemical Germicides	December 6, 1996	ODE/DDIG/ICDB	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants (and 3/9/94 Addendum)	October 1, 1993	ODE/DDIGD/ICDB	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Sharps Containers	October 1, 1993	ODE/DDIGD/ICDB	Do
Addendum to Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants	March 9, 1994	ODE/DDIGD/ICDB	Do
Guidance on Premarket Notification 510(k) for Sterilizers Intended for Use in Health Care Facilities	March 3, 1993	ODE/Division of General and Restorative Devices (DGRD)	Do
Guidance Document for Powered Suction Pump 510(k)s	September 30, 1998	ODE/DGRD	Do
Guidance Document for Industry and CDRH Staff for the Preparation of Investigational Device Exemptions and Premarket Approval Applications for Bone Growth Stimulator Devices (Replaces: Guidance Document for the Preparation of Investigatinal Device Exemptions and Premarket Approval Applications for Bone Growth Stimulator Devices—8/12/88)	March 18, 1998	ODE/DGRD	Do
Guidance for Content of Premarket Notifications for Esophageal and Tracheal Prostheses	April 28, 1998	ODE/DGRD	Do
Guidance Document for Surgical Lamp 510ks	July 13, 1998	ODE/DGRD	Do
Protocol for Dermal Toxicity Testing for Devices in Contact with Skin (Draft)	January 1, 2000	ODE/DGRD	Do
Guide for 510(k) Review of Processed Human Dura Mater	June 26, 1990	ODE/DGRD	Do
Guide for TENS 510(k) Content (Draft)	August 1, 1994	ODE/DGRD	Do
Guidelines for Reviewing Premarket Notifications that Claim Substantial Equivalence to Evoked Response Stimulators	January 1, 2000	ODE/DGRD	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Studies for Pain Therapy Devices—General Considerations in the Design of Clinical Studies for Pain-Alleviating Devices	May 12, 1988	ODE/DGRD	Do
Galvanic Skin Response Measurement Devices—Draft Guidance for 510(k) Content	August 23, 1994	ODE/DGRD	Do
Draft Version Guide for Cortical Electrode 510(k) Content	August 10, 1992	ODE/DGRD	Do
Draft Version Neuro Endoscope Guidance	July 7, 1994	ODE/DGRD	Do
Draft Version Guidance for Clinical Data to be Submitted for Premarket Approval Application for Cranial Electrotherapy Stimulators	August 20, 1992	ODE/DGRD	Do
Draft Version 1—Biofeedback Devices—Draft Guidance for 510(k) Content	August 1, 1994	ODE/DGRD	Do
Draft Version—Guidance on Biocompatibility Requirements for Long Term Neurological Implants: Part 3—Implant Model	September 12, 1994	ODE/DGRD	Do
Draft Premarket Notification Review Guidance for Evoked Response Somatosensory Stimulators	June 1, 1994	ODE/DGRD	Do
Draft Version Cranial Perforator Guidance	July 13, 1994	ODE/DGRD	Do
ORDB 510(k) Sterility Review Guidance	July 3, 1997	ODE/DGRD	Do
Draft Guidance for Testing MR Interaction with Aneurysm Clips	May 22, 1996	ODE/DGRD	Do
Draft 510(k) Guideline for General Surgical Electrosurgical Devices	May 10, 1995	ODE/DGRD/General Surgery Devices Brancch (GSDB)	Do
Draft Guidance for Arthroscope and Accessory 510(k)s	May 1994	ODE/DGRD/GSDB	Do
Guidance for the Preparation of a Premarket Notification for Extended Laparoscopy Devices	August 30, 1994	ODE/DGRD/GSDB	Do
Guidance on the Content and Organization of a Premarket Notification for a Medical Laser	June 1, 1995	ODE/DGRD/GSDB	Do
Guidance Document for Testing Bone Anchor Devices	April 20, 1996	ODE/DGRD/Orthopedic Devices Branch (ORDB)	Do
510(k) Information Needed for Hydroxyapatite Coated Orthopedic Implants	February 20, 1997	ODE/DGRD/ORDB	Do
Calcium Phosphate (Ca-P) Coating Draft Guidance for Preparation of FDA Submissions for Orthopedic and Dental Endosseous Implants	February 21, 1997	ODE/DGRD/ORDB	Do
Draft Data Requirements for Ultrahigh Molecular Weight Polyethylene (Uhmupe) Used in Orthopedic Devices	March 28, 1995	ODE/DGRD/ORDB	Do
Draft Guidance Document for Femoral Stem Prostheses	August 1, 1995	ODE/DGRD/ORDB	Do
Draft Guidance Document for Testing Acetabular Cup Prostheses	May 1, 1995	ODE/DGRD/ORDB	Do
Draft Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Orthopedic Devices-The Basic Elements	July 16, 1997	ODE/DGRD/ORDB	Do
Draft Guidance for the Preparation of Premarket Notifications [510(k)s] for Cemented, Semi-Constrained Total Knee Prostheses	April 1, 1993	ODE/DGRD/ORDB	Do
Draft Guideline for Reviewing Spinal Fixation Device Systems	January 9, 1997	ODE/DGRD/ORDB	Do
Draft of Guidance Document for Testing of Orthopedic Implants with Metallic Plasma Sprayed Porous Coatings Subject to Required Post Market Surveillance	October 25, 1995	ODE/DGRD/ORDB	Do
Draft Outline for a Guidance Document for Testing Orthopedic Bone Cement, request for comments by December 10, 1993	November 1, 1993	ODE/DGRD/ORDB	Do
Guidance Document for Testing Biodegradable Polymer Implant Devices	April 20, 1996	ODE/DGRD/ORDB	Do
Guidance Document for Testing Non-Articulating, ''Mechanically Locked'', Modular Implant Components	May 1, 1995	ODE/DGRD/ORDB	Do
Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement	April 28, 1994	ODE/DGRD/ORDB	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance Document for the Preparation of IDE and PMA Applications for Intra-Articular Prosthetic Knee Ligament Devices	February 18, 1993	ODE/DGRD/ORDB	Do
Guidance Document for the Preparation of Premarket Notification for Ceramic Ball Hip Systems	January 10, 1995	ODE/DGRD/ORDB	Do
Reviewers Guidance Checklist for Intramedullary Rods	February 21, 1997	ODE/DGRD/ORDB	Do
Reviewers Guidance Checklist for Orthopedic External Fixation Devices	February 21, 1997	ODE/DGRD/ORDB	Do
Electroencephalograph Device Draft Guidance for 510(k) Content	June 25, 1997	ODE/DGRD/Plastic and Reconstructive Surgery Devices Branch (PRSB)	Do
Alternate Suture Labeling Resulting from the January 11, 1993, Meeting with HIMA	January 11, 1993	ODE/DGRD/PRSB	Do
Copy of October 9, 1992 Letter and Original Suture Labeling Guidance		ODE/DGRD/PRSB	Do
Draft Guidance for Preparation of PMA Applications for Silicone Inflatable (Saline) Breast Prostheses	January 18, 1995	ODE/DGRD/PRSB	Do
Draft Guidance for Preparations of FDA Submissions of Silicone Gel-Filled Breast Prostheses	May 11, 1992	ODE/DGRD/PRSB	Do
Draft Guidance for Testing of Alternative Breast Prostheses (nonsilicone gel-filled)	September 1, 1994	ODE/DGRD/PRSB	Do
Draft Guidance for the Preparation of a Premarket Notification for a Non-Interactive Wound and Burn Dressing [510(k)]	March 31, 1995	ODE/DGRD/PRSB	Do
Draft Guidance for the Preparation of IDE Submission for Interactive Wound and Burn Dressing	April 1, 1995	ODE/DGRD/PRSB	Do
Letter: Core Study for Silicone Breast Implants	January 11, 1996	ODE/DGRD/PRSB	Do
Electrical Muscle Stimulator (EMS) Labeling Indications, Contraindications, Warnings, etc.	July 11, 1985	ODE/DGRD/Restorative Devices Branch (REDB)	Do
Technological Reporting for Powered Muscle Stimulator 510k Submissions	January 1, 1992	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Notification (510(k)) Applications for Therapeutic Massagers and Vibrators	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Beds	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Communications Systems (Powered and Non-Powered) and Powered Environmental Control Systems	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Electromyograph Needle Electrodes	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Exercise Equipment	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Heating and Cooling Devices	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Immersion Hyudrobaths	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Muscle Stimulators, and Ultrasound Diathermy and Muscle Stimulators	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Tables and Multifunctional Physical Therapy Tables	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Submerged (Underwater) Exercise Equipment	July 26, 1995	ODE/DGRD/REDB	Do

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Guidance Document for the Preparation of Premarket Notification [510k)] Applications for Mechanical and Powered Wheelchairs, and Motorized Three-Wheeled Vehicles	July 26, 1995	ODE/DGRD/REDB	Do
Aqueous Shunts—510(k) Submissions	November 16, 1998	ODE/Division of Opthalmics Devices (DOD)	Do
Guidance for Industry—Guidance Document for Nonprescription Sunglasses	October 9, 1998	ODE/DOD	Do
Third Party Review Guidance for Vitreous Aspiration and Cutting Device Premarket Notification (510k)	January 31, 1997	ODE/DOD	Do
Dear Sponsor Letter Concerning the Revocation of 21 CFR Part 813 IOL IDE Regulations	May 20, 1997	ODE/DOD	Do
Retinoscope Guidance	July 8, 1998	ODE/DOD	Do
Opthalmoscope Guidance	July 8, 1998	ODE/DOD	Do
Slit Lamp Guidance	July 8, 1998	ODE/DOD	Do
Revised Procedures for Adding Lens Finishing Laboratories to Approved Premarket Approval Applications for Class III Rigid Gas Permeable Contact Lens for Extended Wear	August 11, 1998	ODE/DOD	Do
Announcement by Dr. Alpert at 7/26/96 Ophthalmic Panel Meeting Concerning Manufacturers & Users of Lasers for Refractive Surgery [excimer	August 26, 1996	ODE/DOD	Do
Announcement: Information for Manufacturers & Users of Lasers for Refractive Surgery [excimer]	September 22, 1997	ODE/DOD	Do
Intraocular Lens (IOL) Guidance Document	October 10, 1997	ODE/DOD	Do
FDA Guidelines for Multifocal Intraocular Lens IDE Studies and PMAs	May 29, 1997	ODE/DOD	Do
Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses	May 12, 1994	ODE/DOD	Do
Contact Lenses: The Better the Care the Safer the Wear—FDA Publication No. (FDA) (91–4220)	April 1, 1991	ODE/DOD	Do
An FDA Survey of U.S. Contact Lens Wearers (Carol L. Herman) Reprinted from Contact Lens Spectrum	July 1, 1987	ODE/DOD	Do
Facts for Consumers from the Federal Trade Commission—Eyeglasses	April 1, 1986	ODE/DOD	Do
Important Information About Rophae Intraocular Lenses	August 20, 1992	ODE/DOD	Do
Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers [excimer]	October 10, 1996	ODE/DOD	Do
Ophthalmic Device Triage List	March 19, 1998	ODE/DOD	Do
Discussion Points for Expansion of the 'Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers' Draft Document	September 5, 1997	ODE/DOD	Do
Letter to Manufacturers and Users of Lasers for Refractive Surgery [excimer]	October 10, 1996	ODE/DOD	Do
Owners Certification of Lasers as PMA Approved Devices [excimer]	September 26, 1996	ODE/DOD	Do
Update on Excimer Lasers for Nearsightedness	May 20, 1996	ODE/DOD	Do
Amendment 1: Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses	June 28, 1994	ODE/DOD	Do
Certification Statement for the Impact Resistance Test	February 3, 1995	ODE/DOD	Do
Premarket Notification 510(k) Guidance for Contact Lens Care Products	May 1, 1997	ODE/DOD	Do
Eye Valve Implant (and all glaucoma drainage devices) manufacturers letter from N. C. Brogdon	November 16, 1995	ODE/DOD	Do
New FDA Recommendations & Results of Contact Lens Study (7-day letter)	May 30, 1989	ODE/DOD	Do
Sunglass Letter including 510(k) format	October 8, 1996	ODE/DOD	Do
Sunglass Package	February 3, 1995	ODE/DOD	Do
Guidance for Industry; Noise Claims in Hearing Aid Labeling	October 21, 1998	ODE/Division of Reproductive, Abdominal, ENT, and Radiological Devices (DRAERD)	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for the Submission of Premarket Notification for Magnetic Resonance Diagnostic Devices	November 14, 1998	ODE/DRAERD	Do
Guidance for the Content of Premarket Notifications for Intracorporeal Lithotripters	November 30, 1998	ODE/DRAERD	Do
Guidance for the Submission of Premarket Notifications for Radionuclide Dose Calibrators	November 20, 1998	ODE/DRAERD	Do
Guidance for the Submission of Premarket Notifications for Emission Computed Tomography Devices and Accessories (SPECT and PET) and Nuclear Tomography Systems	December 3, 1998	ODE/DRAERD	Do
Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems	February 4, 1999	ODE/-DRAERD	Do
Harmonic Imaging with/without Contrast—Premarket Notification Requirements	November 16, 1998	ODE/DRAERD	Do
Guidance for the Content of Premarket Notifications for Metal Expandable Biliary Stents	February 5, 1998	ODE/DRAERD	Do
Guidance for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters	February 11, 1997	ODE/DRAERD	Do
Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification	January 14, 1998	ODE/DRAERD	Do
Letter to Manufacturers of Falloposcopes	September 5, 1996	ODE/DRAERD	Do
Letter to Manufacturers of Prescription Home Monitors for Non-Stress Tests	September 6, 1996	ODE/DRAERD	Do
Latex Condoms for Men—Information for 510(k) Premarket Notifications: Use of Consensus Standards for Abbreviated Submissions	July 23, 1998	ODE/DRAERD	Do
Uniform Contraceptive Labeling	July 23, 1998	ODE/DRAERD	Do
Guidance to Industry and CDRH Reviewers—Guidance for the Content of Premarket Notifications for Conventional and Permeability Hemodialyzers (Replaces: Guidelines for Premarket Testing of New Conventional Hemodialyers, High Premeability Hemodialyzers and Hemofilters)	August 7, 1998	ODE/DRAERD	Do
Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures	September 10, 1998	ODE/DRAERD	Do
Guidance for the Technical Content of a Premarket Approval (PMA) Application for an Endolymphatic Shunt Tube with Valve	April 1, 1990	ODE/DRAERD	Do
Letter: Notice to Manufacturers of Bone Mineral Densitometers	September 25, 1997	ODE/DRAERD	Do
Draft Guidance to Hearing Aid Manufacturers for Substantiation of Claims	August 5, 1994	ODE/DRAERD/Ear, Nose, and Throat Devices Branch (ENTB)	Do
Guidance for Submission of a 510(k) Premarket Notification for an Air Conduction Hearing Aid	April 1, 1991	ODE/DRAERD/ENTB	Do
Guidance For The Arrangement and Content of a Premarket Approval (PMA) Application For a Cochlear Implant in Children Ages 2 through to 17 Years	May 1, 1990	ODE/DRAERD/ENTB	Do
Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims	October 21, 1996	ODE/DRAERD/ENTB	Do
Guideline for the Arrangement and Content of a Premarket Approval (PMA) Application for a Cochlear Implant in Adults at Least 18 Years of Age	May 1, 1990	ODE/DRAERD/ENTB	Do
Draft Guidance for Hemodialyzer Reuse Labeling	October 6, 1995	ODE/DRAERD/Gastroenterology and Renal Devices Branch (GRDB)	Do
Draft Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis	May 30, 1997	ODE/DRAERD/GRDB	Do
Condom Packet: 4/13/94 R. J. Rivera Letter, Condom Guidance & 7 Tabs, General Guidance for Modifying Condom Labeling to Include Shelf Life	April 13, 1994	ODE/DRAERD/Obstetrics/Gynecology Devices Branch (OGDB)	Do

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Draft Guidance for the Content of Premarket Notifications for Loop and Rollerball Electrodes for GYN Electrosurgical Excisions	July 29, 1991	ODE/DRAERD/OGDB	Do
Draft Guidance for the Content of Premarket Notifications for Menstrual Tampons	May 25, 1995	ODE/DRAERD/OGDB	Do
Draft Thermal Endometrial Ablation Devices (Submission Guidance for an IDE)	March 14, 1996	ODE/DRAERD/OGDB	Do
Guidance ('Guidelines') for Evaluation of Fetal Clip Electrode	March 8, 1977	ODE/DRAERD/OGDB	Do
Guidance ('Guidelines') for Evaluation of Hysteroscopic Sterilization Devices	May 10, 1978	ODE/DRAERD/OGDB	Do
Guidance ('Guidelines') for Evaluation of Laparoscopic Bipolar and Thermal Coagulators (and Accessories)	January 1, 2000	ODE/DRAERD/OGDB	Do
Guidance ('Guidelines') for Evaluation of Tubal Occlusion Devices	November 22, 1977	ODE/DRAERD/OGDB	Do
Guidelines for Evaluation of Non-Drug IUDs	September 28, 1976	ODE/DRAERD/OGDB	Do
Hysteroscopes and Gynecology Laparoscopes—Submission Guidance for a 510(k) —includes 00192	March 27, 1996	ODE/DRAERD/OGDB	Do
Hysteroscopes and Laparoscopic Insufflators: Submission Guidance for a 510(k)	August 1, 1995	ODE/DRAERD/OGDB	Do
In-vivo Devices for the Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE Draft Document	June 14, 1997	ODE/DRAERD/OGDB	Do
Intrapartum Continuous Monitors for Fetal Oxygen Saturation and Fetal pH; Submission Guidance for a PMA; Draft Document	June 14, 1997	ODE/DRAERD/OGDB	Do
Premarket Testing Guidelines for Falloposcopes	November 20, 1992	ODE/DRAERD/OGDB	Do
Premarket Testing Guidelines for Female Barrier Contraceptive Devices also Intended to Prevent Sexually Transmitted Diseases	April 4, 1990	ODE/DRAERD/OGDB	Do
Premarket Testing Guidelines for Home Uterine Activity Monitors	March 31, 1993	ODE/DRAERD/OGDB	Do
Information for a Latex Condom 510(k) Submission for Obstetrics-Gynecology Branch (draft)	March 1994	ODE/DRAERD/OGDB	Do
Testing Guidance for Male Condoms Made from New Material (Non-Latex)	June 29, 1995	ODE/DRAERD/OGDB	Do
Draft Guidance for Review of Bone Densitometer 510(k) Submissions	November 9, 1992	ODE/DRAERD/Radiology Devices Branch (RDB)	Do
Guidance for Content and Review of a Magnetic Resonance Diagnostic Device 510(k) Application and 10/11/95 MRI Guidance Update for dB/dt	August 2, 1988	ODE/DRAERD/RDB	Do
Guidance for Magnetic Resonance Diagnostic Devices—Criteria for Significant Risk Investigations	September 29, 1997	ODE/DRAERD/RDB	Do
Guidance for the Comment and Review of 510(k) Notifications for Picture Archiving and Communications Systems (PACS) and Related Devices [See 2099]	August 1, 1993	ODE/DRAERD/RDB	Do
Guidance for the Submission of 510(k)s for Solid State X-ray Imaging Devices	June 1, 1997	ODE/DRAERD/RDB	Do
Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers	September 30, 1997	ODE/DRAERD/RDB	Do
Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems	June 19, 1996	ODE/DRAERD/RDB	Do
Reviewer Guidance for Automatic X-Ray Film Processor 510(k)	February 1, 1990	ODE/DRAERD/RDB	Do
Simplified 510(k) procedures for certain radiology devices: 12/21/93 letter from L. Yin, ODE/DRAERD, to NEMA	December 21, 1993	ODE/DRAERD/RDB	Do
510(k) Checklist for Sterile Lubricating Jelly Used With Transurethral Surgical Instruments	September 19, 1994	ODE/DRAERD/Urology and Lithrotripsy Devices Branch (ULDB)	Do
Draft Guidance to Firms on Biliary Lithotripsy Studies	August 2, 1990	ODE/DRAERD/ULDB	Do
CDRH Interim Regulatory Policy for External Penile Rigidity Devices	September 10, 1997	ODE/DRAERD/ULDB	Do
Checklist for Mechanical Lithotripters and Stone Dislodgers Used in Gastroenterology and Urology	November 1, 1994	ODE/DRAERD/ULDB	Do

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Draft—510(k) Checklist for Conditioned Response Enuresis Alarms	November 23, 1994	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Condom Catheters	February 23, 1995	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Endoscopic Electrosurgical Unit (ESU) and Accessories Used in Gastroenterology and Urology	August 16, 1995	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Endoscopic Light Sources Used in Gastroenterology and Urology	June 22, 1995	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Non-Implanted Electrical Stimulators Used for the Treatment of Urinary Incontinence	June 6, 1995	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Urological Irrigation System and Tubing Set	August 1, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for Clinical Investigations of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH)	November 11, 1994	ODE/DRAERD/ULDB	Do
Draft Guidance for Information on Clinical Safety and Effectiveness Data for Extracorporeal Shock Wave Lithotripsy of Upper Urinary Tract (Renal Pelvis, Renal Calyx and Upper Ureteral) Calculi	February 5, 1992	ODE/DRAERD/ULDB	Do
Draft Guidance for Preclinical and Clinical Investigations of Urethral Bulking Agents Used in the Treatment of Urinary Incontinence	November 29, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for Preparation of PMA Applications for Penile Inflatable Implants	March 16, 1993	OD/DRAERD/ULDB	Do
Draft Guidance for Preparation of PMA Applications for Testicular Prostheses	March 16, 1993	ODE/DRAERD/ULDB	Do
Draft Guidance for Preparation of PMA Applications for the Implanted Mechanical/Hydraulic Urinary Continence Device (Artificial Urinary Sphincter)	May 1, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for the Clinical Investigation of Urethral Stents	November 2, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for the Content of Premarket Notifications for Endoscopes Used in Gastroenterology and Urology	March 17, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for the Content of Premarket Notifications for Penile Rigidity Implants	May 30, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for the Content of Premarket Notifications for Urological Balloon Dilatation Catheters	January 24, 1992	ODE/DRAERD/ULDB	Do
Draft Guidance Outline—Points to Consider for Clinical Studies for Vasovasostomy Devices	November 30, 1993	ODE/DRAERD/ULDB	Do
Draft of Suggested Information for Reporting Extracorporeal Shock Wave Lithotripsy Device Shock Wave Measurements	January 18, 1991	ODE/DRAERD/ULDB	Do
Guidance for the Content of Premarket Notifications for Biopsy Devices Used in Gastroenterology and Urology	February 10, 1993	ODE/DRAERD/ULDBDo	
Guidance for the Content of Premarket Notifications for Conventional and Antimicrobial Foley Catheters	September 12, 1994	ODE/DRAERD/ULDB	Do
Guidance for the Content of Premarket Notifications for Ureteral Stents	February 10, 1993	ODE/DRAERD/ULDB	Do
Guidance for the Content of Premarket Notifications for Urine Drainage Bags	June 7, 1994	ODE/DRAERD/ULDB	Do
Guidance for the Content of Premarket Notifications for Urodynamic/Uroflowmetry Systems	July 29, 1994	ODE/DRAERD/ULDB	Do
Guidance to Manufacturers on the Development of Required Postapproval Epidemiologic Study Protocols for Testicular Implants	January 1, 2000	ODE/DRAERD/ULDB	Do
Center for Devices and Radiological Health's Investigational Device Exemption (IDE) Refuse to Accept Policy	June 30, 1993	ODE/IDE/blue/	Do
Center for Devices and Radiological Health's Premarket Notification [510(k)] Refuse to Accept Policy—(updated Checklist 3/14/95)	June 30, 1993	ODE/510k/blue/	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance For Request and Issuance of Interim Notice Letters for Mammography Facilities Under the MQSA	October 21, 1998	Office of Health and Industry Programs (OHIP)/Division of Mammography Quality and Radiation Programs (DMQRP)	Do
Continuing Education Credits for Reading/ Writing Articles/Papers and Presenting Courses/Lectures	March 17, 1998	OHIP/DMQRP	Do
Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies	August 13, 1998	OHIP/DMQRP	Do
Additional Mammography Review Policy	March 26, 1998	OHIP/DMQRP	Do
Guidance For Review of Cases of Possible Suspension or Revocation of Mammography Facility Certificates Under the Mammography Quality Standards Act (42 U.S.C. 263(b))	March 26, 1998	OHIP/DMQRP	Do
Guidance for Review of Requests for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Act (42 U.S.C. 263(b))	March 26, 1998	OHIP/DMQRP	Do
Guidance for Submission of Requests for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Act, 42 U.S.C. 263(b)	March 26, 1998	OHIP/DMQRP	Do
Supplement to The Physician's Continuing Experience Requirement	April 9, 1998	OHIP/DMQRP	Do
Requalification for Interpreting Physician's Continuing Experience	May 28, 1998	OHIP/DMQRP	Do
MQSA Policy Statements in a Question and Answer	June 2, 1998	OHIP/DMQRP	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations	August 27, 1998	OHIP/DMQRP	Do
MQSA Policy Statements for the Interim Regulations	August 6, 1998	OHIP/DMQRP	Do
Policy for Facilities Changing Accreditation Bodies	April 15, 1998	OHIP/DMQRP	Do
Addendum to What a Mammography Facility Should do to Prepare for an MQSA Inspection	July 31, 1996	OHIP/DMQRP	Do
Handbook of Selected Tissue Doses for Fluoroscopic and Cineangiographic Examination of the Coronary Arteries (in SI Units) FDA 95–8289, (Units of milliray (mmmGy) tissue dose and gray (Gy) air kerma)	September 1, 1995	OHIP/DMQRP	Do
What a Mammography Facility Should Do to Prepare for an MQSA Inspection	June 30, 1995	OHIP/DMQRP	Do
Policy Notebook in a Q/A Format (update to existing document)	January 23, 1998	OHIP/DMQRP	Do
Guidance for Staff, Industry, and Third Parties Implementation of Third Party Programs Under the FDA Modernization Act of 1997	October 30, 1998	OHIP/Division of Small Manufacturer's Assistance (DSMA)	Do
Pages 39.html Exporting Medical Devices and 391.html Foreign Liaison List	June 30, 1998	OHIP/DSMA	Do
Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA)	January 6, 1999	OHIP/DSMA	Do
A Pocket Guide to Device GMP Inspections—Inspections of Medical Device Manufacturers and GMP Regulation Requirements	November 1, 1991	OHIP/DSMA	Do
Medical Device Reporting for Manufacturers	March 1997	OHIP/DSMA	Do
Regulatory Requirement for Devices for the Handicapped (FDA 87–4221)	August 1, 1987	OHIP/DSMA	Do
Comparison Chart: 1996 Quality System Reg vs. 1978 Good Manufacturing Practices Reg vs. ANSI/ISO/ASQC Q9001 and ISO/DI 13485:1996 (include 126)	January 1, 2000	OHIP/DSMA	Do
Small Business Guide to FDA (FDA 96–1092)	January 1, 1996	OHIP/DSMA	Do
Investigational Device Exemptions [IDE] Manual (FDA 96–4159)/DSMA	July 1, 1996	OHIP/DSMA	Do
An Introduction to Medical Device Regulations (FDA 92–4222)	January 1, 1992	OHIP/DSMA	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
In Vitro Diagnostic Devices: Guidance for the Preparation of 510(k) Submissions (supersedes FDA 87–4224)	January 1, 1997	OHIP/DSMA	Do
Instructions for Completion of Medical Device Registration and Listing Forms FDA 2891, 2891a and 2892	July 1, 1997	OHIP/DSMA	Do
Additional Guidance for Testing Immunity to Radiated Electromagnetic Fields—Infant Apnea Monitor Standard	September 1, 1993	OHIP/DSMA	Do
Classification Names for Medical Devices and In Vitro Diagnostic Products (FDA Pub No. 95–4246)	March 1, 1995	OHIP/DSMA	Do
Labeling—Regulatory Requirements for Medical Devices (FDA 89–4203)	September 1, 1989	OHIP/DSMA	Do
List of Current CDRH Addresses for Report Submission and Ordering of CDRH Forms	July 30, 1996	OHIP/DSMA	Do
Obtaining CDRH Guidance Documents	May 13, 1998	OHIP/DSMA	Do
Premarket Approval (PMA) Manual (FDA 97–4214)	July 1, 1997	OHIP/DSMA	Do
Premarket Notification: 510(k)—Regulatory Requirements for Medical Devices (FDA 95–4158)	August 1, 1995	OHIP/DSMA	Do
Procedures for Laboratory Compliance Testing of Television Receivers—Part of TV Packet	May 1, 1986	OHIP/DSMA	Do
Regulation of Medical Devices Background Information for Foreign Officials	May 1, 1996	OHIP/DSMA	Do
MDR Documents Access Information	May 10, 1996	OHIP/DSMA	Do
MDR Documents Access Information for CDRH Electronic Docket (ED)	February 29, 1996	OHIP/DSMA	Do
MDR Documents Access Information for CDRH Facts-On-Demand (FOD)	February 29, 1996	OHIP/DSMA	Do
MDR Documents Access Information for Industry Organizations	May 8, 1996	OHIP/DSMA	Do
MDR Documents Access Information for National Technical Information Service (NTIS)	May 10, 1996	OHIP/DSMA	Do
MDR Documents Access Information for World Wide Web (WWW)	February 29, 1996	OHIP/DSMA	Do
Medical Device Quality Systems Manual: A Small Entity Compliance Guide	December 1, 1996	OHIP/DSMA	Do
Overview of FDA Modernization Act of 1997, Medical Device Provisions	February 19, 1998	OHIP/DSMA	Do
Medical Device Appeals and Complaints—Guidance on Dispute Resolutions	February 1, 1998	OHIP/DSMA/Office of the Center Director (OCD)	Do
Medical Device Reporting for User Facilities	April 1996	OHIP/Division of Device User Programs and Systems Analysis (DUPSA)	Do
Human Factors Points to Consider for IDE Devices	January 17, 1997	OHIP/DUPSA	Do
Human Factors Principles for Medical Device Labeling	September 1, 1993	OHIP/DUPSA	Do
Write it Right	August 1, 1993	OHIP/DUPSA	Do
Do It By Design—An Introduction to Human Factors in Medical Devices	December 1, 1996	OHIP/DUPSA	Do
FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions: Availability	February 6, 1998	OHIP/Regs	Do
Statistical Aspects of Submissions to FDA: A Medical Device Perspective (also includes as Appendix the Article Observed Uses and Abuses of Statistical Procedures in Medical Device Submissions	June 1, 1984	OSB/Division of Biostatistics (DB)	Do
Statistical Guidance for Clinical Trials of Non Diagnostic Medical Devices (Replaces Clincal Study Guidance, formerly 891)	January 1, 1996	OSB/DB	Do
Amendment to Guidance on Discretionary Postmarket Surveillance on Pacemaker Leads	March 30, 1994	OSB/Division of Postmarket Surveillance (DPS)	Do
Guidance on Procedures to Determine Application of Postmarket Surveillance Strategies	February 19, 1998	OSB/DPS	Do
Guidance on Procedures for Review of Postmarket Surveillance Submissions	February 19, 1998	OSB/DPS	Do
SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance	February 19, 1998	OSB/DPS	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Proposed Draft Guidance to Sponsors Regarding Required Postmarket Surveillance Studies of Plasma-Sprayed Porous-Coated Hip Prostheses	October 7, 1994	OSB/DPS	Do
Guidance to Sponsors on the Development of a Discretionary Postmarket Surveillance Study for Permanent Implantable Cardiac Pacemaker Electrodes (Leads)	June 9, 1993	OSB/DPS	Do
Medical Device Reporting for Distributors	April 1996	OSB/Division of Surveillance Systems (DSS)	Do
Medical Device Reporting: An Overview	April 1996	OSB/DSS	Do
MDR Internet List Server (listserv) Instruction Sheet	August 29, 1996	OSB/DSS	Do
MEDWATCH FDA Form 3500A For Use By User Facilities, Distributors and Manufacturers for Mandatory Reporting	June 1, 1993	OSB/DSS	Do
Instructions for Completing FDA Form 3500A with Coding Manual for Form 3500A (MEDWATCH)	December 15, 1995	OSB/DSS	Do
MDR Policy/Guidance for Endosseus Implant Devices	December 1992	OSB/DSS	Do
MDR Guidance—Blood Loss Policy	December 1995	OSB/DSS	Do
Summary Reporting Approval for Adverse Events	July 31, 1997	OSB/DSS	Do
Common Problems: Baseline Reports and MedWatch Form 3500A (letter to manufacturer—undated)		OSB/DSS	Do
MDR Guidance Document: Remedial Action Exemption—E1996001	July 30, 1996	OSB/DSS	Do
Variance from Manufacturer Report Number Format [MDR letter]	July 16, 1996	OSB/DSS	Do
Instructions for Completing Form 3417: Medical Device Reporting Baseline Report [MDR]	March 31, 1997	OSB/DSS	Do
MDR Guidance Document No. 1—IOL—E1996004	August 7, 1996	OSB/DSS	Do
MDR Guidance Document No. 3—Needlestick & Blood Exposure—E1996003	August 9, 1996	OSB/DSS	Do
MDR Reporting Guidance For Breast Implants—E1996002	August 7, 1996	OSB/DSS	Do
Instructions for Completing Semi-Annual Report, Form 3419 (MDR)	September 24, 1996	OSB/DSS	Do
Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date	May 15, 1998	Office of Standards and Technology (OST)/Division of Electronics and Computer Science (DECS)	Do
Draft Document—A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems	February 7, 1997	OST/Division of Postmarket Surveillance (DPS)	Do
Frequently Asked Questions on Recognition of Consensus Standards	February 19, 1998	OST/OD	Do
Guidance on the Recognition and Use of Consensus Standards	February 19, 1998	OST/OD	Do

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Aerosol Steroid Product Safety Information in Prescription Drug Advertising and Promotional Labeling	January 12, 1998	Advertising	Drug Information Branch (HFD–210), CDER, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573, or via Internet at http://www.fda.gov/cder/guidance/index.htm
Dissemination of Reprints of Certain Published, Original Data	October 8, 1996	Do	Do
Funded Dissemination of Reference Texts	October 8, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Consumer-Directed Broadcast Advertisements	August 12, 1997	Advertising draft	Do
Promoting Medical Products in a Changing Healthcare Environment; Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs)	January 5, 1998	Do	Do
Alprazolam Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	November 27, 1992	Biopharmaceutic	Do
Bioavailability Policies and Guidelines		Do	Do
Bumetanide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Buspirone Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 15, 1998	Do	Do
Captopril Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 13, 1993	Do	Do
Carbidopa and Levodopa Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 19, 1992	Do	Do
Cefactor Capsules and Suspension In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Cholestyramine Powder In Vitro Bioequivalence	July 15, 1993	Do	Do
Cimetidine Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Clozapine (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 15, 1996	Do	Do
Corticosteroids, Dermatologic (topical) In Vivo	June 2, 1995	Do	Do
Diclofenac Sodium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 6, 1994	Do	Do
Diflunisal Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Diltiazen Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Dissolution Testing of Immediate Release Solid Oral Dosage Forms	August 25, 1997	Do	Do
Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations	September 26, 1997	Do	Do
Flurbiprofen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Gemfibrozil Capsules or Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 15, 1992	Do	Do
Glipizide (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Guanabenz Acetate Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Hydroxchloroquine Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 28, 1995	Do	Do
Indapamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Ketoprofen (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Leucovorin Calcium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 4, 1988	Do	Do
Medroxyprogesterone Acetate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 17, 1987	Do	Do
Metaproferenol Sulfate and Albuterol Metered Dose Inhalers In Vitro	June 27, 1989	Do	Do
Metoprolol Tartrate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Nadolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Naproxen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Nortriptyline Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Oral Extended (controlled) Release In Vivo Bioequivalence and In Vitro Dissolution Testing	September 9, 1993	Do	Do
Pentoxifyline (extended-release tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Do	Do
Phenytoin/Phenytoin Sodium (capsules, tablets, suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 4, 1994	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Pindolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Piroxicam (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 15, 1992	Do	Do
Potassium Chloride (slow-release tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 6, 1994	Do	Do
Rantidine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Selegiline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Do	Do
Statistical Procedure for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design	July 1, 1992	Do	Do
Trazodone Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 30, 1988	Do	Do
Antifungal (topical)	February 24, 1990	Biopharmaceutic draft	Do
Antifungal (vaginal)	February 24, 1990	Do	Do
Bioanalytical Methods Validations for Human Studies	January 5, 1999	Do	Do
Food-Effect Bioavailability and Bioequivalence Studies	December 30, 1997	Do	Do
In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches	December 30, 1997	Do	Do
Topical Dermatological Drug Product NDAs and ANDAs—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies	June 18, 1998	Do	Do
Waiver Policy	March 29, 1993	Do	Do
Glyburide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Biopharmaceutic testing	Do
Drug Master Files	September 1, 1989	Chemistry	Do
Environmental Assessment of Human Drugs and Biologics Applications	July 27, 1998	Do	Do
FDA's Policy Statement for the Development of New Stereoisomeric Drugs	May 1, 1992	Do	Do
Format and Content for the CMC Section of an Annual Report	September 1, 1994	Do	Do
Format and Content of the Chemistry, Manufacturing and Controls Section of an Application	February 1, 1987	Do	Do
Format and Content of the Microbiology Section of an Application	February 1, 1987	Do	Do
PAC–ALTS: Postapproval Changes—Analytical Testing Laboratory Sites	April 28, 1998	Do	Do
Reviewer Guidance: Validation of Chromatographic Methods	November 1, 1994	Do	Do
Submission of Chemistry, Manufacturing and Controls Information for Synthetic Peptide Substances	November 1, 1994	Do	Do
Submission of Documentation for Sterilization Process Validation Applications for Human and Veterinary Drug Products	November 1, 1994	Do	Do
Submitting Documentation for Packaging for Human Drugs and Biologics	February 1, 1987	Do	Do
Submitting Documentation for the Manufacturing of and Controls for Drug Products	February 1, 1987	Do	Do
Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Submitting Supporting Documentation in Testing Drug Applications for the Manufacture of Drug Substances	February 1, 1987	Do	Do
Submitting Samples and Analytical Data for Methods Validation	February 1, 1987	Do	Do
SUPAC–IR—Immediate-Release Solid Oral Dosage Forms: Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls, In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation	November 30, 1995	Do	Do
SUPAC–IR: Immediate Release Solid Oral Dosage Forms; Manufacturing Equipment Addendum	October 21, 1997	Do	Do
SUPAC–IR Questions and Answers	February 18, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
SUPAC–MR: Modified Release Solid Oral Dosage Forms: Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation	October 6, 1997	Do	Do
SUPAC–SS—Nonsterile Semisolid Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation	June 13, 1997	Do	Do
BACPAC I: Intermediates in Drug Substance Synthesis (Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation)	November 30, 1998	Chemistry draft	Do
Content and Format of Investigational New Drug Applications (INDs) for Phases 2 and 3 Studies of Drugs, Including Specific Therapeutic Biotechnology-Derived Products—Preliminary Draft	December 10, 1997	Do	Do
Metered Dose Inhalers (MDI) and Dry Powder Inhalers (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation	November 19, 1998	Do	Do
NDAs: Impurities in Drug Substances	January 21, 1999	Do	Do
Stability Testing of Drug Substances and Drug Products	June 8, 1998	Do	Do
Submission of Documentation in Drug Applications for Container Closure Systems Used for the Packaging of Human Drugs and Biologics	July 15, 1997	Do	Do
Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications	November 1, 1991	Do	Do
SUPAC–IR/MR: Immediate Release and Modified Release Solid Oral Dosage Forms, Manufacturing Equipment Addendum	April 28, 1998	Do	Do
SUPAC–SS: Nonsterile Semisolid Dosage Forms	January 5, 1999	Do	Do
Tracking of NDA and ANDA Reformulations for Solid, Oral, Immediate Release Drug Products		Do	Do
Acute Bacterial Exacerbation of Chronic Bronchitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Clinical antimicrobial draft	Do
Acute Bacterial Meningitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Acute Bacterial Sinusitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Acute or Chronic Bacterial Prostatitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Acute Otitis Media; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Bacterial Vaginosis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Community Acquired Pneumonia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Complicated Urinary Tract Infections and Pylonephritis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Empiric Therapy of Febrile Neutropenia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
General Considerations for Clinical Trials; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Lyme Disease; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Nosocomial Pneumonia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Secondary Bacterial Infections of Acute Bronchitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Streptococcal Pharyngitis and Tonsillitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Uncomplicated Gonorrhea—Cervical, Urethral, Rectal, and/or Pharyngeal; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Uncomplicated Urinary Tract Infections; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Uncomplicated and Complicated Skin and Skin Structure Infections; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Vuvlovaginal Candidiasis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Clinical Evaluation of Antidepressant Drugs	September 1, 1977	Clinical medical	Do
Clinical Evaluation of Antidiarrheal Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Antiepileptic Drugs (adults and children)	January 1, 1981	Do	Do
Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy of Postmenopausal Women	March 20, 1995	Do	Do
Clinical Evaluation of Radiopharmaceutical Drugs	October 1, 1981	Do	Do
Clinical Evaluation of Analgesic Drugs	December 1, 1992	Do	Do
Clinical Evaluation of Antacid Drugs	April 1, 1978	Do	Do
Clinical Evaluation of Anti-Inflammatory and Antirheumatic Drugs (adults and children)	April 1, 1988	Do	Do
Clinical Evaluation of Anti-Anxiety Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Anti-Infective Drugs (Systemic)	September 1, 1977	Do	Do
Clinical Evaluation of Drugs to Prevent, Control and/or Treat Periodontal Disease	November 1, 1978	Do	Do
Clinical Evaluation of Gastric Secretory Depressant (GSD) Drugs	September 1, 1977	Do	Do
Clinical Evaluation of General Anesthetics	May 1, 1982	Do	Do
Clinical Evaluation of Hypnotic Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Laxative Drugs	April 1, 1978	Do	Do
Clinical Evaluation of Local Anesthetics	May 1, 1982	Do	Do
Clinical Evaluation of Psychoactive Drugs in Infants and Children	July 1, 1979	Do	Do
Content and Format for Pediatric Use Supplements	May 24, 1996	Do	Do
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products	November 20, 1995	Do	Do
Development of Vaginal Contraceptive Drugs (NDA)	April 19, 1995	Do	Do
FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	February 2, 1999	Do	Do
FDA Requirements for Approval of Drugs to Treat Superficial Bladder Cancer	June 20, 1989	Do	Do
FDA Requirements for Approval of Drugs to Treat Non-Small Cell Lung Cancer	January 29, 1991	Do	Do
Format and Content of the Clinical and Statistical Sections of an Application	July 1, 1988	Do	Do
Format and Content of the Summary for New Drug and Antibiotic Applications	February 1, 1987	Do	Do
Formatting, Assembling and Submitting New Drug and Antibiotic Applications	February 1, 1987	Do	Do
General Considerations for the Clinical Evaluation of Drugs in Infants and Children	September 1, 1977	Do	Do
General Considerations for the Clinical Evaluation of Drugs	December 1, 1978	Do	Do
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Ovarian Cancer	April 13, 1988	Do	Do
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Colon and Rectal Cancer	April 19, 1988	Do	Do
OTC Treatment of Hypercholesterolemia	October 27, 1997	Do	Do
Points to Consider: Clinical Development Programs for MDI and DPI Drug Products	September 19, 1994	Do	Do
Points to Consider in the Clinical Development and Labeling of Anti-Infective Drug Products	October 26, 1992	Do	Do
Points to Consider in the Preclinical Development of Immunomodulatory Drugs for the Treatment of HIV Infection and Associated Disorders	May 1, 1993	Do	Do
Points to Consider in the Preclinical Development of Antiviral Drugs	November 1, 1990	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Postmarketing Adverse Experience Reporting for Human Drugs and Licensed Biological Products; Clarification of What to Report	August 27, 1997	Do	Do
Postmarketing Reporting of Adverse Drug Experiences	March 1, 1992	Do	Do
Preparation of Investigational New Drug Products (Human and Animal)	November 1, 1992	Do	Do
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	May 15, 1998	Do	Do
Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs	July 22, 1993	Do	Do
Study of Drugs Likely to be Used in the Elderly	November 1, 1989	Do	Do
Abuse Liability Assessment	July 1, 1990	Clinical medical draft	Do
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	February 18, 1998	Do	Do
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	March 18, 1998	Do	Do
Clinical Evaluation of Antihypertensive Drugs	May 1, 1988	Do	Do
Clinical Evaluation of Anti-Anginal Drugs	January 1, 1989	Do	Do
Clinical Evaluation of Anti-Arrhythmic Drugs	July 1, 1985	Do	Do
Clinical Evaluation of Drugs for the Treatment of Congestive Heart Failure	December 1, 1987	Do	Do
Clinical Evaluation of Drugs for Ulcerative Colitis (3rd draft)		Do	Do
Clinical Evaluation of Lipid-Altering Agents in Adults and Children	September 1, 1990	Do	Do
Clinical Evaluation of Motility-Modifying Drugs		Do	Do
Clinical Evaluation of Weight-Control Drugs	October 1, 1997	Do	Do
Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review	November 22, 1996	Do	Do
Developing Medical Imaging Drugs and Biologics	October 13, 1998	Do	Do
Development and Evaluation of Drugs for the Treatment of Psychoactive Substance Use Disorders	February 12, 1992	Do	Do
Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products	February 18, 1997	Do	Do
Points to Consider for System Inflammatory Response Syndrome (SIRS) 1st Draft		Do	Do
Points to Consider in the Preparation of IND Applications for New Drugs Intended for the Treatment of HIV-Infected Individuals	September 1, 1991	Do	Do
Preclinical and Clinical Evaluation of Agents Used in the Prevention or Treatment of Postmenopausal Osteoporosis	April 1, 1994	Do	Do
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	September 21, 1998	Do	Do
Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro	April 7, 1997	Clinical pharmacology	Do
Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application	February 1, 1987	Do	Do
Pharmacokinetics and Pharmacodynamics in Patients with Impaired Renal Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	May 15, 1998	Do	Do
Population Pharmacokinetics	February 10, 1999	Do	Do
General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products	November 30, 1998	Clinical pharmacology draft	o
In Vivo Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling	November 19, 1998	Do	Do
A Review of FDA's Implementation of the Drug Export Amendments of 1986		Compliance	Do
Compressed Medical Gases	December 1, 1989	Do	Do
Expiration Dating and Stability Testing of Solid Oral Dosage Form Drugs Containing Iron	June 27, 1997	Do	Do
General Principles of Process Validation	May 1, 1987	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Good Laboratory Practice Regulations Questions and Answers		Do	Do
Monitoring of Clinical Investigations	January 1, 1988	Do	Do
Nuclear Pharmacy Guideline Criteria for Determining When to Register as a Drug Establishment	May 1, 1984	Do	Do
Sterile Drug Products Produced by Aseptic Processing	May 1, 1987	Do	Do
Validation of Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Computerized Systems Used in Clinical Trials	June 18, 1997	Compliance draft	Do
Investigating Out of Specification (OOS) Test Results for Pharmaceutical Production	September 30, 1998	Do	Do
Manufacture, Processing or Holding of Active Pharmaceutical Ingredients	April 17, 1998	Do	Do
Repackaging of Solid Oral Dosage Form Drug Products	February 1, 1992	Do	Do
ANDAs: Impurities in Drug Products	January 5, 1999	Generic drug draft	Do
ANDAs: Impurities in Drug Substances	July 24, 1998	Do	Do
Content and Format of an Abbreviated New Drug Application (ANDA)—Positron Emission Tomography (PET) Drug Products—With Specific Information for ANDAs for Fludeoxyglucose F18 Injection	April 18, 1997	Do	Do
Letter announcing that the OGD will now accept the ICH long-term storage conditions as well as the stability studies conducted in the past	August 18, 1995	Generic drug	Do
Letter describing efforts of CDER & ORA to clarify the responsibilities of CDER chemistry review scientists and ORA field investigators in the new and abbreviated drug approval process in order to reduce duplication or redundancy in the process	October 14, 1994	Do	Do
Letter on incomplete Abbreviated Applications, Convictions under GDEA, Multiple Supplements, Annual Reports for Bulk Antibiotics, Batch Size for Transdermal Drugs, Bioequivalence Protocols, Research, Deviations from OGD Policy	April 8, 1994	Do	Do
Letter on the request for cooperation of regulated industry to improve the efficiency and effectiveness of the generic drug review process, by assuring the completeness and accuracy of required information and data submissions	November 8, 1991	Do	Do
Letter on the provision of new information pertaining to new bioequivalence guidelines and refuse-to-file letters	July 1, 1992	Do	Do
Letter on the provision of new procedures and policies affecting the generic drug review process	March 15, 1989	Do	Do
Letter on the response to 12/20/84 letter from the Pharmaceutical Manufacturers Association about the Drug Price Competition and Patent Term Restoration Act	March 26, 1985	Do	Do
Letter to all ANDA and AADA applicants about the Generic Drug Enforcement Act of 1992 (GDEA), and the Office of Generic Drugs intention to refuse-to-file incomplete submissions as required by the new law	January 15, 1993	Do	Do
Letter to regulated industry notifying interested parties about important detailed information regarding labeling scale-up, packaging, minor/major amendment criteria, and bioequivalence requirements	August 4, 1993	Do	Do
Organization of an Abbreviated New Drug Application and an Abbreviated Antibiotic Application	April 7, 1997	Do	Do
Variations in Drug Products that May Be Included in a Single ANDA	January 27, 1999	Do	Do
E5 Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	ICH draft guidances efficacy	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances	November 25, 1997	ICH draft guidances—quality	Do
Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	June 9, 1998	Do	Do
S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	November 18, 1997	ICH draft guidances safety	Do
E1A The Extent of Population Exposure to Assess Clinical Safety: for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions	March 1, 1995	ICH guidances—efficacy	Do
E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting	March 1, 1995	Do	Do
E2B Data Elements for Transmission of Individual Case Reports	January 15, 1998	Do	Do
E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs	May 19, 1997	Do	Do
E4 Dose-Response Information to Support Drug Registration	November 9, 1994	Do	Do
E6 Good Clinical Practice: Consolidated Guideline	May 9, 1997	Do	Do
E7 Studies in Support of Special Populations: Geriatrics	August 2, 1994	Do	Do
E8 General Considerations for Clinical Trials	December 24, 1997	Do	Do
E9 Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
M3 Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	November 25, 1997	ICH guidances—joint safety/efficacy (multidisciplinary)	Do
Q1A Stability Testing of New Drug Substances and Products	September 22, 1994	ICH guidances—quality	Do
Q1B Photostability Testing of New Drug Substances and Products	May 16, 1997	Do	Do
Q1C Stability Testing for New Dosage Forms	May 9, 1997	Do	Do
Q2A Text on Validation of Analytical Procedures	March 1, 1995	Do	Do
Q2B Validation of Analytical Procedures: Methodology	May 19, 1997	Do	Do
Q3A Impurities in New Drug Substances	January 4, 1996	Do	Do
Q3B Impurities in New Drug Products	May 19, 1997	Do	Do
Q3C Impurities: Residual Solvents	December 24, 1997	Do	Do
Q5A Biotechnological/Biological Pharmaceutical Products, Viral Safety Evaluation	September 24, 1998	Do	Do
Q5B Quality of Biotechnology Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products	February 23, 1996	Do	Do
Q5C Quality of Biotechnological Products: Stability Testing of Biotechnology/Biological Products	July 10, 1996	Do	Do
Q5D Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
S1A The Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals	March 1, 1996	ICH guidances—safety	Do
S1B Testing for Carcinogenicity in Pharmaceuticals	February 23, 1998	Do	Do
S1C Dose Selection for Carcinogenicity Studies of Pharmaceuticals	March 1, 1995	Do	Do
S1C(R) Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes	December 4, 1997	Do	Do
S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals	April 24, 1996	Do	Do
S2B Genotoxicity: Standard Battery Testing	November 21, 1997	Do	Do
S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies	March 1, 1995	Do	Do
S3B Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies	March 1, 1995	Do	Do
S5A Detection of Toxicity to Reproduction for Medicinal Products	September 22, 1994	Do	Do
S5B Detection of Toxicity to Reproduction for Medicinal Products: Addendum on Toxicity to Male Fertility	April 5, 1996	Do	Do

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S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals	November 18, 1997	Do	Do
E3 Structure and Content of Clinical Study Reports	July 17, 1996	IHC guidances—efficacy	Do
A Revision in Sample Collection Under the Compliance Program Pertaining to Pre-Approval Inspections	July 15, 1996	Industry letters	Do
Certification Requirements for Debarred Individuals in Drug Applications	July 27, 1992	Do	Do
Continuation of a series of letters communicating interim and informal generic drug policy and guidance. Availability of Policy and Procedure Guides, and further operational changes to the generic drug review program	June 1, 1990	Do	Do
Fifth of a series of letters providing informal notice about the Act, discussing the statutory mechanisms by which ANDA applicants may make modifications in approved drugs where clinical data is required	April 10, 1987	Do	Do
Fourth of a series of letters providing informal notice to all affected parties about policy developments and interpretations regarding the Act. Three year exclusivity provisions of Title I	October 31, 1986	Do	Do
Implementation of the Drug Price Competition and Patent Term Restoration Act. Preliminary Guidance	October 11, 1984	Do	Do
Implementation Plan USP injection nomenclature	October 2, 1995	Do	Do
Instructions for Filing Supplements Under the Provisions of SUPAC–IR	April 11, 1996	Do	Do
Seventh of a series of letters about the act providing guidance on the ''180-day exclusivity'' provision of section 505(j)(4)(B)(iv) of the FD&C Act	July 29, 1988	Do	Do
Sixth of a series of informal notice letters about the Act discussing the 3- and 5-year exclusivity provisions of sections 505(c)(3)(d) and 505(j)(4)(D) of the FD&C Act	April 28, 1988	Do	Do
Streamlining Initiatives	December 24, 1996	Do	Do
Supplement to 10/11/84 letter about policies, procedures and implementation of the Act (Q & A format)	November 16, 1984	Do	Do
Third of a series of letters regarding the implementation of the Act	May 1, 1985	Do	Do
Regulatory Submissions in Electronic Format; General Considerations	January 28, 1999	Information technology	Do
Regulatory Submissions in Electronic Format; New Drug Applications	January 28, 1999	Do	Do
Acetaminophen, Aspirin and Codeine Phosphate Tablets/Capsules	December 1, 1993	Labeling	Do
Acetaminophen and Codeine Phosphate Oral Solution/Suspension	December 1, 1993	Do	Do
Acetaminophen and Codeine Phosphate Tablets/Capsules	December 1, 1993	Do	Do
Alprazolam Tablets USP	August 1, 1996	Do	Do
Amiloride Hydrochloride and Hydrochlorothiazide Tablets USP	September 1, 1997	Do	Do
Amlodipine Besylate Tablets	September 1, 1997	Do	Do
Astemizole Tablets	September 1, 1997	Do	Do
Atenolol Tablets USP	August 1, 1997	Do	Do
Barbituate, Single Entity-Class Labeling	March 1, 1981	Do	Do
Butalbital, Acetaminophen, Caffeine and Hydocodone Bitartrate Tablets	September 21, 1997	Do	Do
Butalbital, Acetaminophen and Caffeine Capsules/Tablets USP	September 1, 1997	Do	Do
Butorphanol Tartrate Injection USP	October 1, 1992	Do	Do
Captopril and Hydrochlorothiazide Tablets USP	April 1, 1995	Do	Do
Captopril Tablets	February 1, 1995	Do	Do
Carbidopa and Levodopa Tablets USP	February 1, 1992	Do	Do
Chlordiazepoxide Hydrochloride Capsules	January 1, 1988	Do	Do
Cimetidine Hydrochloride Injection	September 1, 1995	Do	Do
Cimetidine Tablets	September 1, 1995	Do	Do
Cisapride Oral Suspension	September 1, 1997	Do	Do

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Cisapride Tablets	September 1, 1997	Do	Do
Clindamycin Phosphate Injection USP	September 1, 1998	Do	Do
Clorazepate Dipotassium Capsules/Tablets	March 1, 1993	Do	Do
Combination Oral Contraceptives—Physician and Patient Labeling	January 1, 1994	Do	Do
Cyproheptadine Hydrochloride Tablets/Syrup	December 1, 1986	Do	Do
Diclofenac Sodium Delayed-Release Tablets	January 1, 1997	Do	Do
Diltiazem Hydrochloride Extended-Release Capsules	September 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulphate Tablets USP	April 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulfate Oral Solution USP	April 1, 1995	Do	Do
Dipivefrin Hydrochloride Ophthalmic Solution USP	October 1, 1998	Do	Do
Dipivefrin Hydrochloride Ophthalmic Solution, 0.1%	November 2, 1998	Do	Do
Ergoloid Mesylates Tablets	January 1, 1988	Do	Do
Fludeoxyglucose F18 Injection	January 1, 1997	Do	Do
Flurbiprofen Tablets USP	January 1, 1994	Do	Do
Fluvoxamine Maleate Tablets	September 1, 1997	Do	Do
Gentamicin Sulfate Ophthalmic Ointment and Solution USP	April 1, 1992	Do	Do
Heparin Sodium Injection USP	March 1, 1991	Do	Do
Hydrocodone Bitartrate and Acetaminophen Tablets USP	April 1, 1994	Do	Do
Hydroxyzine Hydrochloride Injection	December 1, 1989	Do	Do
Hypoglycemic Oral Agents—FEDERAL REGISTER	April 1, 1984	Do	Do
Indomethacin Capsules USP	September 1, 1995	Do	Do
Informal Labeling Guidance Texts for Estrogen Drug Products—Patient Labeling	August 1, 1992	Do	Do
Informal Labeling Guidance Texts for Estrogen Drug Products—Professional Labeling	August 1, 1992	Do	Do
Isoetharine Inhalation Solution	March 1, 1989	Do	Do
Itraconazole Capsules, USP	September 1, 1998	Do	Do
Leucovorin Calcium for Injection	July 1, 1996	Do	Do
Leucovorin Calcium Tablets, USP	July 1, 1996	Do	Do
Local Anesthetics—Class Labeling	September 1, 1982	Do	Do
Meclofenamate Sodium Capsules	July 1, 1992	Do	Do
Medroxyprogesterone Acetate Tablets, USP	September 1, 1998	Do	Do
Metaproterenol Sulfate Inhalation Solution USP	May 1, 1992	Do	Do
Metaproterenol Sulfate Syrup, USP	May 1, 1992	Do	Do
Metaproterenol Sulfate Tablets	May 1, 1992	Do	Do
Metoclopramide Tablets/ Oral Solution, USP	February 1, 1995	Do	Do
Naphazoline Hydrochloride Ophthalmic Solution	March 1, 1989	Do	Do
Naproxen Sodium Tablets, USP	September 1, 1997	Do	Do
Naproxen Tablets, USP	September 1, 1997	Do	Do
Niacin Tablets	July 1, 1992	Do	Do
Paclitaxel Injection	September 1, 1997	Do	Do
Phendimetrazine Tartrate Capsules/Tablets, and Extended-Release Capsules	February 1, 1991	Do	Do
Phentermine Hydrochloride Capsules/Tablets	August 1, 1988	Do	Do
Promethazine Hydrochloride Tablets	March 1, 1990	Do	Do
Propantheline Bromide Tablets	August 1, 1988	Do	Do
Pyridoxine Hydrochloride Injection	June 1, 1984	Do	Do
Quinidine Sulfate Tablets/Capsules USP	October 1, 1995	Do	Do
Ranitidine Tablets	November 1, 1993	Do	Do
Risperidone Oral Solution	September 1, 1997	Do	Do
Risperidone Tablets	September 1, 1997	Do	Do
Sulfacetamide Sodium Ophthalmic Solution/Ointment	August 1, 1992	Do	Do
Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension and Ointment	January 1, 1995	Do	Do
Sulfamethoxazole and Phenazopyridine Hydrochloride Tablets	February 1, 1992	Do	Do
Sulfamethoxazole and Trimethoprim Tablets and Oral Suspension	August 1, 1993	Do	Do
Theophylline Immediate-Release Dosage Forms	February 1, 1995	Do	Do
Theophylline Intravenous Dosage Forms	September 1, 1995	Do	Do
Thiamine Hydrochloride Injection	February 1, 1988	Do	Do
Tobramycin Sulfate Injection USP	May 1, 1993	Do	Do
Venlafaxine Hydrochloride Tablets	October 1, 1997	Do	Do

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Verapamil Hydrochloride Tablets	October 1, 1991	Do	Do
Vitamin A Capsules	February 1, 1992	Do	Do
Zolpidem Tartrate Tablets	September 1, 1997	Do	Do
Content and Format for Geriatric Labeling	January 21, 1999	Labeling draft	Do
Non-Contraceptive Estrogen Class Labeling	October 15, 1998	Do	Do
Non-Contraceptive Estrogen Drug Products—Physician and Patient Labeling	January 8, 1999	Do	Do
OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis)	July 16, 1998	Do	Do
Therapeutic Equivalence Code Placement on Prescription Drug Labels and Labeling	January 28, 1999	Do	Do
Enforcement Policy on Marketing OTC Combination Products		OTC	Do
General Guidelines for OTC Combination Products		Do	Do
Upgrading Category III Antiperspirants to Category I		Do	Do
OTC Nicotine Substitutes	March 1, 1994	OTC draft	Do
Points to Consider for OTC Actual Use Studies	July 22, 1994	Do	Do
Format and Content of the Nonclinical Pharmacology/Toxicology Section of an Application	February 1, 1987	Pharmacology/toxicology	Do
Points to Consider in the Nonclinical Pharmacology/Toxicology Development of Topical Drugs Intended to Prevent the Transmission of Sexually Transmitted Diseases (STD) and/or for the Development of Drugs Intended to Act as Vaginal Contraceptives		Do	Do
Reference Guide for the Nonclinical Toxicity Studies of Antiviral Drugs Indicated for the Treatment of Non-Life Threatening Disease: Evaluation of Drug Toxicity Prior to Phase I Clinical Studies	February 1, 1989	Do	Do
Single Dose Acute Toxicity Testing for Pharmaceuticals	August 26, 1996	Do	Do
180–Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	July 14, 1998	Procedural	Do
Advisory Committees: Implementing Section 120 of the Food and Drug Modernization Act of 1997	November 2, 1998	Do	Do
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act	November 23, 1998	Do	Do
Fast Track Drug Development Programs: Designation, Development, and Application Review	November 18, 1998	Do	Do
Implementation of Section 126, Elimination of Certain Labeling Requirements, of the FDA Modernization Act of 1997	July 21, 1998	Do	Do
National Uniformity for Nonprescription Drugs Ingredient Labeling for OTC Drugs	April 9, 1998	Do	Do
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	June 29, 1998	Do	Do
Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act	June 15, 1998	Do	Do
Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 15, 1998	Do	Do
Submitting Debarment Certification Statements	October 2, 1998	Procedural draft	Do
Classifying Resubmissions in Response to Action Letters	May 14, 1998	User fee	Do
Submitting and Reviewing Complete Responses to Clinical Holds	May 14, 1998	Do	Do

V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition (CFSAN)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Compliance Policy Guides Manual	1996	FDA regulated industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (Order No. PB96–920500)
Compliance Programs Guidance Manual	1995	Do	NTIS (Order No. PB95–915499)
Inspection Operations Manual	October 1994	Do	NTIS (Order No. PB95–913399)
Regulatory Procedures Manual	August 1995	Do	NTIS (Order No. PB95–265534)
Requirements of Laws and Regulations Enforced by the U.S. Food and Drug Administration ''Blue Book''	1997	Do	Superintendent of Documents, Government Printing Office, Washington, DC 20402
FDA Recall Policy	1995	Do	Industry Activities Staff (HFS–565), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed	1995	Food and animal feed industries	Do
Pesticides Analytical Manual	1994	Food Industry	NTIS (Order No. PB94–911899)
FDA Advisory for Deoxynivanol (DON) in Finished Wheat Products Intended for Human Consumption and in Grain and Grain By-Products for Animal Feed	September 16, 1993	Food and animal feed industries	Office of Plant & Dairy Foods & Beverages (HFS–306), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681
FDA's Cosmetic Labeling Manual	October 1991	Cosmetic industry	Office of Colors and Cosmetics (HFS–105), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4493
Statement of Policy: Foods Derived from New Plant Varieties	May 29, 1992	Developers of new plant food varieties	Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3100
A Food Labeling Guide	September 1994	Food industry	Superintendent of Documents, Government Printing Office, Washington, DC 20402, 202–512–1800
Appendix I—Model Small Business Food Labeling Exemption Notice	August 7, 1993	Do	Industry Activities Staff (HFS–565), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5251
Food Labeling: Questions and Answers	August 1993	Do	Do
Food Labeling: Questions and Answers: Volume II	August 1995	Do	Superintendent of Documents, Government Printing Office, Washington, DC 20420, 202–512–1800
Fair Packaging and Labeling Act Requirements and Interpretations	June 1978	Do	NTIS (Order No. PB83–222117)
Bacteriological Analytical Manual 7th Edition	1992	FDA regulated industries	AOAC International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2417, 301–924–7077
FDA Food Importer's Guide for Low-Acid Canned and Acidified Foods	1995	Food industry	Industry Activities Staff (HFS–565), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5251
Fabrication of Single Service Containers and Closures for Milk and Milk Products	1995	States	Milk Safety Branch (HFS–626), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175
Evaluation of Milk Laboratories	1995	Do	Do
Methods of Making Sanitation Ratings Of Milk Supplies	1995	Do	Do
Dry Milk Ordinance	1995	Do	Do
Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers	1995	Dairy industry	Do
Frozen Dessert Processing Guidelines	1989	Do	Office of Plant and Dairy Foods and Beverages (HFS–302), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175
Pasteurized Milk Ordinance	1995	States	Milk Safety Branch (HFS–626), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases	1993	Food industry	Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561
Guidelines for Determining Metric Equivalents of Household Measures	October 1, 1993	Do	Do
List of Food Defect Action Levels (DALS)	1995	Food and Animal Feed Industries Industry Activities Staff (HFS–565), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5251	
Action Levels for Poisonous or Deleterious Substances in Human Food and Feed (Also Found in CPG's)	1995	Do	Do
1997 FDA Food Code	1997	States	NTIS
Seafood List	1993	Seafood industry	Superintendent of Documents, Government Printing Office, Washington, DC 20402, 202–512–1800
Manual of Operations National Shellfish Sanitation	1992	States	Office of Seafood (HFS–407), Shellfish Sanitation Branch, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150
Fish and Fisheries Products Hazards and Controls Guide	1996	Seafood industry	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150
Guidance for Submitting Requests Under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food Articles	1996	Food packaging industry	Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3100
Guidelines for the Preparation of Petition Submissions	1996	Do	Do
Guidelines for Approval of Color Additives in Contact Lenses Intended as Colors	1996	Color or contact lens industry	Do
Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs or Cosmetics Use	February 1993	Color additives industry	Do
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations	December 1992	Food packaging industry	Do
Recommendations for Submission of Chemical and Technological Data for Direct Food Additive and GRAS Food Ingredient Petitions	May 1993	Do	Do
Recommendations for Chemistry Data for Indirect Food Additive Petitions	June 1995	Do	Do
Enzyme Preparations: Chemistry Recommendations for Food Additive and GRAS Affirmation Petitions	January 1993	Food enzyme industry	Do
Estimating Exposure to Direct Food Additive and Chemical Contaminants in the Diet	September 1995	Food and food ingredient industry	Do
Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (also known as Redbook I)	1982	Petitioners for food or color additives	NTIS (Order No. PR–83–170696)
Environmental Assessment Technical Handbook	March 1987	Do	NTIS (Order No. PB87–175345–AS, A–01)
Preparing Environmental Assessments: General Suggestions	August 1990	Do	Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW, Washington, DC 20204, 202–418–3100
Step-by-Step Guidance for Preparing Environmental Assessments	March 1987	Do	Do
Environmental Assessment of Food-Packaging Materials with Enhanced Degradation Characteristics	February 1994	Do	Do
Color Additive Petitions Information and Guidance	1996	Do	Do
Toxological Testing of Food Additives	1983	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
List of Products for Each Product Category	October 8, 1992	Food industry	Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561
Label Declaration of Allergenic Substances in Foods; Notice to Manufacturers	June 10, 1996	Do	Do
Guidance on Labeling of Foods that Need Refrigeration by Consumers	February 24, 1997	Do	Do
Interim Guidance on the Voluntary Labeling of Milk and Milk Products that Have Not Been Treated With Recombinant Bovine Somatropin	February 10, 1994	Do	Do
Guidelines Concerning Notification and Testing of Infant Formula	1985	Infant formula manufacturers	Office of Special Nutritionals (HFS–450), Food and Drug Administration, 200 C St. SW, Washington, DC 20204 202–205–4168
Clinical Testing of Infant Formulas with Respect to Nutritional Suitability for Term Infants	1985	Do	Do
Guidelines for the Evaluation of the Safety and Suitability of New Infant Formulas for Feeding	Infants with Allergic Diseases	1988	Do
Guidelines for the Evaluation of the Safety and Suitability of Infant Formulas for Feeding Infants with Allergic Diseases	1990	Do	Do
Guidelines for the Clinical Evaluation of New Products Used in the Dietary Management of Infants, Children and Pregnant Women with Metabolic Disorders	1987	Do	Do
Guidance Document for Arsenic (Trace Elements in Seafood)	January 1993	States	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150 or via Internet: FDA Home Page http://vm.cfsan.fda.gov/list.html
Guidance Document for Cadmium (Trace Elements in Seafood)	January 1993	Do	Do
Guidance Document for Chromium (Trace Elements in Seafood)	January 1993	Do	Do
Guidance Document for Lead (Trace Elements in Seafood)	August 1993	Do	Do
Guidance Document for Nickel (Trace Elements in Seafood)	January 1993	Do	Do
FDA's Policy for Foods Developed by Biotechnology	1995	Food industry	Internet: FDA Home Page http://vm.cfsan.fda.gov
Bovine Spongiform Encephalopathy (BSE) In Products for Human Use	1997	Do	Office of Plant and Dairy Foods and Beverages (HFS–302), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175 or via Internet: FDA Home Page http://www.fda.gov/opacom/morechoices/industry/guidance/gelguide.htm
Shellfish Sanitation Model Ordinance	1995	States	Shellfish Program Implementation Branch, Office of Field Programs (HFS–628), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–8137
Draft Working Guide to Minimize Microbial Hazards for Fresh Fruits and Vegetables	1998	Farmers and food packers	Food Safety Initiative (HFS–3), Food and Drug Administration, 200 C. St. SW, Washington, DC 20204 or jsaltsman@bangate.fda.gov
Iron-Containing Supplements and Drugs: Label Warning and Unit Dose Packaging; Small Entity Compliance Guide	1997	Dietary supplement manufacturers: small entities	Office of Special Nutritionals (HFS–450), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Partial List of Enzyme Preparations That are Used in Foods	1998	FDA regulated industry	Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Partial List of Microorganisms and Microbial-Derived Ingredients That Are Used in Food	1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Fish and Fishery Products Hazards and Controls Guide, 2nd Edition	January 1998	Do	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
HACCP Regulations for Fish and Fishery Products: Questions and Answers	1997	Do	Do
Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body	1998	Do	Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099
Small Business Juice Labeling: Questions and Answers	1998	Do	Do
FDA Nutrition Labeling Manual, A Guide for Developing and Using Data Bases	March 1998	Do	Do
HACCP Regulation for Fish and Fishery Products: Questions and Answers, Issue Three, Revised	January 1999	Seafood processors	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150
Foods—Adulteration Involving Hard or Sharp Foreign Objects (CPG)	February 1999	FDA field offices	Office of Plant and Dairy Foods and Beverages (HFS–300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Food Additive Petition Expedited Review	January 1999	FDA personnel and regulated industry	Office of Premarket Approval, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3074, premarkt@cfsan.fda.gov OR http://vm.cfsan.fda.gov/dms/opa-expe.html
Use of Antibiotic Resistance Marker Genes in Transgenic Plants	September 1998	FDA regulated industry	Do—premarkt@cfsan.fda.gov OR http://vm.cfsan.fda.gov//dms/opa-armg.html
Changes to the ''Pesticides and Industrial Chemicals in Domestic Foods'' Compliance Program for FY 99	December 30, 1998	FDA districts	FOI/Domestic Programs Branch (HFS–636), Office of Field Programs, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4771
FY 99 Mycotoxin Collection and Sample Analysis Schedule	November 13, 1998	Do	Do
Revisions to the EHEC Method	November 23, 1998	Do	Do
Vibrio Vulnificus and Vibrio parahaemolyticus in Retail Shell Oysters CFSAN Assignment 98–7	June 17, 1998	Do	Do
Revisions to Att F ''Special Survey Obligations—Dioxins and Furans in Food'' of the Pesticides and Industrial Chemicals Domestic Food Compliance Program for FY99	September 30, 1998	Do	Do
Collection and Analyses of Physical Sample to Support Undeclared Allergen Cases: NLEA and General Labeling Requirements; Domestic Compliance Program	November 30, 1998	Do	Do
Assignment to Assure Unpasteurized Juice Manufacturers and Imported Juice Products Provide Required Label Warnings, Placards, and/or meet the 5 log Pathogen Reduction Requirement	September 21, 1998	Do	Do
Assignment to Assure Unpasteurized Juice Manufacturers and Imported Juice Products Provide Required Label Warnings, Placards, and/or meet the 5 log Pathogen Reduction Requirement	November 3, 1998	Do	Do
Pesticides in Imported Ginseng (Field Assignment)	September 17, 1998	FDA districts	FOI/Imports Branch (HFS–606), Office of Field Programs, Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Radionuclides in Foods	October 2, 1998	Do	Do
Letters to Manufacturers of Prepared Sandwiches	August 21, 1998	Manufacturers of prepared sandwiches	Office of Field Programs (HFS–600), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5194 or JohnThomas@OFP@FDA.CFSAN, FAX 292–260–0133

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 3—General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals	July 1994	Animal drug industry	Internet via: http://www.fda.gov/cvm or Communications Staff (HFV–12), CVM, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, FAX 301–594–1831
Guideline 4—Guidelines for Efficacy Studies for Systemic Sustained Release Sulfonamide Boluses for Cattle		Do	Do
Guideline 5—Stability Guidelines	December 1990	Do	Do
Guideline 6—Guidelines for Submitting NADA's for Generic Drugs Reviewed by NAS/NRC		Do	Do
Guideline 9—Preclearance Guidelines for Production Drugs	October 1975	Do	Do
Guideline 10—Amendment of Section II(G)(1)(b)(4) of the Preclearance Guidelines	October 1975	Do	Do
Guideline 13—Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Feeds	January 1985	Do	Do
Guideline 14—Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in FOOD Producing Animals		Do	Do
Guideline 15—Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in NON–FOOD Producing Animals	February 1977	Do	Do
Guideline 16—FOI Summary Guideline	May 1985	Do	Do
Guideline 18—Antibacterial Drugs in Animal Feeds: Human Health Safety Criteria		Do	Do
Guideline 19—Antibacterial Drugs in Animal Feeds: Animal Health Safety Criteria		Do	Do
Guideline 20—Antibacterial Drugs in Animal Feeds: Antibacterial Effectiveness Criteria		Do	Do
Guideline 22—Guideline Labeling of Arecoline Base Drugs Intended for Animal Use		Do	Do
Guideline 23—Medicated Free Choice Feeds—Manufacturing Control	July 1985	Do	Do
Guideline 24—Guidelines for Drug Combinations for Use in Animals	October 1983	Do	Do
Guideline 25—Guidelines for the Efficacy Evaluation of Equine Anthelmintics	January 1979	Do	Do
Guideline 29—Guidelines for the Effectiveness Evaluation of Swine Anthelmintics	September 1980	Do	Do
Guideline 31—Guidelines for the Evaluation of Bovine Anthelmintics	July 1981	Do	Do
Guideline 33—Target Animal Safety Guidelines for New Animal Drugs	June 1989	Do	Do
Guideline 35—Bioequivalence Guideline—Final	1996	Do	Do
Guideline 36—Guidelines for Efficacy Evaluation of Canine/Feline Anthelmintics	July 1985	Do	Do
Guideline 37—Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Poultry Feed for Pigmentation	March 1984	Do	Do
Guideline 38—Guideline for Effectiveness Evaluation of Topical/Otic Animal Drugs	August 1984	Do	Do
Guideline 40—Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry	April 1992	Do	Do
Guideline 41—Draft Guideline: Formatting, Assembling, and Submitting New Animal Drug Applications	June 1992	Do	Do
Guideline 42—Animal Drug Manufacturing Guidelines, 1994	1994	Do	Do
Guideline 43—Guidance on Generic Animal Drug Products Containing Fermentation-Derived Drug Substances	October 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 45—Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle	August 1993	Do	Do
Guideline 48—Guidance for Industry for the Submission of Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products	November 1994	Do	Do
Guideline 49—Guidance Document for Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products	April 1996	Do	Do
Guideline 50—Draft Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Teat Antiseptic Products	February 1993	Do	Do
Guideline 52—Guidance—Microbiological Testing of Antimicrobial Drug Residues in Food	January 1996	Do	Do
Guideline 53—Guideline for the Evaluation of the Utility of Food Additives in Diets Fed to Aquatic Animals	May 1994	Do	Do
Guideline 54—Draft Guideline for Utility Studies for Anti-Salmonella Chemical Food Additives in Animal Feeds	June 1994	Do	Do
Guideline 55—Supportive Data for Cat Food Labels Bearing ''Reduces Urinary pH Claims: Guideline in Protocol Development''	June 1994	Do	Do
Guideline 56—Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials	November 1994	Do	Do
Guideline 57—Master Files—Guidance for Industry for the Preparation and Submission of Veterinary Master Files	July 1995	Do	Do
Guideline 58—Guidance for Industry for Good Target Animal Study Practices: Clinical Investigators and Monitors	May 1997	Do	Do
Guideline 59—Guidance for Industry: Submitting a Notice of Claimed Investigational Exemption in Electronic Format to CVM via E-Mail	January 1999	Do	Do
Guidance 61—Guidance for Industry—FDA Approval of Animal Drugs for Minor Uses and for Minor Species	January 1999	Do	Do
Guideline 62—Guidance for Industry—Consumer-Directed Broadcast Advertisements	August 1997	Do	Do
Guideline 63—Guidance for Industry—Validation of Analytical Procedures: Definition and Terminology—Draft Guidance	December 1997	Do	Do
Guideline 64—Guidance for Industry—Validation of Analytical Procedures: Methodology—Draft Guidance	December 1997	Do	Do
Guideline 65—Guidance for Industry—Industry-Supported Scientific and Educational Activities	November 1997	Do	Do
Guideline 66—Guidance for Industry—Professional Flexible Labeling of Antimicrobial Drugs—Draft Guidance	January 1998	Do	Do
Guideline 67—Guidance for Industry—Small Entities Compliance Guide for Renderers	February 1998	Do	Do
Guideline 68—Guidance for Industry—Small Entities Compliance Guide for Protein Blenders, Feed Manufacturers, and Distributors	February 1998	Do	Do
Guideline 69—Guidance for Industry—Small Entities Compliance Guide for Feeders of Ruminant Animals With On-Farm Feed Mixing Operations	February 1998	Do	Do
Guideline 70—Guidance for Industry—Small Entities Compliance Guide for Feeders of Ruminant Animals Without On-Farm Feed Mixing Operations	February 1998	Do	Do
Guideline 71—Guidance for Industry—Use of Human Chorionic Gonadotropic (HCG) as a Spawning Aid for Fish	April 1998	Do	Do
Guideline 72—Guidance for Industry—GMP's for Medicated Feed Manufacturers Not Required to Register and Be Licensed With FDA	May 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 73—Draft Guidance for Industry—Stability Testing of New Animal Drug Substances and Products	July 1998	Do	Do
Guideline 74—Draft Guidance for Industry—Stability Testing for New Dosage Forms of New Animal Drugs	July 1998	Do	Do
Guideline 75—Guidance for Industry—Stability Testing: Photostability Testing of New Animal Drug Substances and Products: Draft Guidance	July 1998	Do	Do
Guideline 76—Guidance for Industry—Questions and Answers—BSE Feed Regulation	July 1998	Do	Do
Guideline 77—Guidance for Industry—Interpretation of On-Farm Feed Manufacturing and Mixing Operations—Draft Guidance	August 1998	Do	Do
Guideline 78—Guidance for Industry—Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals—Draft Guidance	November 1998	Do	Do

VII. Guidance Documents Issued by the Office of Regulatory Affairs

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Compliance Policy Guides Manual	August 1996	FDA staff personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (Order No. PB96–915499) or via Internet www.fda.gov/ora/compliance—ref/cpg/cpgtc.html
Compliance Policy Guide Medical Device Warning Letter Draft Pilot	August 27, 1998	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via Internet www.fda.gov/ora/compliance—ref/dev—pl.pdf
Compliance Policy Guide-DRAFT Commercialization of In Vitro Diagnostic Devices (IVD's) Labeled for Research Use Only or Investigational Use Only	January 5, 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/cdrh/comp/ivddrfg.html
Compliance Policy Guide 675.400 (CPG 7126.24) REVISION Rendered Animal Feed Ingredients	November 13, 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/cpg/cpgvet/cpg675.400.html
Compliance Policy Guide—DRAFT Distributor Medical Device Reporting	August 28, 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/cpg—mdr3.txt
Compliance Policy Guide 257.100 NEW Deferral of Source Plasma Donors Due to Red Cell Loss During Collection of Source Plasma by Automated Plasmapheresis	December 21, 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/cpg/default.html
FDA/ORA International Inspection Manual and Travel Guide	May 1997	Do	Division of Emergency & Investigational Operations (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 29857 or via Internet www.fda.gov/ora/inspect—ref/itob/itob.html
Glossary of Computerized System and Software Development Terminology	August 1995	Do	NTIS (Order No. PB96–127352) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Import Alerts	continuously	Do	Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or via Internet www.fda.gov/ora/fiars/ora—import—alerts.html
Investigations Operations Manual	January 1999	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3276 or via Internet www.fda.gov/ora/inspect—ref/iom/iomtc.html
Investigations Operations Manual-REVISION: Chapter 4—Sampling	July 1998	Do	Do
Investigations Operations Manual-REVISION: Chapter 5—Establishment Inspection	July 1998	Do	Do
Laboratory Procedures Manual	June 1994	Do	Division of Field Science (HFC–141), Food and Drug Administration, 5600 Fishers Lane, rm. 12–41, Rockville, MD 20857, ATTN: Donna Porter or via Internet www.fda.gov/ora/science—ref/lpm/lpmtc.html
Regulatory Procedures Manual	August 1997	Do	NTIS (Order No. PB97–196182) or via Internet www.fda.gov/ora/compliance—ref/rpm/rpmtc.html
Regulatory Procedures Manual: UPDATE/New Subchapter/ Application Integrity Policy	March 1998	Do	Division of Compliance Policy, or via Internet www.fda.gov/ora/compliance—ref/rpm/rpmtc.html
Regulatory Procedures Manual: UPDATE Subchapter/Warning Letters	March 1998	Do	Do
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual; UPDATE/REVISION Subchapter/Priority Enforcement Strategy for Problem Importers	April 1998	Do	Do
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Notice of Sampling	April 1998	Do	Do
Regulatory Procedures Manual: UPDATE/NEW Subchapter/Granting and Denying Transportation and Exportation (T&E) Entries	May 1998	Do	Do
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Seizure	June 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/rpm—new2/ch6.html
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Supervisory Charges	June 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/rpm—new2/ch9chgs.html
Regulatory Procedures Manual: NEW Subchapter/ Civil Penalties—Electronic Product Radiation Control	July 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/ch6civpen.html
Guide to Inspections of Bulk Pharmaceutical Chemicals	May 1994	Do	NTIS (Order No. PB96–127154) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Pharmaceutical Quality Control Laboratories	July 1993	Do	NTIS (Order No. PB96–127279) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Microbiological Pharmaceutical Quality Control Laboratories	July 1993	Do	NTIS (Order No. PB96–127287) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Validation of Cleaning Processes	July 1993	Do	NTIS (Order No. PB96–127246) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Lyophilization of Parenterals	July 1993	Do	NTIS (Order No. PB96–127253) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of High Purity Water Systems	July 1993	Do	NTIS (Order No. PB96–127261) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guide to Inspections of Dosage Form Drug Manufacturers-CGMPs	October 1993	Do	NTIS (Order No. PB96–127212) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Oral Solid Dosage Forms Pre/Post Approval Issues for Development and Validation	January 1994	Do	NTIS (Order No. PB96–127345) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Topical Drug Products	July 1994	Do	NTIS (Order No. PB96–127394) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Sterile Drug Substance Manufacturers	July 1994	Do	NTIS (Order No. PB96–127295) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Oral Solutions and Suspensions	August 1994	Do	NTIS (Order No. PB96–127147) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Nutritional Labeling and Education Act (NLEA) Requirements	February 1995	Do	NTIS (Order No. PB96–127378) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Interstate Carriers and Support Facilities	April 1995	Do	NTIS (Order No. PB96–127386) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Dairy Product Manufacturers	April 1995	Do	NTIS (Order No. PB96–127329) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Miscellaneous Foods Vol. I	May 1995	Do	NTIS (Order No. PB96–127220) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Miscellaneous Foods Vol. II	September 1996	Do	NTIS (Order No. PB97–196133) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 1 - Administrative Procedures/Scheduled Processes	November 1996	Do	NTIS (Order No. PB97–196141) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 2- Processes/Procedures	April 1997	Do	NTIS (Order No. PB97–196158) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Cosmetic Product Manufacturers	February 1995	Do	NTIS (Order No. PB96–127238) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Blood Banks	September 1994	Do	NTIS (Order No. PB96–127303) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Source Plasma Establishments	December 1994	Do	NTIS (Order No. PB96–127360) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1996	Do	NTIS (Order No. PB96–199476) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Biotechnology Inspections Guide	November 1991	Do	NTIS (Order No. PB96–127402) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Computerized Systems in Drug Processing	February 1983	Do	NTIS (Order No. PB96–127337) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Foreign Medical Device Manufacturers	September 1995	Do	NTIS (Order No. PB96–127311) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Foreign Pharmaceutical Manufacturers	May 1996	Do	NTIS (Order No. PB96–199468) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Mammography Quality Standards Act (MQSA) Auditors Guide	January 1998	Do	NTIS (Order No. PB98–127178) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Electromagnetic Compatibility Aspects of Medical Device Quality Systems	December 1997	Do	NTIS (Order No. PB98–127152) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guide to Inspections of Grain Product Manufacturers	March 1998	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3276
Guide to Bioresearch Monitoring Inspections of In Vitro Devices	February 1998	Do	Do
Guide to Inspections of Viral Clearance Processes for Plasma Derivatives	March 1998	Do	Do
Guide to Traceback of Fresh Fruits and Vegetables Implicated in Epidemiological Investigations	August 1998	Do	Do
Guide to Inspections of Computerized Systems in the Food Processing Industry	August 1998	Do	Do—Internet at www.fda.gov/ora/inspect—ref/igf/iglist.html
Guideline for the Monitoring of Clinical Investigators	January 1988	FDA regulated industry	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420
Computerized Systems Used in Clinical Trials-DRAFT	June 18, 1997	Do	Do
Compliance Program 7348.808: Bioresearch Monitoring; Good Laboratory Practices (Nonclinical)	Revised August 17, 1998	FDA staff personnel	Do—Internet http://www.fda.gov/ora/compliance—ref/bimo/default.html
Compliance Program 7348.810: Sponsors, Contract Research Organizations and Monitors	Revised October 30, 1998	Do	Do
Compliance Program 7348.811: Bioresearch Monitoring; Clinical Investigations	Revised September 2, 1998	Do	Do
Food Laboratory Practice Program (Nonclinical Laboratories) 7348.808A; EPA Data Audit Inspections	October 1, 1991	Do	Division of Compliance Policy
Compliance Program 7348.809; Bioresearch Monitoring; Institutional Review Board	August 18, 1994	Do	Do
Good Laboratory Practice Regulations Management Briefings	August 1979	Do	Do—Internet at www.fda.gov/ora/compliance—ref/bimo/default.html

VIII. Guidance Documents Issued by the Office of the Commissioner and Office of Policy

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, Fax, E-mail or Internet
Draft Guidance for Industry; Exports and Imports under the FDA Export Reform and Enhancement Act of 1996	June 1998	Regulated industry	Internet via www.fda.gov/opacom/fedregister/frexport.html
FDA's Development, Issuance and Use of Guidance Documents	February 1997	FDA personnel and regulated industry	Internet via www.fda.gov/opacom/morechoices/moreindu.html or Office of Policy (301–827–3360)
Industry Supported Scientific and Educational Activities	December 1997	Regulated industry	Internet via www.fda.gov/cder/guidance/index.htm or Office of Policy (301–827–3360)
Draft Guidance on Broadcast Advertisements	February 1997	Do	Do
Direct Final Rule Guidance	November 1997	FDA personnel	Internet via www.fda.gov/opacom/morechoices/industry/guidedc.htm or Lisa Helmanis (301–443–3480)
Small Entities Compliance Guide: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)	February 1997	Regulated industry	Internet via www.fda.gov/opacom/campaigns/tobacco/tobret.htm or 1–888–FDA–4KIDS
Children & Tobacco—Frequently Asked Questions about the New Regulations (Draft)	July 1997	Do	Do
Children & Tobacco—A Retailer's Guide to the New Federal Regulations	October 1997	Do	Do
Children & Tobacco—A Guide to the the New Federal Regulations	October 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, Fax, E-mail or Internet
FDA's Standards Policy	October 1995	FDA personnel and regulated industry	60 FR 53078, October 11, 1995 or Office of Policy (301–827–3360)
Policy & Guidance Handbook for FDA Advisory Committees	1994	FDA personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–487–4650 (Order No. PB94–158854)

Dated: June 4, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14752 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1149]

Draft Guidance for Industry on in Vivo Pharmacokinetics and Bioavailability Studies and in Vitro Dissolution Testing for Levothyroxine Sodium Tablets; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''In Vivo Pharmacokinetics and Bioavailability Studies and in Vitro Dissolution Testing for Levothyroxine Sodium Tablets.'' The draft guidance contains agency recommendations on how to design in vivo pharmacokinetics and bioavailability studies and perform in vitro dissolution testing for levothyroxine sodium tablets.

DATES: Written comments on the draft guidance may be submitted by August 9, 1999. General comments on documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry can be obtained 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 and requests are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Michael J. Fossler, Center for Drug Evaluation and Research (HFD–870), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6417.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''In Vivo Pharmacokinetics and Bioavailability Studies and in Vitro Dissolution Testing for Levothyroxine Sodium Tablets.'' This draft guidance contains agency recommendations on how to design in vivo pharmacokinetics and bioavailability studies and perform in vitro dissolution testing for levothyroxine sodium tablets, which were identified as new drugs in a notice published in the **Federal Register** of August 14, 1997 (62 FR 43536).

Levothyroxine sodium was introduced into interstate commerce during the 1950's without approval of new drug applications (NDA's) for the drug products. As a result of concerns about the stability and consistent potency of the products, the agency announced that orally administered drug products containing levothyroxine sodium were new drugs (62 FR 43536). The notice stated that a manufacturer who wished to continue to market orally administered levothyroxine sodium products had to submit an NDA. The agency allowed current manufacturers 3 years to obtain approved NDA's, until August 14, 2000.

A number of firms have contacted FDA for advice regarding how to conduct bioavailability studies and in vitro dissolution testing for levothyroxine sodium tablets. Because of this interest, and the need to provide consistent advice to all firms who intend to submit NDA's for this product, FDA has developed this draft guidance on designing in vivo pharmacokinetics and bioavailability studies and performing in vitro dissolution testing for levothyroxine sodium tablets. The guidance documents FDA's current thinking on this subject. Although the guidance is being submitted in draft for comment, FDA recognizes that sponsors of already marketed levothyroxine sodium products that are required to obtain approved NDA's by August 14, 2000, may already have begun to conduct bioavailability and dissolution studies. The study design described in this guidance may be used for these studies or an alternative approach may be used. In either case, the study designs will be acceptable if scientifically justified. FDA will revise the study designs described in the guidance in accordance with any comments received, if appropriate.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on in vivo pharmacokinetics and bioavailability studies and in vitro dissolution testing for levothyroxine sodium tablets. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may, on or before August 9, 1999, 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 may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 3, 1999.

Peggy Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–14751 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1081–N]

Medicare Program; June 24, 1999, Meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City Metropolitan Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee (the CPAC) and the Area Advisory Committee (AAC) for the Kansas City metropolitan area on June 24, 1999. The CPAC will first meet independently before convening a joint session with the Kansas City metropolitan area AAC.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to create the CPAC to make recommendations on sites to be included in the demonstration and appropriate research designs for the project. The BBA also requires the Secretary to appoint AACs in the demonstration sites to advise on the implementation of the project. This meeting is open to the public.

DATES: The CPAC is scheduled to meet on June 24, 1999, from 10 a.m. until 5:30 p.m., c.d.s.t. The CPAC will meet jointly with the Kansas City metropolitan area AAC from 1 p.m. to 5:30 p.m. the same day.

ADDRESSES: The meeting will be held at the Kansas City Airport Hilton, 8801 NW 112th Street, Kansas City, MO 64153, (816) 891–8900.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard C4–14–17, Baltimore, MD 21244–1850, (410) 786–6451 (for information about the CPAC). Richard P. Brummel, Deputy Regional Administrator, Health Care Financing Administration, Richard Bolling Federal Building, Room 235, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5233 (for information about the Kansas City metropolitan area AAC).

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to meet periodically and make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research designs for implementation. The CPAC has previously met on May 7, 1998, June 24 and 25, 1998, September 23 and 24, 1998, October 28, 1998, January 6, 1999, and May 13, 1999.

The CPAC consists of 15 individuals who are independent actuaries, experts in competitive pricing and the administration of the Federal Employees Health Benefit Program, and representatives of health plans, insurers, employers, unions, and beneficiaries. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, Health Care Financing Administration; John Bertko, Actuary Principal, Reden & Anders, Ltd.; Dave Durenberger, Vice President, Public Policy Partners; Gary Goldstein, M.D., former CEO, The Oschner Clinic; Samuel Havens, Healthcare Consultant and Chairman of Health Scope/United; Margaret Jordan, President and CEO, The Margaret Jordan Group; Chip Kahn, President, The Health Insurance Association of America; Cleve Killingsworth, President, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, Senior Fellow, The Brookings Institution; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President, Service Employees International Union, AFL-CIO; and Jay Wolfson, Director, Florida Health Information Center, University of South Florida. The chairperson of the CPAC is James Cubbin and the co-chairperson is Robert Berenson, M.D. In accordance with section 4012(a)(5) of the BBA, the CPAC will terminate on December 31, 2004.

Section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) in each demonstration site to advise the Secretary on the implementation of the project. Thus far, the CPAC has designated the Kansas City metropolitan area and Maricopa County in Arizona as demonstration sites. The Kansas City metropolitan area AAC has previously met on March 26, 1999, April 8, 1999, April 22, 1999, and May 12, 1999. The Maricopa County AAC has previously met on March 31, 1999, April 20, 1999, and May 18 and 19, 1999. Additional meetings for the Maricopa County AAC are scheduled for June 7 and 8, 1999.

The Kansas City metropolitan area AAC consists of 17 members who represent health plans, providers, and Medicare beneficiaries. The members of the Kansas City metropolitan area AAC are: E.J. Holland, Jr., Assistant Vice President for Corporate Benefits, Sprint; Robert Bonney, Vice President, Managed Care, St. Luke's Shawnee Mission PHO; Hazel Borders, beneficiary; Richard Brown, President and CEO, Health Midwest; Cynthia Finter, President and Executive Director, Kaiser Permanente, Kansas City Region; Tresia Franklin, Director of Benefits Administration, Hallmark Cards, Inc.; Alan Freeman, CEO, Cass Medical Center; Herman Johnson, beneficiary; John Kennedy, Senior Vice President of Blue Cross and Blue Shield of Kansas City; Mike Oxford, Executive Director, Topeka Independent Living Resource Center; Jean Rumbaugh, Vice President, Government Programs, HealthNet; Kathleen Sebelius, Kansas Insurance Commissioner; Zarina Shockley-Sparling, Executive Director, Humana, Inc.; Jan Stallmeyer, R.N., President, Principal Health Care of Kansas City, Inc.; Charles Van Way III, M.D., Metropolitan Medical Society; Barry Wilkinson, President (retired), Heavy Construction Workers Labor Local 663; and Esther Wolf, Associate, School of Social Welfare, University of Missouri at Kansas City. The chairperson of the Kansas City metropolitan area AAC is E.J. Holland, Jr.

The agenda for the June 24, 1999, meeting will include the following:

- In the morning, the CPAC will meet to review the status and any pending issues from the Maricopa County AAC, as well as review preliminary information on future demonstration site selection.
- In the afternoon, the CPAC and Kansas City metropolitan area AAC will meet in a joint session to discuss and decide how to measure disruption in the Kansas City market due to competitive

pricing and to develop a communication and education plan for Kansas City beneficiaries.

Individuals or organizations that wish to make 5-minute oral presentations on the CPAC agenda issues should contact Sharon Arnold, CPAC Executive Director, by 12 noon, June 16, 1999, to be scheduled. A written copy of the oral remarks should be submitted to the executive director no later than 12 noon, June 16, 1999. Anyone who is not scheduled to speak may submit written comments to the executive director by 12 noon, June 18, 1999.

Individuals or organizations that wish to make 5-minute oral presentations on the Kansas City metropolitan area AAC agenda issues should contact Richard Brummel, Kansas City Deputy Regional Administrator, by 12 noon, June 16, 1999, to be scheduled. A written copy of the oral remarks should be submitted to the Kansas City Deputy Regional Administrator no later than 12 noon, June 16, 1999. Anyone who is not scheduled to speak may submit written comments to the Kansas City Deputy Regional Administrator by 12 noon, June 18, 1999.

The number of oral presentations may be limited by the time available. This meeting is open to the public, but attendance is limited to the space available.

(Section 4012 of the Balanced Budget Act of 1997, Pub. L. 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App.2, section 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 4, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–14647 Filed 6–9–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 64 FR 16977–80, dated April 7, 1999). This notice reflects the changes in the functional statement in the Bureau of Health Professions, Division of Medicine.

Section RP–20–Function

Delete the functional statement in its entirety and replace with the following:

DIVISION OF MEDICINE (RP4)

Serves as the principal focus with regard to education, practice, and research of medical personnel; with special emphasis on allopathic and osteopathic and podiatric medicine, and closely associated assistants, particularly physician assistants. Specifically: (1) Provides professional expertise in the direction and leadership required by the Bureau for planning, coordinating, evaluating, and supporting development and utilization of the Nation's health personnel for these professions; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of such personnel; (3) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between the members of the health care team, their tasks, education requirements, and training modalities, credentialing and practice; (4) supports and encourages the planning, development, and operation of regionally integrated educational systems; (5) conducts and supports studies and evaluations of physician and podiatric personnel requirements, distribution and availability and cooperates with other components of the Bureau and Agency in such studies; (6) analyzes and interprets physician and podiatric programmatic data collected from a variety of sources; (7) conducts, supports, or obtains analytical studies to determine the present and future supply and requirements of physicians and podiatrists by specialty and geographic location, including the linkages between their training and practice characteristics; (8) conducts and supports studies to determine potential national goals for the distribution of physicians in graduate medical education programs and develops alternative strategies to accomplish these goals; (9) supports and conducts programs with respect to activities, associated with the international migration, domestic training, and utilization of foreign medical graduates and U.S. citizens studying abroad; (10) maintains liaison with relevant health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver health services; and (11) provides consultation and technical assistance to public and private organizations, agencies, and institutions, other agencies of the Federal Government, and international agencies and foreign governments, on all aspects of the Division's functions.

Section RP–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon the date of signature.

Dated June 2, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–14753 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Council Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 23, 1999.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 3, 1999.

LaVerne J. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14692 Filed 6–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 14, 1999.

Time: 4:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Suddendorf, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 26, 1999.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Antonio Noronha, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–7722, anoronha@willco.niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 4, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–14693 Filed 6–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are 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 Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169, Revision)

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act, (42 U.S.C. Chapter 1114) authorized funds to support protection and advocacy services on behalf of individuals with mental illness and severe emotional disturbance who are at risk for abuse and neglect and other civil rights violations while under treatment in a residential facility. Under the PAIMI Act, formula grant awards are made to protection and advocacy (P&A) systems designated by the governors of the 50 states and 5 territories, and the District of Columbia to ensure that the rights of individuals with mental illness and severe emotional disturbance are not violated. The PAIMI Act requires P & A systems to file an annual report on their activities and accomplishments and to provide in the report information on such topics as, numbers of individuals served, types of complaints addressed, the number of intervention strategies used to resolve the presenting issues. The Act also requires that the P&A Advisory Council also submit an annual report that assesses the effectiveness of the services provided by P&A systems.

The Center for Mental Health Services (CMHS) is revising the PAIMI Annual Program Performance Report for the following reasons: (1) to make it consistent with the revised annual program report format used by the Administration on Developmental Disabilities, Administration on Children and Families; and, (2) to conform to the GPRA requirements that the reporting burden to the States be reduced. CMHS proposes no revisions to the PAIMI Annual Advisory Council Report.

Planned revisions to the PAIMI Annual Program Performance Report include: (1) Deletion of financial expenditure and sub-contractor information, which P&A systems are required to submit annually to the SAMHSA Grants Management Office; (2) Deletion of items that are more appropriate for inclusion in the Guidance for Applicants (GFA), such as PAIMI program staff positions, by-laws & policies and procedures; (3) PAIMI staff, advisory council and governing board demographic information will be reduced to a comprehensive graph format; (4) All ''information not available'' statements will be deleted to ensure that P&A systems focus on gathering more accurate client data during the intake and referral process; (5) Sections such as, PAIMI program mechanisms for public comment, individual PAIMI clients, etc. will be reduced to a graph format similar to that approved by OMB for use by the Administration on Developmental Disabilities, Administration on Children and Families, which administers the Protection and Advocacy to the

Developmentally Disabled (PADD) Program; (6) Case complaints and problems of the individuals served by the P&As will be modified to capture more accurate information on incidents of abuse, neglect and civil rights violations, such as the incidents of seclusion and restraint used in the emergency rooms of general hospitals on individuals with mental illness, co-occurring disorders and severe emotional disturbance, during transport to and from a residential treatment facility, etc.; and, (7) Sections focused on the types of intervention strategies, public education and awareness/training activities used by the P&As on behalf of the clients served will be placed in a chart format. The revised format will be effective for the report due on January 1, 2001.

The annual burden estimate is as follows:

	Number. of respondents	Number of responses per respondent	Hours per response	Total hour burden
Annual Program Performance Report	56	1	26	1,456
Activities & accomplishments			(20)	(1,120)
Performance outcomes			(3)	(168)
Expenses			(0)	(0)
Budget			(2)	(112)
Priority statement			(1)	(56)
Advisory Council Report	56	1	10	560
Total				2,016

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 14, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–14701 Filed 6–9–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: July 15, 1999, at 1:00 p.m. and July 16 at 8:30 a.m.

ADDRESSES: Fourth floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The agenda will include discussions about the proposed Fiscal Year 2000 Work Plan and the Restoration Reserve.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 99–14702 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting; Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force (Task Force) will meet from 9:00 a.m. to 5:00 p.m. on Wednesday, June 23, 1999 and from 8:00 a.m. to 1:00 p.m. on Thursday, June 24, 1999.

PLACE: The meeting will be held at the Shilo Inn, 2500 Almond Street, Klamath Falls, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda items at this meeting will be: (1) A report on the Clean Water Act Total Maximum Daily Load Process—how this might constrain nonpoint pollution; (2) A report on the status of the Department of the Interior's flow study and associated flow study efforts; (3) A status report on the 1999 Klamath Project operations and the Long-term Environmental Impact Statement; (4) Task Force discussion of the Mid-term Evaluation; (5) Reports from the Sub-basin Planning Groups on progress of sub-basin planning and restoration efforts and the Task Force's review of the plans; and (6) Task Force decision on FY2000 Project Funding.

For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Elizabeth Stevens,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 99–14449 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Final Endangered Species Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice

SUMMARY: The Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), hereafter referred to as the Services, announce the availability of their final joint Endangered Species Consultation Handbook. This document provides internal guidance to all employees of the two agencies relative to conducting consultations and conferences under section 7 of the Endangered Species Act of 1973, as amended (Act). Its purpose is to provide policy and guidance for section 7 procedures to promote efficiency and nationwide consistency within and between the Services. Although intended primarily as internal agency guidance, this handbook is fully available for public information and use.

FOR FURTHER INFORMATION CONTACT: Sandy Tucker, Division of Endangered Species, Fish and Wildlife Service (telephone 703–358–2106; or Craig Johnson, Office of Protected Resources, National Marine Fisheries Service (telephone 301–713–1401).

SUPPLEMENTARY INFORMATION:

Background

Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) outlines the procedures for interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(1) of the Act directs all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of species listed pursuant to the Act. Section 7(a)(2) of the Act requires Federal agencies to insure that their actions are not likely to jeopardize listed species or result in the destruction or adverse modification of designated critical habitat. The consultation process between the Services and other Federal agencies to verify avoidance of jeopardy is generally defined in 50 CFR part 402 and further developed in this handbook.

This handbook provides consistent procedures for the Services' compliance with the consultation and conference provisions of section 7 of the Act by:

(1) Providing national procedural and policy guidance;

(2) Providing standardized guidance to Service offices and personnel who participate in consultation and conferencing procedures under section 7;

(3) Providing assistance to other Federal agencies and applicants in the non-Federal sector who are involved in section 7 procedures; and

(4) Providing for conservation of federally listed, proposed, and candidate species.

Within the Fish and Wildlife Service Manual we incorporate the handbook by reference into chapter I, part 734.

Public Comments Addressed

We published the notice of Availability of a draft consultation handbook in the **Federal Register** on December 21, 1994 (59 FR 65781). The Services considered all information and recommendations from comments submitted on the draft handbook. Our analysis follows.

Issue #1: Many commenters requested that certain terms used in the handbook be defined. Some commenters questioned the clarity or accuracy of specific definitions.

Response: The Services reviewed all the terms mentioned in comment letters. We improved definitions as necessary and new definitions were added. These were taken from the Act or regulations, if available. If not available in those documents, we defined terms by common usage and practice developed over 20 years of section 7 implementation. To further assist handbook users, we added an expanded glossary with all the definitions to the handbook. As terms are used in the text, we repeated the definitions and revised the glossary in Appendix E (FWS Intra-Service Consultation Handbook).

Issue #2: Several commenters requested clarification and further discussion of the relationship between processes relating to section 7 and section 10 of the Act.

Response: The handbook addresses procedures to be used in conducting section 7 consultations on the issuance of section 10 permits. The Services have also jointly produced (November 1996) a final handbook entitled Endangered Species Habitat Conservation Planning Handbook on the processing of applications for section 10 ''incidental take'' permits. The Habitat Conservation Planning Handbook is available from the U.S. Fish and Wildlife Service, Division of Endangered Species, 1849 C Street, NW (Mail Stop 420 Arlington Square), Washington, DC 20240, or from the Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway (PR–3), Silver Spring, MD 20910.

Issue #3: Commenters on the FWS Intra-Service Consultation Handbook were concerned with the requirement that candidate species be addressed as though they are proposed for listing and that this infringes on the authorities of States to manage non-listed species.

Response: The FWS Intra-Service Consultation Handbook clarifies that the need to address candidate species (species for which FWS has adequate information to propose listing) applies only to consultations that are being conducted on actions that the FWS is authorizing, funding, or carrying out. FWS has implemented this internal policy to assist in the conservation of candidate species and to ensure that actions taken by FWS will not be a factor in the necessity to list candidate species in the future. FWS staff will bear any additional workload required to address candidate species in conducting the internal FWS section 7 consultation, so no burden will be placed on the States. FWS recognizes that the States have the lead for addressing the needs of non-listed species and desires to work closely with the States in developing conservation plans for candidate species.

Issue #4: Commenters stated that the handbook should provide a better discussion of how the section 7 process interfaces with other laws, particularly the National Environmental Policy Act (NEPA), and should address ways of streamlining the consultation process.

Response: A section has been added to the handbook on coordination with other environmental reviews which addresses how the NEPA and the section 7 processes can be undertaken simultaneously to minimize the need for extended consultation time frames. A section has also been added to the handbook which outlines streamlined consultation processes which are currently ongoing between the Services and other agencies on various programs, and encourages the Services to look for ways to implement such processes for other existing programs.

Issue #5: Commenters requested that the handbook clarify the role and authority of Federal agencies in the section 7 process, and also clarify the involvement of State agencies, Tribal

governments, and other non-federal parties, especially applicants for Federal permits or funds.

Response: The Services have revised the handbook to better recognize the authority of Federal action agencies and to stress that the Services will work cooperatively with these agencies during consultation, particularly in developing the scope of the proposed action, identifying adverse effects to listed species, developing reasonable and prudent alternatives to avoid jeopardy, and developing reasonable and prudent measures to minimize the impacts of incidental take. The Services acknowledge that the action agency can best judge if an action is technologically feasible and within their authority to carry out.

In addition, the Services have revised the handbook to encourage the inclusion of State and Tribal governments in the consultation process. State and Tribal governments, as managers of land and wildlife resources, often have information and expertise available which is important to the consultation. The Services are committed to notifying affected State and Tribal governments of ongoing consultations, and requesting that they supply any information pertinent to the consultation. While the Services recognize that it is the decision of the Federal action agency to include these governmental agencies in the formal consultation process, we will encourage Federal agencies to do so. Likewise, we will encourage the action agency to include entities such as local governments and outside interest groups.

Issue #6: Commenters requested that the handbook provide more specific guidance and examples on a number of issues, including the difference between a ''may affect'' and ''not likely to adversely affect'' determination, procedures to follow when projects have beneficial effects, clarification of timeframes and procedures for the various types of consultations, and the discussion of consultations on ongoing water projects.

Response: The Services have added language and examples, where appropriate, to clarify all section 7 processes that commenters questioned. We provided new flow charts for Informal, Formal, Early, and Emergency Consultation processes, and for Conference processes. Appendix C includes recent examples of various types of consultations. The handbook is approximately 850 double-sided pages in length.

Summary of Streamlining Measures

The Services have made numerous reforms in the consultation handbook to encourage better coordination, shortened consultation timeframes, and streamlined consultation processes. Improvements include:

1. Clear guidance and standards for all aspects of the consultation program.
2. Incorporating language and policies which encourage early coordination with all parties with an interest in the consultation, including other Federal agencies, applicants, State agencies, and Tribal governments.
3. Encouraging coordination with reviews conducted under other environmental statutes, including NEPA and the Fish and Wildlife Coordination Act.
4. Requiring the integration of section 7 consultation processes with section 10 requirements early in the process of Habitat Conservation Plan review and approval.
5. Establishing joint policies and procedures for FWS and NMFS.
6. Encouraging development of programmatic consultations and streamlined consultation processes. An example of these processes is the Memorandum of Agreement developed among the Services, the Forest Service, and the Bureau of Land Management to review projects developed under the Northwest Forest Plan.

Questions on the Contents of the Handbook

Questions on the content of the handbook may be addressed to the FWS Regional Office nearest you, or to NMFS Headquarters.

FWS Region 1: CA, HI, ID, ND, OR, WA, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the Pacific Trust Territories

Chief, Division of Consultation and Conservation Planning, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Telephone: (503) 231–6241; Fax: (503) 231–6243.

FWS Region 2: AZ, NM, OK, TX

Regional ESA Section 7 Coordinator, U.S. Fish and Wildlife Service, 500 Gold Avenue S.W., (P.O. Box 1306), Albuquerque, New Mexico 87103(–1306); Telephone: (505) 248–6653; Fax: (505) 248–6922.

FWS Region 3: IA, IL, IN, MI, MN, MO, OH, WI

Chief, Ecological Services Operations, U.S. Fish and Wildlife Service, B.H. Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056; Telephone: (612) 713–5334; Fax: (612) 713–5292.

FWS Region 4: AL, AR, FL, GA, KY, LA, MS, NC, PR, SC, TN, U.S. Virgin Islands

Chief, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345; Telephone: (404) 679–4156; Fax: (404) 679–7081.

FWS Region 5: CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV

Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone: (413) 253–8615; Fax: (413) 253–8482.

FWS Region 6: CO, KS, MT, NE, ND, SD, UT, WY

Regional ESA Section 7 Coordinator, U.S. Fish and Wildlife Service, Street Address: Lake Plaza North Building, 134 Union Blvd., 4th Floor, Lakewood, Colorado 80228; Telephone: (303) 236–7400; Fax: (303) 236–0027. Mailing Address: Denver Federal Center, P.O. Box 25486, Denver, Colorado 80225.

FWS Region 7: AK

Regional Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; Telephone: (907) 786–3505; Fax: (907) 786–3350.

NMFS Headquarters Office

National Section 7 Coordinator, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, PR 3, Silver Spring, Maryland 20910; Telephone: (301) 713–1401 x 174; Fax: (301) 713–0376.

Where To Obtain a Copy of the Consultation Handbook

You may purchase copies of the handbook through the Superintendent of Documents at the U.S. Government Printing Office (GPO) for $55.00. The GPO stock number for the handbook is 024-010–00718–4. Contact the Superintendent of Documents order desk at (202) 512–1800 for further information. You may find the GPO order form on the Internet at GPO's Sales Product Catalog site located at: http://www.access.gpo.gov/su__docs/sale/prf/prf.html.

National Environmental Policy Act

The Department of the Interior has determined that the issuance of the consultation handbook is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM2,

Appendix 1.10 and 516 DM 6, Appendix 1.4A(3).

Author/Editor

The editors of this document were Susan Linner and Mary Klee, U.S. Fish and Wildlife Service, Division of Endangered Species, Arlington, Virginia, and Margaret Lorenz, Endangered Species Division, National Marine Fisheries Service, Silver Spring, Maryland.

Authority

The authority for this action is the Endangered Species Act of 1973 , as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 29, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: May 17, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14686 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1410–00–P and AA–6686–0]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kijik Corporation for 581.41 acres. The lands involved are in the vicinity of Nondalton, Alaska.

Seward Meridian, Alaska

T. 2 S., R. 33 W.,
Sec. 25.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 12, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Land Law Examiner, Branch of State and Project Adjudication.

[FR Doc. 99–14696 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–11; WYW 83359]

Public Land Order No. 7342; Modification and Partial Revocation of 12 Secretarial Orders; Wyoming; Correction

AGENCY: Bureau of land management, Interior.

ACTION: Public land order; Correction.

SUMMARY: The Bureau of Land Management, Wyoming published a public land order (PLO), in the **Federal Register** of June 18, 1998. The PLO contained incorrect legal descriptions. This document will correct those errors.

EFFECTIVE DATE: [Insert Date of Publication in **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Jim Paugh, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6306.

Correction

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows: The land description in Public Land Order No. 7342, 63 FR 33389, June 18, 1998, page 33389, column 3, line 42, T. 14 N., R. 98 W., Sec. 15, which reads ''SE¼E¼;'' is hereby corrected to read ''SE¼SE¼;''. On page 33390, column 1, line 47, under T. 20 N., R. 105 W., which reads ''Sec. 21, E½;'' is hereby corrected to read ''Sec. 20, E½;''.

Dated: June 4, 1999.

Jim Paugh,

Realty Officer.

[FR Doc. 99–14703 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–01; COC–62995]

Notice of Proposed Withdrawal; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 165,000 acres of Federal lands and 6,400 acres of reserved Federal minerals to protect nationally significant scientific and cultural resource values, and the ecological diversity of the Yellow Jacket Canyon region of southwestern Colorado. This notice segregates the lands and minerals described below for up to 2 years from surface entry, mineral material sales, and mining. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Mark Stiles, Southwest Center Manager, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, 970–240–5300.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to protect the nationally significant scientific and cultural resource values and the ecological diversity of the Yellow Jacket Canyon area while the lands are under study for additional protection through some form of special designation. The area represents the focus of northern Anasazi development, with more than 100 sites per square mile in many areas, representing the highest known archaeologic site density of any area in the nation. The total number of sites on public lands within the area is estimated at nearly 20,000. In 1985, the Bureau of Land Management's Resource Management Plan for the San Juan/San Miguel Planning Area designated the area as the Anasazi Culture Multiple Use Area of Critical Environmental Concern (ACEC) in recognition of the tremendous cultural values present.

Approximately 90 percent of the land proposed for withdrawal is currently leased for oil and gas under the Mineral Leasing Act of 1920. Approximately 74 producing oil, gas, and carbon dioxide wells maintain these leases. The temporary segregation and subsequent withdrawal would not affect existing mineral leases or any of the associated facilities or authorizations currently in place, nor would it affect the ability of the Bureau of Land Management to authorize actions typically associated with oil and gas development (such as

the drilling of new wells, re-drilling or re-completion of wells, construction of collection systems, and plugging and abandonment). Development of oil and gas resources in this area has been carefully managed over the years to mitigate potential impacts to cultural resources and other values. Effective mitigation of such potential impacts would continue to be emphasized during the temporary segregation period and under the proposed withdrawal.

The proposal, if finalized, would withdraw the following described Federal lands and minerals, subject to valid existing rights, from settlement, sale, location, and entry under the general land laws, including the mining and mineral material sales laws, but not the mineral leasing laws. The proposal includes withdrawing the reserved Federal mineral interest underlying private surface within the ACEC, but would not affect surface rights of those private lands. The allowance of any temporary land use permits, rights-of-way or cooperative agreements would be authorized only when necessary to accommodate valid existing rights and previously authorized actions.

New Mexico Principal Meridian

T. 35 N., R. 16 W.,
Sec. 6.
T. 35 N., R. 17 W.,
Secs. 1, 12, and 13.
T. 35 N., R. 19 W.,
Secs. 3 to 10, inclusive, secs.15 to 22, inclusive, and secs. 28 to 30, inclusive.
T. 35 N., R. 20 W.,
Secs. 1 to 3, inclusive, secs.10 to 15, inclusive, secs. 22 to 27, inclusive, secs. 34 and 35.
T. 36 N., R. 16 W.,
Secs. 18 to 20, inclusive, and secs. 29 to 32, inclusive.
T. 36 N., R. 17 W.,
Secs. 4, secs. 8 to11, inclusive, secs. 13 to 30, inclusive, and sec. 36.
T. 36 N., R. 18 W.,
Secs. 1 to 32, inclusive; sec. 36, N½.
T. 36 N., R. 19 W.,
Secs. 1 to 34, inclusive, and sec. 36.
T. 36 N., R. 20 W.,
Secs. 1 to 3, inclusive, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34 to 36, inclusive.
T. 37 N., R. 17 W.,
Secs. 3, 4, secs. 8 to 10, inclusive, secs. 16 to 20, inclusive, and secs. 30 and 31.
T. 37 N., R. 18 W.,
Secs. 1 to 36, inclusive.
T. 37 N., R. 19 W.,
Secs. 1 to 36, inclusive.
T. 37 N., R. 20 W.,
Secs. 1 to 3, inclusive, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34 to 36, inclusive.
T. 38 N., R. 17 W.,
Secs. 33 and 34.
T. 38 N., R. 18 W.,
Secs. 13 to 15, inclusive, and secs.17 to 35, inclusive.
T. 38 N., R. 19 W.,
Secs. 2 to 36, inclusive.
T. 38 N., R. 20 W.,
Secs. 1 to 3, inclusive, secs.10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34 to 36, inclusive.
T. 39 N., R. 18 W.,
Secs. 6, 7, secs. 17 to 20, inclusive, and secs. 29 and 30.
T. 39 N., R. 19 W.,
Secs. 1 to 3, inclusive, secs. 5, 7, 8, secs. 10 to 15, inclusive, secs. 18, 19, and secs. 21 to 28, inclusive, sec. 30, and secs. 32 to 34, inclusive.
T. 39 N., R. 20 W.,
Secs. 13, 14, secs. 23 to 27, inclusive, and secs. 34 to 36, inclusive.

The areas described aggregate approximately 165,000 acres of Federal lands and 6,400 acres of reserved Federal mineral estate underlying privately held surface in Montezuma and Dolores Counties.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the Federal lands and minerals will be segregated from settlement, sale, location, and entry under the general land laws, including the mining and mineral material sales law, subject to valid existing rights, unless the proposal is canceled or unless the withdrawal is finalized prior to the end of the segregation. Further, the segregation does not preclude issuance of land use permits, rights-of-way or other authorizations that are needed to accommodate valid existing rights and previously authorized actions under the Mineral Leasing Act and other public land laws. All previously authorized activities and permitted uses of the segregated lands may be continued in accordance with the terms of the authorization.

Dated: June 8, 1999.

Ray Brady,

Manager, Lands and Realty Group.

[FR Doc. 99–14917 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Prepation of a Draft Environmental Impact Statement on Floating Production, Storage, and Offloading Systems on the Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The Minerals Management Service (MMS) will prepare an Environmental Impact Statement (EIS) on floating production, storage, and offloading (FPSO) systems on the Gulf of Mexico (GOM) Outer Continental Shelf (OCS). The MMS has awarded a contract to Ecology and Environment, Inc. (E&E) to prepare the EIS to examine the use of FPSO systems in the deepwater areas (water depths greater than 200 meters or 656 feet) in the Central and Western Planning Areas of the GOM OCS. The contract was awarded in April 1999; it is anticipated that completion of the EIS will take 18 months. Based upon the analysis in the EIS, the MMS will decide whether FPSO systems will be an acceptable option for consideration for use on the GOM OCS; the decision will not constitute approval for the use of any particular FPSO at any specific site. Individual plans proposing use of an FPSO will be subject to MMS's established project-specific and site-specific evaluation and decision process.

1. *Authority.* Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA), the MMS is announcing its intent to prepare an EIS on FPSO systems on the GOM OCS. This NOI also serves to announce the scoping process for this DEIS. Throughout the scoping process, Federal and State agencies, local governments, and other interested parties will have the opportunity to aid the MMS in determining the scope of the DEIS, significant issues that should be addressed, and alternatives to be considered.

2. *Proposed Action.* FPSO's may be used as production facilities to develop marginally economic or remote oil fields in the deepwater areas of the GOM OCS. This DEIS will consider scenarios that represent the potential range of FPSO activities that could occur if the proposed action were implemented. The ''base case'' of the proposed action to be evaluated is a permanently moored, double-hulled, shipshaped FPSO with up to 1 million barrels of crude oil storage capability. The seafloor well equipment and on-board production equipment will be the same types as those used with other deepwater production facilities. Produced oil will be offloaded to nondynamically positioned, 500,000-barrel-capacity shuttle tankers for transport to ports in Texas or Louisiana or to the Louisiana Offshore Oil Port (LOOP). Associated or produced gas will be transferred to shore via a gas pipeline.

The range of the proposed action will include technical variations such as the use of disconnectable moorings, single

hull or single bottom design variations, non-shipshaped FPSO systems, increased crude oil storage up to 2.3 million barrels, dynamically positioned shuttle tankers, reinjection of natural gas for later recovery, and gas-to-liquids conversion.

3. *Alternatives.* One of the alternatives to be considered in the DEIS is the exclusion of FPSO systems from the ''lightering prohibited area'' established by the U.S. Coast Guard at 33 CFR part 156 subpart C. Other alternatives may be identified during the scoping process.

4. *Scoping.* Scoping is an open and early process for determining the scope of the DEIS and for identifying significant issues related to a proposed action. Scoping also provides an opportunity for interested parties to help identify alternatives to the proposed action. For this DEIS, public scoping meetings will be held from 7 p.m. to 10 p.m. on June 21, 1999, at the Natural Resources Center—Room 1003, Texas A&M University in Corpus Christi, Texas; on June 22, 1999, at the Radisson Hotel and Conference Center, 9100 Gulf Freeway, Houston, Texas; on June 23, 1999, at the Beaumont Hilton in Beaumont, Texas; on June 24, 1999, at the Players Island Hotel in Lake Charles, Louisiana; and on June 28, 1999, at the Radisson Inn Airport in Kenner (New Orleans), Louisiana. Additional information on the scoping meetings will be distributed to interested parties. Details on the times and locations for the public scoping meetings will also be advertised in local media and are available on the MMS website at http://www.mms.gov or through the MMS Public Information Office at 1–800–200–GULF or GulfPublicInfo@mms.gov.

5. *Comments on the NOI.* In addition to participation at the scoping meetings, Federal and State agencies, local governments, and other interested parties are invited to send their written comments on the scope of the DEIS, significant issues to be addressed, and alternatives that should be considered in the DEIS to the contact person at the address listed below. Comments should be enclosed in an envelope labeled ''Comments on the NOI to Prepare a DEIS on FPSO's'' and should be submitted no later than 45 days after publication of this NOI in the **Federal Register**.

6. *Decisions.* The MMS will make several decisions based on the analysis in the EIS; (a) whether FPSO systems will be permitted in the Central and Western Planning Areas of the GOM OCS; (b) the range of acceptable FPSO operations; and (c) the potential exclusion of FPSO systems in certain geographic areas of the Central and Western Planning Areas of the GOM OCS; or (d) a decision for no action. The no action alternative will mean that FPSO systems will not be permitted in the Central and Western Planning Areas of the GOM OCS.

FOR FURTHER INFORMATION: Questions concerning the NEPA process and the DEIS should be directed to Minerals Management Service, Gulf of Mexico OCS Region, Attention: Ms. Deborah Cranswick (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2744.

Dated: June 4, 1999.

Chris C. Oynes,

Regional Director, Gulf of Mexico, OCS Region.

[FR Doc. 99–14704 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 18, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. AA1921–111 (Review) (Roller Chain from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 1, 1999.)
5. Outstanding action jackets:

(1) Document No. EC–99–011: Approval of study objectives, annotated study outline, final staffing plan, and final work schedule in Inv. No. 332–406 (Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan).

(2) Document No. GC–99–047; Inv. Nos. 751–TA–17–20 (Titanium Sponge from Japan, Russia, Kazakhstan, and Ukraine).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14891 Filed 6–8–99; 2:57 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–11]

Alfred Khalily, Inc. d.b.a. Alfa Chemical; Grant of Restricted Registration

On January 8, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued on Order to Show Cause to Alfred Khalily, Inc., d.b.a. Alfa Chemical (Respondent) of New York, notifying it of an opportunity to show cause as to why DEA should not deny its applications for registration as an importer and as a distributor of List I chemicals, for reason that such registration would be inconsistent with the public interest as determined pursuant to 21 U.S.C. 823(h).

Respondent, through counsel, filed a request for a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Uniondale, New York on May 19 and 20, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument. On October 30, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's applications be granted subject to two conditions. On November 23, 1998, the Government filed exceptions to the Administrative Law Judge's Opinion and Recommended Ruling and on December 15, 1998, Respondent filed its reply to the Government's exceptions. Thereafter, on December 16, 1998, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

Alfred Khalily started Respondent in 1990, and is Respondent's president, only officer, and only employee. In 1991, Respondent merged with another company named American Roland pursuant to a two-year contract. This company was involved in the

importation, brokering, and contract manufacturing of controlled substances and chemicals. Mr. Khalily was an assistant manager at American Roland.

In 1992, the president of R.J. Meyer, a Mexican company, visited American Roland. Mr. Khalily was not a part of that meeting. However he met R.J. Meyer's president in June of 1993, when Respondent company split from American Roland and Respondent took over the R.J. Meyer account.

In October 1994, DEA's Long Island office received information from DEA's Atlanta office regarding three ''very large shipments'' of hydriotic acid, a List I chemical, from Ajay Chemical in Georgia to Respondent in New York. Hydriotic acid can be used in the illegal manufacture of methamphetamine and it takes at least one gallon of hydriotic acid to manufacture one kilogram of methamphetamine. Further investigation revealed two additional shipments of hydriotic acid from Ajay Chemical to Respondent. These shipments occurred in late December 1993, March 1994, May 1994, July 1994, and October 1994 for a total of over 11,000 kilograms (kgs.) of hydriotic acid.

On November 8, 1994, DEA personnel visited Respondent's business which is located in Mr. Khalily's home in a residential area. Mr. Khalily told a DEA investigator that R.J. Meyer was a regular customer of Respondent; that Respondent has sold R.J. Meyer pharmaceutical products other than hydriotic acid in the past; and that R.J. Meyer was a paint manufacturer that used the hydriotic acid as a disinfectant in the manufacture of paint. During this visit, Mr. Khalily gave the investigator a Purchase Authorization Form from R.J. Meyer which indicated that R.J. Meyer intended to use the hydriotic acid it purchased from Respondent as a disinfectant and a cleaner of metals.

In July or August 1993, R.J. Meyer's president first contacted Mr. Khalily regarding the purchase of hydriotic acid. In approximately 1993, R.J. Meyer sent Respondent a purchase order for hydriotic acid. Mr. Khalily then sent R.J. Meyer a Purchase Authorization Form which detailed the provisions of the ''Anti-Drug Abuse Act of 1988,'' regarding the reporting of suspicious orders and the need to establish the identity of the purchaser, and which requested that R.J. Meyer ''please identify the general use you intend for all Hydriotic Acid purchased from Alfa Chem.'' In response to this request, R.J. Meyer listed the following proposed uses for the hydriotic acid: agents for reducing fabrications of iodides, disinfectants, metal finishing, reducing in the pigment, and petroleum acidification. It was Mr. Khalily's understanding that R.J. Meyer was engaged in ''contract manufacturing'' whereby R.J. Meyer would supply a manufacturer with the ''synthesizing path'' and the necessary raw materials, and the contractor would return the finished product to R.J. Meyer.

Based on price, Respondent selected Ajay Chemicals, Inc. (Ajay), as the manufacturer to supply this order. Respondent ultimately engaged in five transactions with R.J. Meyer for hydriotic acid. In general, when Respondent received an R.J. Meyer purchase order, it would then send a purchase order to Ajay. Mr. Khalily would call Sky Harbor warehouse, R.J. Meyer's warehouse, to notify them that a shipment would be arriving. The shipments were sent by Ajay via Yellow Freight, directly to Sky Harbor. Ajay paid Yellow Freight and R.J. Meyer paid Sky Harbor. Ajay would send an invoice to Respondent and Respondent would then send a check to Ajay. Respondent would send an invoice to R.J. Meyer, who would in turn send a check to Respondent. Mr. Khalily would call Sky Harbor to check to see if the shipment was received and would later call to see if the shipment had been picked up.

Specifically, in December 1993 Respondent sold R.J. Meyer 3,080 kgs. of hydriotic acid; 1,686 kgs. in March 1994; 1,686 kgs. in May 1994; 1,686 kgs. in July 1994; and 6,650 pounds or approximately 3,016 kgs. in October 1994. A review of R.J. Meyer's purchase orders revealed that shipments were either consigned to Jose Gutierrez, and sometimes Gus Pimental c/o Sky Harbor Delivery in Tucson, Arizona, or to Jose Gutierrez c/o Gus Pimentel at a warehouse in Phoenix, Arizona.

Ajay's invoices showed that the hydriotic acid was sold to Respondent, but was to be shipped to R.J. Meyer at Sky Harbor Delivery c/o Jose Gutierrez. According to these invoices Respondent was billed approximately $42,000 for the first shipment, approximately $41,500 for the last shipment, and $22,086 for the other three shipments.

According to Respondent's invoices, Respondent sold the hydriotic acid to R.J. Meyer, but it was shipped to Jose Gutierrez at Sky Harbor Delivery. These shipments were ''FOB Destination,'' which according to Mr. Khalily means that the shipper's responsibility ends when the product is delivered to the specified location. Respondent billed R.J. Meyer approximately $63,000 for the first and last shipments, and $33,720 for the other three shipments.

Bills of Lading for two of the transactions indicated that the hydriotic acid was shipped from Ajay and was consigned to R.J. Meyer c/o Sky Harbor Delivery, Attention: Jose Gutierrez.

Air freight Door to Door receipts showed a transfer fee of $92.75 for the May 1994 shipment, and a transfer fee of $166.25 for the October 1994 shipment. Sky Harbor billed Respondent for these fees. The Government alleges that these fees indicate that Respondent rented the space from Sky Harbor. However, Mr. Khalily testified that R.J. Meyer leased the space at Sky Harbor for the deliveries. According to Mr. Khalily, some of the containers of hydriotic acid leaked because there were not properly sealed by Ajay. Respondent paid the transfer fees to Sky Harbor so that the warehouse would accept the shipment and place the containers outside with container material around them so as not to damage the warehouse facility.

According to Sky Harbor employees, all of the shipments were picked up by the same Hispanic male in a rental truck and on one or two occasions, the shipment would be loaded into two trucks because the cargo was so large.

During the course of the investigation of these shipments, a DEA investigator questioned an employee of R.J. Meyer who indicated that Respondent was a ''customer'' of R.J. Meyer and that they had a long-standing relationship. Regarding these five shipments, the employee indicated that R.J. Meyer had ''brokered'' the transactions for Respondent. However, Mr. Khalily acknowledged that while R.J. Meyer sometimes participated in transactions with Respondent where R.J. Meyer acted as the broker, R.J. Meyer was the customer in these five transactions. All of the purchase orders for these transactions submitted to Respondent by R.J. Meyer indicated that R.J. Meyer was the customer.

The employee of R.J. Meyer indicated that R.J. Meyer never received any of the five shipments; the shipments had not come into Mexico; and that she had no information regarding the final destination of the shipment. DEA has not been able to determine the disposition of the shipment after they left the Sky Harbor warehouse. Specifically, DEA does not know if the shipments ever entered Mexico.

According to a DEA investigator who testified at the hearing in this matter, Respondent is considered to be the exporter of the hydriotic acid because it was ''the principal party of interest that is arranging to have the chemical exported out of the country.'' A review of DEA's records indicated that no export declarations were filed by any party to the five transactions at issue.

Mr. Khalily testified that because the transactions were ''FOB Destination,'' his responsibilities ended when the shipments were delivered to the Sky Harbor warehouse in Arizona.

In a letter to DEA dated May 24, 1995, in response to a subpoena for information regarding these shipments, Mr. Khalily stated that prior to the shipments, ''The local DEA was notified and they gave their O.K. The shipment was made directly to our customer. * * * From our background checking we know our customer has been in the chemical and pharmaceutical business for the past 30 years.''

At the hearing, Mr. Khalily testified that in his opinion the five transactions did not involve extraordinary amounts of hydriotic acid. He believed that the chemical was being used as a disinfectant and testified that:

> [W]hen you are starting a production run of disinfectant you probably use about maybe 30 or 40 55-gallon drums, approximately, a regular run, to start the production. Then later on, for other productions, you just replenish—a little bit less. May about 20 or 30 55-gallon drums is (sic) used to be able to achieve that.

According to Mr. Khalily, an initial start-up of a product run would require approximately 7,000 to 10,000 pounds of hydriotic acid. The Government did not present any evidence to dispute Respondent's explanation for the quantity of hydriotic acid that it sold to R.J. Meyer.

Mr. Khalily also testified that the method of delivery of these transactions was not unusual. The same method of delivery was used for these transactions as was used for other transactions with R.J. Meyer. According to Mr. Khalily, an unusual method of delivery would include: ''Picking up from you, from your warehouse or picking up from a third party or drop shipping into some other place which you don't know about,'' Mr. Khalily explained that a drop ship is when ''you are sending to a third party which is not part of the transaction.''

At the hearing, Mr. Khalily admitted that he does not know Jose Gutierrez or Gus Pimentel, however he believed that they were representatives of R.J. Meyer, who would be responsible for the export of the hydriotic acid. When told that R.J. Meyer's president indicated that Jose Gutierrez was not an R.J. Meyer representative, Mr. Khalily stated that, ''[t]his was the first time I heard of that. All the purchase orders that they have, they have the name of their representatives on it.'' Mr. Khalily admitted that he did not know what happened to the five shipments after they were delivered to Arizona.

In October 1995, Respondent submitted an application to be registered as an importer of various List I chemicals. The address listed on the application is also Mr. Khalily's residence. Respondent submitted a second application in October 1995 to be registered as a distributor of various List I chemicals. The address on this application is for a public warehouse where individuals can lease space to store goods. DEA did not conduct a preregistration investigation at either of these locations.

Accordingly to Mr. Khalily, the warehouse address listed on the distributor application is a public bonded warehouse that he has used for 18 years. He explained that he does not have any specific space leased, but that we will be charged based on the square footage his product(s) takes up. In response to a question regarding security at the warehouse, Mr. Khalily stated:

> It is a public, bonded warehouse. United States Customs leave their goods over there. What other provision [do] I have to have? * * * I talked to the manager * * * and he would allow me to build a cage, sort of the same way that the controlled substance are controlled. There is a fenced in area which two people would have * * * the key to that cage. And also, it has an alarm and is very much contained, within the same facility.

Although there are currently no security arrangements specifically established for Respondent at the warehouse, Mr. Khalily explained that he would make the necessary arrangements when he anticipated receiving any regulated substances.

Mr. Khalily testified that listed chemicals have comprised less than one percent of his business, and that he subsequently ceased listed chemical transactions with R.J. Meyer because it ''was a kind of service that I was supplying to them, and it wasn't really our main business.'' Mr. Khalily further testified that since 1994, his practice in selling listed chemicals has become to ask which state the customer is calling from; to ask for the customer's DEA number, the product they are seeking, and their phone number; and to call DEA in Washington to double-check the accuracy of the DEA number of the customer.

In arguing against Respondent's registration, the Government contends that Respondent has not maintained adequate controls against diversion, as evidenced by the disappearance of over 1,750 gallons of hydriotic acid. The Government further argues that Respondent violated 21 U.S.C. 841(d)(2), since Respondent knew or had reasonable cause to believe that the listed chemical it was distributing would be used to unlawfully manufacture methamphetamine. The Government also contends that the transactions involved the following regulatory violations by Respondent: (1) Failure to report an extraordinary quantity of a listed chemical; (2) failure to identify the other party to the transaction; (3) failure to keep and maintain records of regulated transactions; and (4) failure to notify the DEA 15 days in advance of an export of a listed chemical. The Government notes that Respondent's experience in the chemical industry made him aware of the regulatory requirements, but that Respondent ''was more concerned with seeking a profitable venture rather than ensuring the integrity of the regulated transactions in which he was involved.''

In arguing in favor of its registration, Respondent alleges that the term ''extraordinary quantity'' is vague, and that the quantities involved in the transactions at issue were not extraordinary, and the transactions were conducted in the normal course of international commerce, and were ''[f]ar from being a series of secretive and unreported sales.'' As to the identification requirement, Respondent argues that R.J. Meyer was the only party Respondent was required to identify. Respondent also contends that it was not required to file any export documentation since it was merely acting as a broker and therefore was not considered a ''regulated person'' at that time. Respondent points out that its principal officer ''has substantial experience in the chemical industry and is fully aware of the regulatory requirements.''

Pursuant to 21 U.S.C. 958(c)(2)(A), ''[t]he Attorney General shall register an applicant to import or export a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.'' Pursuant to 21 U.S.C. 823(h), ''[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.''

Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may properly rely on any one or a combination of these factors, and give each factor the weight he deems appropriate in determining whether an application should be denied. See Jacqueline Lee Pierson, Energy Outlet, 56 FR 14,269 (1999); Henry J. Schwarz, Jr. M.D., 54 FR 16,422 (1989).

As a preliminary matter, DEA has consistently held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of an applicant or registrant for registration. See, e.g., Rick's Pharmacy, 62 FR 42,595 (1997); Big T Pharmacy, Inc., 47 FR 51,830 (1982). Since Mr. Khalily is the owner of Respondent, his conduct is relevant in determining whether or not to grant Respondent's applications for registration.

Regarding factor one, the Government alleged that the fact that over 1,750 gallons of a listed chemical disappeared is evidence that Respondent failed to maintain effective controls against the diversion of listed chemicals. However, the Government did not provide any specific argument under this factor to support its allegation. The Deputy Administrator concludes that Respondent's failure to properly identify Jose Gutierrez, which will be discussed in more detail under factor two, clearly shows that Respondent failed to maintain effective controls against the diversion of listed chemicals.

Pursuant to 21 CFR 1309.71, there are general security requirements that List I chemical handlers must meet. The Deputy Administrator agrees with Judge Randall that the Government failed to prove by a preponderance of the evidence that the physical security at both locations is inadequate. DEA did not conduct a preregistration inspection at either location to determine whether or not the facilities lacked adequate security.

As to factor two, Respondent's compliance with applicable law, it must first be determined whether Respondent was subject to the laws and regulations relating to listed chemicals. A ''regulated person'' engaged in a ''regulated transaction'' is subject to various recordkeeping, reporting and identification requirements. Respondent was a regulated person pursuant to 21 U.S.C. 802(38), since it distributed a listed chemical when it caused the hydriotic acid to be delivered, ''FOB destination'' to Sky Harbor warehouse in Arizona.

Respondent seems to suggest that it was not a regulated person at the time of the transactions at issue in 1993 and 1994, because it was acting as a broker, and ''brokers'' were not added to the definition of ''regulated person'' until 1995. However, like Judge Randall, the Deputy Administrator rejects Respondent's argument. Starting in 1995, a broker engaged in an international transaction is a regulated person pursuant to 21 U.S.C. 802(38), (42), and (43). ''International transaction'' is defined in 21 U.S.C. 802(42) as ''a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.'' Although Respondent entered into a contract with a Mexican company for hydriotic acid, these were not ''international transactions'' because Respondent only arranged for the chemicals to be delivered to Arizona.

Pursuant to 21 U.S.C. 802(39), a sale or distribution of above a threshold amount of a listed chemical is a regulated transaction. In 1993 and 1994, the threshold for hydriotic acid was 1.7 kgs. Each of the transactions at issue in this proceeding were above the threshold amount and were therefore regulated transactions.

The Deputy Administrator concludes that since Respondent was a regulated person engaged in regulated transactions at the times at issue in this proceeding, it was subject to various recordkeeping, reporting and identification requirements.

The Government alleged that Respondent violated these regulatory requirements by failing to maintain records of these transactions; to report these transactions to DEA; to properly identify the other party to the transactions; and to file required export declarations. In addition, the Government alleged that Respondent violated 21 U.S.C. 824(d)(2) because it knew or had reasonable cause to believe that the listed chemical that it was distributing would be used to unlawfully manufacture methamphetamine.

First, the Deputy Administrator agrees with Judge Randall that the Government has failed to present any evidence regarding the adequacy of Respondent's records. Therefore, the Government has failed to prove by a preponderance of the evidence that Respondent violated the recordkeeping provisions found in 21 U.S.C. 830(a) and 21 CFR 1310.03, 1310.04, and 1310.06.

Next, pursuant to 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1), a regulated person is required to report to DEA ''[a]ny regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.''

The phrase ''extraordinary quantity'' is not defined in the regulations. Judge Randall noted that ''[b]y merely comparing the threshold of 1.7 kilograms to each of the five sales, whose quantities ranged from 1,686 kilograms to 3,080 kilograms, the quantities would seem to be extraordinary.'' However, Mr. Khalily testified that he did not believe that these quantities were excessive because R.J. Meyer indicated that it was using the chemical as a disinfectant for contract manufacturing and that these amounts were reasonable for the stated purpose. The Government did not present any evidence at the hearing as to why it believed that these were extraordinary quantities, nor did it present any evidence to dispute Mr. Khalily's explanation of the amounts needed by R.J. Meyer for its stated purpose. The Deputy Administrator agrees with Judge Randall that ''[g]iven this alternate explanation for the large amounts of hydriotic acid being shipped, the lack of evidence to the contrary, and the lack of any further guidance in the regulations, * * * the quantities alone in these transactions are not sufficient to trigger the reporting requirements of section 1310.05 as they pertain to the Respondent.''

Likewise the phrase ''uncommon method of payment or delivery'' is not defined in the regulations. Regarding the method of payment for these shipments, Respondents was paid by a business account check drawn on R.J. Meyer's bank and Respondent used a business check to pay Ajay from its own checking account. The Deputy Administrator agrees with Judge Randall's conclusion that there is no evidence that there was an uncommon method of payment for these shipments.

As to the method of delivery, Mr. Khalily testified that the method of delivery used for these transaction was the same as was used by Respondent in

non-listed chemical transactions. He further testified that he believed that Jose Gutierrez was R.J. Meyer's representative, and the transaction documents support this interpretation. As Judge Randall noted, ''[t]hese documents, prepared in 1993 and 1994, weigh heavily in favor of finding credible Mr. Khalily's interpretation of Mr. Gutierrez's role in these transactions on behalf of R.J. Meyer.''

However, with the benefit of hindsight, the method of delivery for these transactions was suspicious. Mr. Gutierrez signed for the hydriotic acid at Sky Harbor warehouse, and loaded it into a rental truck. DEA has been unable to determine the whereabouts of the hydriotic acid after it was picked up by Mr. Guiterrez. But as Judge Randall noted, ''at the time the transaction[s] arose, Mr. Khalily did not have the benefit of this hindsight.''

Therefore, the Deputy Administrator agrees with Judge Randall's conclusion ''that preponderating evidence supports Mr. Khalily's interpretation of Mr. Gutierrez's relationship to R.J. Meyer * * *.'' However, the Deputy Administrator shares Judge Randall's concern ''that Mr. Khalily failed to ascertain Mr. Guiterrez's role in the transaction prior to shipping the listed chemicals to him as the named recipient on behalf of R.J. Meyer.''

Next, the Government alleged that Respondent failed to properly identify the other party to the transactions at issue as required by 21 CFR 1310.07(a). While Mr. Khalily and Respondent's predecessor has a long-standing business relationship with R.J. Meyer, he had never met Mr. Gutierrez before. Mr. Khalily testified that he assumed that Mr. Gutierrez was a representative of R.J. Meyer because ''[a]ll purchase orders that they have, they have the name of their representatives on it.'' But, pursuant to 21 CFR 1310.07(c), ''[w]hen transacting business with a new representative of a firm, the regulated person must verify the claimed agency status of the representative.'' Mr. Khalily failed to do this. Judge Randall found that ''[b]ased on his own testimony, it appears that Mr. Khalily merely assumed that Mr. Gutierrez was a representative of R.J. Meyer, rather than to verify his identity with R.J. Meyer, prior to shipping the listed chemicals to him.'' Therefore, the Deputy Administrator agrees with Judge Randall that the preponderance of the evidence shows that Mr. Khalily failed to properly identify the other party to the five transactions as required by 21 CFR 1310.07.

As to the Government's allegation that Respondent failed to file the appropriate export documentation, the Deputy Administrator agrees with Judge Randall that pursuant to the regulations Respondent was not required to file such documentation. Pursuant to 21 CFR 1313.21(a) (1993 & 1994), DEA must be notified at least 15 days in advance of any export of threshold or above threshold quantities of a listed chemical. The term ''chemical export'' is defined in 21 CFR 1313.02(a) (1993 & 1994) [1] as ''transferring ownership or control, or the sending or taking of threshold quantities of listed chemicals out of the United States * * *.'' The regulations further define ''chemical exporter'' as ''a regulated person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the listed chemical out of the United States.'' 21 CFR 1313.02(b) (1993 & 1994).[2]

While Respondent was selling above threshold quantities of hydriotic acid to a Mexican company, these sales were ''FOB Destination'' transactions and therefore Respondent's responsibility ended when the chemicals were delivered to the warehouse in Arizona. Respondent did not send or take the listed chemicals out of the United States, nor was it the ''principal party in interest'' with the power and control over sending the chemicals out of the United States. Therefore, it was not responsible for filing any export documentation.

As to factor three, there is no evidence that Respondent or its owner, Mr. Khalily, has been convicted of any criminal acts related to controlled substances or listed chemicals.

Regarding Respondent's past experience in the manufacture or distribution of chemicals, Mr. Khalily has been involved with the importation, contract manufacturing, and brokering of transactions involving controlled substances and listed chemicals for a number of years. As a result, he has been aware of the regulatory requirements regarding listed chemicals. Nonetheless, Mr. Khalily distributed a listed chemical on five occasions without properly identifying the other party to the transaction in violation of the regulations which allowed over 11,000 kgs. of hydriotic acid to disappear.

As to other factors relevant to the public health and safety, Judge Randall noted Mr Khalily's failure to take responsibility for his role in the transactions and his lack of concern regarding the disappearance of the five shipments. Further, Mr. Khalily did not present adequate assurances that Respondent will implement better procedures for properly identifying other patties to listed chemical transactions.

Judge Randall concluded that ''[t]he Government has not proven by a preponderance of the evidence that the Respondent is conducting five regulated transactions of hydriotic acid, failed to comply with any record-keeping or reporting requirements.'' Further, the Government has failed to prove that Respondent was required to file export documents. But, the Deputy Administrator agrees with Judge Randall that the evidence does support the conclusion that Respondent failed to properly identify Mr. Gutierrez thereby allowing over 11,000 kgs. of a listed chemical that can be used in the illicit manufacture of methamphetamine to disappear.

Judge Randall concluded that ''[t]he Government has proven by a preponderance of the evidence that the Respondent's failure to comply with identification regulations contributed to the ultimate loss of the shipments, leading to a greater likelihood that they could have been diverted to illicit use, the very evil addressed by this regulatory and statutory scheme.'' Judge Randall also concluded that ''Respondent has done nothing to assure the DEA that it will act more responsibly in future transactions.'' Nonetheless, after considering all of the facts and circumstances of this case, Judge Randall concluded that complete denial of Respondent's applications is not warranted. However, Judge Randall further concluded that Respondent's prior conduct warrants closer monitoring than in other cases.

Therefore, Judge Randall recommended that Respondent's applications be granted with the following conditions:

(1) The Respondent be required to maintain a log of all listed chemical transactions he engages in for a period of three years from the date of issuance of these DEA Certificates of Registration. At a minimum, the log shall indicate the date that the shipment occurred, the name and address of all the parties involved in the transaction, the destination of the shipments, and the name and quantity of the listed chemical shipped. Upon request by the Special Agent in Charge of the local DEA Field Division, or his designee, the Respondent shall submit or otherwise make available his log for inspection.

[1] This regulation has since been renumbered and can now be found in 21 CFR 1300.02(5).

[2] This regulation has since been renumbered and can now be found in 21 CFR 1300.02(6).

(2) For three years from the date of issuance of the DEA Certificates of Registration, the Respondent shall consent to periodic inspections at its registered locations by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

In its exceptions to Judge Randall's Opinion and Recommended Ruling, the Government argued that the Administrative Law Judge gave undue weight to Mr. Khalily's testimony that Respondent had no obligation to report the transactions as a result of the proposed use for the hydriotic acid. Further, the Government argued that Respondent had an obligation to report these shipments since they were for extraordinary quantities and there was an uncommon method of delivery.

Specifically, the Government contended that Respondent's explanation of the quantities distributed was self-serving, and that Judge Randall gave too much significance to the intended uses listed on R.J. Meyer's purchase authorization form. ''The Government believes that this form, standing alone, is inadequate to prove that the listed uses were intended, or even valid, uses.'' The Government disagreed with the Administrative Law Judge's conclusion that mere quantities of shipments alone are not sufficient to require reporting and that the method of delivery was reasonable based upon Mr. Khalily's mistaken impression that Mr. Gutierrez was an agent of R.J. Meyer.

The Government argued that the quantities of these shipments were extraordinary because they each greatly exceeded the threshold for hydriotoc acid; ''the physical size of the product shipment was bulky and large''; and ''the amount of illicit methamphetamine that could ostensibly be made from this product was immense.'' The Government also argued that an uncommon method of delivery was used for these shipments because Mr. Khalily ''did not know the persons to whom he shipped the [hydriotic acid,] * * * [t]he shipments were picked up by rental truck * * * [and] [n]o one knows where the [hydriotic acid] went.''

The Government further contended that ''the burden of establishing whether any given shipment is required to be reported falls heavily upon the regulated industry.'' In support of its position, the Government cites to the final rule implementing the chemical Diversion and Trafficking Act wherein DEA declined to define either ''extraordinary quantity'' or ''uncommon method of delivery'', but rather stated:

> The chemical industry is expected to understand the nature of its legitimate business transactions and must make informed decisions as to whether the above terms apply to any of their transactions.

See 54 FR 31,657,31,659 (1989).

Based upon the record before him, the Deputy Administrator finds that the Government has not established that the quantities of these shipments were extraordinary. While these shipments seem large to the Deputy Administrator, the Respondent's explanation based upon the intended use of the hydriotic acid for the quantities shipped was unrebutted by the Government. The Deputy Administrator would like to have considered evidence of whether R.J. Meyer's intended use for the hydriotic acid was legitimate and what the usual quantities are in the industry for the intended use, however no such evidence was presented by the Government. Therefore, the Deputy Administrator is left with nothing but Respondent's explanation, and as stated above the industry is expected to understand the nature of its business. Consequently, based upon the evidence in the record before him the Deputy Administrator concludes that Respondent was not required to report these transactions in light of the quantities shipped.

The Deputy Administrator has considered the Government's contention that these shipments should have been reported based upon an uncommon method of delivery. However as stated above, the method of delivery employed for these transactions was the same as had been employed by Respondent with R.J. Meyer in previous non-listed chemical transactions, and based upon the transaction documents, Respondent's assumption that Mr. Gutierrez was a representative of R.J. Meyer was not unreasonable.

In its exceptions, the government also disagreed with the Administrative Law Judge's conclusion that Respondent was not required to file any export documents. Essentially the Government argued that by selling hydriotic acid to a Mexican company Respondent was exporting the chemical, and therefore was responsible for filing the appropriate documents. However as previously noted, the Deputy Administrator agrees with Judge Randall that since these were ''FOB Destination'' transactions, Respondent responsibility ended when the shipments were received at the warehouse in Arizona. Therefore, Respondent did not meet the definition of a chemical exporter since it did not have ''the power and responsibility for determining and controlling the sending of the listed chemical out of the United States.'' 21 CFR 1313.02(b) (1993 & 1994).

Finally, the government took exception to Judge Randall's conclusion that despite Respondent's failure to properly identify the other party to these transactions, Respondent's applications should not be denied. The Government argued that Respondent's failure to determine the identity of Mr. Gutierrez resulted in the disappearance of over 11,000 kgs. of hydriotic acid which could be used to produce over 1,700 kgs. of methamphetamine. The Government further argued that Respondent has distanced itself from the transactions; has accepted no culpability for its actions; and ''thus has not shown that it can be depended upon to carry out DEA regulations in the future.''

In its response to the Government's exceptions, Respondent contended that it is not distancing itself from its own conduct, however it argues that the Government also bears some responsibility for failing to prevent the listed chemical from disappearing. Respondent asserted that ''[t]he Government must provide expert assistance to the chemical industry. It should provide information to assist the chemical handlers in recognizing potential problem transactions.'' Specifically, Respondent argued that it would have benefited from knowing that in 1993, ''the Southwest was the home for the illegal production of amphetamines and [hydriotic acid] was the main ingredient.'' In addition, Respondent argued that had they known of Ajay's concerns regarding the first four of the transactions, ''the final sale in October 1994 would have occurred.'' According to Respondent, Mr. Khalily ''believes that he did everything the law required in 1993 and 1995 and that he should not be held solely accountable when there were other parties involved in these transactions, including the DEA, who were equally unable to prevent the listed chemical from disappearing.''

The Deputy Administrator agrees with Respondent that such information may have been helpful to Respondent. However, in 1993 and 1994 Respondent was experienced in the handling of listed chemicals and Mr. Khalily testified that he was familiar with the provisions of the law relating to listed chemicals. Consequently, he knew that he had to properly identify the other party to any transaction involving a listed chemical. While it is true that Respondent and its predecessor had a long-standing business relationship with R.J. Meyer, he had never before dealt with Mr. Gutierrez.

The Deputy Administrator is extremely concerned by Mr. Khalily's failure to properly identify Mr. Gutierrez and verify whether he was a representative of R.J. Meyer. This is particularly troubling given that Mr. Khalily knew that hydriotic acid was a listed chemical; that he had not seen Mr. Gutierrez's name on previous invoices; and that R.J. Meyer had not previously purchased hydriotic acid from Respondent. All of these things combined should have caused Mr. Khalily to recognize the need to ascertain whether Mr. Gutierrez was in fact a representative of R.J. Meyer.

Nontheless, the Deputy Administrator agrees with Judge Randall that denial of Respondent's applications is not warranted in this case. Although Respondent was clearly not as careful as he should have been in identifying Mr. Gutierrez, Respondent did follow its normal business practices regarding these shipments and there has been no other evidence of any wrongdoing by Respondents. However, chemicals are designated as listed chemicals because they have the potential to be used to manufacture dangerous substances. Consequently those who deal with these chemicals have to be ever vigilant to ensure that they are not diverted for illegal purposes. Therefore, the Deputy Administrator agrees with Judge Randall that Respondent's prior conduct warrants that Respondent should be more closely monitored than other registrants.

The Deputy Administrator agrees with Judge Randall's recommendation that Respondent's applications be granted with the following conditions:

(1) The Respondent be required to maintain a log of all listed chemical transactions he engages in for a period of three years from the date of issuance of these DEA Certificates of Registration. At a minimum, the log shall indicate the date that the shipment occurred, the name and address of all the parties involved in the transaction, the destination of the shipments, and the name and quantity of the listed chemical shipped. Upon request by the Special Agent in Charge of the local DEA Field Division, or his designee, the Respondent shall submit or otherwise make available his log for inspection.

(2) For three years from the date of issuance of the DEA Certificates of Registration, the Respondent shall consent to periodic inspections at its registered locations by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the applications for registration as an importer and a distributor of various listed chemicals, submitted by Alfred Khalily, Inc., d.b.a. Alfa Chemical, be, and they hereby are, granted subject to the above described conditions. This order is effective upon issuance of the DEA Certificates of Registration, but not later than July 12, 1999.

Dated: June 1, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–14650 Filed 6–9–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 23, 1998, (63 FR 71155), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methamphetamine (1105), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture methamphetamine to produce products for distribution to its customers.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 25, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14651 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration; Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 24, 1999, Los Angeles Cannabis Resources Center, Inc., 7494 Santa Monica Blvd., #215, West Hollywood, California 90046, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of marihuana (7360), a basic class of controlled substance.

The firm plans to develop single-cannabinoid strains of marihuana and to provide cannabis and naturally extracted plant-derived cannabionids for use in pharmaceutical research and cannabionoid-based drug development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 9, 1999.

Dated: May 28, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14649 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–09–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 4–99]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, June 17, 1999, 1:30 p.m.

SUBJECT MATTER: Consideration of a Request for Reopening of the Final Decision on a claim against Albania, as follows: Claim No. ALB–075 Haritini Poulos.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW, Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, June 7, 1999.

Judith H. Lock,

Administrative Officer.

[FR Doc. 99–14838 Filed 6–8–99; 11:07 am]

BILLING CODE 4410–BA–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Privacy Act of 1974; Systems of Records

AGENCY: Foreign Claims Settlement Commission, Justice.

ACTION: Notice of Privacy Act systems of records.

SUMMARY: The Foreign Claims Settlement Commission of the United States herewith publishes an updated Notice of its Privacy Act Systems of Records. Publication of such notice is required under subsection (e)(4) of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4). This update is necessary in order to reflect changes in the location of some of the Commission's records systems, and the deletion of seven systems (Justice/FCSC–2, ''Bulgaria, Claims Against (1st Program),'' Justice/FCSC–10, ''Czechoslovakia, Claims Against,'' Justice/FCSC–16, ''Hungary, Claims Against (1st Program),'' Justice/FCSC–18, ''Italy, Claims Against (1st Program),'' Justice/FCSC–21, ''Panama, Claims Against,'' Justice/FCSC–26, ''Rumania, Claims Against (1st Program),'' and Justice/FCSC–29, ''Yugoslavia, Claims Against (1st Program)''), due to the release of the records in those systems to the National Archives for permanent retention. In addition, as part of the review of Privacy Act systems of records mandated by the President's Memorandum on Privacy and Personal Information in Federal Records of May 14, 1998, the Commission has deleted three other systems (Justice/FCSC–13, ''Payroll Records,'' Justice/FCSC–14, ''General Personnel Records,'' and Justice/FCSC–15, ''General Financial Records''), based on a determination that the records in those systems were duplicative of records in other systems or otherwise had become superfluous.

EFFECTIVE DATE: June 10, 1999.

ADDRESSES: 600 E Street, NW, Room 6002, Washington, DC 20579.

FOR FURTHER INFORMATION CONTACT: Judith H. Lock, Administrative Officer, Tel. 202–616–6986, FAX 202–616–6993.

Pursuant to 5 U.S.C. 552a(e)(4), the Foreign Claims Settlement Commission hereby publishes the systems of records as currently maintained by the agency.

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JUSTICE/FCSC–1

SYSTEM NAME:

Indexes of Claimants (Alphabetical)—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Maintained on all individuals who filed claims for compensation under the statutes administered by the Foreign Claims Settlement Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Microfilm copies of index cards and computer-generated paper indexes containing names of claimants, claim and decision numbers, date and disposition of claims, addresses and dates of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSES:

To enable Commission personnel and interested members of the public to ascertain whether any named individual, corporation, or other legal entity has submitted a claim to the Commission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Used by authorized Commission personnel for identification of individual claims and to obtain information concerning disposition of claims.

—The information contained in this system of records (except for that pertaining to the system ''Justice/FCSC–27: Germany, Holocaust Survivors Claims Against'', described below) is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a

proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof,

ii. Any employee of the FCSC in his or her official capacity,

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm rolls stored in steel drawers. Computer-generated paper indexes stored on shelves in cardboard binders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Security guards in building. Records maintained in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Permanent records. Disposition will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6986 Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and information obtained by actions taken by the Foreign Claims Settlement Commission as a result of adjudication of individual claims.

JUSTICE/FCSC–2

SYSTEM NAME:

Bulgaria, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals who suffered property losses in Bulgaria between August 9, 1955, and July 2, 1963.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any, date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and U.S.-Bulgarian Claims Agreement of July 2, 1963.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a Members of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 24, 1971.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–3

SYSTEM NAME:

Certification of Awards—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving awards under the International Claims Settlement Act of 1949, as amended, and War Claims Act of 1948, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of claimants and amounts of awards certified to Treasury Department for payment. Name and address of claimant's representative, if any, also included in certification voucher.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

International Claims Settlement Act of 1949, as amended, and War Claims Act of 1948, as amended.

PURPOSES:

Maintained as a record of the names, addresses, and amounts awarded to individuals in the Commission's claims programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Award certifications prepared by authorized FCSC personnel and forwarded to Treasury Department for payment in accordance with statutory authority and Treasury Department regulations and procedures.

—The information contained in this system of records (except for that pertaining to the system ''Justice/FCSC–27: Germany, Holocaust Survivors Claims Against'') is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about a claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Contained in file folders.

RETRIEVABILITY:

By voucher number and date of certification.

SAFEGUARDS:

Building has building guards. Records are maintained in file cabinets in locked rooms.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993. Notification Procedure: Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

From award portion of decisions as determined by FCSC.

JUSTICE/FCSC–4

SYSTEM NAME:

China, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses, death and disability in mainland China arising between October 1, 1949, and May 11, 1979.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization of claimant; nature and amount of claim; description, ownership and value of property; and evidence to support claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles I and V, International Claims Settlement Act of 1949, as amended,

and the U.S.-China Claims Settlement Agreement of May 11, 1979.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Adjudication of claims, issuance of decisions as to the validity and amounts of claims and issuance of certifications to each individual claimant as to amount determined by FCSC officials and personnel. Such amounts and copies of FCSC decisions were certified to the Secretary of State and to the Secretary of the Treasury.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975, Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–5

SYSTEM NAME:

Civilian Internees (Vietnam)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

American citizens held by a hostile force in Southeast Asia during Vietnam Conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form contains name and address, date and place of birth, birth certificates. Verification of internment furnished by State Department contains names, addresses and inclusive dates of internment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5(i), War Claims Act of 1948, as amended.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Adjudication of claims of American citizens and certification of awards by authorized FCSC personnel to Treasury Department for payment.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged

with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed by claim number. (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, or his or her survivor(s), where applicable.

JUSTICE/FCSC–6

SYSTEM NAME:

Correspondence (General)–FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Generally, U.S. nationals suffering property or financial losses in foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing names and addresses of individuals, description and location of property or other types of losses. Inquiries generally are related to claims, Commission procedures and other related matters not included under the ''Correspondence (Inquiries concerning claims in foreign countries)'' system, JUSTICE/FCSC–7.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To enable the Commission to maintain a record of the correspondence it processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—For dissemination of requested information to individuals by FCSC personnel. Correspondence may be referred to other concerned agencies on matters not within the jurisdiction of FCSC.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetical in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Security guards in building. Records maintained in file cabinets in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone:202/616–6975. Fax:202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–7

SYSTEM NAME:

Correspondence (Inquiries Concerning Claims in Foreign Countries)—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing names and addresses of individuals and description and location of property or other types of losses. Inquiries generally are related to claims programs administered by FCSC. Records also include those transferred from State Department which may relate to such programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, sec. 4(d), International Claims Settlement Act of 1949, as amended, and sec. 216, War Claims Act of 1948, as amended.

PURPOSE:

To enable the Commission to maintain a record of the correspondence it has processed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—For dissemination of information by authorized FCSC personnel to individuals making inquiries concerning various claims programs authorized under the International Claims Settlement Act of 1949, as amended, the War Claims Act of 1948, as amended, international claims agreements, and for notification purposes for newly authorized claims programs in which individuals may be eligible to participate.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivision, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be sense use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetical in file cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Security guards in building. Records maintained in file cabinets in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–8

SYSTEM NAME:

Cuba, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses, death and disability in Cuba arising on or after January 1, 1959.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim, including medical and death records in claims involving death and disability.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V, International Claims Settlement Act of 1949, as amended.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Cuba submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Adjudication of claims, issuance of decisions as to the validity and amounts of claims and issuance of certifications to each individual claimant as to amount determined by FCSC officials and personnel. Such amounts and copies of FCSC decisions were certified to the Secretary of State pending conclusion of any claims settlement agreement between US and Cuba.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and

whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File Folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–9

SYSTEM NAME:

Czechoslovakia, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Czechoslovakia from August 9,1958, to February 2, 1982.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Czechoslovakian Claims Settlement Act of 1981 (22 U.S.C. note prec. 1642), and the U.S.-Czechoslovakian Claims Settlement Agreement of February 2, 1982.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Czechoslovakia submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the

Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC—10

SYSTEM NAME:

East Germany, Registration of Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals who suffered certain property losses in East Germany.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims registration form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; and description, ownership, and value of property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended.

PURPOSE:

To enable the Commission to conduct an evaluation of potential claims against the former German Democratic Republic, in order to determine whether sufficient claims existed to justify enactment of legislation authorizing a formal claims adjudication program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Information received from individuals on registration forms was used to evaluate whether to propose enactment of legislation to authorize a formal claims adjudication program.

—Registration forms filed were also used by FCSC personnel in the distribution of formal claim application forms once a formal claims adjudication program was authorized.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Numerical order in file folders. Cross-reference alphabetical index (see system ''JUSTICE/FCSC–1'' above).

RETRIEVABILITY:

By name. (see system ''JUSTICE/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. System manager(s) and address: Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC—11

SYSTEM NAME:

Federal Republic of Germany, Questionnaire Inquiries From—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals suffering losses in Eastern European countries, including Germany.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaires from Federal Republic of Germany (Ausgleichsamt) containing name, address, date and place of birth or naturalization; description and location of property. Such information was furnished to Federal Republic of Germany by U.S. residents who filed claims under the West German Federal Compensation Laws (BEG).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

To maintain a file on requests for information from Germany that have been received and acted upon.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—To inform Federal Republic Of Germany (FRG) Equalization of Burdens offices whether individuals who filed claims for losses compensable under the West German Federal Compensation Laws also filed claims with the Foreign Claims Settlement Commission under U.S. claims statutes and received compensation under such statutes for the same losses. Information furnished to FRG obtained from FCSC decisions or claim applications from individuals who filed claims with FCSC.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Questionnaire from Federal Republic of Germany (Equalization of Burdens Offices).

JUSTICE/FCSC—12

SYSTEM NAME:

Hungary, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Hungary that arose between August 9, 1955, and March 6, 1973.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and U.S.-Hungarian Claims Agreement of March 6, 1973.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Hungary submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to

the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC—13

SYSTEM NAME:

Italy, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims against Italy for certain property losses attributable to military action by Italian forces during World War II. Benefits extended to U.S. nationals who acquired their U.S. citizenship after the date of their property losses, to individuals who did not file under the 1st Italian Claims Program, and to individuals with claims for property losses arising in territory ceded pursuant to the Treaty of Peace with Italy, which claims had been excluded under the 1st program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended by Pub. L. 85–604.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Italy submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the

Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 24, 1971.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–14

SYSTEM NAME:

Micronesia, Claims Arising In—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inhabitants of Micronesia, including U.S. nationals, who suffered damages to property, disability and death arising out of military operations during World War II, and arising during the period from the dates of the securing of the various islands of Micronesia by Allied forces up until July 1, 1951.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Micronesian Claims Act of 1971.

PURPOSE(S):

To enable the Micronesian Claims Commission (MCC), under the supervision of the FCSC, to carry out its statutory responsibility to determine the validity and amount of the claims against Italy submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under authority of the Micronesian Claims Act of 1971; notifications to claimants of rights to appeal; and preparation by authorized personnel of Foreign Claims Settlement Commission assigned to duty in the Trust Territory of the Pacific Islands and locally hired employees of the MCC of certifications of awards, if any, to Secretary of the Interior for payment.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used to identify claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–15

SYSTEM NAME:

Poland, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Poland due to nationalization or other taking of such property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and U.S.-Poland Claims Agreement of July 16, 1960.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Poland submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on March 31, 1966.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–16

SYSTEM NAME:

Prisoners of War (Pueblo)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Armed Forces and civilian employees of the U.S. Government assigned to duty on the USS Pueblo who were captured by military forces of North Korea on January 23, 1968, and held prisoner by such forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant, date and places of birth, branch of service and military service number. In case of death, date, place and name of spouse, names, address and date of birth of surviving children, name and address of parents and Veterans Administration (VA) claim number. Proof of death if no VA claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 6(e), War Claims Act of 1948, as amended.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to

determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for adjudication of claims for detention benefits, issuance of decisions concerning eligibility of claimant to receive compensation; notifications to claimants of rights to appeal; and preparation by authorized Commission personnel of certifications of awards to Treasury Department for payment. Verifications from State Department include names and addresses and inclusive dates of detention.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By claim number. Cross-referenced by alphabetical index cards which contain claim numbers (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at the Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–17

SYSTEM NAME:

Prisoners of War (Vietnam)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Armed Forces of the United States who were captured and held by a hostile force during the Vietnam conflict beginning February 28, 1961.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant; date and place of birth, branch of service and military service number. In case of death, date, place, name of spouse, names, addresses and dates of birth of surviving children, name and address of parents and Veterans Administration claim number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sect. 6(f), War Claims Act of 1948, as amended.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records used for adjudication of claims for detention benefits; issuance of decisions concerning eligibility of claimants to receive compensation; notifications to claimants of rights of appeal; and preparation of certification of awards to Treasury Department for payment by authorized Commission personnel. Verification of captured status obtained from rosters or casualty reports furnished by the respective armed service branches.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC'18

SYSTEM NAME:

Rumania, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Rumania which arose between August 9, 1955 and March 30, 1960.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and the US-Rumania Claims Agreement of March 30, 1960.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Rumania submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to the Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 25, 1971.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–19

SYSTEM NAME:

Soviet Union, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for loss of property in the Soviet Union prior to November 16, 1933, and claims by individuals based upon liens acquired with respect to property in the U.S. assigned to U.S. Government by the Soviet Government under Litvinov Assignment of November 16, 1933.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against the Soviet Union submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to the Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on August 9, 1959.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC—20

SYSTEM NAME:

Yugoslavia, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Yugoslavia which arose between July 19,1948, and November 5, 1964.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and U.S.-Yugoslavia Claims Agreement of November 5, 1964.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Yugoslavia submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on July 15, 1969.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–21

SYSTEM NAME:

German Democratic Republic, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in the German Democratic Republic which arose between May 8, 1945, and October 18, 1976.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI, International Claims Settlement Act of 1949, as amended.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against the German Democratic Republic submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notification to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC is determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–22

SYSTEM NAME:

General War Claims Program—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses during World War II.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II of War Claims Act of 1948, as amended.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of transmittals of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the

statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a Congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–23

SYSTEM NAME:

Vietnam, Claims for Losses Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Vietnam arising between April 29, 1975, and December 28, 1980.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII, International Claims Settlement Act of 1949, as amended.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Vietnam submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to members of Congress, Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–24

SYSTEM NAME:

Ethiopia, Claims for Losses Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Ethiopia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims information including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the December 19, 1985 Compensation Agreement between the Government of the United States of America and the Provisional Military Government of Socialist Ethiopia.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Ethiopia submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to members of Congress, Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–25

SYSTEM NAME:

Egypt, Claims Against.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Egypt.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; other evidence establishing entitlement to compensation of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the Agreement Between the Government of the United States of America and the Government of the Arab Republic of Egypt Concerning Claims of Nationals of the United States of May 1, 1976.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Egypt submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act and Agreement; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the Immigration and Naturalization Service.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein including but not limited to Members of Congress or Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC'1'' above).

SAFEGUARDS:

Under security safeguards at the Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–26

SYSTEM NAME:

Albania, Claims Against.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Albania.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; other evidence establishing entitlement to compensation of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the Agreement Between the Government of the United States of America and the Government of Albania on the Settlement of Certain Outstanding Claims of March 10, 1995 (went into force April 18, 1995).

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Albania submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act and Agreement; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the Immigration and Naturalization Service.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein including but not limited to Members of

Congress or Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system ''Justice/FCSC–1'' above).

SAFEGUARDS:

Under security safeguards at the Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–27

SYSTEM NAME:

Germany, Holocaust Survivors' Claims Against.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Room 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural persons who assert claims for loss of liberty or damage to body or health as a result of National Socialist measures of persecution conducted directly against them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and valuation of claim, including description of measures of persecution; other evidence establishing entitlement to compensation for claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 104–99, and the Agreement Between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of National Socialist Measures of Persecution of September 19, 1995.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims before it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

Records were used for the purpose of determining the validity and amount of claims; issuance of decisions concerning eligibility to receive compensation under the claims statute and Agreement; notifications to claimants of rights to appeal; preparation of decisions for certification to the Secretary of State for use in diplomatic settlement negotiations with Germany; and preparation of certifications of awards to the Secretary of the Treasury for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the INS. As required by the authorizing statute, the information contained in this system of records will be maintained as confidential information which will be exempt from disclosure to the public.

—Law Enforcement: In the event that a system of records maintained by the FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim.

SAFEGUARDS:

At FCSC: Building employees security guards. Records are maintained in a locked room accessible to authorized FCSC personnel and other persons when accompanied by such personnel.

RETENTION AND DISPOSAL:

Records are maintained in accordance with 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579; telephone 202–616–6975, fax 202–616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–28

SYSTEM NAME:

Iraq, Registration of Potential Claims Against.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street NW, Room 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural and juridical persons with potential claims against Iraq that are outside the jurisdiction of the United Nations Compensation Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and valuation of claim, including description of property or other asset or interest that is the subject of the claim; other evidence establishing entitlement to compensation for claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Information in the system was collected under the Foreign Claims Settlement Commission's general authority to adjudicate claims conferred by 22 U.S.C. 1621 *et seq.*

PURPOSE:

To enable the Commission to formulate recommendations concerning the drafting of legislation to authorize formal adjudication of claims against Iraq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

—Records are used for the purpose of determining the validity and amount of potential claims, to facilitate planning for adjudication of such claims in the future. Names and other information furnished by registrants may be used for verifying citizenship status with the INS. Names and addresses of individual registrants will be subject to public disclosure. Other information provided by the individual registrants will be maintained as confidential information which will be exempt from disclosure to the public.

—Law Enforcement: In the event that a system of records maintained by the FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by registration number. Alphabetical index used for identification of registrant.

SAFEGUARDS:

At FCSC: Building employs security guards. Records are maintained in a locked room accessible to authorized FCSC personnel and other persons when accompanied by such personnel.

RETENTION AND DISPOSAL:

Records are maintained in accordance with 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW, Room 6002, Washington, DC 20579; telephone 202–616–6975, fax 202–616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Registrant on whom the record is maintained.

Dated at Washington, DC.

Judith H. Lock,

Administrative Officer.

[FR Doc. 99–14638 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OJP (NIJ)–1234]

RIN 1121–ZB67

National Institute of Justice; Announcement of the Availability of the National Institute of Justice Solicitation for Evaluation of a Multi-Site Demonstration for Enhanced Judicial Oversight of Domestic Violence Cases

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Evaluation of a Multi-site Demonstration for Enhanced Judicial Oversight of Domestic Violence Cases.''

DATES: Due date for receipt of proposals is close of business, Friday, July 9, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is soliciting proposals for an evaluation of the Judicial Oversight Demonstration Initiative. The Judicial Oversight Demonstration Initiative, a collaboration between NIJ and the Violence Against Women Office (VAWO), is a program designed to reduce domestic violence through enhanced judicial oversight, victim safety, and offender accountability. This solicitation calls for a single evaluation to measure the added value resulting from the changes and enhancements made at each of the demonstration sites.

The evaluation will consist of four phases—Methodological Refinement and Baseline Data Collection, Formative Evaluation, Process Evaluation, and Outcome/Impact Evaluation.

This solicitation makes $500,000 available for the first stage of the multi-site evaluation. Up to $2.5 million is anticipated for the entire multi-year evaluation expected to extend to five years.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Evaluation of a Multi-site Demonstration for Enhanced Judicial Oversight of Domestic Violence Cases'' (refer to document no. SL000357). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–14666 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1233]

RIN 1121–ZB66

Announcement of the Availability of the National Institute of Justice Solicitation for Research on Violence Against Indian Women

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Research on Violence Against Indian Women.''

DATES: Due date for receipt of proposals is close of business, Friday, July 9, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ), in collaboration with the Office of Justice Programs' Violence Against Women Office (VAWO), is soliciting proposals for research on violence against women issues among Native Americans. Grants will be awarded in conjunction with the S.T.O.P. (Services/Training/Officers/Prosecutors) Violence Against Indian Women Discretionary Grant Program.

Recommended study areas include, but are not limited to: Instrumentation development for measuring prevalence and incidence rates of violence against Indian women with and understanding and sensitivity to Native cultures; enforcing the provisions of the VAWA in Tribal Courts; factors affecting the safety of Indian women in Public Law 280 States; effectiveness of batterer reeducation; level of shelter services provided; patterns of abuse; and the impact of domestic violence training on tribal response to violence.

NIJ encourages both qualitative and quantitative research proposals. NIJ has allocated $450,000 for this solicitation and anticipates awarding up to 4 grants for a period of 24 months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Research on Violence Against Indian Women'' (refer to document no. SL000359). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–14665 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration, Unemployment Insurance Service: Proposed Information Collection Request Submitted for Public Comment and Recommendations; State Quality Service Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the new State Quality Service Plan (SQSP), which was designed in consultation with end users, and will replace the Program Budget Plan (PBP), which has been used for more than a decade.

Guidelines for completion and submittal of the SQSP are contained in a handbook, which has been designed not to become obsolete annually, as was the case with the PBP. Fiscal year-specific information such as Federal Program Focus, or additional budget allocations, will be provided annually in an implementation memorandum that will initiate the planning process each year. The requirements of the reporting and data collection process

itself will remain unchanged from year to year.

The SQSP introduces a process which allows the State partner to provide a narrative summary of the State focus for the coming fiscal year called the State Program Narrative. In addition, the SQSP introduces a Tier I/Tier II concept for performance measures which reduces from the PBP the number of measures with the potential to require mandatory Corrective Action Plans for failure to meet criterioned measures (Tier I). At the same time, continuous program improvement is enhanced with an expanded array of measures for which program performance may be negotiated between a State and ETA (Tier II). Finally, the number of required forms has been reduced, and some replaced with formats that can be transmitted electronically. Because of its length, the SQSP Handbook is not included with the notice. Copies of the handbook may be obtained by contacting the addressee below. The handbook also is available on the Internet at http://www.itsc.state.md.us/.

The proposed information collection request follows.

DATES: Written comments must be submitted on or before August 9, 1999. Written comments should:

—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.

ADDRESSES: William N. Coyne, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4522, 200 Constitution Avenue, NW, Washington, D.C. 20210, 202–219–5223, Ext. 142 (this is not a toll-free number); FAX, 202–219–8506; Internet: wcoyne@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The SQSP is the planning instrument for the Unemployment Insurance (UI) system nationwide. The statutory basis for the SQSP is Title III of the Social Security Act, which establishes conditions for each State to receive grant funds to administer its UI program. Plans are prepared annually, since funds for UI operations are appropriated each year. ETA's annual budget request for State UI operations contains workload assumptions for which a State must plan in order for the Secretary of Labor to carry out her responsibilities under Title III. ETA issues financial planning targets based on the budget request. States make plans based on these assumptions and targets.

II. Current Actions

ETA proposes to replace the PBP with the State Quality Service Plan.

Type of Review: Revised Process.

Specifically, we propose the following:

Agency: Employment and Training Administration.

Title: SQSP Handbook.

Record keeping: States are required to keep records consistent with retention and access requirements at 29 CFR 97.42.

Affected Public: State Employment Security Agencies (SESA's).

Total Respondents: 53.

Frequency: Annually.

Total Responses: 53 plans.

Average Time Per Response: 40 hours.

Estimated Total Burden Hours: 2098.

Estimated Total Burden Cost: $61,324.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: June 4, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–14756 Filed 6–9–99; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Change to Sunshine Act Meeting of the Board of Directors

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64.FR.30367, June 7, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: The Board of Directors of the Legal Services Corporation will meet on June 12, 1999. The meeting will begin at 1:00 p.m. and continue until conclusion of the Board's agenda.

LOCATION: The Westin Hotel, 1672 Lawrence Street, Denver, CO 80202–2010.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

CHANGES TO THE MEETING: The following item has been added to the open session of the meeting:

7. Approval of minutes of the Board's teleconference meeting of May 27, 1999.

The remainder of the Board of Directors' agenda will be as follows:

8. Chairman's Report.
9. Members' Report.
10. President's Report.
11. Inspector General's Report.
12. Consider and act on the Board's meeting schedule, including designation of locations, for year 2000.
13. Consider and act on the report of the Board's Operations and Regulations Committee.

- Consider and act on the Committee's recommendation regarding proposed final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
- Consider and act on the Committee's recommendation regarding final rule, 45 CFR Part 1628, Recipient Fund Balances.
- Consider and act on the Committee's recommendation regarding proposed amendment(s) to the Corporation's 403(b) Thrift Plan that are intended to increase the Corporation's employer contribution level to match the Civil Service Retirement System.

14. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
15. Report on the status of the work of the special panel established to study and report to the board on issues relating to LSC grantees' representation of legal alien workers and the requirement that they be ''present in the United States.''
16. Appointment of Acting Vice President of Programs.
17. Consider and act on proposed resolution ratifying the adoption of the

new corporate logo for LSC's 25th Anniversary.

CLOSED SESSION:

18. Briefing[1] by the Inspector General on the activities of the OIG.

19. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

OPEN SESSION:

20. Consider and act on other business.

21. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: June 7, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–14815 Filed 6–7–99; 4:40 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 1:00 p.m., Monday, June 14, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Two (2) Requests from Federal Credit Unions to Convert to Community Charters.

2. Final Rule: Amendment to Part 707, NCUA's Rules and Regulations, Truth In Savings—Disclosure of the Annual Percentage Yield.

3. Final Rule: Amendments to Part 712, NCUA's Rules and Regulations, Credit Union Service Organization (CUSOs).

RECESS: 2:15 p.m.

TIME AND DATE: 2:30 p.m., Monday, June 14, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 or Section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).

2. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Request from a Corporate Credit Union for a National Field of Membership. Closed pursuant to exemption (8).

4. Five (5) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–14822 Filed 6–7–99; 4:40 pm]

BILLING CODE 7535–01–M

NATIONAL INSTITUTE FOR LITERACY

Submission for OMB Review; Comment Request

ACTION: Notice.

On May 28, 1999, the National Institute for Literacy (NIFL) published a notice requesting comments for the Office of Management and Budget's review of NIFL's Information Collection Request. In that notice, the title and abstract of the notice were inadvertently omitted. The correction should be inserted after **DATES**, as follows:

Title: Equipped for the Future (EFF) Center for Training, Technical Assistance and Materials Development.

Abstract: The National Institute For Literacy (NIFL) was created by the National Literacy Act of 1991 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. NIFL is authorized to carry out a wide range of activities that will improve and expand the system for delivery of adult literacy services nationwide.

For the past four years, the NIFL has been working with a range of partners in states across the country to develop a customer-driven, standards-based, collaborative approach to adult literacy system reform. The EFF standards that have been developed through this effort define the critical skills and knowledge that enable adults to effectively carry out their responsibilities as workers, parents and family members, and citizens and community members. The standards have been developed and refined with the assistance of a broad cross section of literacy and basic skills programs, as well as with the advice and guidance of key stakeholders in the workforce development, family literacy, and civic participation movements in this country. By September of 1999 NIFL will have completed the major development work on the standards and will release a Users Guide designed to introduce key constituencies to the Standards and how they can be used for teaching and learning, program improvement, accountability, and system reform.

The EFF Center for Training, Technical Assistance and Materials Development will work collaboratively and with National Institute for Literacy (NIFL) to assure the effective integration of EFF into on-going adult education, family literacy, welfare-to-work, skill standards voluntary partnerships, and other workforce development systems.

Dated: June 7, 1999.

Sharyn M. Abbott,

Executive Officer, NIFL.

[FR Doc. 99–14748 Filed 6–9–99; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date & Time: June 10 and 11, 1999; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 580, Arlington, Virginia 22230.

Contact Person: Dr. Alison Flatau, Control, Materials and Mechanics Cluster, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230. 703/306–1361, x5069.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: June 4, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–14705 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (1119).

Date and Time: June 21, 1999 (8:30 a.m. to 6:00 p.m.); June 22, 1999 (8:30 a.m. to 6:00 p.m. and June 23, 1999 (8:30 a.m. to 2:00 p.m.).

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 320, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Celeste Pea, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1682.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To review and evaluate the Urban Systemic Initiatives (USI) Program and provide an assessment of program-level technical and managerial matters pertaining to proposal decisions and program operations.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the government in the Sunshine Act would be improperly disclosed.

Dated: June 4, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–14709 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (#153).

Date/Time: July 8–9, 1999, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 4, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–14706 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental and Integrative Activities: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Experimental and Integrative Activities (#1193).

Date/Time: June 24, 1999; 8:45 a.m. to 5:30 p.m.

Place: National Science Foundation, Room 1105.17, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Rita V. Rodriguez, Program Director for Minority Institutions Infrastructure Program, Division of Experimental and Integrative Activities, National Science Foundation, Room 1160, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide further evaluation and final recommendation of submitted Minority Institutions Infrastructure proposals submitted to NSF for financial support.

Agenda: To review and discuss recommendations concerning CISE Minority Institutions Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 5552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 4, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–14711 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date & Time: June 22 & 23, 1999.

Place: Arlington Hilton, 8th Floor, 950 North Stafford St., Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1587.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CoOP Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: June 4, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–14707 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date and Time: June 23 and 24, 1999.

Place: Arlington Hilton, 8th Floor, 950 North Stafford St., Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Reeve, Section Head, National Science Foundation, 4201 Wilson

Blvd., Arlington, VA 22230. Telephone: (703) 306–1587.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate MARGINS Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 4, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–14708 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Microbial Observatories; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Microbial Observations, a sub-panel of the Advisory Panel for Genetics (1149).

Date and Time: Monday & Tuesday, June 21–22, 1999, 9:00 A.M.–5:00 P.M.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Philip Harriman, Program Director, and Charles Liarakos, Deputy Division Director for Microbial Observatories, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1440).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Microbial Observations Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 4, 1999

Karen York,

Committee Management Officer.

[FR Doc. 99–14710 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–398]

Florida Power & Light Co., Orlando Utilities Commission of the City of Orlando, Florida and Florida Municipal Power Agency; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–16, issued to the Florida Power & Light Company, *et al.* (the licensee), for operation of the St. Lucie Plant, Unit 2, located in St. Lucie County, Florida.

The proposed amendment would revise the Unit 2 Technical Specifications (TS) to clarify the nonconservative wording of TS 3/4.5.1, ''Safety Injection Tanks,'' Surveillance Requirement 4.5.1.1.d.1 and would revise TS 3/4.5.2, ''ECCS Subsystems—Tavg Greater Than or Equal to 325°F,'' Surveillance Requirement 4.5.2.e.1. The proposed changes would align the surveillance specification with the intent and design bases requirements intended to be verified.

On May 24, 1999, FPL staff submitted a license amendment request, described above, to amend their TS. On June 3, 1999, St. Lucie, Unit 2, began to experience problems unrelated to systems in the previously mentioned TS sections. These problems ultimately resulted in the plant entering TS Mode 3, ''Hot Standby,'' on June 4, 1999, in order to repair and troubleshoot these unrelated equipment problems. Due to the nature of these repairs, the possibility that other emerging work activities may require a lower mode, and the desire of the NRC to avoid granting a notice of enforcement discretion, the staff has decided to pursue this exigent TS amendment. Without this amendment, St. Lucie Plant, Unit 2, could not resume power operation if they were to enter Mode 4, or ''Hot Shutdown.''

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated. There are no physical changes to plant equipment or changes in plant operation that could initiate an accident or adversely affect accident mitigation or consequences. This PLA [proposed license amendment] provides a wording clarification of the Technical Specification Surveillance 4.5.1.1.d.1 requirements for verifying that each SIT [safety injection tank] isolation valve (V–3614, V–3624, V–3634, and V–3644) opens automatically prior to exceeding an actual or simulated RCS [reactor coolant system] pressure of 515 psia, such that design bases functions and safety are assured. This PLA also provides a wording clarification (Surveillance 4.5.2.e.1) for the automatic isolation and interlock action of the SDC [shutdown cooling] system (V–3480, V–3481, V–3651, and V–3652) from the RCS prior to exceeding an RCS pressure (actual or simulated) of 515 psia, such that design bases functions and safety are assured. These clarifications explicitly align the surveillance requirements with the intent and design basis functions for the valves being verified. As such, this change is considered administrative.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no physical changes to plant equipment or changes in plant operation that could create a new or different kind of accident. This PLA does not result in

any plant configuration changes or new failure modes. This PLA provides a wording clarification of the Technical Specification Surveillance 4.5.1.1.d.1 requirements for verifying that each SIT isolation valve (V–3614, V–3624, V–3634, and V–3644) opens automatically prior to exceeding an actual or simulated RCS pressure of 515 psia. This PLA also provides a wording clarification (Surveillance 4.5.2.e.1) for the automatic isolation and interlock action of the SDC system (V–3480, V–3481, V–3651, and V–3652) from the RCS prior to exceeding an RCS pressure (actual or simulated) of 515 psia. These clarifications explicitly align the surveillance requirements with the intent and design basis functions for the valves being verified. As such, this change is considered administrative.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a reduction in the margin of safety. This administrative PLA clarifies the surveillance requirements of the subject Technical Specifications by aligning the surveillances with the intent and design bases functions for the valves being verified. This PLA does not result in any plant configuration changes. As such, the assumptions and conclusions of the accident analyses in the UFSAR remain valid and the associated safety limits will continue to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-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 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently. Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 24, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no

significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: 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 M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 24, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Dated at Rockville, Maryland, this 7th day of June 1999.

For the Nuclear Regulatory Commission.

William C. Gleaves,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–14749 Filed 6–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 31 of Regulatory Guide 1.84, ''Design and Fabrication Code Case Acceptability, ASME Section III, Division 1,'' and Revision 31 of Regulatory Guide 1.85, ''Materials Code Case Acceptability, ASME Section III, Division 1,'' list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 12 of Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Single copies of regulatory guides, both active and draft, may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, USNRC, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Active guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Copies of active and draft guides are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273; fax (202) 634–3343. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, MD, this 24th day of May 1999.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 99–14750 Filed 6–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1671]

Standard Review Plan for the Recertification of the Gaseous Diffusion Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of comment period.

SUMMARY: On February 19, 1999 (64 FR 8412), the Nuclear Regulatory Commission (NRC) published for public comment a draft NUREG–1671 entitled, ''Standard Review Plan for the Recertification of the Gaseous Diffusion Plants.'' The comment period for this proposed NUREG expired on May 20, 1999. The United States Enrichment Corporation (USEC) has requested an extension of the comment period until November 19, 1999. Given that the renewal of the Certificates of Compliance for the gaseous diffusion plants is not scheduled again until December 31, 2003, the NRC has decided to reopen the comment period. The comment period now expires on November 19, 1999.

DATES: The comment period has been reopened and now expir4es on November 19, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send/written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm during Federal workdays.

Draft NUREG–1671 is available for inspection and copying for a fee at the NRC Public Document Room (PDR),

2120 L Street, NW, Washington, DC 20555–0001.

A free single copy of draft NUREG–1671, to the extent of supply, may be requested by writing to U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001. Draft NUREG–1671 is available on the World Wide Web at http://www.nrc.gov/NRC/NUREGS/indexnum.html. Comments may be submitted by selecting the ''comments'' link on the main page for the draft NUREG.

FOR FURTHER INFORMATION CONTACT: For information regarding draft NUREG–1671 contact Charles Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6755. Dated at Rockville, Maryland, this 3rd day of June 1999.

For the Nuclear Regulatory Commission.

Elizabeth Q. TenEyck,

Director, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–14762 Filed 6–9–99; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Renewal of Experimental Nonletter-Size Business Reply Mail Classifications and Fees; Changes in Domestic Classification and Fees

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule and accompanying fee changes.

SUMMARY: This notice sets forth the changes to Domestic Mail Classification Schedule (DMCS) section 931 and the accompanying Fee Schedule section 931 changes to be implemented as a result of the May 26, 1999, Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental Nonletter-Size Business Reply Mail Classification and Fees.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Tidwell, (202) 268–2998.

SUPPLEMENTARY INFORMATION: On March 10, 1999, pursuant to its authority under 39 U.S.C. 3621 *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on the renewal of the experimental classification and fees for weight-averaged nonletter-size Business Reply Mail. The PRC designated the filing as Docket No. MC99–1. On March 19, 1999, the PRC published a notice of the filing, with a description of the Postal Service's proposals, in the **Federal Register** (64 FR 13613–13617).

On May 14, 1999, pursuant to its authority under 39 U.S.C. 3624, the PRC issued to the Governors of the Postal Service its recommended decision on the Postal Service's request. The PRC recommended the extension of the experimental weight averaging classification for the term specified in the Postal Service's Request, subject to the fees proposed by the Docket No. MC99–1 parties in a Stipulation and Agreement.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendations on May 26, 1999. [Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Renewal Of Experimental Classification and Fees For Weight Averaged Nonletter-Size Business Reply Mail, Docket No. MC99–1.] The Governors determined to approve the Commission's recommendations. Set forth below are revised Domestic Mail Classification Schedule section 931 and Fee Schedule 931, which incorporate the classification and fee changes approved by the Governors.

Also on May 26, 1999, the Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to make the classification and fee changes approved by the Governors effective at 12:01 a.m. on June 8, 1999 (Resolution No. 99–6).

In accordance with the aforementioned Decision of the Governors and Resolution No. 99–6, the Postal Service hereby gives notice that these classification and fee changes will become effective at 12:01 a.m. on June 8, 1999. Implementing regulations also become effective at that time, as noted elsewhere in this issue.

Changes in the Domestic Mail Classification Schedule

The following material reflects changes to Domestic Mail Classification Schedule (DMCS) section 931 approved by the Governors of the United States Postal Service in response to the Postal Rate Commission's Recommended Decision in Docket No. MC99–1. This material also reflects changes to DMCS section 931 which will result from the June 7, 1999, expiration of provisions relating to the experimental classification and fees for nonletter-size Business Reply Mail subject to the reverse manifest method of accounting.

Domestic Mail Classification Schedule Section 931—Business Reply Mail

931 BUSINESS REPLY MAIL

931.1 Definitions

931.11 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

931.12 A business reply mail piece is nonletter-size for purposes of this section if it meets addressing and other preparation requirements, but does not meet the machinability requirements specified by the Postal Service for mechanized or automated letter sortation.

This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

931.2 Description of Service

931.21 The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons and labels under any one license for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

931.3 Requirements of the Mailer

931.31 Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

931.32 Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons, or labels.

931.4 Fees

931.41 The fees for business reply mail are set forth in Fee Schedule 931.

931.42 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.

931.43 An accounting fee as set forth in Fee Schedule 931 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

931.5 [RESERVED]

931.6 Experimental Weight Averaging Fees

931.61 [RESERVED]

931.62 A nonletter-size weight averaging monthly fee as set forth in Fee Schedule 931 must be paid each month during which the distributor's weight averaging account is active.

This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the weight averaging nonletter-size business reply mail experiment.

This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

931.7 Authorizations and Licenses

931.71 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Fee Schedule 931.

931.72 Except as provided in section 931.73, the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

931.73 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all business reply mail.

931.74 The license to mail business reply mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.

931.75 Authorization to pay experimental nonletter-size business reply mail fees as set forth in Fee Schedule 931 may be canceled for failure of a business reply mail advance deposit trust account holder to meet the standards specified by the Postal Service for the weight averaging accounting method.

This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

Changes in DMCS Fee Schedule 931

The following material reflects changes to DMCS Fee Schedule 931 approved by the Governors of the United States Postal Service in response to the Postal Rate Commission's Recommended Decision in Docket No. MC99–1. This material also reflects changes to Fee Schedule 931 which will result from the June 7, 1999, expiration of provisions relating to the experimental classification and fees for nonletter-size Business Reply Mail subject to the reverse manifest method of accounting.

FEE SCHEDULE 931—BUSINESS REPLY MAIL

	Fee
Active business reply advance deposit account:	
Per piece:	
Qualified	$0.05
Nonletter-size, using weight averaging (experimental)	0.01
Other	0.08
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	0.30
Annual License and Accounting Fees:	
Accounting Fee for Advance Deposit Account	300
Permit fee (with or without Advance Deposit Account)	100
Monthly Fees for customers using weight averaging for nonletter-size business reply:	
Nonletter-size, using weight averaging (experimental)	600

Note: Experimental per piece and monthly fees are applicable only to participants selected by the Postal Service for the nonletter-size business reply mail experiment. The experimental fees expire February 29, 2000, or upon implementation of permanent fees for weight-averaged nonletter-size business reply mail, whichever comes first.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–14637 Filed 6–8–99; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23458; File No. 812–11518]

First Defined Portfolio Fund LLC

June 4, 1999.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'' or the ''Act'').

SUMMARY OF APPLICATION: Applicant seeks an order pursuant to Section 6(c) of the Act exempting Applicant and any other open-end investment company or series thereof advised by First Trust Advisors L.P. ''First Trust Advisors'') or any entity controlled by or under common control with First Trust Advisors that follows the same investment strategy as the Target 10 Series, the Target 5 Series, or the Global Target 15 Series, from the provisions of Section 12(d)(3) of the 1940 Act top the extent necessary to permit the Target 10 Series to invest up to 10.5%, the Target 5 Series to invest up to 20.5%, and the Global Target 15 Series to invest up to 7.5%, of their respective total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

Applicant: First Defined Portfolio Fund LLC.

Filing Date: The application was filed on February 18, 1999, amended and restated on May 25, 1999, and on June 3, 1999.

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 on this application by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 30, 1999, and accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, 1001 Warrenville Road, Lisle, Illinois 60532, Suite 300.

FOR FURTHER INFORMATION CONTACT: Martha Peterson, Attorney, or Susan Olson, Branch Chief, Office or Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609 (tel. (202) 942–8090).

Applicant's Representations

1. First Defined Portfolio Fund LLC (the ''Fund'' or the ''Applicant'') is a registered, open-end management investment company (File No. 811–09235). It currently consists of seven series: the DOW℠ Target 5 Portfolio (i.e., the Target 5 Series), the Dow℠ Target 10 Portfolio (i.e., the Target 10 Series), the Global Target 15 Portfolio (i.e., the Global Target 15 Series), the Target 10 Large Cap Portfolio, the Target 15 Large Cap Portfolio, the Target Small Cap Portfolio and the 10 Uncommon Values Portfolio (collectively, the ''Current Fund Series''). Applicant was organized under the laws of Delaware as a limited liability company on January 8, 1999. Under Delaware law, limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant (''Interest'') represents an undivided interest in the stocks held in one of Applicant's portfolios.

2. Interests in the Fund and any future fund relying on the application are not and will not be offered directly to the public but will be offered to separate accounts which serve as funding vehicles for variable annuity contracts and other variable insurance products. Interests of each Current Fund Series are sold only to American Skandia Life Assurance Corporation Variable Account B (''Account B''), to fund the benefits of variable annuity policies issued by American Skandia Life Assurance Corporation (''American Skandia''). The variable annuity owners of Account B who have contract values allocated to any of the Applicant's portfolios have indirect beneficial rights in the Interests and have the right to instruct American Skandia with regard to how it votes the Interests that it holds in its variable annuity separate accounts.

3. First Trust Advisors is the advisor of each of the Funds's series.

4. Applicant states that the portfolio of the Target 10 Series consists of an investment portfolio of the common stocks of the ten companies in the Dow Jones Industrial Average (the ''Dow'') having the highest dividend yields as of a date specified in the prospectus (the ''Stock Selection Date''). These ten companies are popularly known as the ''Dogs of the Dow.'' Applicant also states that take portfolio of the Target 5 Series consists of the common stock of the five companies with the lowest per share stock price of the ten companies in the Dow that have the highest dividend yields as of the Stock Selection Date specified in the prospectus. Finally, Applicant states that the portfolio of the Global Target 15 Series consists of the common stocks of the five companies with the lowest per share stock price of the ten companies in each of the Dow, the Financial Times Industrial Ordinary Share Index (''FT Index''), and the hang Seng Index, respectively, that have the highest dividend yields in the respective index as of the applicable Stock Selection Date.

5. Applicant states that on the initial Stock Selection Date, First Trust Advisors will establish the percentage relationships among the portfolio securities of each issuer held by the Target 5 Series, the Target 10 Series and the Global Target 15 Series (the ''Series''), respectively, for the period until the Series are rebalanced. The Target 5 Series, the Target 10 Series and Global Target 15 Series are adjusted annually on their Stock Selection Date. The Target 5 Series, the Target 10 Series and the Global Target 15 Series intend to invest in the portfolio securities determined by their respective strategies in relatively equal amounts. When additional amounts are invested in the Target 5 Series, the Target 10 Series and the Global Target 15 Series, additional securities will be purchased in numbers reflecting as closely as practicable the percentage relationship of the number of securities established on the Stock Selection Date. Similarly, sales of securities by each Series will attempt to replicate the percentage relationship of securities held in the portfolio of each Series. The percentage relationship among the number of securities in the Target 5 Series, the Target 10 Series and the Global Target 15 Series should therefore remain relatively stable until the Series are rebalanced. On the Stock Selection Date each year, First Trust Advisors will rebalance the portfolios with a new mix of securities in the Target 5 Series, the Target 10 Series and the Global Target 15 Series selected pursuant to the investment strategy of each Series. Applicant states that, given the fact that the market price of portfolio securities will vary after the Stock Selection Date, the value of the securities of each company as compared to the total assets of the Target 5 Series, the Target 10 Series and the Global Target 15 Series will fluctuate above and below the proportion established on the Stock Selection Date.

6. Applicant states that the Target 5 Series, the Target 10 Series and the Global Target 15 Series intend to invest in their portfolio securities determined by their respective strategies in relatively equal amounts and the Series may purchase securities in odd lots to achieve this goal. However, it may be more efficient for a Series to purchase securities in 100 or 50 share lots or in board lot size in the case of the Global Target 15 Series. A ''board lot'' is comprised of a fixed number of shares determined by the issuer. Most fees associated with trading, settling, and transfer of Hong Kong securities are charged on a per board lot basis. Accordingly, Applicant states that it is more efficient for the Global Target 15 Series to purchase securities in the specified board lot size. As a result, securities of a securities related issuer may represent (i) more than 10% but in no event more than 10.5% of the value of the Target 10 Series' total assets; (ii) more than 20%, but in no event more than 20.5% of the value of the Target 5 Series' total assets; and (iii) more than 6.7%, but in no event more than 7.5% of the value of the Global Target 15 Series, as of the close of business on the business day following the applicable Stock Selection Date. Although each Series will strive to purchase equal values of each of the stocks represented in a Series' portfolio, Applicant believes the flexibility to deviate slightly from this requirement is appropriate because it enables a Series to meet its purchase requirements while trying to obtain the best price. Applicant states that this is particularly important for the Global Target 15 Series because it is more

efficient to purchase Hong Kong securities on a board lot basis. Applicant submits that because the size of board lots vary widely, it is appropriate to permit the Global Target 15 Series to invest up to 7.5% of the value of its asset as of the close of business on the business day following the Stock Selection Date in the securities of a securities related issuer.

7. Applicant states that the objective of the Target 10 Series, the Target 5 Series and the Global Target 15 Series is to provide above-average total return. Each of these Series seeks its objective by investing in common stocks issued by companies that are expected to provide income and to have the potential for capital appreciation. These Series may or may not achieve that objective. Applicant states that the stocks held in these Series are not expected to reflect the entire applicable index or indices, and the prices of Interests are not intended to parallel or correlate with movements in the applicable index or indices. Applicant states that, generally, it will not be possible for all of the funds in the Target 10 Series Target 5 Series and Global Target 15 Series to be 100% invested in the prescribed mix of stocks at any time. Applicant states that First Trust Advisors will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate rounds lots of the portfolio securities.

8. The Dow consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the broader domestic stock market and of American industry. Applicant states that the Dow Jones & Company, Inc. is not affiliated with it and had not participated, and will not participate, in any way in the management of the Target 10 Series, Target 5 Series, or Global Target 15 Series or the selection of the stock purchased by such Series.

9. The FT Index consists of common stocks listed on the London Stock Exchange which are chosen by the editors of The Financial Times (London). The FT Index is an unweighted average of 30 companies representative of British industry and commerce. The companies in the FT Index are highly capitalized, major factors in their industries, and their stocks are widely held by individuals and institutional investors. All companies in the FT Index are listed and traded on the London Stock Exchange. The publishers of the FT Index are unaffiliated with the Fund and First Trust Advisors and do not participate in any way in the management of any Series or the selection of stocks purchased for a Series. Changes in the components of the FT Index are made entirely by the editors of The Financial Times without consultation with the companies, the stock exchange or any official agency. For the sake of continuity, changes are rarely made.

10. The Hang Seng Index consists of 33 of the 358 stocks currently listed on the Stock Exchange of Hong Kong Ltd. (the ''Hong Kong Stock Exchange''). The Hang Seng Index is representative of four major market sectors: commerce and industry, finance, properties, and utilities. The Hang Seng Index is a recognized indicator of stock market performance in Hong Kong. In computing the Hang Seng Index, the companies included therein are weighted by market capitalization and therefore the index is strongly influenced by stocks with large capitalizations. The publishers of the Hang Seng Index are unaffiliated with the Fund and First Trust Advisors and do not participate in any way in the management of any Series or the selection of stocks purchased for a Series.

11. Applicant states that it is not a ''regulated investment company'' under Subchapter M of the Internal Revenue Code of 1986, as amended (the ''Code''). Nonetheless, Applicant states that it does not pay federal income tax on its interest, dividend income or capital gains. As a limited liability company whose interests are sold only to Account B, Applicant states that it is disregarded as an entity for purposes of federal income taxation. Applicant states that American Skandia, through its variable annuity separate accounts, is treated as owning the assets of the portfolios directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Applicant states that under current tax law, interest, dividend income and capital gains of Applicant are not taxable to Applicant, and are not currently taxable to American Skandia or to contract owners, when left to accumulate within a variable annuity contract.

12. Section 817(h) of the Code provides that in order for a variable contract which is based on a segregated asset account to qualify as an annuity contract under the Code, the investment made by that account must be ''adequately diversified'' in accordance with Treasury regulations.

13. Applicant states that the Target 10 Series, Target 5 Series and Global Target 15 Series must comply with the Section 817(h) diversification requirements. Therefore, Applicant states that First Trust Advisors may depart from the portfolio investment strategy, if necessary, in order to satisfy the Section 817(h) diversification requirements. Applicant represents that in all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each portfolio will be chosen solely according to the applicable formula described above and will not be based on the research opinions or buy or sell recommendations of First Trust Advisors.

14. Applicant represents that First Trust Advisors does not have any discretion as to which common stocks are purchased. Applicant states that securities purchased for the Target 10 Series, Target 5 Series, and Global Target 15 Series may include securities of issuers in the Dow (and with respect to the Global Target 15 Series, issuers in the FT Index and the Hang Seng Index as well as the Dow) that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter, or principal underwriter or their affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. The Target 10 Series, Target 5 Series, and Global Target 15 Series undertake to comply with all of the requirements of Rule 12d3–1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities related issuer.

2. Section 6(c) of the Act provides that the Commission by order upon application may, conditionally or unconditionally, exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the

exemption is necessary or 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.

3. Applicant states that Section 12(d)(3) was intended: (a) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, (b) to prevent potential conflicts of interests; (c) to eliminate certain reciprocal practices between investment companies and securities related business; and (d) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. A potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely in the basis of investment merit. Applicant states that this concern does not arise in this situation. Applicant states that generally, neither the Applicant nor First Trust Advisors has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the applicable index or indices (which along with the publishers of the indices are unaffiliated with Applicant and First Trust Advisors). In addition, with respect to the Target 10 Series, the stock must also qualify as one of the ten companies in the Dow that has the highest dividend yields as of the Stock Selection Date. With respect to the Target 5 Series, the stock must qualify as one of the five companies with the lowest per share stock price of the ten companies in the Dow that have the highest dividend yields as of the Stock Selection Date. Finally, with respect to the Global Target 15 Series, the stock must qualify as one of the five companies with the lowest per share stock price of the ten companies in each of the Dow, FT Index, and Hang Seng Index, respectively, that has the highest dividend yields in the respective index as of the Stock Selection Date.

5. Applicant states that the relief requested is substantially similar to that granted to management companies serving as investment options underlying variable annuities. In addition, Applicant states that the Commission has granted similar Section 12(d)(3) relief to unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolios securities to the extent necessary to meet redemptions, pay expenses, and in other limited circumstances.

6. Applicant states that First Trust Advisors is obligated to follow the applicable investment formula described above as nearly as practicable. Applicant states that, like prior applicants for Section 12(d)(3) relief, securities purchased for each portfolio will be chosen with respect to the specified formula. Applicant states that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular portfolio would fail to be ''adequately diversified'' under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as an annuity under the Code. Applicant states that the likelihood of this exception arising is extremely remote. In such a situation, Applicant states that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant states that this limited discretion does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies in a securities related business that Section 12(d)(3) is designed to prevent.

7. Applicant states that the liquidity of the portfolios of the Target 10 Series and Target 5 Series is not a concern here since each common stock selected will be a component of the Dow, listed on the New York Stock Exchange, and among the most actively traded securities in the United States. Similarly, the liquidity of the portfolio of the Global Target 15 Series is also not a concern here as each common stock selected will be a component of the Dow, FT Index, or Hang Seng Index, listed on the New York Stock Exchange, London Stock Exchange, or the Hong Kong Stock Exchange and among the most actively traded securities in their respective countries.

8. In addition, Applicant states that the effect of a Series' purchase of the stock of parents of broker-dealers would be de minimis. Applicant states that the common stocks of securities related issuers represented in the Dow, FT Index or the Hang Seng Index, as the case may be are widely held with active markets and that potential purchases by a portfolio would represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

9. Another possible conflict of interest which has raised concern is where broker-dealers may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant states that because of the large market capitalization of the issuers in the Dow, FT Index and Hang Seng Index and the small portion of these issuers' common stock and trading value that would be purchased by a Series, it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a portfolio would be invested in the broker-dealer or a parent thereof.

10. Finally, another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer in which the company had invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application that no company whose stock is held by the Target 10 Series, Target 5 Series, or Global Target 15 Series nor any affiliate of such a company, will act as broker or dealer for the Target 10 Series, Target 5 Series, or Global Target 15 Series in the purchase or sale of any security for such Series' portfolio.

11. Applicant seeks relief not only with respect to the Fund and its Series described above, but also with respect to any other existing or future open-end investment company or series thereof that is advised by First Trust Advisors, or any entity controlled by or under common control with First Trust Advisors, and that follows an investment strategy that is the same as the investment strategy of the Target 10 Series, Target 15 Series, or Global Target 15 Series (the ''Future Funds''). Applicant represents that any such Future Funds will comply with the terms and conditions of the Application, as amended.

12. Applicant represents that the terms of the relief requested are consistent with the relief previously granted in similar applications. Applicant states that the terms of the relief requested are consistent with the standards set forth in Section 6(c) of the Act.

Applicant's Conditions

Applicant agrees to the following conditions:

With respect to the Target 10 Series:

(a) The common stock is included in the Dow as of the applicable Stock Selection Date;

(b) The common stock represents one of the ten companies in the Dow that have the highest dividend yields as of the applicable Stock Selection Date;

(c) As of the close of business on the business day following the applicable Stock Section Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of such Series' total assets, but in no event more than 10.5% of the value of such Series' total assets;

2. With respect to the Target 5 Series:

(a) The common stock is included in the Dow as of the applicable Stock Selection Date;

(b) The common stock represents one of the five companies with the lowest dollar per share stock price of the ten companies in the Dow that have the highest dividend yields as of the applicable Stock Selection Date;

(c) As of the close of business on the business day following the applicable Stock Section Date, the value of the common stock of each securities related issuer represents approximately 20% of the value of such Series' total assets, but in no event more than 20.5% of the value of such Series' total assets;

3. With respect to the Global Target 15 Series:

(a) The common stock is included in the Dow, the Hang Seng Index, or the FT Index as of the applicable Stock Selection Date;

(b) The common stock represents one of the five companies with the lowest per share stock price of the ten companies on each of the Dow, the FT Index, and the Hang Seng Index, respectively, that have the highest dividend yield as of the applicable Stock Selection Date;

(c) As of the close of business on the business day following the applicable Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 6.7% of the value of such Series' total assets, but in no event more than 7.5% of the value of such Series' total assets; and

4. No company whose stock is held by the Target 10 Series, Target 5 Series, or Global Target 15 Series, or any affiliate thereof, will act as a broker or dealer for any Target 10 Series, and Target 5 Series, or any Global Target 15 Series in the purchase or sale of any security for such Series' portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that the order requested 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, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14757 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23857; 812–11622]

Norwest Advantage Funds, et al.; Notice of Application

June 3, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants, Norwest Advantage Funds (''NAF''), Core Trust (Delaware) (''Core Trust'') (each, a ''Trust''), Norwest Corporation Master Savings Trust (the ''NW Plan''), Norwest Bank Minnesota, N.A. (''Norwest Bank''), and Norwest Investment Management, Inc. (''NIM'') seek an order to permit an in-kind redemption of shares of the Fund by an affiliated person of the Fund.

FILING DATE: The application was filed on May 28, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, Two Portland Square, Portland, ME 04101 and Norwest Center, Sixth and Marquette, Minneapolis, MN 55490–1026.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Nadya Roytblat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NAF is organized as a Delaware business trust and is registered under the Act as an open-end management investment company. NAF offers shares in 39 separate series, including the Index Fund (''Fund''). As a feeder fund in a master-feeder structure, the Fund seeks to achieve its investment objective by investing all of its assets in the Index Portfolio of Core Trust (''Portfolio''). The investment objective of the Portfolio is to replicate the return of the S&P 500 Index. Core Trust is organized as a Delaware business trust and is registered under the Act as an open-end management investment company. Core Trust offers shares in 21 separate series, including the Portfolio.

2. Norwest Bank is a national bank and is a wholly-owned subsidiary of Wells Fargo & Company, a bank holding company. NIM is a wholly-owned subsidiary of Norwest Bank and is registered under the Investment Advisers Act of 1940 (''Advisers Act''). NIM serves as investment adviser to the Portfolio. The NW Plan is an employee benefit plan for affiliates of the Norwest Corporation, the parent corporation of Norwest Bank. The NW Plan owns approximately 29% of the Fund's outstanding voting securities.

3. Wells Fargo has determined to combine a number of existing employee benefit plans, including the NW Plan into a single plan (''New Plan''). The New Plan will not offer the Fund as an investment option for plan participants and will instead offer an index investment option in an index collective trust fund (''CTF'') managed by Barclays Global Investors, N.A., which is not affiliated with any participant in the Transaction. The New Plan would redeem in-kind its interest in the Fund and ultimately reinvest the proceeds of the redemption in the CTF (''Transaction''). The Transaction is expected to take place on or about June 30, 1999.

4. The Fund's prospectus and statement of additional information

provide that, under certain circumstances, the Fund may satisfy a request for redemption in-kind with portfolio securities. The Transaction will be completed only if each Trust's board of trustees (''Board''), including the trustees who are not ''interested persons'' as that term is defined in Section 2(a)(19) of the Act (''Independent Trustees'') approves the redemption in-kind.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include, among others, any person owning 5% or more of the outstanding voting securities of the other person and any person controlling, controlled by or under common control with the other person. Under section 2(a)(9) of the Act, a person that owns beneficially more than 25% of the voting securities of a company is presumed to control the company.

2. Applicants state that Norwest Bank, as the record holder on behalf of the NW Plan of 29% of the outstanding voting securities of the Fund, would be an affiliated person of the Fund. Applicants also state that because the Fund holds greater than 5% of the outstanding voting securities of the Portfolio, the Fund would be an affiliated person of the Portfolio, and Norwest Bank, through its subsidiary, NIM, could be viewed as an affiliated person of an affiliated person of the Portfilio. Applicants state that to the extent that an in-kind redemption could be viewed as involving the sale of portfolio securities from the Fund to the NW Plan, section 17a(a)(2) may prohibit the Transaction.

3. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the terms of the Transaction meet the standards set forth in section 17(b) of the Act. Applicants contend that the potential conflicts of interest posed by an in-kind redemption are that the portfolio securities redeemed would be selected or priced in a way that would be unfair to either the redeeming fund or the remaining shareholders. Applicants state that the redemption in-kind will not involve any choice as to the securities to be distributed. Applicants also submit that the portfolio securities to be distributed in-kind will be valued in the same manner as they would be valued for purposes of determining the Fund's net asset value.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Fund will distribute to the NW Plan pursuant to an in-kind redemption a pro rata share of each portfolio security held by the Portfolio (''In-Kind Securities''), provided that the Fund may distribute cash (i) in lieu of odd lot securities, fractional shares and accruals on such securities, and (ii) as proceeds from the liquidation of S&P 500 Index futures contracts held by the Portfolio.

2. The In-Kind Securities distributed to the NW Plan will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of the redemption setting forth a description of each security distributed in-kind, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14680 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41472; File No. SR–Amex–99–14]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange LLC Relating to a Reduction in the Morgan Stanley High Technology Index Value

June 2, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to split the Morgan Stanley High Technology Index (''Index'') to one-third its current value.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose, of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to split the Morgan Stanley High Tech Index to one-third its current value and temporarily increase its position and exercise limits to three times their current levels as discussed more fully below. Position and exercise limits will revert to their applicable limits at the expiration of the furthest LEAP expiration month as established on the date of the split.

Morgan Stanley High Tech Index: On September 26, 1995, the Commission approved the Exchange's request to permit options trading on the Index.[3] Initially, the aggregate value of the stocks contained in the Index was reduced by a divisor to establish an index benchmark value of 200. The Index's current value, as of the close on April 7, 1999, taken from Bloomberg Financial Markets Commodities News

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 36283 (Sept. 26, 1995), 60 FR 51825 (Oct. 3, 1995).

and rounded to the nearest whole number, was approximately 1075.

As a consequence of the rising of the Index's value, premium levels for options on the Index have also risen. These higher premium levels have discouraged retail investors and some market professionals from trading options on the Index. The Exchange believes that decreasing the value of the Index may make the Index options more attractive to retail investors and other market professionals and therefore more competitive with other products in the marketplace. As a result, the Exchange is proposing to decrease the Index to one-third its present value.

To decrease the Index's value, the Exchange will triple the divisor used in calculating the Index. No other changes are proposed as to the components of the Index, its method of calculation (other than the change in the divisor), expiration style of the option, or any other Index specification.

The lower valued Index will result in substantial lowering of the dollar values of option premiums for Morgan Stanley High Technology contracts. The Exchange plans to adjust outstanding series similar to the manner in which equity options are adjusted for a 3-for-1 stock split. On the effective date of the split ''ex-date,'' the number of outstanding Morgan Stanley option contracts will be tripled and strike prices reduced by a factor of three.

Position and Exercise Limits: Currently, the Index's position and exercise limits are equal to 15,000 contracts on the same side of the market. The Exchange proposes to triple the Index's position and exercise limits to 45,000 contracts on the same side of the market. This change will be made in conjunction with the simultaneous reduction of the Index's value and the tripling of the number of contracts.

Because the new limits will be equivalent to the Index's present limits, there is no additional potential for manipulation of the Index or the underlying securities. Further, an investor who is currently at the 15,000 contract limit will, as a result of the index value reduction, automatically hold 45,000 contracts to correspond with the lowered Index value. The position and exercise limits will revert to their then applicable limits at the expiration of the furthest non-LEAP (Long Term Equity Anticipation Security) expiration month as established on the date of the split.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) [5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–14 and should be submitted by July 1, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14682 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41471; File No. SR–BSE–99–1]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. To Allow Specialist Remote Access to the BEACON System

June 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 1999, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt a one-year pilot program for remote specialist trading on the BEACON trading system, under which BSE specialists will be permitted to conduct regular trading activities off the BSE's trading floor. Proposed new language is italicized.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change's purpose was clarified and technical changes were made during a conversation between George Mann, General Counsel, BSE, and Joshua Kans, Attorney, Division of Market Regulation (''Division''), Commission, May 26, 1999.

CHAPTER XXXIII

Boston Exchange Automated Communication Order-routing Network (BEACON)

BEACON Remote

Sec. 9. BEACON terminals and related equipment will be provided to remote member firm locations for specialist trading. The remote terminals will be linked to the BEACON Trading System and will provide the same functionality as is available to on-floor specialists. All orders directed to remote specialists, including ITS commitments and administrative messages, will be from the Woburn data center through BEACON as occurs with on-floor specialists. Floor broker orders will be routed to remote specialists under the same criteria by which they are routed to on-floor specialists. There will be no remote floor brokerage services. The following shall apply to specialists participating in the 12-month BEACON Remote pilot program:

(a) All rules and policies of the Board of Governors of the Exchange shall apply except as specifically excluded or amended under this section.

(b) Only member firms with existing Exchange specialist operations are eligible for participation in the 12-month BEACON Remote pilot program.

(c) Any eligible firm may apply to the Market Performance Committee to participate in the pilot program.

(d) Unless the Market Performance Committee specifically authorizes otherwise, participating member firms shall be prohibited from trading remotely any securities which are currently being traded on-floor by that individual member firm.

(e) The number of specialty stocks traded remotely shall not exceed two hundred (200) per specialist account.

(f) Individual securities may not be traded by one specialist firm in more than one location.

(g) All layoff orders must be included in BEACON drop copy.[1]

(h) All rule references pertaining to the trading floor of the Exchange, including:

Chapter I–B, Section 2 (''Dealings on Floor—Hours'');
Chapter I–B, Section 3 (''Dealings on Floor—Persons'');
Chapter II, Section 2 (''Recording of Sales'');
Chapter II, Section 6 (''Bids and Offers for Stocks'');
Chapter II, Section 9 (''Trading for Joint Account'');
Chapter II, Section 10 (''Discretionary Transactions'');
Chapter II, Section 13 (''Trading Against Privileges'');
Chapter II, Section 15 ''Record of Orders from Offices to Floor'');
Chapter II, Section 23 (''Dealing on Other Exchanges, or Publicly Outside the Exchange'');
Chapter II, Section 31 (''Offering Publicly on the Floor'');
Chapter VII, Section 2 (''Member-organization Accounts'');
Chapter XV, Section 1 (''Registration'');
Chapter XV, Section 2 (''Responsibilities'');
Chapter XV, Section 3 (''Code of Acceptable Business Practices for Specialists'');
Chapter XV, Section 5 (''Preference on Competitive Basis'');
Chapter XV, Section 6 (''The Specialist's Book'');
Chapter XV, Section 9 (''Opening Listed Stock'');
Chapter XV, Section 10 (''Hours'');
Chapter XV, Section 16 (''Status of Orders When Primary Market Closed'');
Chapter XV, Section 18 (''Procedures for Competing Specialists'');
Chapter XVI (''Special Offerings'');
Chapter XVIII, Section 1 (''Penalties'');
Chapter XVII, Section 4 (''Imposition of Fines for Minor Violation(s) of Rules and Floor Decorum Policies'');
Chapter XX, Section 6 (''Gratuities'');
Chapter XXII, Section 2 (''Capital and Equity Requirements'');
Chapter XXXI, Section 2 (''Intermarket Trading System'');
Chapter XXXI, Section 3 (''Pre-Opening Application'');
Chapter XXXI, Section 4 (''Trade-Throughs and Locked Markets'');
Clearing Corporation Rule 3, Section 2 (''Dual Member Broker/Dealer Accounts'');
Clearing Corporation Rule 3, Section 3 (''Boston Representative Broker/Dealer Accounts'');
Clearing Corporation Rule 3, Section 4 (''Specialist Member'');
Clearing Corporation Rule 4, Section 4 (''Bills Rendered'');

shall be deemed to include any trading done remotely through BEACON, and all such trades shall be deemed to be executions on the Exchange.

(i) A written confidentiality policy regarding the location of equipment and access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading.

(j) Floor policies regarding dress code, smoking, identification and visitors shall not apply.

(k) All Exchange correspondence, memoranda, bulletins and other publications shall be sent to BEACON Remote specialists via electronic mail through BEACON and via U.S. mail or overnight delivery.

(l) All BEACON Remote specialists will have stentofon, as well as telephone access, to the physical trading floor.

(m) Servicing of BEACON terminals and related equipment shall be by Exchange authorized and trained personnel only.

(n) The[4]*Exchange's examination program would include the remote specialist operations of all firms.*

(o) Any arbitration or disciplinary action arising out of trading activity pursuant to this section would be held at the physical offices of the Exchange located in Boston.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to establish a limited scope, one-year pilot program to provide for remote specialist trading through the BEACON system.[5] At present, access to the BEACON system is provided only to specialists located on the Exchange's physical trading floor, and all market-making occurs on that physical floor. The Exchange views the remote specialist proposal as the natural first

[1] *Drop copy is a BEACON system enhancement which permits the electronic loading of layoff system trade data for realtime specialist position updating, clearance, settlement and audit trail purposes.*[4]

[4] In its filing, the Exchange used the term ''DOT system trade data'' in this footnote. The Exchange now proposes to use the term ''layoff system trade data.'' Conversation between George Mann, General Counsel, BSE, and Joshua Kans, Attorney, Division, Commission, May 26, 1999.

[5] The BEACON system is the Exchange's securities communication, order-routing and execution system. *See generally* BSE Rules, Chapter XXXIII.

step in the progression from a manual open outcry system of trading to an automated electronic trading system. Although the Exchange believes that many traditional exchanges are considering eliminating their trading floors, due to the numerous electronic communications networks with which the Exchange must now compete, the Exchange seeks to provide its specialist member firms with the option of virtual access to the Exchange's physical floor via a remote BEACON terminal located in the firms' offices, while retaining the ability to centralize specialists on the Exchange's physical trading floor.

The Exchange proposes to implement the program by adding Section 9, ''BEACON Remote,'' to Chapter XXXIII of the Exchange's rules. Because of the framework of the BEACON trading system and the BEAM on-line surveillance system,[6] all trades on the Exchange occur within the confines of BEACON and are monitored real-time BEAM. Section 9 would permit specialist operations to function remotely within the confines of these Exchange systems, and within the framework of the existing rules of the Exchange, although those operations would not be physically conducted on the trading floor. As such, all executions that occur within the BEACON System, whether on-floor or remote, would be considered executions occurring on the floor of the Exchange, not unlike executions which occur today on the Cincinnati Stock Exchange, which has no physical trading floor. Both remote and on-floor specialists would have equal access to all BEACON functionalities, including access to the Intermarket Trading System (''ITS'') through the recently developed BEACON System interface.

The Exchange is proposing to permit remote specialist access to the BEACON system for a 12-month pilot program. The Exchange would provide BEACON terminals and related equipment to remote member firm locations for specialist trading during this period. The remote terminals will be linked to the BEACON Trading System utilizing dedicated lines and connected via the same wide area network currently utilized to link the physical trading floor to the Woburn data center. These terminals will provide the same functionality as is available to on-floor specialists. All orders directed to remote specialists, including ITS commitments and administrative messages, will be from the Woburn data center through BEACON as occurs with on-floor specialists. Floor brokers orders will also be routed to remote specialists under the same criteria by which they are routed to on-floor specialists. Members will not be able to use the BEACON Remote pilot to conduct floor brokerage services.

Proposed Section 9(a) would provide that all rules and policies of the Board of Governors of the Exchange shall apply except as specifically excluded or amended. Accordingly, all of the Exchange's membership, net capital, equity, examination, specialist performance evaluation, competing specialist, stock allocation, trading and specialist rules and policies would apply equally to remote specialists. Surveillance and compliance monitoring of remote specialist trading activity would occur through BEAM as it does today for on-floor specialists, and trading issues with a remote specialist would be addressed via telephone and e-mail (as opposed to in person on the trading floor).

The following limitations will apply to remote specialists participating in the 12-month pilot program: Proposed Section 9(b) would provide that only existing Exchange specialist operations are eligible to participate. Proposed Section 9(e) would provide that the total number of specialty stocks traded remotely shall not exceed two hundred (200) per specialist account. Proposed Section 9(d) would provide that securities currently traded on-floor by a firm cannot be moved to a remote location unless specifically authorized by the Exchange's Market Performance Committee. Proposed Section 9(g) would provide that all layoff orders must be included in BEACON drop copy, meaning that remote specialists would be required to utilize layoff systems that are electronically linked to BEACON to help ensure that a surveillance audit trail is created by the drop copy report.[7]

In addition, the following provisions shall apply to the program: any eligible firm may apply to the Exchange's Market Performance Committee to participate in the pilot program (Section 9(c)); a specialist firm may not trade individual securities in more than one location (Section 9(f)); all rule references pertaining to the trading floor of the Exchange shall be deemed to include any trading done remotely through BEACON, and all such trades shall be deemed to be executions on the Exchange (Section 9(h)); a written confidentiality policy regarding the location of equipment and access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading (Section 9(i))[8]; floor policies regarding dress code, smoking, identification and visitors shall not apply (Section 9(j))[9]; all Exchange correspondence, memoranda, bulletins and other publications shall be sent to BEACON Remote specialists via electronic mail through BEACON and via U.S. mail or overnight delivery (Section 9(k)); all BEACON Remote specialists will have stentofon, as well as telephone access, to the physical trading floor (Section 9(l)[10]; servicing of BEACON terminals and related equipment shall be by Exchange authorized and trained personnel only (Section 9(m)); the Exchange's examination program would include the remote specialist operations of all firms (Section 9(n))[11]; and any arbitration or disciplinary action arising out of trading activity pursuant to this section would be held at the physical offices of the Exchange located in Boston (Section 9(o)).

(2) Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[12] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in

[6] The BEAM system provides the Exchange with real-time capabilities to monitor specialist trading activity within the BEACON system.

[7] The drop copy system generates a report of all executions of orders laid off to other market centers for purposes of specialist position updating, clearance and settlement, and audit trail. BSE members may layoff orders to the New York Stock Exchange through the Designated Order Turnaround (''DOT'') system and to the American Stock Exchange through the Post Execution Reporting (''PER'') system.

[8] Proposed confidentiality policies should provide that BEACON terminals would be physically located in a secure area without open access, and that members have made a specific person responsible for ensuring compliance.

[9] The Exchange adopted those floor policies in its Minor Rule Plan, pursuant to BSE Rules chapter XVIII, section 4.

[10] BSE's stentofon system provides electronic voice communications among BSE members.

[11] The Exchange conducts a full examination of the books and records of those member firms assigned to it as the Designated Examining Authority (''DEA''). In addition, the Exchange conducts a more limited examination of the books and records of all non-DEA member firms with specialist operations on the floor (limited to books and records related to specialist operation only). This review would be expanded to include the examination of the books and records of all firms with remote specialist operations.

[12] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–99–1 and should be submitted by July 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14684 Filed 6–9–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41473; File No. SR–NASD–99–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Locked and Crossed Markets that Occur at or Prior to the Market's Open

June 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend the portion of NASD Rule 4613(e) regarding locked and crossed market conditions [4] that occur prior to the market's opening. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

4613. Character of Quotations.

(a)–(d) No changes.

(e) Locked and Crossed Markets.

(1) A market shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) the bid quotation entered is equal to (''*lock*'') or greater than (''*cross*'') the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to (''*lock*'') or less than (''*cross*'') the bid quotation of another market maker entering quotations in the same security.

[The prohibitions of this rule include the entry of a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time if such quotation continues to lock or cross the market at the market's opening, and requires a market maker or ECN that enters a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time to take action to avoid the lock or cross at the market's open or immediately thereafter, but in no case more than 30 seconds after 9:30:00 a.m.]

(C) *Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening.*

(i) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a market maker that is a party to a lock/cross because the market maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker (''party to a lock/cross'') may, beginning at 9:20 a.m. Eastern Time, send through Nasdaq's SelectNet system (or its successor system) a message of any size that it at the receiving market maker's quoted price (''Trade-or-Move Message''). Any market maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(ii) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.—If a market maker locks or crosses the market between 9:20 and 9:29:59 a.m. Eastern Time, the market maker must immediately send through SelectNet to the market maker whose quotes it is locking or crossing a Trade-or-Move Message that is at the receiving market maker's quoted price and that is for at least 5,000 shares (in instances where there are multiple market makers to lock/cross, the locking/crossing market maker must send a message to each party to the lock/cross and the aggregate

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On May 14, 1999, Nasdaq amended its proposal to require a market participants that sends a Trade-or-Move Message (as defined below) to place a modifier on the message indicating the message is a Trade-or-Move Message. *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, date May 14, 1999 (''Amendment No. 1'').

[4] A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

size of all such messages must be at least 5,000 shares). A market maker that receives a Trade-or-Move Message during this period and that is party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(iii) A market maker that sends a Trade-or-Move Message pursuant to subparagraphs (e)(1)(C)(i) or (e)(1)(C)(ii) of this rule must append to the message a Nasdaq-provided symbol indicating that it is a Trade-or-Move Message.

(2)–(3) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing amendments to NASD Rule 4613(e) that would alter the obligations regarding locked and crossed markets that occur prior to the market's open.

Background

Nasdaq has observed a number of locked/crossed markets on the open. This often occurs because a member will enter a quote prior to the open that will lock/cross the market on the open. Nasdaq's current role regarding locked/crossed markets has alleviated some, but not all, of the locked/crossed market situations. Specifically, current NASD Rule 4613(e) provides that if a market participant enters a quote at or after 9:25 a.m. that would lock/cross the market on the open, the locking/crossing market participant must take action when the market opens, but in no case later than 9:30:30 a.m., to unlock/uncross the market by (for example) sending a SelectNet message to the market participant(s) it is locking/crossing. Under the current rule, however, locks/crosses still occur at the open because the passively locked/crossed market participant may not respond immediately to the incoming SelectNet message. To address ongoing concerns with locked and crossed markets, Nasdaq is proposing the following amendments to NASD Rule 4613(e).

Generally, the proposed amendments provide that if a market participant is a party to a locked/crossed market prior to the open, beginning at 9:20 a.m. the market participant has the *right* to send the other parties to the lock/cross a SelectNet message (''Trade-or-Move Message''), to which the receiving market participant(s) must respond in one of two ways. Specifically, the receiving market participant(s) must respond to the Trade-or-Move Message within 30 seconds by either: (1) Trading with the message for the full size of the message; or (2) moving its quotation to a price level that unlocks or uncrosses the market. Thus, the receiving market participant has the choice of either trading in full or moving its quote out of the way.[5] Under the proposal, a market participant's *obligations* would vary slightly depending on whether the lock/cross occurs prior to or after 9:20 a.m., as specified below.

Locks/Crosses Occurring At or After 9:20 and Before 9:30 a.m.

If a market participant locks/crosses the market between 9:20 a.m. and 9:29:59 a.m. Eastern Time, the market participant would be required to send—prior to or immediately after entering a locking/crossing quotation—a Trade-or-Move message(s) that was for at least an aggregate size of 5,000 shares to the party or parties that he or she is locking/crossing. (If there are multiple market participants being locked/crossed, the proposed rule will require the ''initiating'' or ''active'' locker to send Trade-or-Move Messages—whose aggregate size was at least 5,000 shares—to all parties to the lock/cross.)[6] The receiving market participant will then be required to trade in full with the incoming message within 30 seconds or move its quote out of the way within 30 seconds.[7] Prior to sending a Trade-or-Move Message, a market participant must append to the SelectNet message a symbol indicating that such message has been designated as ''Trade-or-Move.'' Nasdaq is requiring market participants to append such a symbol so that the receiving market participant knows that it owes some obligation to the incoming message.[8] Of course, a market participant could accept a portion of the incoming Trade-or-Move Message, but would be required to move its quote within the 30 second time period.

In addition, if the receiving market participant trades in full with the message (*i.e.*, up to the full amount of the incoming Trade-or-Move-Message), the market participant may maintain its locked/crossed quotes and not move if it wishes to trade more shares. Thereafter, any party to the lock/cross would have the right, but not the obligation, to send a Trade-or-Move Message to any other party to the lock/cross, and any party to the lock/cross that receives a Trade-or-Move Message would then have the obligation to trade or move within 30 seconds.

Locks/Crosses Prior to 9:20 a.m.

For locks/crosses that occur prior to 9:20 a.m. Eastern Time, any party to a lock/cross would have the right but not the obligation *beginning at 9:20 a.m.*, to send a Trade-or-Move Message of any size to any party to the lock/cross. Similar to the above, any party to the lock/cross that receives a Trade-or-Move Message would have the obligation, beginning at 9:20 a.m., to trade or move within 30 seconds. Unlike locks/crosses that occur at or after 9:20 a.m., there is no requirement that the ''actively'' locking/crossing market participant send a specific number of shares to the parties to the lock/cross. The rationale for this distinction is that it is often difficult to determine which party actively locked/crossed the market in the period prior to 9:20 a.m. because market participants often do not actively

[5] As discussed more fully below, the receiving market participant also may trade with a portion of the incoming Trade-or-Move Message, and move its quote. A market participant that trades in full with the incoming Trade-or-Move Message is not required to move its quote.

[6] Thus, a market participant would be prohibited from locking/crossing the market in the 10-minute period prior to the open unless the actively locking/crossing market participant is willing to trade at least 5,000 shares.

[7] Nasdaq states that because the proposed rule will apply to quotations entered prior to the market's open, the market participant receiving a Trade-or-Move Message prior to the open would have no liability under NASD Rule 4613(b) (''NASD's Firm Quote Rule''). In addition, Nasdaq believes that a market maker receiving a Trade-or-Move Message prior to the open would owe no liability to the message under SEC Rule 11Ac1–1 (''SEC Firm Quote Rule''). Thus, a market maker would be permitted to move its quote without trading upon the receipt of what, during market hours, would be a SelectNet ''liability'' order.

[8] *See* Amendment No. 1, *supra* note 3. Specifically, Nasdaq plans to change its system so that a Trade-or-Move SelectNet message may be encoded with the following message: ''trad or mov.'' This change will allow market participants to distinguish a Trade-or-Move Message (to which the recipient has an obligation to respond under the proposed rule) from other pre-opening messages that a market participant may receive.

monitor their quotes prior to that time. This is also the reason why, under the proposed rule, the obligations and rights of the parties to the lock/cross do not start until 9:20 a.m.

Nasdaq believes that the 9:20 a.m. benchmark establishes a reasonable point in time for when market participants should be actively monitoring their quotes, responding to incoming Trade-or-Move Messages, and monitoring prospectively for whether they are the actively locking/crossing market participants in the market and thus required to send out a Trade-or-Move Message for at least an aggregate of 5,000 shares, It is Nasdaq's view that if a party receives a Trade-or-Move Message at or after 9:20 a.m. and stays at its quote without trading at all or trading in full, this generally would be considered a violation of the locked/crossed market rule, as amended by this proposal, and would not be considered a violation of NASD's Firm Quote Rule.[9]

The following are examples of how the proposed rule would work.

At 9:21 a.m., MMA locks four market participants—MMB, MMC, MMD and MME—each quoting 1,000 shares. Since the lock has occurred after 9:20 a.m., MMA is required to send a Trade-or-Move Message for at least 5,000 shares to each of these four market makers. Accordingly, MMA sends a Trade-or-Move Message for 1,100 shares to MMB, who declines and moves. MMC receives a 1,500 share order, fills it partially (1,000 shares), and, as required, moves its quote out of the way. MMD receives a message for 400 shares, fills the message in full, and then moves down ⅛ to unlock the market.[10] MME receives a 2,000 share message, and fills it completely; MME is permitted to remain at her quote, but is not required to do so. MME also may send a Trade-or-Move Message to MMA, who must trade or move, or MMA may send another Trade-or-Move Message to MME, who then would have to trade or move.

As a second example, assume that at 9:18 a.m., MMW and MMX are bidding 74, and MMY and MMX enter offer prices of 73, thus crossing the market. Since it is before 9:20 a.m., no Trade-or-Move Messages may be sent yet. At 9:20 a.m., all four market participants would have the right to send Trade-or-Move Messages of any size to either of the two market participants crossing them. Any party not filling such an order in full within 30 seconds would have to move its quote out of the cross.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[11] and Section 11A[12] of the Act. Section 15A(b)(6) requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. An association's rules may not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

Nasdaq believes that the proposed amendments to NASD rule 4613(e) are consistent with sections 15A(b)(6) and 11A(a)(1)(C) of the Act. By attempting to resolve locks and crosses on the market's opening, the proposed amendments foster cooperation and coordination with members. In addition, Nasdaq believes that the proposal also will ensure the fair and orderly operation of Nasdaq and the protection of investors, as its purpose is to limit disruptions to the Nasdaq market and the potential for harm to investors.

B. Self-Regulation Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–23 and should be submitted by July 1, 1999.

[9] If a market maker receives a Trade-or-Move Message within the last 30 seconds before the opening (*i.e.*, at or after 9:29:30 a.m.), the market maker still has the obligation to trade or move within 30 seconds, even if the end of that 30 seconds occurs after the market's open. Unlike today, a market that actively locked the market prior to the open would not be required to resend to the parties to the lock/cross a SelectNet message at or after (9:30:00 a.m., in an attempt to unlock/uncross the market on the open.

However, a market maker that wishes to enter a locking/crossing quote at or after 9:30:00 a.m. would be required to use reasonable means to avoid locking/crossing the market by, for example, sending a SelectNet message to the party (or parties) it will lock/cross. *See NASD Notice to Members 97–49.*

[10] Because MMD has filled the message in full, he is not required to move his quote.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78k–1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14681 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41469; File No. SR–NYSE–97–25]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change to Amend its Rule 382 Relating to Carrying Agreements

June 2, 1999

I. Introduction

On September 16, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 382 to monitor the activities of introducing firms that are parties to carrying agreements.

The proposed rule change was published for comment in the **Federal Register** on October 14, 1997.[3] Seven comment letters were received on the proposal.[4] On November 12, 1998, the NYSE submitted to the Commission a letter responding to the issues raised in the comment letters received by the Commission.[5] On November 25, 1998, the NYSE submitted Amendment No. 1 to the proposed rule change.[6] This order approves the proposed rule change and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The NYSE proposes to revise NYSE Rule 382 to enhance the ability of the Exchange and other securities self-regulatory organizations (''SROs'') to monitor the activities of introducing firms that are parties to carrying agreements. NYSE Rule 382 governs the contractual agreements, known as ''carrying agreements. NYSE Rule 382 governs the contractual agreements, known as ''carrying agreements,'' between a carrying firm and an introducing firm, that allocate certain functions and responsibilities associated with the carrying of, and transactions in, customer accounts. Generally, the proposed amendments to NYSE Rule 382 would provide for increased monitoring of customer complaints regarding introducing firms, require specific procedures for introducing firms requesting reports offered by carrying firms, and address procedures and responsibilities of introducing firms that are permitted to issue negotiable instruments of the carrying firms.

Specifically, the proposal, as amended, would require a carrying firm to provide promptly any written customer complaint it receives regarding the introducing firm to the introducing firm and the introducing firm's Designated Examining Authority (''DEA''). In addition, the proposal would require that the carrying firm notify the customer who submitted the written complaint in writing that the complaint was received and that it was provided to the introducing firm and the DEA. As initially proposed, the carrying firm would also have been required, in response to customer complaints, to inform customers of their right to transfer their accounts to another broker-dealer. As discussed further below, this provision was subsequently deleted from the proposal in response to comment letters received by the Commission.[7]

The proposal also would require a carrying firm to provide to each of its introducing firms, at the beginning of the agreement and annually thereafter, a list of all exception and other reports that it offers to assist its introducing firms in supervising and monitoring their customer accounts. The proposal would require each introducing firm to notify the carrying firm of those specific reports offered that should be provided to the firm.[8]

In addition, the proposal would require the carrying firm to provide written notice, on an annual basis within 30 days of July 1 of each year (*i.e.,* between June 1 and July 31), to the introducing firm's Chief Executive Officer, Compliance Officer, and DEA, of the list of reports offered to the introducing firm and to specify those reports actually requested or supplied as of the report date.

The Exchange also proposes to amend its original filing to conform its rule language to the amended proposal submitted by the National Association of Securities Dealers, Inc. (''NASD'').[9] The proposal, as amended, would grant the NYSE the discretion, upon a showing of good cause, to grant exemptions from the requirements relating to the handling of customer complaints and the provision of exception reports in instances where the introducing firm is an affiliated entity of the carrying firm.[10]

Finally, the proposal addresses those agreements that allow introducing firms to issue negotiable instruments (*e.g.,* checks) to their customers, for which the carrying firm is the maker or drawer. The proposed rule provides that the introducing firm must represent to the carrying firm that it has supervisory procedures in place, which it enforces and which are satisfactory to the carrying firm, with respect to the issuance of such instruments.

III. Summary of Comments

The Commission received seven comment letters on the proposed rule change.[11] As discussed further below, all of the commenters, except one,[12] generally opposed the proposal: four expressed concerns that the proposal was unnecessarily broad,[13] while two stated that the proposal was inadequate

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* Securities Exchange Act Release No. 39200 (October 3, 1997), 62 FR 53369.

[4] *See* Letters to Jonathan Katz, Secretary, Commission, from Mark R. Grewe, Schroder & Co. Inc., dated October 14, 1997 (''Schroder''); Jonathan Kord Lagemann, Esq., dated October 30, 1997; Olga Monetti, dated October 29, 1997; Stephen Tenison, Senior Vice President-Compliance, Global Financial Services, L.L.C., dated October 29, 1997 (''Global''); J. David Coker, Coker & Palmer, Inc., dated October 29, 1997 (''Coker & Palmer''); Erich Sokolower, Managing Director, Repex & Co., Inc., dated October 31, 1997 (''Repex''); and Thomas J. Berthel, Chairman, Local Firms Committee, Edward Schlitzer, Chairman, Clearing Firms Committee, and Thomas A. Franko, Ad Hoc Clearing Subcommittee, Securities Industry Association, dated November 3, 1997 (''SIA'').

[5] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 11, 1998 (''NYSE Response Letter'').

[6] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division, Commission, dated November 24, 1998 (''Amendment No. 1''). In Amendment No. 1, NYSE proposes to amend its filing to: (1) delete the proposed requirement that, in response to customer complaints, the carrying firm must notify the customers of their right to transfer their accounts; and (2) add a good cause exclusion from certain provisions of the proposed rule when the introducing firm is an affiliated entity of the carrying firm.

[7] *See* Amendment No. 1, *supra* note 6.

[8] In addition, the carrying firm will be required to retain and preserve copies of the specific reports requested by, or supplied to, the introducing firm or have the capability to: (1) recreate copies of reports provided, or (2) make available the report format and data elements provided in the original reports necessary to recreate the original reports.

[9] *See* Amendment No. 1, *supra* note 6.

[10] *Id.*

[11] *See* note 4, *supra.*

[12] *See* SIA Letter, *supra* note 4.

[13] *See* Letters from Schroder, Global, Coker & Palmer, and Repex, *supra* note 4.

as it failed to hold carrying firms responsible for the actions of their introducing firms.[14] Two of the commenters specifically opposed any attempts by the NYSE to hold carrying firms liable for the actions of their introducing brokers.[15] In response, the NYSE stated that the proposed rule change would not hold the carrying firms responsible for the actions of their introducing firms, noting, ''the proposals are not intended to alter the fundamental carrying/clearing contractual relationship.'' [16]

A. Customer Complaints

Two of the comment letters stated that requiring carrying firms to send copies of written customer complaints to the introducing firm's DEA is unnecessary because the introducing firm is already required to submit information about its customer complaints to its DEA.[17] In response, the NYSE distinguished the proposed customer complaint requirements from existing reporting rules, such as NYSE Rule 351, which require statistical information about customer complaints to be provided to the DEA on a quarterly basis. The NYSE noted that the proposal would supplement, rather than duplicate, the existing reporting requirements by requiring that copies of actual written complaints be provided immediately to the DEA.[18]

Three comment letters expressed concerns that the proposed notification provisions advising complaining customers of their rights to transfer their accounts would be misleading as it could create the perception that the subject of the complaint necessarily warranted a transfer.[19] For example, one commenter pointed out that the proposed statement ''might well cause the customer to infer wrongdoing and take his or her business elsewhere, regardless of the merit of the complaint or the underlying circumstances * * *.'' [20] Another commenter suggested that the proposed response ''should be reserved for only serious allegations where a transfer of account is an appropriate response.''[21] In response, the NYSE proposes to delete this provision from its proposal, noting that investor education initiatives may more effectively accomplish the objectives of the proposed requirements.[22]

B. Exception Reports

One commenter believed that the proposed requirement that carrying firms provide a notice, on an annual basis, of reports offered to their introducing firms was unnecessary and served no ongoing useful purpose.[23] This commenter recommended that the DEA and introducing broker should be permitted to choose whether or not to receive such annual notices.[24] In response, the Exchange reaffirmed its belief that the annual notice would serve as an important regulatory tool for the introducing firm's DEA by enhancing the DEA's ability to conduct on-site examinations and by providing useful information regarding the specific data available to the introducing firm to monitor its customer accounts.[25] The NYSE further noted that the proposal would require carrying firms to provide information about updated, and possibly reformatted, reports that might be useful to the introducing firm, as well.[26]

C. Negotiable Instruments

One commenter noted that the representations required of the introducing firm that it have supervisory procedures in place with respect to check writing that are ''satisfactory'' to the carrying firm places responsibility on the carrying firm that may be inconsistent with other requirements, noting that NYSE rule 382(b)(4) permits the responsibility for the receipt and delivery of funds to be allocated pursuant to the carrying agreement.[27] The NYSE stated that although the carrying firm, as the maker or drawer of the negotiable instrument, should be satisfied as to the adequacy of the introducing firm's procedures relating to the issuance of such negotiable instruments, the proposal was not intended ''to impose supervisory obligations on the carrying organization that are not part of its contractual allocated responsibilities or part of its supervisory responsibilities pursuant to Rule 382.'' [28]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [29] and the rules and regulations thereunder applicable to a national securities exchange.[30] The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section (b)(5) of the Act [31] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, by assisting the NYSE to better monitor the activities of introducing firms, should help to prevent fraudulent and manipulative acts and practices. The proposal and the companion proposal submitted by the NASD [32] represent an important step toward addressing recent concerns about questionable sales practices and potentially fraudulent activity engaged in by some introducing firms.[33] The Commission expects that the proposed rules, by establishing procedures for the handling of customer complaints, the offer and receipt of exception reports, and the introducing firm's issuance of negotiable instruments of the carrying firm, should assist the SROs in their regulatory efforts. In addition, by requiring carrying firms to provide to their introducing firms copies of customer complaints and lists of available exception reports, the proposal should help introducing firms to better monitor their customer accounts.

A. Customer Complaints

The proposed customer complaint provisions of the proposal would require carrying firms to provide any written customer complaint they receive regarding the introducing firm to the introducing firm and the introducing firm's DEA. In addition, the proposal would require that the customer who submitted the written complaint be

[14] *See* Letters from Lagemann and Monetti, *supra* note 4.

[15] *See* Letters from Schroder and SIA, *supra* note 4.

[16] *See* NYSE Response Letter, *supra* note 5.

[17] *See* Letters from Schroder and Global, *supra* note 4.

[18] *See* NYSE Response Letter, *supra* note 5.

[19] *See* Letters from Schroder, Global, and SIA, *supra* note 4.

[20] *See* SIA Letters, *supra* note 4.

[21] *See* Global Letter, *supra* note 4.

[22] *See* Amendment No. 1, *supra* note 6; *see also* NYSE Response Letter, *supra* note 5.

[23] *See* Global Letter, *supra* note 4.

[24] *Id.*

[25] *See* NYSE Response Letter, *supra* note 4.

[26] *Id.*

[27] *See* SIA Letter, *supra* note 4.

[28] *See* NYSE Response Letter, *supra* Note 5.

[29] 15 U.S.C. 78f.

[30] In approving this rule, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(5).

[32] The Commission is simultaneously approving the NASD's amended proposal, File No. SR–NASD–97–76.

[33] The Commission encourages the NYSE, the NASD, and others to continue to consider additional measures focusing on introducing and clearing firm processes that would assist in detecting and deterring fraudulent and manipulative activities.

notified in writing by the carrying firm that the complaint was received and that it was provided to the introducing firm and the DEA.

The Commission believes the proposed requirements relating to the handling of customer complaints received by carrying firms are reasonable. These procedures should enhance the ability of introducing firms and their DEAs to monitor complaints. In particular, DEAs and firms should be better able to identify patterns of complaints and to determine, for example, whether there is a problem with the firms' supervisory procedures, operations, or an individual registered representative. The Commission notes the commenters' concerns that the proposal is duplicative because existing NYSE Rule 351 requires member firms to report to the Exchange statistical and summary information regarding customer complaints.[34] The Commission, however, believes that because this proposal would require the submission of a copy of the actual complaint to the DEA, the proposed reporting requirements supplement, rather than duplicate, the existing reporting requirements.

Moreover, the Commission agrees with the commenters that the notification provisions, initially proposed, which required carrying firms to advise complaining customers of their right to transfer their accounts, could have created the perception that the subject of the customer's complaint warranted a transfer. Many customer complaints relate to operational issues, such as delayed dividend checks, and are easily resolved by the firm. The Commission believes that broader investor education initiatives designed to inform investors of their rights would more effectively achieve the same objectives without creating the possibility of unnecessary confusion. The Commission is working with the SROs on educational initiatives in this area. Accordingly, the Commission believes that the NYSE's proposal to delete the proposed notification provision is appropriate.

B. Exception Reports

The proposal also would require carrying firms to provide a list of all reports that are offered to their introducing firms and would require each introducing firm to provide its carrying firm with a list of specific reports requested. The proposal further would require carrying firms to provide to their introducing firms and the introducing firms' DEA written annual notice, within 30 days of July 1, of the list of reports offered to each introducing firm and to specify those reports actually requested or supplied as of the report date.

Exception and other reports are important tools in the monitoring and supervision of customer accounts, from both a risk management and customer services perspective. For example, reports that flag unusual account activity or possible unauthorized trades may allow for early detection and correction of potential problems with a firm's supervisory procedures, operations, or an individual registered representative. In addition, the Commission believes that information regarding reports available and those reports requested as of a specific date should assist both the introducing firm in assessing its prospective needs and the introducing firm's DEA in its regulatory efforts.

Finally, the Commission notes that the proposed requirements relating to exception reports apply to all carrying firm/introducing firm relationships, regardless of the manner in which the date is transmitted from the carrying firm to the introducing firm. Therefore, the proposed rules are equally applicable to carrying agreements that provide for the transmission from the clearing firm to the introducing firm of raw data, rather than information organized in a formatted report. Under either scenario, the Commission expects the introducing firm to determine what information is needed for the proper supervision of its customer accounts, and to have the ability to use the data provided by its carrying firm in its supervisory efforts.

C. Exemption for Good Cause Shown

The NYSE is proposing to include an exemption from the customer complaint and exception report provisions of the proposal for those situations in which carrying firms are already performing these compliance functions for their introducing firm affiliates. The Commission believes that it is reasonable for the Exchange to have the authority to grant such an exemption in the limited circumstances in which the introducing firm is an affiliated entity of the carrying firm to avoid duplication of efforts.

In addition, the Commission notes that this proposed revision to the NYSE's original filing seeks to conform the Exchange's rule language to the amended proposal submitted by the NASD. The Commission believes that uniformity between the NYSE's and the NASD's rules in this area should ease the compliance burden on introducing firms and their carrying brokers alike, as well as enhance the usefulness of the rules for the firms' respective DEAs.

D. Negotiable Instruments

The Commission believes that the proposed procedures to be followed by introducing firms that issue negotiable instruments for which the carrying firm is the maker or drawer are reasonable. Specifically, the Commission believes that it is appropriate for the introducing firm to be required to represent to the carrying firm that it has supervisory procedures in place, which it enforces, and which are satisfactory to the carrying firm. A carrying firm that finds that its introducing firm does not have minimal safeguards and procedures for the issuance of checks drawn on the carrying firm's account should, at a minimum, reexamine its relationship with the introducing firm. The Commission views the proposed requirement as a supplement to, rather than a replacement for, any other obligation or legal liability of the carrying firm as maker or drawer of the instrument.[35]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the NYSE addresses the concerns raised in the seven comment letters received by the Commission on this proposal. Moreover, Amendment No. 1 modifies the original filing only slightly, in response to specific comments raised by interested parties. Specifically, Amendment No. 1 deletes the proposed rule language requiring carrying firms to include in their responses to customer complaints a statement regarding the customer's right to transfer the account to another broker-dealer. As discussed above, the Commission believes that alternative investor education initiatives to inform public customers of their rights as investors would be equally effective, without raising the possibility of customer confusion regarding whether the carrying firm believes such action is warranted. Amendment No. 1 also adds a good cause exclusion from certain provisions of the proposed rule in circumstances in which the introducing firm is an affiliated entity of the carrying firm and the carrying firm has assumed the responsibility for performing certain compliance functions for the introducing firm. As the modifications proposed in

[34] *See* Letters from Schroder and Global, *supra* note 4.

[35] *See, e.g.*, NYSE Information Memo No. 96–4 (November 22, 1996); NYSE Interpretation Handbook, p. 561–62, (k)(2)(ii)/017.

Amendment No. 1 are reasonable and do not significantly alter the original proposal, the Commission believes that Amendment No. 1 raises no new issues of regulatory concern. Accordingly, the Commission believes that it is consistent with section 6 of the Act [36] to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–25 and should be submitted by July 1, 1999.

VI. Conclusion

The Commission believes that the proposal, as amended, should significantly assist the efforts of introducing firms and their DEAs to fulfill their supervisory responsibilities. Specifically, the Commission believes that, by ensuring that carrying firms provide introducing firms with important information about their customers' accounts and by requiring that the introducing firms have in place supervisory procedures with respect to their issuance of negotiable instruments, the proposed rules should enhance good business practices by introducing firms. Further, by requiring that introducing firms receive copies of customer complaints and exception and other reports about their customers' account, the proposal should assist introducing firms in more quickly identifying and addressing potential problems with their supervisory procedures, operations, or an individual registered representative. This should reduce the risks to both the firm and its customers from questionable sales practice and potentially fraudulent activity.

In addition, the Commission believes that the proposal should also assist the regulatory efforts of the introducing firms' DEAs. Specifically, the Commission believes that the proposal may allow earlier detection by an introducing firm's DEA of potentially fraudulent activity, which will benefit investors and the public. Therefore, the Commission finds the approval of the proposed rule change, as amended, is consistent with the requirements of the Act applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5) of the Act [37] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[38] that the proposed rule change (SR–NYSE–97–25) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14683 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

[36] 15 U.S.C. 78f.

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Trade Mission Online Company Profile Data''.

Form No: 2111.

Description of Respondents: U.S. Small Business Exporters.

Annual Responses: 100,000.

Annual Burden: 50,000.

Comments: Send all comments regarding this information collection to Ken Fletcher, Program Analysts, Office of International Trade, Small Business Administration, 409 3rd Street SW, Suite 8500, Washington, DC 20416. Phone No: 202–205–6436.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–14716 Filed 6–9–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Delegation of Authority To Conduct Asset Sales of Loans and Other Properties

A. The Administrator of the Small Business Administration (the ''Agency'') Aida Alvarez pursuant to the authority vested in her by the Small Business Act, 72 Stat. 384, as amended and the Small Business Investment Act of 1958, 72 Stat. 689 as amended, hereby delegates to the Assistant Administrator for Portfolio Management the following authority to conduct sales in bulk of Agency assets including loans and properties.

1. To conduct a public sale of 7(a), 503, 504 and disaster business and home loans or portfolios of loans and properties that have been designated for the Asset Sales Program.

2. To enter into any and all agreements with lenders that are required to market and sell assets as part of the Asset Sales Program.

3. To remove any loans or properties from a particular sale or from the Asset Sales Program.

4. To oversee and take all necessary action in connection with the administration, servicing, collection and liquidation of any loan that has been designated for the Asset Sales Program.

5. To solicit bids from qualified bidders for the purchase of loan assets or properties held by the Agency or for which the Agency has been authorized to act as agent for their sale by participating lenders or third parties holding Agency guaranteed or direct loans.

6. To execute on behalf of SBA loan sale agreements and any other documents necessary to consummate the sale and transfer of certain loans and properties designated for the Asset Sales Program to successful bidders approved by the Deputy Administrator.

7. To take all necessary action in connection with matters related to the

Asset Sales Program and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the powers granted herein.

8. To certify true copies of any records, papers, documents or instruments in the possession of the Agency, to certify the nonexistence of records; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.

9. The authority and powers delegated herein may not be re-delegated.

B. The Administrator of the Small Business Administration (the ''Agency'') Aida Alvarez pursuant to the authority vested in her by the Small Business Act, 72 Stat. 384, as amended and the Small Business Investment Act of 1958, 72 Stat. 689 as amended, hereby delegates to the Deputy Administrator the following authority:

To approve the selection of the successful bidder or bidders for any asset sale conducted by the Agency. The Deputy Administrator's approval of all bids will be based on the advice and recommendation of a committee consisting of the Chief Financial Officer, Chief Operating Officer, General Counsel, Associate Administrator for Financial Assistance, and the Associate Deputy Administrator for Capital Access.

Aida Alvarez,

Administrator.

[FR Doc. 99–14715 Filed 6–9–99; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on the Caribbean Basin Economic Recovery Act: Report to Congress

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Section 221(f) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (19 U.S.C. 2702(f)) (''the Act'') requires the Administration to submit a report to the Congress on or before October 1, 1999 regarding the operation of the program. All interested parties are invited to submit comments relevant to the issues to be examined in preparing such a report, including the considerations included in subsections 212(b) and (c) of the Act (19 U.S.C. 2702(b) and (c)).

DATES: Public comments are due by noon on Wednesday, June 30, 1999.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: James M. Roberts, Director for Central American and Caribbean Affairs, (202)–395–5190).

SUPPLEMENTARY INFORMATION: Section 212(f) (19 U.S.C. 2702(f)) of the Caribbean Basin Economic Recovery Act states:

> On or before October 1, 1993, and the close of each 3-year period thereafter, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the consideration described in subsections (b) and (c).

The Chairman of the Trade Policy Staff Committee invites written comments from the public relevant to the program's operation, including the status of beneficiary countries under the criteria set out below. Interested parties may comment on any aspect of the program's operation. Issues to be examined include: The program's effect on the volume and composition of trade and investment between the United States and the region; its effect on economic growth and development of beneficiary countries; the effect on U.S. firms and consumers; the degree to which the Act has encouraged the trade and investment policies cited in the Act; and the administrative requirements for beneficiary exporters and U.S. importers.

Interested parties are also asked to comment on the following Act designation criteria as contained in sections 212(b) and (c) of the Act:

(b) * * * In addition, the President shall not designate any country a beneficiary country under this title—

(1) If such country is a Communist country;

(2) If such country

(A) Has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) Has taken steps to repudiate or nullify—

(i) Any existing contract or agreement with, or

(ii) Any patent, trademark or other intellectual property of, a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) Prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) Good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) A dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) If such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) If such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) If a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) Unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) If such country has not or is not taking steps to afford internationally

recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) An expressions by such country of its desire to be so designated;

(2) The economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) The degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979;

(5) The degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) The degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) The degree to which such country is undertaking self-help measures to promote its own economic development;

(8) Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(9) The extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) The extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) The extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

Persons submitting written comments should provide a statement in twenty copies, by noon, Wednesday, June 30, 1999, to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 501, 600 176th Street, NW, Washington, DC 20508. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Room 101, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–14657 Filed 6–9–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST–1999–5631]

The Interagency Task Force on the Roles and Missions of the U.S. Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Notice reopening public comment period.

SUMMARY: This notice announces that we are reopening until July 15, 1999, the period for submitting comments on the roles and missions of the U.S. Coast Guard. The original comment period ended on June 1, 1999.

DATES: Comments are now due July 15, 1999.

ADDRESSES: Your written comments must be signed and refer to docket number OST–199–5631. Send them to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001. All comments received will be available for public examination at this address between 10 a.m. and 5 p.m., ET. Monday through Friday, except Federal Holidays. Persons who wish notification of the receipt of their comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: John Crowley, Jr., Interagency Task Force on the Roles and Missions of the U.S. Coast Guard, 1111 Jefferson Davis Highway, Suite 502 West Tower, Arlington, VA 22302, telephone (703) 416–0192, facsimile (703) 416–6793.

SUPPLEMENTARY INFORMATION: The President has directed an independent study on the appropriate roles and missions of the U.S. Coast Guard through year 2020. The Interagency Task Force on the Roles and Missions of the U.S. Coast Guard will seek to identify and distinguish which Coast Guard roles, missions, and functions: (a) Might be added or enhanced; (b) might be maintained at current levels of performance; or (c) might be reduced or eliminated. The Task Force will also consider whether private organizations, public authorities, local or State governments, or other federal agencies might better perform current Coast Guard roles, missions, and functions. The Task Force will also consider the impact on Coast Guard roles, missions, and functions of future prospects in the areas of technology, demographics, the law of the sea, national security, etc.

On May 10, 1999, the Office of the Secretary of Transportation published a notice seeking public comment on the roles and missions of the U.S. Coast Guard to help the Task Force determine whether those roles and missions are still appropriate. The Coast Guard has received several requests for more time to comment.

This notice reopens the comment period until July 15, 1999, to provide the public with additional time to review and comment on the roles and missions of the U.S. Coast Guard. It should not disadvantage any person, and will give the Task Force the benefit of additional informed comments.

Issued in Washington, DC on June 3, 1999.

Nancy McFadden,

General Counsel.

[FR Doc. 99–14773 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed redevelopment of

properties in the Waterfront South area of Seattle in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Gene Fong, Division Administrator, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, WA 98501, telephone: (360) 753–9413; Terry McCarthy, Deputy Assistant Secretary, Washington State Ferries (WSF), 801 Alaskan Way, Seattle, WA 98104, telephone: (206) 515–3403 and/or Tim King, P.E., Project Manager, Washington State Ferries, 811 First Avenue, Seattle, WA 98104, telephone: (206) 233–9127; or David Schniedler, Manager of Customer Service Marine Division, Port of Seattle, Pier 69, P.O. Box 1209, Seattle, WA 98111, telephone: (206) 728–3523.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Washington State Ferries (WSF)/Washington State Department of Transportation (WSDOT) and the Port of Seattle (PORT), will prepare an environmental impact statement (EIS) on a proposal for redevelopment of Seattle waterfront properties in the area of Colman Ferry Dock and Pier 48 in King County, Washington, at the terminus of State Route 519.

The project, known as ''Waterfront South'', would provide for the improvement and redevelopment of waterfront properties generally bounded by Terminal 46 on the south, Alaskan Way (State Route 519) to the east, and Colman Ferry Dock (Piers 50 and 52) to the north. Improvements to Alaskan Way and to an interim remote vehicle holding area bounded by Alaskan Way, 1st Avenue South, and Royal Brougham Way are also included.

The condition of the existing physical facilities within the limits of the Waterfront South project require varying degrees of structural improvement to maintain existing uses. In addition, the Colman Dock ferry terminal facilities are approaching capacity and at present only marginally accommodate passengers and vehicles using the facility. Increased delays to ferry riders and increased congestion to the local community are anticipated through the forecast year 2025 if no action is taken. This increase results from passenger and vehicle demand on existing auto ferry routes (Seattle-Bainbridge Island, and Seattle-Bremerton), new service on a potential third auto ferry route between Seattle and Southworth, increased demand on existing Passenger Only Fast Ferry (POFF) routes (Seattle-Bremerton, and Seattle-Vashon Island), and new demand resulting from the addition of two new POFF routes between Seattle-Kingston and Seattle-Southworth in Year 2001.

The primary purpose of the proposed project is to create a multi-modal regional transportation facility capable of accommodating current and future ferry ridership. A secondary goal of the project is to take full advantage of the revenue-sharing potential of public sector capital investments.

The proposed Waterfront South project will combine infrastructure improvements at Colman Dock and Pier 48 to accommodate long range ferry traffic serviced by WSF; will expand and improve a remote vehicle holding area (RHA) located south of Colman Dock; will add capacity to existing arterials between the RHA and Colman Dock; will allow improvements to existing public open space owned and operated by the City of Seattle; will accommodate limited international ferry service and/or commercial moorage; and to the extent practical will allow for future development of the Pier 48 upland property.

In addition to the No Action alternative required under NEPA, alternatives under consideration include the following common design options for improving, locating or relocating, or reconstructing facilities and operations: vehicle holding on Colman Dock; a fourth auto slip and connecting overhead passenger walkways at Pier 50; limited retail development at Colman Dock; additional pedestrian and vehicle ticketing capabilities; new POFF terminal and maintenance facilities south of Colman Dock; expanded public open space; improvement of existing and addition of new pedestrian walkways, ramps and bridges; improved transit connections; channelization and signal improvements between the RHA and Colman Dock; upgrade of historic sites and public parks; improvement/expansion to an interim RHA currently in planning and environmental review as part of a separate project, SR 519; and contaminated sediment remediation undertaken in conjunction with project construction. Selective elements being considered include: transient small boat moorage, moorage for a historic vessel, international ferry service to Victoria, British Columbia, commercial boat moorage, and commercial/retail development on the upland properties of Pier 48.

The three option packages currently under consideration include all of the common and some of the selective elements outlined in addition to the location and configuration of a new passenger only passenger and maintenance facility at pier 48. Features unique to the options packages are: (A) Splits the passenger only terminal and maintenance facilities between Colman Dock and Pier 48; (B) locates the new WSF passenger only terminal and maintenance facilities within the Pier 48 right of way, and, (C) modification of A and B which would likely require greater cooperation among key stakeholders including the CITY, WSF, and the PORT, and may result in a larger public access area.

All options considered will require WSF/WSDOT to purchase all or part of Pier 48 from the PORT. Option C would require additional exchanges of current ownership or operational agreements be established between the WSF/WSDOT, the PORT, and the CITY.

Public involvement completed as part of the master planning process in 1996 and 1997 included formation of a Citizens Advisory Committee (CAC), interviews and coordination with stakeholders, public open houses, a speakers bureau, and project newsletters. Additional planning has occurred since the Master Development Plan was completed to develop options to assist in the scoping process and alternatives development for the EIS.

Announcements describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, local agencies, affected Indian Tribes, private organizations, and citizens who have previously expressed or are known to have an interest in this proposal. A series of open houses beginning in May 1999 are scheduled as a part of the EIS public involvement plan. Two EIS scoping meetings are scheduled for June 15, 1999—one for agencies and the other for the public. Input from these open houses and scoping meetings will then be used to identify the alternatives for study in the EIS. Subsequent to Scoping, the EIS public involvement plan will also include newsletters, bulletins, stakeholder coordination, and continued involvement of the CAC. A public hearing will be held after the release of the Draft EIS to receive public and agency comments. Public notice will be given of the time and place of the future meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone numbers provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 1, 1999.

Michael R. Brower,

Transportation and Environmental Engineer, FHWA Washington Division.

[FR Doc. 99–14779 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports, Part 248

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need and usefulness of BTS collecting independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, the Department will accept the annual report submitted to the stockholders. Comments are requested concerning whether the audited reports are needed by DOT as: (a) A means to monitor an air carrier's continuing fitness to operate, (b) reference material used by analysts in examining foreign route cases, (c) reference material used by analysts in examining proposed acquisitions, mergers, and consolidations, (d) a means whereby the Department sends a copy of the report to International Civil Aviation Organization (ICAO) in fulfillment of a U.S. treaty obligation, and (e) corroboration of carriers' Form 41 filings. Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility and clarity of the information collected.

DATES: Written comments should be submitted by August 9, 1999.

ADDRESSES: Comments should be directed to Mr. Bernie Stankus, Office of Airline Information, K–25, Room 4201, 400 Seventh Street, NW., Washington, DC 20590–0001.

COMMENTS: Comments should identify the OMB #2138–0004 and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0004. The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0004

Title: Submission of Audit Reports, Part 248.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 84.

Estimated Time Per Response: 15 minutes.

Total Annual Burden: 21 hours.

Needs and Uses: The audit reports are used as follows: (a) A means of monitoring an air carrier's continuing fitness to operate, (b) reference material by analysts in examining foreign route cases, (c) reference material by analysts in examining proposed acquisitions, mergers, and consolidations, (d) a means whereby the Department sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a U.S. treaty obligation, and (e) corroboration of carriers' Form 41 filings.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 99–14771 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether: (a) The supplemental reports are needed by BTS to fulfill the U.S. treaty obligation of furnishing financial and traffic reports to ICAO; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by August 9, 1999.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

COMMENTS: Comments should identify the OMB #2138–0039 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0039. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 47.

Estimated Time Per Response: 20 minutes.

Total Annual Burden: 16 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the air carriers' Form 41 submissions to DOT. BTS Form EF is the means by which BTS supplies the

remaining one percent of the air carrier data to ICAO.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 99–14772 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–62–U

UNITED STATES INFORMATION AGENCY

FY99 Burma Refugee Scholarship Program; Request for Proposals

SUMMARY: The Office of Academic Programs of the United States Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces an open competition for the Burma Refugee Scholarship Program (BRSP) which will begin recruitment and selection in FY99 (Academic year 1999–2000) and enrollment in FY00. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to develop an educational program for approximately five Burmese students and professionals, living in India as refugees, to receive undergraduate and/or graduate training in a variety of fields in the humanities and sciences in U.S. colleges and universities for a three year grant period running until 2002. The requirements are outlined in this letter and in the attached Program Goals, Objectives, and Implementation (POGI) document.

Program Information

Overview: The goal of the program is to support the economic and democratic development of Burma by helping to educate potential leaders living outside of Burma who could assist in its future transition to a democratic government. It is USIA's intent to provide grantees with programs of the highest quality that meet their academic and personal needs and to further the Agency's mission to promote mutual understanding. We also request that administration efficiencies and cost-sharing be actively sought.

Guidelines: The applicant organization shall design a proposal with a cost of up to $300,000 to conduct the recruitment, selection, and placement of no more than five Burmese undergraduate students living in India in an appropriate U.S. academic setting. Monitoring the students' academic progress will be a requirement of the organizations. Grant administration should begin October 1, 1999. Students with undergraduate degrees who are bridging to a master's program would also be eligible. We estimate that these funds will support five students for up to a year of intensive English-language training and two years towards an associate, bachelor's or master's degree program.

Administration in the Region: The organization must work closely with USIA, the U.S. Information Service (USIS), Immigration and Naturalization Service, and the U.S. Embassy in India to coordinate appropriate documentation for grantees' entry into the United States. The USIS representative administering the BRSP is in India, but it may be difficult for USIS officers to provide extensive facilitative assistance for this program. Applicant proposals should therefore include a plan to provide for publicity, recruitment, and selection in India, should USIS support be unavailable. The organization will be responsible for administering the program through its own resources and subcontractors, as required. The organization must also provide relocation or transition assistance to the students in the U.S. at the time their studies are terminated.

Requirements and Implementation: The proposal should respond to and describe the following major requirements:

- Planning and monitoring the entire exchange program;
- Selection and notification of participants, including publicizing the program to appropriate audiences in India using such methods as media, alumni networks, and local educational institutions and NGOs; and plans for distributing, answering inquiries about, and receiving applications—which may require the assistance of volunteers or paid staff in the region and/or special mailing arrangements;
- Travel;
- Placement at U.S. universities;
- Orientations;
- Provision of housing/stipends;
- On-going advising and student services;
- Cross cultural counseling;
- Cultural and community enrichment activities about the U.S.;
- Internships and professional development;
- Evaluation and alumni activities; and
- Fiscal management.

To the extent possible, the applicant should designate a contact person in India who would provide assistance with dissemination and submission of applications. Please review the application form to ensure that it includes all the information needed for review panel deliberations.

Length of Program: The proposed length of the Burmese scholarships is three years—up to one year of intensive English-language training followed by up to two years of academic study. The duration of the USIA grant cannot exceed three years. Students must understand this policy in advance. Where there are compelling circumstances, students may receive a limited extension to complete their degrees at the discretion of the project director and the USIA program officer. Summer periods should be used for a mix of academic, professional and enrichment activities.

Pre-Academic and English-Language Training: Applicants must describe plans for pre-academic preparation and English-language training. USIA recommends that immediately after the initial orientation, participants be tested to determine which level of English-language courses are appropriate. Several levels of intensive English-language courses, from beginning to advanced, should be made available. It is assumed that most participants in this scholarship program will need up to one year of English-language instruction. Students who need additional instruction beyond the first year will be required to take the additional instruction at their placement universities.

Recruitment: The recruitment material and award publicity should provide all relevant information to potential applicants. The key conditions, benefits, and terms of the program—what is, and what is not covered under the grant—should be fully described to candidates and nominees before they accept an award and travel to the U.S. The description of study opportunities should be basic and include essential information for applicants who are unfamiliar with the U.S. educational system, and the policy on dependents should be described. All individuals should be fully informed of these policies before they accept an award.

Stipends: Please address the question of participant stipend levels in the narrative, including what expenses the stipend is intended to cover and the estimated monthly cost of housing provided to students. The USIA program officer must be informed in advance of any proposed adjustment in stipend levels and must approve such changes prior to implementation.

Fields of Study: Eligibility fields for the FY–99 program should respond to critical development needs in Burma, promote mutual understanding and potential linkages with the U.S., and attract academically qualified students who are likely to become future leaders in Burma. The program announcement

might include a statement such as: ''Eligible fields of study are drawn from the standard university curriculum, with priority given to agriculture, business administration, community/public health, economics, education, environmental studies, journalism, legal studies, natural resources management political science, and public administration. If a subject area is proposed that is not among these priority fields, candidates should give special attention to explaining how this course of study would support the goals of the program.'' The final list of eligible fields and the text of the announcement must be reviewed and approved by the Office of Academic Programs, in consultation with USIA's East Asia and Pacific Area Office, prior to program implementation.

Selection Criteria: The Burma Refugee Scholarship Program is directed toward Burmese students and professionals who are outside Burma. The proposal should outline the selection criteria and selection process for the program. A corresponding statement of the selection criteria should be included in the program announcement for potential applicants. The leadership elements and the expectation that students will be active alumni following the conclusion of the program should be mentioned. Applicants should plan to work closely with USIA in developing the selection criteria.

Timeline: The proposed should include a projected timeline, from first announcement to student arrival and placement in the U.S., which takes into consideration the logistical and communications obstacles in the region. These include immigration requirements, travel arrangements, time required to obtain student records, and the like. The timeline should include dates of key elements, such as ''candidates notified,'' ''pre-arrival materials mailed,'' etc.

U.S. Educational System, American Culture and Institutions: It is essential that prior to arrival, as well as during orientation, applicants and participants be informed of the general nature, philosophy and goals of U.S. higher education, particularly with regard to the broad scope of a liberal arts bachelor's degree program. Applicants and participants should clearly understand that they will be required to take courses in a variety of academic fields and should be briefed about the specifics of this grant. Students should receive guidance from the academic advisor to assist them in choosing appropriate courses outside their major field.

To support the mutual understanding goal of the exchange, USIA is particularly interested in opportunities for academic and enrichment experiences related to U.S. institutions, society, and culture. It is recommended that the applicant stipulate that students take one or more courses in a U.S. Studies field, such as American history, literature, or government. USIA welcomes other creative ideas for exposing students to American institutions, such as ''issues'' discussion groups for students, visits to political campaign offices and polling places, attendance at school board or city council meetings, exposure to American religious institutions, and civic-related volunteer work. Student attendance at museums, concerts, plays, and other cultural events featuring American content should be encouraged and facilitated wherever possible. The awardee will be requested to keep USIA informed of the status of this part of the program throughout the year.

Program Activities: Applicants should describe plans for orientation, including pre-departure orientation; goals and approaches for the academic portion of the program, including any special activities such as internships or academic enrichment; cultural and community projects; evaluation and follow-up; and alumni-tracking. For example, volunteer work, student presentations to the local community, and matching of students with a local host family might be among the enrichment activities proposed. Internships should be designed to provide a close match with a student's field of academic or professional interest. USIA requests that applicants provide support systems (such as tutoring, counseling, host family, mentor or buddy system, consultation with student advisor and project director) to the students during the program.

Pre-Arrival Information: Please provide a sample copy of the pre-arrival information in advance to the USIA program officer. Information should be complete, accurate for the program site and detailed. Key points about academic requirements, academic departments and available courses, housing, what to bring with them, personal budgeting considerations, policies on dependents, and other critical issues should be included in the material. The material should be designed to serve as a useful post-arrival reference as well, supplemented with additional information. Students should also receive a summary of key points in addition to the complete package. This should include exchange policy matters as well as ''what to bring.''

GPRA–Outcomes and Results: Applicants must include a statement of goals and expected outcomes for the program, including how results, as necessitated by Government Performance and Results Act (GPRA) requirements would be measured. Outcomes might include, but are not limited to, the following areas: developing a cadre of Burmese leaders with first-hand experience in the U.S., advancement of development goals for Burma, conflict resolution and building viable non-governmental institutions in Burma, and expansion of professional relationships between individuals and institutions in the U.S. and Burma. Project goals and planning should be linked to desired outcomes. For example, if it is a goal to produce or influence leaders in Burma, potential leadership qualities should be among the selection criteria for applicants.

Measurements might include: alumni achievements and activities; the quality and quantity of institutional linkages established as a result of the program; and degree of positive change in participant and/or public attitudes as a result of the program.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $300,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

A. Program Costs

(1) One-way economy fare international travel from their overseas location;

(2) Domestic travel;

(3) Tuition, room and board, incidental expenses, maintenance for university vacation periods;

(4) Education materials;

(5) Cost of standardized test fees;

(6) Per diem for orientation, professional, academic and cultural enrichment.

B. Administrative Costs (Not To Exceed 20% of the Budget)

(1) Staff salaries and benefits;

(2) Staff travel;

(3) Communications (including telephone, fax, postage, etc.);

(4) Office supplies;

(5) Other direct costs.

For the budget presentation, applicants should submit a three-column budget which includes the following information:

Column 1—FY–99 USIA funds requested

Column 2—Amount of cost-sharing in FY–99

Column 3—Total FY–99 Budget (Total of Columns 1 and 2)

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. Applicants will find those federally required forms which must be included in the proposal submission in the Proposal Submission Instructions section of the solicitation package.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the title and number E/AEF–99–04. Please submit a one-page Executive Summary and a narrative as part of the proposal. The Executive Summary should contain an overview of the goals and activities of the program in order to set the context for modifications and budget requests. The narrative should deal with program facts only, and not contain the history of the organization or program philosophy, except as directly relevant to the proposed activity. It should outline the purpose of the program and the major activities funded under the award which meet the goals of the program. Concurrently, this will provide background information for a review of the proposed budget and program modifications.

Applicants should explain in the narrative any personnel changes which are anticipated in the coming year. Please also indicate briefly the responsibilities of all staff listed as working on this project, including those whose employment is cost-shared. Please submit resumes for employees under Tab E.

Further Information: For further information, or to request a Solicitation Package, contact the Office of Academic Programs, E/AEF, Room Number 208, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 619–5406, fax number (202) 401–1728. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer, Tim Gerhandson, on all other inquiries and correspondence.

Please read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposal copies must be received at the US. Information Agency by 5 p.m. Washington, DC time on *June 30, 1999.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline. The FY99 BRSP applications (the original proposal), 10 hard copies, and one extra application cover sheet should be submitted to: United States Information Agency, Bureau of Educational and Cultural Affairs, Reference: E/AER–99–04, Grants Management Division, E/XE, Room 326, 301 4th St. SW, Washington, DC 20547.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA EA area office(s) and the USIA post(s) overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer. Awards will be subject to the availability of FY99 funding. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program.

The narrative is not a program report or an annual report, nor does it replace any reporting requirements outlined in the grant. However, the grant proposal is the only document that the review panel will consider during its deliberations, so it should provide all relevant information for a full review. It should not be assumed that panelists will have prior familiarity with applicants or this particular scholarship program.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible, Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resources and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined USIA's Office of Contracts. The Agency will consider the past

performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years. Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures. For further information, please contact my designee for this program, Tim Gerhardson, at (202) 619–5406, or tgerhard@usia.gov on e-mail.

Dated: June 18, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–14836 Filed 6–9–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Future Leaders Exchange Program Administrative Components

NOTICE: Request for proposals.

SUMMARY: The Division for the NIS Secondary School Initiative, Office of Citizen Exchanges, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the Future Leaders Exchange (FLEX) program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct a package of Administrative Components for the recruitment, selection and other related activities listed below for approximately 930 high school students from the 12 New Independent States (NIS) of the former Soviet Union who will come to the U.S. for the 2000/2001 academic year under the FLEX program. This RFP is only for the package of administrative components described in this solicitation. Grants for other program components, including placement and supervision of the students while they are in the United States, will be competed separately. Final award of the grant or grant(s) is subject to the availability of funding.

Program Information

Overview

The Future Leaders Exchange (FLEX) program has been sponsored by USIA since 1992, when it was authorized and funded under the Freedom Support Act. The 2000/2001 FLEX program will be its eighth cycle. The program provides an opportunity for high school students aged 15–17 from the 12 countries of the New Independent States (NIS) of the former Soviet Union to live with an American host family for eleven months and attend a full academic year of high school. The scholarship covers all aspects of the students' program, including recruitment and selection, orientation, travel, family and school placement, supervision while in the U.S., maintenance allowances, health and accident insurance, cultural and educational enhancements, and alumni activities upon return to their home countries. Placement, supervision,

maintenance, and enhancements are not part of the package covered by this solicitation. For budgeting purposes, applicants should assume that the number of participants will be 930, with about 33% coming from Russia, 20% from Ukraine, and the remaining 47% from the other ten NIS countries. Details can be found in the Project Objectives, Goals and Implementation guidelines. Applicants must address the complete package of components outlined below.

The objectives of the FLEX program are:

1. To foster interaction between young people from the United States and the former Soviet Union and promote a greater understanding of one another so as to contribute to our common future through our greatest resource, our youth.

2. To provide high school students from the former Soviet Union with an opportunity to live with American host families, attend a U.S. high school, and learn about American society, history, culture, and the economic and political foundations of the United States.

3. To integrate the people of the former Soviet Union into the global citizenry by assisting young people of the NIS countries in building a new and open society and by promoting democratic values and the development of democratic institutions at the grass roots level.

4. To provide opportunities for a diverse group of youth from the NIS to acquire values and skills and enhance those personal qualities that will make them successful citizens and future leaders of their societies.

Through participation in the FLEX program, students should:

1. Acquire an understanding of important elements of a civil society. This will include concepts such as volunteerism, the idea that American citizens can and do act at the grass roots level to deal with societal problems, and an awareness of and respect for the rule of law.

2. Demonstrate a willingness and a commitment to serve as agents for change in their countries after they return home.

3. Develop an appreciation for American culture.

4. Interact with Americans and generate enduring ties.

5. Teach Americans about the cultures of their home countries.

Eligibility

Applicants may be public institutions or organizations that are legally incorporated and recognized by the IRS as not-for-profit. Applicants may be single organizations or two or more organizations working in consortium. For consortia, each organization should submit a separate proposal for its components and indicate clearly how these dovetail with the other consortium member(s).

Guidelines

The package of components for this solicitation encompasses the following:

1. Recruitment and selection of student finalists through a merit-based competition in each country.

2. Documentation—assistance with passports, visas; assistance to USIA with preparation of IAP66 forms on finalists and alternates.

3. Medical screening and clearance to ensure that the students are healthy; immunizations as necessary.

4. Orientation—Programming for all participants prior to departure from the NIS.

5. Travel—Ticketing and all arrangements from the students' homes to their host communities and return.

6. Communications and liaison with the students' natural families during the program year.

7. On-program counseling for students and the staff and volunteers of the placement organizations in dealing with problems.

8. Information management—Tracking and database maintenance on all applicants through their selection as finalists, their placement, and travel.

9. Tracking of, support for and follow-up programming with alumni upon their return home.

The following considerations apply to these responsibilities:

1. The grantee organization(s) must coordinate overall planning with the USIS staff in each country at the outset and ask USIS to indicate where the staff would like to have input or play a role.

2. The ongoing communications with natural parents, follow-up activities with alumni, and relations with foreign government officials all require that the organization(s) maintain a year-round presence in the NIS countries. The grantee(s) should seek to conduct these functions efficiently and cost-effectively. An American staff person should head each permanent office in the NIS with FLEX program responsibilities.

3. All on-the-ground operations in the NIS of this administrative machinery must be staffed by non-U.S. Government personnel in such a way as to ensure that USIS and American embassy personnel are not encumbered by the day-to-day functioning of the program.

4. The aim of the program is to select students who have the personal qualities, motification, and the academic, language and social skills to be successful on the exchange. Recruitment and selection must be conducted on the basis of merit and be free of political influence and corruption; to accomplish this, the process must be under the overall direct control of Americans at all times. Selection of finalists will be conducted in the U.S.

5. Selection must reflect the cultural, ethnic, national and geographic diversity of the NIS. The recruitment process must be open in allowing and making it possible for any student who meets the eligibility criteria to apply. A serious effort must be made to include qualified students with physical disabilities. A pre-academic English enrichment program will be offered to a small percentage (approximately 3%) to ensure that the weaker language qualifications of students with disabilities and students from more remote areas is not an excluding factor in their selection. [The English program is competed separately.] It is not necessary or even possible, given budget constraints and areas of civil unrest, to cover every oblast. The grantee(s) should focus recruitment on major population areas, while keeping the process open to applicants from all areas.

6. Uniform predeparture orientation programming conducted regionally for all FLEX students is essential because it reinforces their identity as participants in a government scholarship program enables the dissemination of information, policies and procedures critical to the students' success.

7. What happens to participants once they return home is critically important to ensuring the program's success in fulfilling its objectives and to reinforce the transfer of the American experience to the NIS. The grantee(s) must provide a clear, systematic plan for alumni tracking. USIA will expect reports on alumni to include dates of re-entry into the NIS, current places of residence, and current educational/professional activities. Some follow-on activities will be centrally funded and managed by USIA. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

Participants travel on J–1 visas. As the sponsor is USIA, IAP66 forms are prepared using the Government program designation number. As noted above, the grantee is responsible for assisting USIA in the preparation of these forms.

Timetable

The recruitment and selection process must be concluded by March 1, 2000, so that finalist applications can be

disseminated to the organizations responsible for placing the students in host families and schools. Travel to the U.S. is expected to take place in July/August 2000, in conjunction with the needs of the placement organizations. Return travel should be similarly undertaken in May/June 2001. All component should be planned in accordance with the dates and deadlines set by the needs of the program (e.g., the date by which students need to apply for passports, the timing of arrival in the host families, the conclusion of the school year).

Proposed Budget

The per capita cost of this whole package of components excluding travel and orientation must not exceed $3,000 per finalist. Travel must be arranged in compliance with laws on the use of American flag carriers.

Applicants must submit a comprehensive line-item budget for the entire package of components. There must be a summary budget as well as a break-down reflecting both the administrative and program costs and an indication of participant per capita costs. Cost-sharing is encouraged, cash contributions and in-kind. Please refer to the Proposal Submission Instructions and POGI for complete budget and formatting instructions and for allowable costs.

Organizations with less than four years of experience in conducting international exchange programs will be deemed ineligible.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the solicitation instructions. All eligible proposals will be reviewed by the program office, as well as the USIA Office of NIS Affairs and the USIS posts in the NIS countries. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals also may be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission and design outlined above.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate organizational competency and logistical capacity. Agenda and plan should adhere to the program overview, timetable and guidelines described above.

3. *Ability to achieve program objectives:* Proposals should clearly demonstrate an understanding of the program's objectives stated above and how the organization will achieve them.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (e.g., staffing, program venue) and program content (especially selection of participants and orientation).

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The proposal should clearly explain how the organization will make use of and coordinate with other related NIS and U.S. operations it may be conducting. Proposals should reflect substantial area expertise, a grasp of cross-cultural issues, the needs of the hosting community (including the American host schools and the placement organizations), and a thorough understanding of how to work effectively with NIS authorities and complexities of the environment.

6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful activities that are relevant to this program, as well as responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Project Evaluation:* The proposal should include a plan to evaluate the success of the organization in achieving the stated objectives. The grantee(s) will also be expected to cooperate with USIA in evaluating the program under the requirements of the Results Act (GPRA). Proposals should reflect an understanding and grasp of these responsibilities.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding and in-kind contributions.

10. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of potential impact and significance in the partner countries.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number E/PY–00–02.

For Further Information, Contact: The NIS Secondary School Initiative Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, tel: (202) 619–6299, fax: (202) 619–5311, e-mail: <daronson@usia.gov> to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Diana Aronson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's 'Grants Information Fax on Demand System,' which is accessed by calling 202/401–7616. The 'Table of Contents' listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on Monday, July 12, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted.

Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original, one fully-tabbed copy (Tabs A–F) and eight copies of the application should be sent to: U.S. Information Agency, Ref.: *E/PY–00–02*, Office of Grants Management, E/XE, Room 568, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires that all organizations use Y2K complaint systems including hardward, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation appropriating funds annually for USIA's exchange programs, including the Freedom Support Act.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: June 7, 1999.

Brian J. Sexton,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–14775 Filed 6–9–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

South Africa Teacher Training Program; Notice; Request for Proposals

SUMMARY: The Advising, Teaching and Specialized Programs Division of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for a training program for primary school teachers of math and science in South Africa. The program will target the upper primary level which comprises grades seven through nine. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501 (C) may submit proposals to design, implement, monitor, and evaluate a primary teacher training program for teachers of math and science in South Africa. The program will comprise three phases: (1) Preliminary consultations in South Africa to discuss a detailed implementation strategy; (2) the development and execution of South Africa-based teacher training workshops; and (3) the development and execution of U.S.-based teacher-training summer institutes. The grant award will be up to $300,000 for year one, and may be renewed for two additional years pending availability of funds and successful implementation.

Program Information

Overview

In response to President Mandela's efforts to raise the level of math and science education, and in support of the United States-South Africa Binational Commission, USIA and grantee organization will develop, in collaboration with the South Africa Department of Education (DOE), a primary school teacher training project for teachers of math and science. The grantee will work with the DOE, its respective entities, and supporting ministries and organizations that are directly responsible for national education and teacher training.

The project will span a three-year period and will consist of yearly two-week in-country skills development workshops for 100 teachers, followed by

yearly one-month U.S.-based summer institutes for up to 25 master teacher trainers (initial grant for one year only; see ''Summary''). At the conclusion of the program approximately three hundred primary school teachers will have participated. Participants will be selected from all 9 provinces and two provinces will host the training workshops.

USIA solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this program. The Grantee organization will consult regularly with USIA and the South Africa DOE with regard to program development and management. Proposals should demonstrate an understanding of the issues confronting teacher training in South Africa as well as a broad understanding of teacher training models and practices.

The goal of the program is to assist the South Africa DOE in identifying, developing, and implementing a teacher training program for primary school teachers of math and science. The program objectives are to:

(1) Increase the professional competence of primary school teachers by conducting in-country training workshops and U.S.-based summer institutes;

(2) Develop a corps of South African educators who will serve as resource facilitators and teacher trainers;

(3) Expand and/or establish school to school, teacher to teacher partnerships in South Africa at the primary level in order to foster school linkages and enhance teacher training, technology linkages where applicable, and cross fertilization of ideas.

Primary teachers throughout South Africa provide basic academic and life skills development for the students. As in other countries, the development and enhancement of teacher training skills and in-service workshops for primary teachers remains critical to their success and the success of their students. The rationale for the program is that improved math and science instruction at the primary level will increase the abilities of South African primary teachers to provide quality instruction resulting in the improvement of student's academic and life skills.

Guidelines

Program Planning and Implementation

The program will consist of three phases: a review of primary education in South Africa in general, and math and science specifically, and the refinement of a project implementation plan, an in-country training workshop, and a U.S.-based summer institute. It is anticipated that the grantee will begin phase I of the program no later than August, 1999 and that the grantee, USIA, and DOE, will define a timetable for the remainder of the program as part of discussions in phase I.

Phase I

The grantee organization will work with USIA and the DOE to undertake preliminary work in South Africa to refine a comprehensive project plan for yearly two-week in-service training workshops for approximately 100 teachers of math and science at the primary level. It is anticipated that the DOE will provide the following assistance as part of the overall program:

(1) Identify and provide training site(s);

(2) Assist grantee in developing program strategies;

(3) Provide lodging, meals, and transportation costs for all in-service trainees.

Additional in-kind, or cash contributions, on the part of the DOE may be negotiated as part of phase I.

The project plan should include, but not be limited to:

(1) Delineation of program responsibility between DOE, USIA, and grantee;

(2) Country needs assessment and project goals and objectives;

(3) The development of materials and resources that will enhance current learning programs and reflect practical, inquiry, and experiential learning concepts;

(4) A mutually agreed upon protocol for selection of participants;

(5) Monitoring and evaluation components.

(6) A plan for on-going communications and contact with program participants which emphasizes resource and master teacher trainer linkages.

Phase II

The in-country training workshops will be conducted over a two-week period at appropriate sites selected in conjunction with the DOE. A total of four U.S. and four South African trainers who have demonstrated expertise in professional development, training, and/or content areas will conduct the training workshops. It is anticipated that the trainers will work in pairs sharing their expertise and insights.

The workshop schedule should incorporate time for both individual and group work as well as intensive training on specific approaches to the teaching of math and science education. The workshop could include field experience or a model school component in order to provide participants with hands-on experience using new teaching techniques and materials. Specific areas that may be addressed in the in-country workshops are:

(1) A review of present attitudes and approaches to teaching math and science, and the introduction of new/current math and science teaching methodologies and approaches that integrate various content areas and continuous assessment techniques;

(2) The design of appropriate lesson plans and learning programs;

(3) The development of teaching materials appropriate for primary classes in South Africa.

Appropriate training materials will be developed by the grantee organization and will be provided to each participant for use during the training and in the classroom after they return to their respective schools. A selection component should be built into an on-going assessment process to identify up to 25 participants who will attend the summer institute to be held in the United States. Those selected should possess leadership potential and a full grasp of the content areas of the workshop.

Phase III

The U.S.-based summer institute for up to 25 primary master teacher trainers should put emphasis on developing the capacities of teacher trainers/educators to assess, train, and mentor teachers of math and science. The program should include a variety of formats, such as discussion sessions, lectures, workshops, and practical application. The emphasis should be on learning math and science through an inquiry model and should integrate knowledge of content areas with knowledge of learning strategies and students. All instruction and materials should include pedagogically and culturally appropriate materials and references relevant to South Africa. The workshop could include field experience or a model school component in order to provide participants with hands-on experience using new teaching techniques and materials. The curriculum for the summer institutes should partially build upon the successes of the previous in-country workshops held in South Africa and promote an understanding of life-long learning. Close communication will be needed among the grantee organization, USIA, participants, and U.S. host.

Specific areas that may be addressed in the summer institutes are:

(1) New/current math and science teaching methodologies and approaches (putting theory into practice);

(2) Professional teacher development and evaluation;

(3) The design and implementation of in-service training programs and workshops for teachers;

(4) Leadership training;

(5) A review of existing South African math and science content areas.

(6) The introduction and/or adaptation of existing math and science materials and practices pertinent to local conditions in South Africa.

Appropriate training materials will be developed by the grantee organization and will be provided to each participant for use during the training and in the classroom after they return to their respective schools.

Programs must comply with J–1 visa regulations (post will issue IAP–66 forms). Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $300,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicant may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The total allowable costs for the program include the following:

(1) Costs necessary for the effective administration of the program including salaries for grant organization employees, benefits, and other direct and indirect costs are described in the detailed instructions in the application package. While this announcement does not prescribe a rigid ratio of administrative to program cost, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) percent of the total requested from USIA. Proposals should show cost-sharing, including both contributions from the applicant and from other sources.

(2) Program costs, including general program costs and program costs for each South African participant in the U.S.-based summer institutes and South African-based training workshops.

(3) International and domestic airfare; visas; transit costs; ground transportation costs.

(4) Per Diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual U.S. cities. For activities outside of the U.S., the published Federal per diem rates must be used. Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at Http://www.policyworks.gov/.

(5) Walk-around and book allowance. Participants are entitled to a walk-around allowance of $10 per day, plus a participant book allowance of $150. U.S. staff do not receive these benefits.

(6) Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

(7) Room rental. Room rental for group activities should not exceed $250 per day.

(8) Materials development. Proposals may contain costs to purchase and develop appropriate materials for participants.

(9) One working meal for the program is allowed. Per capita costs may not exceed $5–$8 for a lunch and $14–$20 per a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

(10) An international travel allowance of $100 may be provided to each participant to be used for incidental expenditures during international travel.

(11) All summer institute participants will be covered under the terms of USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company. Administrative costs. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number *E/ASX–99–03.*

For Further Information Contact: The Office of Academic Programs, Advising, Teaching, and Specialized Programs Division, Fulbright Teacher Exchange Branch, E/ASX, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Telephone number (202) 619–4556, fax number (202) 401–1433, and e-mail address jtcox@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer John Cox on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed. Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

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Deadline for Proposals: All proposals copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, July 9, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASX–99–03*, Office of Grants Management, E/EX, Room 326, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIA posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be

interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

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USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of African Affairs and the USIA post overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful training programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity without USIA support ensuring that the USIA Teacher Training Program is successfully sustained.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the

availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: June 4, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–14774 Filed 6–9–99; 8:45 am]

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federal register

Thursday
June 10, 1999

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutants Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[IL–64–2–5807; FRL–6329–5]

RIN 2060–AE40 and 2060–AE44

National Emission Standards for Hazardous Air Pollutants Phosphoric Acid Manufacturing and Phosphate Fertilizers Production

AGENCY: Environmental Protection Agency (Agency).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing major sources in phosphoric acid manufacturing and phosphate fertilizers production plants (SIC 2874). Hazardous air pollutants (HAPs) emitted by the facilities covered by this rule include hydrogen fluoride (HF); arsenic, beryllium, cadmium, chromium, manganese, mercury, and nickel (HAP metals); and methyl isobutyl ketone (MIBK). Human exposure to the HAP constituents in these emissions may be associated with adverse carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects. Implementation of the rules will achieve an emission reduction of HF estimated at 315 megagrams per year (Mg/yr) (345 tons per year [tpy]). The standards will reduce 940 Mg/yr (1035 tpy) of total fluorides and particulate matter containing heavy metals which are regulated pollutants under the Clean Air Act as amended (the Act). This action also amends 40 CFR part 9 by updating the table of currently approved information collection control numbers to include the information requirements contained in this final rule.

The standards are promulgated under the authority of section 112 of the Clean Air Act (the Act) and are based on the Administrator's determination that phosphoric acid manufacturing and phosphate fertilizers production plants may reasonably be anticipated to emit several of the 188 HAPs listed in section 112(b) of the Act from the various process operations found within the industry. The NESHAP will provide protection to the public by requiring all phosphoric acid manufacturing and phosphate fertilizers plants that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Effective Date.* June 10, 1999. See the Supplementary Information section concerning judicial review.

Incorporation by Reference. The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of June 10, 1999.

ADDRESSES: *Docket.* Public Docket No. A–94–02, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday at the following address in room M–1500, Waterside Mall (ground floor): U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7549. A reasonable fee may be charged for copying docket materials. For additional information on the Docket and electronic availability see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations contact:

Region I

Office of Ecosystem Protection, U.S. EPA, Region I, CAP, JFK Federal Building, Boston, MA 02203, (617) 565–3351

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Region X

Anita Frankel, Office of Air Quality, U.S. EPA, Region X, OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 533–2963

For information concerning the analyses performed in developing this rule, contact Mr. Ken Durkee, telephone number (919) 541–5425, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Today's rulemaking applies to process components at new and existing phosphoric acid manufacturing and phosphate fertilizers production plants. Examples of those process components are listed in the following table:

Source category	Examples
Phosphoric Acid Manufacturing	Wet Process Phosphoric Acid Process Line, Superphosphoric Acid Process Line, Phosphate Rock Dryer, Phosphate Rock Calciner, Purified Phosphoric Acid Process Line.
Phosphate Fertilizers Production	Diammonium and/or Monoammonium Phosphate Process Line, Granular Triple Superphosphate Process Line, Granular Triple Superphosphate Storage Building.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the regulations. This table lists the types of entities that the Agency is now aware could be potentially regulated. To determine whether your facility is covered by the regulations, you should carefully examine the applicability criteria in the rules. 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.

Docket and Electronic Information

The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket index, technical support information, the economic profile of the industry (item II-A–27) and other materials related to this rulemaking are available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4000. The e-mail address for the Center is ''a-and-r-docket@epamail.epa.gov''. A reasonable fee may be charged for copying docket materials. In addition to being available in the docket, an electronic copy of today's document which includes the regulatory text is available through the Technology Transfer Network (TTN) at the Unified Air Toxics Website (UATW). Following promulgation, a copy of the rule will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). More comprehensive information concerning the rule will be posted on the UATW (http://www.epa.gov/ttn/uatw/7__10yrstds.html). The TTN provides information and technology exchange in various areas of air pollution control. If more information on the TTN is needed, call the TTN HELP line at (919) 541-5384.

Judicial Review

The NESHAP for new and existing major sources in phosphoric acid manufacturing and phosphate fertilizers production plants were proposed in the **Federal Register** (FR) on December 27, 1996 (61 FR 68430). This **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Act, judicial review of the final rule 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 action may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading the preamble to the final rule.

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I. Background

A. Background and Purpose of Standards

Section 112 of the Act requires the Agency to promulgate regulations for the control of HAP emissions from both new and existing major sources. The statute requires the regulations to reflect the maximum degree of reduction in emissions of HAPs that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental effects, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology (MACT).

Section 112 of the Act requires the Agency to establish national standards to reduce HAP emissions from major sources and certain area sources that emit one or more HAPs. Section 112(b) contains a list of HAPs to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed and section 112(e) requires the Agency to devise a schedule for development of those NESHAP. The Agency must list all known source categories and subcategories of ''major sources'' that emit one or more of the listed HAPs. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAPs. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes phosphoric acid manufacturing and phosphate fertilizers production.

The control of HAPs is achieved through the promulgation of technology-based emission standards under section 112(d) and work practice standards under 112(h) for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including

requirements for operator training or certification) as provided in subsection (h); or (5) a combination of the above. (See section 112(d)(2).) The Agency may promulgate more stringent standards at a later date if residual risk remains after the imposition of controls. (See section 112(f)(2)). Pursuant to section 112(d) of the Act, on December 27, 1996 the Agency proposed NESHAP for new and existing sources in the phosphoric acid manufacturing and phosphate fertilizers production source categories (61 FR 68430).

B. Technical Basis of Regulation

For existing sources, section 112(d) of the Act requires that the Agency establish NESHAP which require the maximum degree of reductions achievable by available control techniques. Such standards (called ''maximum achievable control technology'' or ''MACT'') may be no less stringent than ''the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has information).'' In general, NESHAP are to be numerical limitations derived from the application of emissions control technologies. This level of control is commonly referred to as the MACT floor. As a starting point, the Agency gathered available data to analyze to identify the technology that could achieve the lowest emissions. Since the HAP HF was the main concern for this standard, the initial approach was focused upon determining MACT for HF. The same approach was later extended to HAP metals for subsequent analyses.

During its information collection effort regarding HF emissions, the Agency found that there is a large body of existing data for the surrogate pollutant total fluoride, which the Agency previously designated for control under § 111 of the Act through the development of new source performance standards (NSPS) and emissions guidelines (EG). The NSPS are emissions limitations for new sources based upon the best demonstrated technologies considering cost, non-air quality health and environmental impacts, and energy impacts. Given a limited amount of direct data on HF emissions and a large body of data developed to demonstrate achievement of permitted emissions which include HF as a component of total fluorides, the Agency chose to use total fluoride as a surrogate for HF in its analyses. By adopting the approach of regulating total fluoride as surrogate for HF, the Agency availed itself of information reflecting the effect of over twenty years of implementation of NSPS and EG which are technology-based standards. The Agency obtained performance data derived from emissions tests conducted to establish compliance with emissions limitations required by NSPS and with State-permitted emissions limitations developed pursuant to EG for previously existing sources.

Performance data were analyzed for several different types and configurations of wet scrubbing devices and the data indicated that no one design achieves superior control. Further, the data were reviewed for the purpose of calculating MACT floors. Data for sources with multiple emission tests showed significant variability which tended to have as its upper bound the permitted emission limits. This was to be expected since the controls were designed and operated to achieve specific limits as reflected in permits. The permit limits were typically based upon NSPS and EG. Since the data indicated that the level of control capable of being achieved was reflected in sources' permits, the Agency elected to directly calculate floors on the basis of the permitted emission limits. So, to determine emissions limits corresponding to MACT floors, the Agency first identified the median of the top twelve percent of permits issued to sources for each process. After thus identifying the best controlled sources and establishing preliminary MACT floors, the Agency again analyzed the available test data to ascertain that the control levels of the permit limits were being achieved and to determine if greater degrees of control were actually being achieved in practice for individual processes. For sources of total fluorides, test data showed that the permitted emissions were reflective of the degree of emissions control actually being achieved.

For phosphate rock dryers and calciners, the MACT floors were established using particulate matter as a surrogate for HAP metals. For dryers, the MACT floor analysis was performed using permitted emissions of particulate matter. The available test data indicate permitted levels are being achieved. For calciners, the permits were all based upon general process rate allowances which were not developed specifically for phosphate rock calcining. In the case of calciners, there were numerous test reports for particulate matter. Test data showed that the permits do not reflect the level of emissions reductions achieved in practice. So, for calciners, the MACT analysis was based upon the test data, which consistently were lower than permitted levels.

One source manufactures a purified phosphoric acid (PPA) through a solvent extraction method. The plant emits MIBK, which is a HAP. Fugitive emissions of MIBK from valves, flanges, and seals are reduced by means of an ongoing maintenance and repair program. As the lone PPA facility in the source category, its control methods constitute the MACT floor for controlling fugitive emissions of MIBK. The MIBK cannot be emitted through a conveyance designed and constructed to capture this pollutant. Upon consideration of the fugitive nature of these emissions, the available information and the public comments received, the Agency has concluded that it is not feasible to prescribe or enforce an emission standard for control of these emissions. In section 112(h)(1), the Act provides that the Administrator may prescribe a work practice consistent with the provisions of section 112(d) in lieu of an emission standard, if it is not feasible to prescribe or enforce an emission standard for control of a HAP. In this instance, the current work practices at the plant constitute the floor level of control for PPA plants. The LDAR (leak detection and repair) provisions in 40 CFR part 63, subpart H were determined during development of the hazardous organics NESHAP to be MACT for fugitive emissions sources with similar characteristics to those of the one plant emitting MIBK. After considering all available information, especially the public comments received, the Agency has concluded that subpart H is at least equivalent to the facility's current practices and has adopted the LDAR provisions of the Hazardous Organics NESHAP (HON) as part of the MACT controls for this process.

Having thus identified the floor level of control for the different processes and pollutants of concern, the Agency then considered the possibility of setting more stringent limitations. The final rule, like the proposal, does not require facilities to achieve emission reductions more stringent than the MACT floor.

As a part of a reconsideration, the Agency first explored the possibility that different control technologies were available and demonstrated for the classes of sources being controlled by today's action. None were found that had been demonstrated and could be applied without creating additional negative impacts to other environmental media. The Agency also considered whether new source emission limits could be applied to existing sources. The emissions data showed that high levels of control were being achieved in both cases and that there was minimal

opportunity for additional significant reductions to be achieved by going from the existing-source MACT floors to the levels of new source MACT. Balanced against the minimal potential for additional reductions were the costs of retrofitting controls to plants for which emissions data showed the existence of multiple test data points near the MACT floor. As an example, the Agency previously calculated the annualized capital cost for the addition of a new wet scrubber to a model WPPA (wet process phosphoric acid) plant producing 36 tons per hour to be $17,253 per year. Such a plant operating at the existing source MACT level which would install a new scrubber to achieve the new source MACT level would reduce HF emissions by 0.34 tons per year. So, the cost effectiveness of the additional reduction would be $50,744 per ton of additional HF removed, which the Agency considers to be inappropriately high at this time. Thus, the Agency concludes that requiring existing sources to be controlled beyond the MACT floor would be unreasonable in terms of cost.

For new sources, section 112(d) of the Act requires that the Agency establish NESHAP which may be no less stringent than ''the emission control that is achieved in practice by the best controlled similar source.'' For new sources, the most stringent permit issued for any given process was adopted as MACT, except for calciners. Performance test data indicated that the most stringent permit limits were being achieved in practice. The calciners limit was based upon test data that showed an achievable level of performance exceeding the permitted requirements. Thus, MACT was set for all but one of the subcategories at the level of the most stringent permit requirements because there was no case in which more effective controls were identified.

C. Stakeholder and Public Participation

In the development of these standards, numerous representatives of the phosphate fertilizers industry were consulted. Industry representatives have included trade associations and producers. Representatives from other interested Agency offices, regional offices, and State environmental agencies participated in the regulatory development process as members of an informal work group. The work group was involved in the regulatory development process, and was given opportunities to review and comment on the standards before proposal and promulgation. Finally, industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed standards and to provide additional information during the public comment period that followed proposal.

The standards were proposed in the **Federal Register** on December 27, 1996 (61 FR 68430). The preamble to the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing and, therefore, one was not held. The public comment period was from December 27, 1996 to February 25, 1997. Sixteen comment letters were received. Commenters included industry representatives, control device manufacturers, State agencies and an environmental organization. The comments were carefully considered, and changes were made in the proposed standards when determined by the Agency to be appropriate. A detailed discussion of these comments and responses can be found in Section IV of this preamble.

II. Summary of Promulgated Standards

The NESHAP emissions limits for existing and new sources are given in the tables below.

EMISSIONS LIMITATIONS FOR EXISTING PHOSPHORIC ACID MANUFACTURING PLANTS AND PHOSPHATE FERTILIZERS PLANTS

Class of source	Pollutant	Emission limit
Wet Process Phosphoric Acid Process Line	Total Fluorides	0.020 lb. Total Fluoride (F^-) Per Ton P_2O_5 Feed.
Superphosphoric Acid Process Line	Total Fluorides	0.010 lb. F^- Per Ton P_2O_5 Feed.
Diammonium and/or Monoammonium Phosphate Process Line.	Total Fluorides	0.060 lb. F^- Per Ton P_2O_5 Feed.
Granular Triple Superphosphate Process Line.	Total Fluorides	0.150 lb. F^- Per Ton P_2O_5 Feed.
Granular Triple Superphosphate Storage Buildings.	Total Fluorides	5.0×10^{-4} lb. F^- Per Hour Per Ton of P_2O_5 Stored.
Phosphate Rock Dryers	Particulate Matter	0.2150 lb. PM Per Ton of Rock Feed.
Phosphate Rock Calciners	Particulate Matter	0.060 grains PM Per Dry Standard Cubic Foot.
Purified Phosphoric Acid Process Line	MIBK	Implement Part 63, Subpart H, Leak Detection and Repair Program.

EMISSIONS LIMITATIONS FOR NEW PHOSPHORIC ACID MANUFACTURING PLANTS AND PHOSPHATE FERTILIZER PLANTS

Class of source	Pollutant	Emission limit
Wet Process Phosphoric Acid Process Line	Total Fluorides	0.01350 lb. Total Fluoride (F^-) per ton P_2O_5 Feed.
SuperphosPhoric Acid Process Line	Total Fluorides	0.00870 lb. F^- per ton P_2O_5 Feed.
Diammonium and/or Monoammonium Phosphate Process Line.	Total Fluorides	0.0580 lb. F^- per ton P_2O_5 Feed.
Granular Triple SuperphosPhate Process Line.	Total Fluorides	0.1230 lb. F^- per ton P_2O_5 Feed.
Granular Triple SuperphosPhate Storage Buildings.	Total Fluorides	5.0 X 10^{-4} lb. F^- Per Hour Per Ton of P_2O_5 Stored.
Phosphate Rock Dryers	Particulate Matter	0.060 lb. PM Per Ton of Rock Feed.
Phosphate Rock Calciners	Particulate Matter	0.040 grains PM Per Dry Standard Cubic Foot.
Purified Phosphoric Acid Process Line	MIBK	Implement Part 63, Subpart H, Leak Detection and Repair Program.

The form, but not the substance, of the standard for one subcategory has changed since proposal. In the proposal, the Agency noted that two types of superphosphoric acid process lines currently operate: a vacuum evaporation process and a submerged combustion process. These processes are quite distinct from one another and they use different feedstock. Moreover, the submerged combustion process is not amenable to the same level of control as is the vacuum evaporation process. The Agency therefore concluded that these processes should be regulated as separate subcategories under this NESHAP.

Because only one facility currently exists in the submerged combustion process subcategory, the proposal's emission standard for the subcategory consisted of the lone source identified by company name. In the final regulation, the Agency has established an emission limit for the submerged combustion process subcategory generally without reference to the specific facility. Doing so ensures that changes in the facility's name or ownership would not change the applicable emission standard.

Consistent with the proposal, the final regulation does not distinguish between process types in its establishment of new source emission limits for superphosphoric acid production. As the Agency noted at proposal, a new facility ''could avail itself of the same resources as other companies in the industry'' in choosing the kind of process to employ in manufacturing superphosphoric acid. (See 61 FR 68438.) Put another way, the Agency examined both vacuum evaporation process and submerged combustion process sources to identify the ''best controlled similar source,'' which serves as the MACT floor for new sources. The Agency concluded that the MACT floor was represented by a facility employing the vacuum evaporation process. No commenter objected to this proposal and the Agency has retained it in the final regulation.

Two additional technical changes are present in the final regulation. First, the standards as proposed often referred to ''plants'' in defining the affected source, but the final regulation refers to ''process lines.'' For example, the proposed standard for a ''Wet Process Phosphoric Acid Plant'' now refers to a ''Wet Process Phosphoric Acid Process Line.'' Because the NSPS used the term ''plant,'' the proposal (based in large part upon the NSPS) did as well. However, in practice, the ''plant'' to which the NSPS applies is indeed a single process line. EPA has chosen to use the more specific term in the final regulation in order to promote clarity for the regulated public. The Agency is confident that this change has no effect on the stringency of the standard.

Second, the requirement that owners or operators of purified phosphoric acid process lines ensure that each product acid and raffinate stream have no more than a specified concentration of MIBK and that they ensure that the chiller stack exit gas stream remains below a given temperature has been moved from the monitoring section of the rule to its more appropriate location in the emission standard section.

An annual performance test is required to demonstrate compliance with each applicable numerical limit for total fluorides or particulate matter. The monitoring provisions require an owner or operator using a wet scrubbing device to continuously monitor the pressure drop and liquid flow rate of scrubbing devices used to control total fluorides or particulate matter. The feed rate of raw materials to the processes must also be continuously monitored. During the performance test, the owner/operator must record the scrubber pressure drop and liquid flow rate to establish baseline levels. Following the performance test, it is an operating requirement that the owner/operator must maintain scrubber pressure drop and liquid flow rate within plus or minus twenty percent of the values recorded during the performance test or within a range established upon the basis of prior successful tests. Any exceedance of the operating range averaged over 24 hours is a violation of the operating requirement.

For PPA plants that emit MIBK, the standards require implementation of a leak detection and repair program, continuous monitoring of chiller stack temperature and daily monitoring of MIBK concentrations at two points in the process.

As required by the NESHAP General Provisions (40 CFR part 63, subpart A), the owner or operator must develop and implement a startup, shutdown, and malfunction plan. Most notification, recordkeeping, and reporting requirements in the general provisions apply to phosphoric acid manufacturing and phosphate fertilizers production facilities. These include but are not limited to: (1) initial notification(s) of applicability, notification of performance test, and notification of compliance status; (2) a report of performance test results; (3) a Startup, Shutdown, and Malfunction Plan with semiannual reports of reportable events (if they occur); and (4) semiannual reports of excess emissions. If excess emissions are reported, the owner or operator must report quarterly until a request to return the reporting frequency to semiannual is approved.

The NESHAP General Provisions also require that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records on site for at least 2 years but may retain the records off site the remaining 3 years. The files may be retained on microfilm, microfiche, on a computer, on computer disks, or on magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

III. Summary of Impacts

The overall effect of the rule is to raise the control performance of plants in the industry to the level achieved by the best performing plants. In addition to the health and environmental benefits associated with HAP emission reductions, benefits of this action include a decrease in site-specific levels of non-HAP pollutants and lowered occupational exposure levels for employees.

The Agency estimates that up to 550 Mg/yr (605 tpy) of HF, the predominate HAP, and other HAPs are emitted from sources at phosphoric acid manufacturing and phosphate fertilizers production plants at the current level of control. Implementing MACT-level controls is expected to reduce these HAP emissions from regulated sources by about 315 Mg/yr (345 tpy) nationwide. Plants affected by the standards are expected to achieve these reductions by upgrading or installing wet scrubbing systems.

Expected impacts to energy usage and other media are expected to be negligible. The largest possible impact will be a minor increase in liquid streams flowing to cooling ponds. Since the processes are net consumers of water, those flows will be recycled to the processes.

The nationwide capital and annualized costs of the NESHAP, including emission controls and associated monitoring equipment, are estimated at $1.4 million and $862,000/yr, respectively. The economic impacts are predicted to increase product prices less than three-fourths of a percent. One company in the industry is a small entity which would be subject to the standards. The economic impact of the NESHAP on this company is estimated to be low and would not be significant. No production line or plant closures are expected.

IV. Summary of Comments on Proposal and Responses

A. Selection of Pollutants

1. Hydrogen Fluoride

Comment. One commenter said that the Agency had no empirical data measuring whether and to what extent HF is actually emitted from phosphoric acid manufacturing and phosphate fertilizer production facilities, and, that the Agency should not, and legally may not, propose or promulgate a NESHAP for HF emissions from these facilities. The commenter questioned whether or not phosphoric acid manufacturing and phosphate fertilizer production facilities actually emit HF. The commenter said that no direct measurements of HF emissions from such facilities have ever been made. The commenter went on to question the calculations used to support the original listing of the source categories and the validity of the listings. The commenter further questioned the suitability of the Agency's use of a state permitting report (docket item II–I–32cc) since it did not contain results of direct measurements of HF. The commenter read the March 1995 review draft technical support document (TSD) as recognizing, whether or not, and to what extent, HF may be emitted by the sources affected by the draft NESHAP is dependent to a large extent on the levels of silica present in the processes in question. The commenter postulated that ammonia also ties up fluoride as ammonium bifluoride, making it even less likely that phosphoric acid manufacturing and phosphate fertilizer production facilities actually emit HF. Thus, the commenter concluded that it appears that the Agency is basing both its determination that the facilities in question emit HF and its estimation of the amount of HF emitted on two sources: (1) ''calculations'' made by an EPA contractor; and (2) a report prepared by a company in connection with state toxic air pollutant permitting. The commenter said that these ''calculations'' are unverified estimates and are not based on empirical data. The commenter continued that the state permitting report was not based on actual measurements of HF emissions. Rather, the silica content of monitoring impingers employed to test total fluoride emissions in two test runs was used to create a mass balance for various fluoride species across all of the fluoride emission points at the facility in question.

One commenter said that the HF fraction of the fluorides in air emissions from phosphate-ore plants, in view of the speciating difficulties of ascertaining the exact fraction as HF, should be closer to the ''⅓ rule'' of chemistry (the reaction of $H_2SiF_6 \longrightarrow 2HF + SiF_4$), not the 28–49 percent range EPA is considering. The commenter said that with silica present in all parts of the phosphoric acid process it is logical for the HF portion in air emissions to be a mere fraction of the 28–49 percent range.

Response. The Agency responds to the statement that HF has not been directly measured or detected at phosphate fertilizer complexes by referring to docket items II–A–6 and II–A–12 which are reports of Agency tests which used Fourier transform infrared spectroscopy (FTIR) sampling and analysis to directly measure HF and silicon tetrafluoride at two facilities. Hydrogen fluoride was measured in amounts that exceeded the major source cutoff under Section 112. It was noteworthy that no silicon tetrafluoride was present in several test runs. In those test runs where silicon tetrafluoride was measured, its concentrations were dwarfed by those of HF. In a third test reported in docket item II–D–15, HF was also measured. The significance of all of these tests is that there are major sources of HAP emissions and HF was in fact directly measured. The low amount of silicon tetrafluoride present is supportive of the Agency's approach of estimating the HF component of total fluoride as one third of the total as predicted by the chemical equations cited in the TSD. The information in the State toxics permitting report (docket item II–I–32cc), which was submitted to the State by a source in the industry, supports this approach.

Comment. One commenter said the Agency used inconsistent methodology in evaluating and regulating HF from processes and the associated cooling ponds. It was the commenter's position that the Agency must use total fluoride as a surrogate for HF in all situations, including cooling pond emissions. Further, the commenter thought that use of one HF test from one cooling pond was highly questionable given the historic wide variation in fluoride emission data from gypsum/cooling ponds. The commenter cited an Agency publication that gave fluoride emission data for gypsum/cooling ponds that has ranged from 0.2 to 10 lbs. of fluoride a day per acre of surface area. The commenter concluded that gypsum/cooling ponds remain a major source of fluoride emissions and the Agency had not established a sound scientific basis for concluding that HF was not a significant part of the large fluoride emissions from the cooling ponds.

Response. The Agency's analysis of NESHAP for cooling ponds focused upon HF emissions because direct measurement data were available. The Agency is aware that those results differed from those of prior studies, including the Agency's own FTIR studies. The variations in data result in different possible estimates of total emissions. Nevertheless, these differences are not important for the purposes of the present rulemaking. The MACT floor determination is driven by the availability of existing control techniques. Here, MACT for existing cooling ponds is no control because there are no demonstrated control techniques used in practice which could have been applied to these sources, regardless of estimated emissions.

Total fluorides were used as a surrogate for HF to establish MACT for emissions from process sources, in contrast to the ponds, because no direct measurements of HF were available and because the NSPS are based on total fluorides. The Agency notes that the results of the FTIR analyses for cooling ponds gave proportions of HF relative to total fluoride which were consistent with those predicted by chemical stoichiometry and, therefore, are supportive of the Agency's approach to estimating the impacts of the emission standards for processes. Since the control of total fluorides and HF from process sources is accomplished with the same control technology (scrubbers), the MACT analysis results in the same level of control regardless of how the emissions are characterized. The use of total fluoride as a surrogate for HF simply changes the manner in which the emissions limit is quantified, not the actual level of control.

2. HAP Metals

Comment. Three commenters stated that particulate matter is an adequate performance measurement for the most likely control technology (wet scrubbers). However, they were concerned that particulate matter used as a surrogate may not accurately track all HAP metals emissions. Their primary concern arose from the fact that calciners operate at temperatures near 1,500 degrees F, which volatilize some HAP metals (such as arsenic, cadmium, mercury and selenium). They noted that such volatilized metals would likely condense as sub-micron particles (for which the scrubbers have significantly lower control efficiency than they do for the bulk of the calciner particulate matter) and that Method 5 measurements would not reflect those emissions. This could lead to an erroneous conclusion that those

pollutants were adequately reduced. In consideration of these concerns, the commenters suggested that the final rule should require affected sources to collect appropriate data (such as that established by Method 29) with which to determine the extent of HAP emissions from calciners.

Response. As the commenters noted, the MACT floor technology consists of wet scrubbers. EPA used available particulate matter emissions data to serve as a surrogate for HAP metals. This PM Surrogate will require the installation of equipment at least as efficient as the technology that is representative of the floor level of emissions. Emission tests and analysis for metals is more costly than simply testing for particulate and would not result in a different floor technology. Therefore the Agency is requiring that particulate testing be performed to demonstrate compliance.

Comment. One commenter said that no direct information was presented to confirm the existence of HAP from dryers and calciners at phosphoric acid manufacturing facilities. The commenter asked that all sections of the proposal dealing with these sources be deleted in the absence of some evidence that they are major HAP emitters.

Another commenter said that the data cited by the Agency are not a sufficient basis for the establishment of a NESHAP for such metals. The commenter stated that there are no stack test data specific to HAP metals and the only data on HAP metals cited are those included in a state toxic air pollutant permitting report (docket item II–I–32cc). The commenter said the establishment of NESHAP (or for particulate matter as a surrogate for such metals) is beyond the legal authority of the Agency under the Act.

Response. Since HAP metals are present in phosphate rock, they will also be emitted from equipment subjecting the ore to high temperatures. The information in the TSD and the docket, to which commenters allude, is air toxics information provided to the State of North Carolina (docket items II–I–32aa and cc) that certifies that a particular source in that State emits HAP metals from dryers and calciners. The State has endorsed the submittals of that source in the form of approved air toxics permits. In particular, item II–I–32aa, which is an attachment to item II–I–32cc, contains results of direct testing of particulate matter from calciner emissions. The testing found arsenic, manganese, nickel, and cadmium, all of which are HAPs. Thus, the Agency concluded that PM is an effective surrogate for HAP metals.

Also, the docket includes item II–I–52u that refers to information provided to a State regulatory agency that indicates that HAP compounds are emitted from calciners that a commenter operated and for which the commenter has current operating permits. Commenter's point that some dryers and calciners may not be major HAP emitters by themselves would not excuse the Agency from a duty to establish emissions limits for that equipment when it is located at major sources of HAPs.

3. Total Reduced Sulfur (TRS)

Comment. One commenter expressed concern that the NESHAP would not address TRS emissions from WPPA plants. The commenter gave as an example one facility that emits 1690 tons per year of TRS and noted that those emissions dwarfed those of kraft pulp mills in its jurisdiction. The commenter suggested that TRS should be regulated and the most appropriate way to do so would be through the next review of the NSPS in subpart T.

Response. Because the TRS pollutants are not listed as HAPs for the purposes of the Act, the Agency presently is not required to regulate TRS under section 112 of the Act. The commenter's suggestion of considering limits on TRS during the next review of the NSPS in Subpart T will be addressed in that context.

B. Compliance Provisions

1. Use of Monitored Operating Parameters for Establishing Violations of the Standards

Comment. A number of commenters expressed their opinions on the Agency's proposal to relate operation outside established site-specific ranges of wet scrubber pressure drop and liquid flow rate to exceedances of the emissions limits. The commenters were unanimous in questioning such relationships for emissions levels for total fluorides and particulates for the sources subject to these NESHAP. One commenter claimed that there was no basis for limiting the variation in operating parameter monitoring results to plus or minus ten percent of the level observed during a performance test. The commenter said there were no data in the record to support any correlation between operating parameter exceedances and a violation of the proposed NESHAP emission limits, much less a correlation between a greater than ten percent variation in operating parameter values and such a violation. Another commenter said the proposed ±10 percent restriction limit on the emission control devices (usually scrubber pressure drop and the liquid flow rate) was needlessly restrictive. The commenter recommended a ±17 percent restriction limit as being less restrictive and serving as a ''surrogate'' indicator for continuous monitoring of equipment whose function is to maintain emission limits.

The primary industry commenter argued that there is nothing in the record of this rulemaking to establish that an operating parameter exceedance is ''credible evidence'' of the duration, much less the existence, of a violation of the proposed NESHAP emission limits. The commenter noted that the data contained in the record of this rulemaking consist entirely of performance test results and there are absolutely no data or information in the record upon which the Agency could base a determination that the operating parameter exceedances identified in the proposal can be equated with a violation of the proposed NESHAP emission limits. The commenter provided data for the purpose of indicating that sources might meet proposed emissions limits over a wide range of operating conditions. The data covered a period of years and included a wide range of operating conditions. As a group, these commenters were of the opinion that control device operating parameters such as scrubber pressure drop and liquid flow rate could be used as indicators of proper operation and the need for maintenance.

In the event that the monitoring provisions of the proposal were retained, three commenters recommended that sources electing to use historic test results to establish a range of operation for control device operating parameters as provided by proposed §§ 63.604(d)(2) or 63.624(f)(2) should be given the same opportunity to retest to demonstrate that prior exceedances did not constitute violations of emission limits as provided in §§ 63.604(d)(1) or 63.624(f)(1). Pursuing the logic of the previous paragraph, one of the commenters said the basis for the retest option would be the fact that compliance with the emission limits can be achieved even if operating parameter values are outside the range observed during a compliance performance test. The commenter held that this rationale was valid whether the operating parameter ranges are established by the plus or minus ten percent method or by the owner or operator under the alternative method.

Some commenters believe it is prudent to keep the continuous parameter monitoring requirements in

the proposed rule to assist operators in determining whether their controls are operating properly. They note that while it is not necessarily true that sources are in compliance with the emission standards just because their two monitored operating parameters are within the range of values established during the performance test, exceedances of operating parameters are good indicators of control device malfunctions. These commenters recommended not allowing sources that exceed the continuous monitoring parameters set during the performance test to have the opportunity to retest within 30 days to demonstrate that the prior exceedance did not constitute a violation of an emission limit, as proposed. The commenters believe it would be very difficult to ensure that the proposed provisions requiring the source to establish and maintain during the re-test the same operating conditions that existed during the exceedance of the operating range could be properly followed and that the retest would, in all probability, not represent conditions present during the exceedance. Furthermore, they commented that the allowance to retest would add another layer of complications for determining compliance under the rule. They recommended deleting the allowance to retest from the final rule.

Response. The final rule accommodates the concerns raised with regard to the Agency's proposal linking exceedances of operating parameter ranges to compliance with the emission limit. Specifically, the final rule eliminates this direct linkage, based on data submitted by commenters' indicating that compliance with an operating parameter range does not always correlate to compliance with the emission limit, and it establishes instead operating parameter limits which help assure continuous compliance with the emission limit. In so doing, the rule also reflects other concerns that the standard should contain operating requirements aimed at ensuring proper operation and maintenance of sources' control devices. Consequently, although the data available to the Agency did not establish an exact correlation between operating parameter values and specific exhaust gas concentrations, the rule retains the requirement to maintain operating parameter values within established ranges, in order to help assure that MACT is being complied with on a continuous basis.

Monitoring of an operating parameter, with an enforceable operating limit, will help assure continuous compliance with the emission limit through continuous emission reductions. The operating limit is a separately enforceable requirement of the rule and is not secondary to the emission limit.

This standard requires sources using wet scrubbers to continuously monitor the scrubber liquid flow rate and the pressure drop across the scrubbers and to maintain these operating parameters within ranges under which the source demonstrates, via a performance test, the source can comply with the emission limit. The operating limits established during a performance test help assure continuous compliance with the emission limit. The EPA has considered the commenters' argument that an exceedance of an operating parameter is not necessarily an exceedance of an emission limit and has consequently not made operating limit exceedances automatic violations of the emission limit; however, the Agency has made these operating limits separately enforceable requirements of the rule in order to promote continuous compliance with the emission limit.

By doing so, the final rule accounts for the commenters' claims in two ways: (1) the operating limits include an operating margin of ±20 percent for sources that base the operating limit upon the baseline values of operating parameters established in the most recent performance test; and (2) by allowing sources to establish operating limit ranges based upon baseline values of operating parameters established in either historic performance tests or performance tests conducted specifically to establish such ranges. Thus, sources have two options to establish operating limit ranges within which the source will still be in compliance with the operating limit. By including an operating margin, the EPA recognizes that control devices can be operated and maintained under a range of conditions and still help assure compliance with the emission limit through continuous emission reduction. For the final rule, the Agency has increased the operating margins in the first instance described above from ±10 percent at proposal to ±20 percent. This change was made in response to the Agency's review of data submitted by the industry commenters that showed a wide range of variability in the level of operating parameters over which the emissions limits could be achieved. The Agency believes that sources which operate in these expanded margins and sources which keep operating parameters within a range established on the basis of test data generally will be meeting the emission limit and, thus, these changes make the operating requirements more likely to provide a reasonable assurance of the source's compliance status. As an additional safeguard to ensure that these operating requirements are set to help assure continuous compliance with the emission limit, when performance testing shows emissions near the emission limits, the permitting agencies have the discretion to shrink a previously-established operating range when a source operating within the broader range could be expected to exceed the emission limits. On the other hand, the Agency does not believe that it is necessary to further expand these operating margins, as some commenters suggest, because the rule permits sources to undertake additional performance testing to establish operating limits which reflect compliance with the emission limit for the full range of operating conditions at the source.

Finally, because the final rule does not make operating limit exceedances automatic violations of the emission limit, and because the operating limits are separately enforceable requirements of the rule, a provision which allows the source to retest to show that certain operating parameter levels do not equate with an emission limit violation is unnecessary. Accordingly, the Agency has deleted the retest provision, as suggested by the State commenters.

Comment. Two commenters said, in many cases, the pressure drops involved are less than one inch and the commenter is unaware of monitoring equipment that can measure at the tenth of an inch level necessary to determine whether or not the measured pressure drop is plus or minus ten percent of that observed during a performance test.

Response. As a result of the comments concerning possible unavailability of instrumentation with suitable sensitivity, the Agency contacted an instrument vendor and was advised that the necessary equipment is available.

Comment. One commenter speaking for the industry as a whole said that operating parameter exceedances may not be denominated as violations of NESHAP emission limits. The commenter said the Act provides no legal authority to denominate operating parameter exceedances as violations of emission limits. The commenter said this is particularly the case when, as here, the emission limits have been developed using a database which consists entirely of performance test results. In such a case, the denomination of operating parameter exceedances as a violation of the emission limit would have the effect of changing the emission limit without

sufficient technical support in the record.

The commenter anticipated that the Agency could argue that section 113(e) of the Act provides the necessary legal authority and noted that the section provides that the duration of a violation may be established by ''any credible evidence (including evidence other than the applicable test method).'' However, the commenter posited that any argument that section 113(e) provides legal authority to denominate operating parameter exceedances as a violation of emission limits in general, and the proposed NESHAP in particular, would be without merit. The commenter argued section 113(e) permits any credible evidence other than the applicable test method to be used only to establish the duration of a violation, not the fact that a violation has occurred.

Response. The final rule does not make exceedances of operating requirements per se violations of the emission limitation. As such, the commenter's concern presumably has been addressed by changes since proposal. The Agency, however, specifically disagrees with the commenter's suggestion that, under the Act, parameter deviations cannot be denominated as violations of applicable emission standards. Section 113(a) of the Act directly contradicts the commenter's position. It permits enforcement actions for violations of the statutory requirements ''on the basis of any information available to the Administrator* * * *'' This broad language means that the Agency can prove a violation based on any information available, limited only by general evidentiary rules.

In addition, the commenter's reading of section 113(e) is too constrained. As the Agency stated in the Credible Evidence rulemaking, section 113(e)'s focus on the duration of a violation grew out of Congress's desire to reverse a judicial decision prohibiting the Agency from establishing a violation's duration by non-reference test methods. See 62 FR 8314, 8320–22 (February 24, 1997). Section 113(e) should not, therefore, be read to limit the Agency's ability to prove the fact of an emission violation, in addition to the duration of such violation, by any credible evidence.

2. Selection of Monitored Parameters

Comment. One commenter said operating parameter ranges should be established on the basis of any relevant data as opposed to the proposal that would allow alternatives to the plus or minus ten percent operating range to be established using data obtained during full-scale performance testing. The commenter thought that data other than that obtained during full-scale performance testing could validly establish operating ranges for pressure drop and liquid flow rate that are representative of compliance with the NESHAP emission limits. The commenter believed that because other data may be used to establish the required operating ranges, and because the ranges must be approved by appropriate government officials, the proposed §§ 63.604(d)(2) and 63.624(d)(2) should be revised to permit the establishment of the required operating ranges on the basis of any relevant data or information, including engineering assessments and manufacturer's recommendations.

Another commenter said that changes in pressure drop are not always an accurate indication of changes in performance for certain types of scrubbers. In particular, the commenter said phosphoric acid production and DAP/MAP fertilizer production are each highly scaling (e.g. depositing hard incrustations inside process vessels) services, and pressure taps necessary for continuous pressure drop monitoring readily scale over in both services. The commenter said that while it is certainly possible to operate a continuous pressure drop monitoring system in these services, keeping the pressure taps from scaling over can be a maintenance-intensive effort. So, the commenter suggested that the final version of the proposed rule should allow for continuous monitoring and recording of some other appropriate indicator parameter(s) in lieu of pressure drop in cases where other parameters provide a more accurate indication of scrubber performance.

Response. Since the scrubber pressure drop and liquid flow rate are direct indicators of the operation of the control device and its performance during the most recent testing, the final standards continue to require that those parameters be monitored. The commenters' suggestions that other ''relevant'' or ''appropriate'' indicators should be specified in lieu of pressure drop and liquid flow rate are vague and would result in case-by-case debates as to whether any of innumerable options may or may not accomplish the same degree of feedback on the performance of emissions controls. The commenters provided no data as to how other parameters correlate with emissions limits. Likewise, establishment of the required operating ranges on the basis of any relevant data or information, including engineering assessments and manufacturer's recommendations, as suggested by the commenters, would be insufficient because there would be no link established between such ranges and the emission limits as is the case when ranges are set during performance testing. The general provisions provide the opportunity for sources to obtain consideration of alternative monitoring, as needed.

3. Frequency of Testing

Comment. Two commenters said that the proposed one-time performance testing was inadequate. The commenters cited the example of one source that is required to test WPPA plants, phosphate rock dryers and calciners, DAP/MAP plants and GTSP plants on an annual basis. The commenters recommended that the Agency require testing either annually or once every permit cycle. The commenters consider one-time performance testing insufficient and a step backwards from their current requirements.

The commenters considered the proposed one-time performance test requirement for sources ineffective and inadequate to demonstrate compliance with each applicable numerical emission limit for total fluorides and particulate matter (surrogate pollutants). They stated that most sources at the affected facilities currently perform at least annual stack testing for the surrogate pollutants identified above. They commented that air pollution control agencies have required this level of testing because their experience indicates that these sources are prone to problems with control device maintenance. They note that many affected facilities, which represent large industrial complexes that have undertaken this type of stack testing for numerous years, use their own environmental compliance staff to conduct the tests, minimizing any economic burden. Accordingly, the commenters recommended that the minimum requirement for ensuring compliance with the proposed emission standards should be annual stack testing using the methods described in the performance tests and compliance provisions sections (§§ 63.606 and 63.626).

Response. The Agency has taken note of the comments that the equipment and control devices in these source categories are subject to harsh conditions that cause corrosion and scaling of the process components and that State agencies already require annual tests of these facilities. So, the performance of the emissions controls will vary over time and so may emissions. Thus, the Agency is promulgating a requirement for annual

testing in the final rule. This change is also important in light of the decision not to make operating parameter exceedances violations of the emission standards, which raises concerns as to how to ensure appropriate enforcement of the NESHAP. As was noted by commenters, most jurisdictions already require annual, or more frequent testing and, so, this will add minimal burden beyond that already required of the sources.

Comment. One commenter said that in the event that the Agency retains the provisions for designating exceedances of operating parameter ranges as violations, he supports the alternative method of setting the operating range for parameters of the air pollution control device.

Response. The alternative for establishing operating ranges based upon prior performance test results was retained in the final rule.

4. Simultaneous Testing

Comment. Two commenters said the requirement for simultaneous testing would be burdensome for most facilities with multiple emission points because, read strictly, this would require multiple test crews and equipment whenever dealing with multiple emission points. One of the commenters said this requirement would add nothing to the quality of the information gathered. The other commenter found ambiguity in the word ''simultaneous.'' He questioned whether ''simultaneous'' meant exactly at the same time, or within a certain number of minutes or hours. Also, the commenter said the processes undertaken at these facilities are continuous operations and variations within these continuous operations would be expected to be slight. Finally, the commenter said simultaneous performance testing had never been required by the existing NSPS on which the proposed NESHAP were based. The commenter said under the NSPS, the relevant regulatory authority establishes performance testing requirements based on the circumstances presented by individual facilities. The commenter said that the NSPS performance testing requirements have been in place for more than 20 years and there is no suggestion that the current approach to performance testing is inadequate or inappropriate. So, he recommended that the timing of performance testing be decided by the Administrator on a case-by-case basis.

Response. Since there is a limited number of sources where multiple emissions points are present and there are no known instances where testing has been a problem in the past, the Agency decided not to make simultaneous testing mandatory in the final rule. The site-specific test plan required by § 63.7(c)(2) of the general provisions will cause development of test plans that can address the concerns which lead the Agency to propose simultaneous testing.

5. Process Monitoring Requirements for Purified Phosphoric Acid (PPA) Plants

Comment. One commenter recommended that the proposed process feed rate monitoring requirements be amended to delete reference to PPA plants. They noted that their plant records P_2O_5 feed to the process on a daily basis, and that, given the averaging period for MIBK additions, continuous recording of feed rate is unnecessary. In addition, the commenter recommended substituting ''product'' for ''stripped'' in connection with the descriptions of the acid streams in proposed § 63.604(f)(1) to distinguish them from those referenced in proposed § 63.604(f)(2).

Response. The Agency agrees with the commenter and the regulations have been appropriately changed.

6. Other

Comment. One commenter opined that approval authority for operating parameter ranges should be broadened. As proposed, §§ 63.604(d)(2) and 63.624(d)(2) required that pressure drop and liquid flow rate ranges be approved by ''the permitting authority.'' The commenter was concerned that limiting approval authority to the permitting authority was unnecessarily restrictive and could result in the inability of an owner or operator to establish operating parameter ranges because there may be, at the relevant time, no ''permitting authority'' to give approval. To address this potential problem, the commenter recommended that operating parameter range approval authority be vested in the ''Administrator.''

Response. That term was deleted from the final rule which, instead, now refers to the Administrator as defined in the General Provisions 40 CFR, part 63, 63.2 Definitions.

Comment. One commenter recommended that the proposal (§§ 63.605(c)(3)(ii) and 63.625(c)(3)(ii)), which would require that the P_2O_5 content of the feed to the processes subject to the NESHAP be determined in accordance with Method 9 of the Association of Official Analytical Chemists (AOAC), be revised. The commenter observed that Method 9 was the accepted method for P_2O_5 determinations in 1974 when it was specified by, and incorporated by reference in, the NSPS for the processes subject to the proposed NESHAP. In the intervening 23 years, AOAC has developed and specified more advanced methods for making the P_2O_5 determination, including Methods 962.02, 969.02, and 978.03. The commenter recommended that in order to avoid specifying outdated methods for the P_2O_5 determination; and in order to keep this section of the NESHAP ''evergreen,'' proposed 40 CFR 63.605(c)(3)(ii) and 63.625(c)(3)(ii) be revised to read: ''(ii) The P_2O_5 content (Rp) of the feed shall be determined in accordance with the method(s) of the Association of Official Analytical Chemists.''

Response. The Agency agrees that the specified AOAC methods are appropriate methods to determine the total phosphorus content of fertilizer, has amended § 63.14 to incorporate by reference AOAC methods 929.01, 929.02, 957.02, 958.01, 962.02, 969.02, and 978.01, and has added appropriate references to those methods in the rule. The Agency also has identified appropriate test methods published by The Association of Florida Phosphate Chemists to quantify total phosphorus content of fertilizer. In addition the Agency has added appropriate references to methods published by The Association of Florida Phosphate Chemists to quantify total phosphorus content of phosphoric acid, superphosphoric acid, triple superphosphate, and ammonium phosphate.

The commenter suggested that a general reference to AOAC methods was a way to avoid citing outdated methods. The Agency does not agree that this is acceptable since changes to a method could affect the stringency of the regulation. It is therefore important that the Agency review changes in consensus methods to assure that this does not inadvertently happen. The Agency accomplishes this by citing a specific version of a consensus method.

Comment. A commenter recommended that the determination of whether pressure drop is measured across each scrubber in the process scrubbing system or across the entire scrubbing system be left to the Administrator on a case-by-case basis. The commenter noted that production facilities subject to the NESHAP employ various types of scrubbers, and various scrubber configurations, as a means of achieving compliance with the current NSPS and that these same systems will be used to achieve compliance with the NESHAP. The commenter said that, because of the variation in the types and configurations of scrubbers used to achieve compliance, a requirement to

measure the total pressure drop across each scrubber in the process scrubbing system in all cases could be unnecessarily burdensome. The commenter went on to say that monitoring of both pressure drop and flow rate may not be appropriate in all cases and that the determination of the appropriate operating parameter(s) for monitoring should be made on a case-by-case basis. The commenter posited that the requirement to install continuous parameter monitoring systems for both pressure drop and flow rate in all cases could be unduly burdensome, inappropriate and not supported by the record. The commenter said whether pressure drop or flow rate is the relevant parameter for monitoring turns largely on the HAP being controlled by the relevant NESHAP.

Response. The documentation of the proposed NESHAP made clear that the Agency was aware of the wide range of possible scrubber configurations that can be and are used to meet the NESHAP level of control. As written, the rules provide sources with flexibility to meet the emission limits in the manner most efficient for a given source. Accordingly, when choosing to use multiple control devices to achieve limits that can be met by a single device, a source also accepts the requirements attendant to operating and monitoring those devices. To allow sources to monitor only chosen components of control systems as suggested by the commenters would undermine the effectiveness of the monitoring requirements in assessing the overall performance of controls. The control systems are essentially doing the same job regardless of whether removal of pollutants is occurring in one or a series of vessels. The main concern is one of providing sufficient time for the effluent gases to contact an absorbent liquid. The key parameters therefore are contact time as reflected by pressure drop and sufficient quantities of absorbent as reflected by liquid flow rate. The overall operating effectiveness of the controls is reflected in those two parameters.

Comment. One commenter questioned the two hour test time in proposed § 63.605(e)(1) which would require that the sampling time for each run of a performance test for phosphate rock calciner particulate matter emissions be ''at least 2 hours.'' Further, the commenter believed that the equipment employed in performing the relevant reference method would be incapable of producing accurate results when operated for a two-hour period due to the plugging of the particulate matter filters involved. Consequently, the commenter suggested that the per-run sampling time for particulate matter performance testing of phosphate rock calciners be set at one hour.

Response. There are two factors generally considered when specifying a minimum particulate matter (Method 5) sampling time in a regulation. The first priority is to assure that sufficient sample mass would be collected to obtain quantitative results with an acceptable degree of confidence at the level of the emission limit. The sample size needed to determine compliance at concentrations of 0.040 grains per dry standard cubic foot is small enough that one hour is a sufficient sampling time. The second factor is the time necessary to obtain a sample that represents normal process operational cycles. Calcination is a continuous operation. Hence, this is not an overriding factor. Thus, consistent with the commenter's suggestion, the Agency is specifying a minimum sampling time for each performance test run of 1 hour.

Comment. One commenter said the Agency recognized in the preamble to the proposed NESHAP that performance testing requirements for uncontrolled GTSP storage buildings have not yet been proposed by the agency and reserved the right to comment on these performance testing requirements when they are proposed.

Response. The Agency previously promulgated Methods 13 A and B which are applicable to GTSP storage buildings. Sources electing to determine compliance without control devices or stacks need to develop site-specific test protocols that are equivalent to Method 13. Source owners wanting to assure compliance in an alternative manner should propose a measurement procedure in their site-specific test plans, required by § 63.7(c)(2). The regulation requires that the owner or operator submit those plans to the Agency for review within twelve months of promulgation. The Administrator's review procedure is governed by § 63.7(c)(3). In the interest of maintaining uniformity in the implementation of the NESHAP, the Administrator has retained from delegation the authority to approve site-specific test plans for uncontrolled granular triple superphosphate storage buildings developed pursuant to § 63.7(c)(2)(i). This retention of authority is contained in § 63.629 entitled ''Miscellaneous requirements.''

C. Emission Limits

1. General

Comment. One commenter expressed the opinion that the Agency has proposed reasonable emissions limits which can be reasonably met using commercially available control technologies.

Response. None required.

2. Wet Process Phosphoric Acid (WPPA) Plants

Comment. One commenter said the Agency should amend the standard for existing WPPA facilities to be the same as for new WPPA facilities because the proposed action failed to consider and analyze the economic advantage that the proposed standard would give existing facilities over new facilities.

Also, the commenter said the proposed MACT floor standard for existing facilities failed to consider the benefits of airborne radionuclides reductions achieved by the proposed new facility standard. Citing the Agency's proposal not to exercise its statutory authority to go ''beyond-the-floor'' and require more stringent controls on existing WPPA plants based upon EPA's analysis of the health impacts of HF and HAP metals, the commenter was unaware of any Agency analysis of the human health and environmental benefit. The commenter maintained that the Agency was required by section 112(d) to evaluate the public health benefit and the environmental benefit which would result from the decreased radionuclide emissions associated with the particulate if existing WPPA facilities were required to meet the new source WPPA standard for HF emissions.

Response. The Agency's actions have been guided by the language of the Act. The Act clearly states that standards for new and existing sources should be determined differently. The commenter was correct in his observation that the Agency has a duty to consider going beyond the floor level of control for existing sources.

For this rulemaking, there were no data which to base analyses of additional reductions in radionuclide emissions. There was information on HF and HAP metals emissions. So, the Agency's analysis for going beyond the MACT floor focused upon those pollutants.

As a part of that consideration, the Agency first explored the possibility that different control technologies were available and demonstrated for the classes of sources being controlled by today's action. None were found that had been demonstrated and could be applied without creating additional negative impacts on other environmental media. The Agency also considered whether the new source emission limits could be applied to

existing sources. The emissions data showed that high levels of control were being achieved in both cases and that there was minimal opportunity for incremental reductions to be achieved in a cost-effective manner by going from the existing-source MACT floors to the levels of new source MACT. As discussed above (I. B.), a simple calculation of the application of new source MACT in place of existing source MACT for the subcategory of WPPA plants, which have the greatest differential between the two levels of control, indicates that the costs would be unreasonable. In that example, the annualized capital cost of achieving the additional annual HF reduction of 0.34 tons per year was $17,253 per year. There, the cost effectiveness of the additional reduction would be $50,744 per ton of additional HF removed, which the Agency considers to be inappropriate at this time.

3. Evaporative Cooling Towers at Phosphoric Acid Manufacturing Plants

Comment. Commenters support the Agency's proposed requirement to forbid the introduction of liquids containing the effluent from air pollution control devices into any evaporative cooling tower. They agree that it does not make sense to scrub hydrogen fluoride and other HAPs from potential emission points and then allow these HAPs to evaporate when the scrubber water is routed to evaporative cooling towers.

One commenter said that separating water discharges of pollution control devices from the evaporative cooling towers would cost one source in its jurisdiction approximately $0.4 million for process alterations. The commenter stated that it could cause the source various operational problems of increased water consumption and plant water effluent, for which the source has no water effluent-handling facilities outside of land application.

One commenter stated that his is the only existing facility affected by this proposal and estimates compliance costs will be several hundred thousand dollars. He commented that the Agency had not considered the benefits or the compliance costs of the proposed work standard and that § 63.602(e) should be deleted.

Response. For phosphoric acid manufacturing, the Agency has elected to base NESHAP upon the floor level of control. This is the least stringent option permitted by the Act. Any consideration of costs would be of significance only for consideration of options for control levels exceeding the floor level of stringency.

Comment. Two commenters noted that the language for existing and new evaporative cooling towers does not agree and proposed that § 63.602(e) should be used for both.

Response. The Agency agrees that the language for existing and new evaporative cooling towers should have been identical. It was the Agency's intent to use the language described for existing sources for new ones also and this has been changed on the final rule.

4. Phosphate Rock Calciners and Dryers

Comment. One commenter expressed the opinion that the proposed particulate matter limit of 0.040 grain per dry standard cubic foot (gr/dscf) for calciners is readily achievable and went on to note that emissions below 0.025 gr/dscf have been achieved for at least one calciner. The commenter suggested that the Agency should also limit emissions of fluorides from calciners.

Response. The Agency agrees with the comments upon the achievability of the proposed emissions limits. The first number referred to by the commenter was selected as MACT for existing calciners via the rationale in the proposal. The limit selected for existing sources was established on the basis of test data for several calciners that actually process phosphate ore and the data show that the emissions limits can be met on an ongoing basis. The lower number given by the commenter has been achieved by calciners in other categories. However, the commenter provided no information that this level of control is achievable for phosphate rock calciners. The selection of new source MACT described in the proposal was made using data specific to this industry to ensure achievability. The Agency did consider setting a fluoride limit for calciners. The wet scrubbers used in the industry for control of particulate matter also capture hydrogen fluoride. Even if the Agency had established an HF floor, it would have been based upon the same control devices that provided the basis for setting the particulate limit.

5. Purified Phosphoric Acid (PPA) Plants

Comment. One commenter initially recommended that the level of the proposed MIBK standard should be changed from that which was proposed. Included with the comments was information describing plant modifications, updated MIBK inventory records and process records from which emissions could be determined. The Agency reviewed the updated information and concluded that it supported neither the proposed standards nor those suggested in the commenter's recommendations. To clarify the comment, the commenter consulted with its State air pollution control agency to discuss alternatives. Two commenters stated that the leak detection and repair (LDAR) provisions of 40 CFR part 63, subpart H would be a workable means of addressing fugitive emissions. Other commenters stated that the LDAR program would not address tank and stack emissions and they supported keeping the proposed requirements to maintain the chiller stack temperature and the MIBK concentration of the raffinate (process waste materials) and product acid within specified limits.

Response. One commenter manufactures PPA through a solvent extraction method. The plant emits MIBK, which is a HAP. Fugitive emissions of MIBK from valves, flanges, and seals are reduced by means of an ongoing maintenance and repair program. As the lone PPA facility in the source category, its control methods constitute the MACT floor for controlling fugitive emissions of MIBK. At proposal, the Agency translated the source's maintenance and repair program into a numerical limit on MIBK that was to be determined through plant production and MIBK makeup records. The proposal was based upon the premise that the MIBK makeup requirement was a result of fugitive emissions. That approach was proposed because the Agency thought that doing so would simplify enforcement of a standard based upon effectiveness of the work practices in place at the plant for limiting process losses of MIBK. In response to a commenter, the Agency reviewed information in the record prior to proposal and the additional information provided by the commenter for the purpose of determining whether the proposed numerical limit would be an appropriate means of implementing MACT. The data indicated that a numerical limit could not be established. Emissions were not related to production and, therefore, the proposed standard which tied allowable emissions to the production rate was not a valid approach.

The MIBK cannot be emitted through a conveyance designed and constructed to capture this pollutant.

Upon consideration of the fugitive nature of these emissions, the available information and the public comments received, the Agency has concluded that it is not feasible to prescribe or enforce an emission standard for control of these emissions. In section 112(h)(1), the Act provides that the Administrator may prescribe a work practice standard

consistent with the provisions of section 112(d) in lieu of an emission standard, if it is not feasible to prescribe or enforce an emission standard for control of a HAP. In this instance, the work practices at the plant constitute the floor level of control. The Agency agrees with the commenters recommendation that the leak detection and repair (LDAR) provisions of 40 CFR part 63, subpart H provides a means of expressing the work practices as a regulatory requirement. The LDAR provisions in subpart H were determined during development of the hazardous organics NESHAP to be MACT for fugitive emissions sources with similar characteristics to those of the one plant emitting MIBK. After considering all available information, the Agency has concluded that subpart H is at least equivalent to the facility's current practices and has adopted the LDAR provisions of the HON as part of the MACT controls for this process. Accordingly, the Agency has referenced the subpart H requirements in today's rulemaking. The Agency is keeping the proposed requirements to monitor and maintain the chiller stack temperature and the MIBK concentration of the raffinate and product acid within specified limits.

Comment. One commenter suggested generalizing the definition of a PPA plant by modifying the proposed language to read as follows: ''Purified phosphoric acid plant means any facility which uses solvent extraction to separate impurities from wet process phosphoric acid product acid for the purposes of rendering the product suitable for industrial, manufacturing or food grade uses.''

Response. The Agency found the commenter's suggestion acceptable and has incorporated it into the final rule with a wording change that clarifies that coverage is limited to those sources employing a HAP compound as a solvent. So, the rules will effectively cover only one of the two processes now in use because the second process does not emit HAPs.

6. *Granular Triple Superphosphate (GTSP) Storage Buildings*

Comment. One commenter supported the Agency's proposed approach limiting applicability for GTSP storage buildings to only those storage buildings co-located with GTSP plants. The commenter concurred with the Agency's rationale and cited additional reasons why the NESHAP for GTSP storage buildings should be made applicable only to such storage buildings collocated with GTSP plants. The commenter said requirements of the proposed NESHAP for such facilities were based directly upon the pre-existing NSPS and said his review of the background documents associated with the original NSPS rulemaking indicated it was clear that the Agency intended that the NSPS apply only to collocated GTSP storage facilities. Furthermore, he noted the only GTSP storage facilities sampled in connection with the development of the NSPS were collocated facilities.

As a consequence of review of the public record, the commenter made several specific suggestions about the proposed rules. First, he said the definition of ''fresh'' GTSP in proposed § 63.621 should be redefined if the Agency does not limit the applicability of the NESHAP to collocated GTSP storage facilities. The commenter suggested that for regulatory purposes, the appropriate inquiry is the extent to which GTSP in storage actually emits significant amounts of fluorides. The commenter provided engineering data on measured fluoride emissions from stored GTSP and said the data demonstrate that the vast majority of fluoride emissions occur within 48 hours of the production of GTSP. The commenter recommended that the definition of ''fresh'' GTSP be revised to read: ''Fresh granular Triple superphosphate means granular Triple superphosphate produced within the preceding 72 hours'' based on the data provided.

The commenter also said that the percentage of fresh GTSP that must be present during performance testing would also have to be revised accordingly. If this were not done, no existing GTSP plant would be capable of producing ''fresh'' GTSP at a rate which would permit the current 20 percent limitation to be met. The commenter recommended that the percentage of the total amount of stored GTSP which must be fresh at performance testing should also be revised from 20 percent to six percent.

Response. In general, the Agency agrees with the commenter's conclusions and recommendations. The proposed approach was to adopt the technical component of the NSPS and to add language exempting GTSP storage buildings co-located with GTSP process lines. Shortly after proposal, the co-location issue and the technical concerns raised by the commenter also arose in the context of the NSPS itself. The NSPS was subsequently revised (see 62 FR 18308) to address those concerns. The main features of the revised NSPS were a change to the definition of ''fresh GTSP'' that was consistent with the commenter's recommendation and a provision requiring producers of GTSP not to ship freshly produced GTSP until it had cured. In effect, the producers were to hold the GTSP in their storage buildings until the HF emissions had tapered off as a result of curing. This, in effect, accomplished the purpose of the proposed NESHAP with regard to limiting applicability to co-located storage buildings. In fact, the approach of the revised NSPS better accomplished that purpose by more clearly addressing which storage buildings were subject to the rules. Since, the revised NSPS addresses the concerns voiced by the commenter and the Agency considers the revised NSPS to better accomplish the purposes of establishing MACT, the final rule for this NESHAP has been amended to reflect the requirements of the NSPS, as revised.

7. *Cooling Ponds.*

Comment. One commenter said that the Agency must regulate the corrosive hazardous waste in the cooling pond either under this rule or by a definitive deadline under RCRA. The commenter said that the proposed HF standards would require the discharge of air pollution scrubber water containing HF into cooling pond water resulting in unregulated corrosive hazardous waste discharge to ground waters and surface waters. The commenter added that the Agency's analysis of the non-air impacts of releases of pollution from cooling ponds did not discuss the cooling pond water pH issue and the commenter was unable to find any discussion of the non-air impacts of the surface and groundwater releases from these ponds resulting from putting additional HF into the ponds. The commenter suggested that addition of more HF to the cooling ponds will lower the pH of these ponds even further below the corrosive hazardous waste standard of a pH of 2.0. As such, the commenter maintained that the proposal did not accomplish the section 112(d)(2) mandate that emission standards ''shall require the maximum degree of reduction in the emissions of the hazardous air pollutants subject to this section'' achievable ''taking into consideration costs and any non-air quality health and environmental impacts and energy impacts.'' The commenter believed that section 112(d)(2) required EPA to consider: (a) the enclosure of systems to eliminate emissions; (b) the collection, capture or treatment of such pollutants when released from a process, stack or storage facility; or, (c) design standards for processes.

In addition, the commenter said the proposed rule also did not comply with

the Pollution Prevention Act because the proposed rule did not address the cooling pond water corrosive hazardous issue by EPA using its powers under section 112 of the Act or under RCRA to eliminate or reduce the surface and groundwater pollution from the HF in the cooling ponds.

Response. Although this rulemaking is focused upon air emissions and regulating cooling ponds with respect to RCRA goals would be outside the scope of this action, the Agency has considered the impacts of MACT upon other media. An engineering analysis of options for addressing the HF content of cooling ponds was included in the docket prior to proposal as item II-B–9. As part of that analysis, consideration was given to a process that would eliminate flows to cooling ponds as encouraged by the Pollution Prevention Act. While the Agency found the new process promising, it was not demonstrated under commercial conditions and could not be adopted as an available control technology. This was specifically discussed in the proposal (61 FR 68444).

As the preamble to the proposed rules indicated, it is the Agency's expectation that five process lines would need to upgrade or replace existing controls to meet the NESHAP. Since those facilities currently route their scrubber effluent to cooling ponds, the effects of the rule would constitute a very small incremental change to current practices at those facilities. Given the relatively small contribution of scrubber effluent to the ponds and buffering effects of the complex mixture of chemicals in the ponds, there would be no observable effect resulting from changes to the air pollution controls.

D. Other Comments

1. *Determination of Major Source Status*

Comment. One commenter noted that pursuant to 40 CFR 63.1 (b)(3), owners or operators of stationary sources potentially subject to the NESHAP must make an initial applicability determination concerning whether or not they are a major source and, therefore, subject to the NESHAP. The commenter acknowledged that this applicability determination is specifically made the responsibility of the owner or operator of a stationary source. The commenter asked that in order to ensure that the statements concerning the number of major sources contained in the December 27, 1996 preamble do not inadvertently lead to ''prejudgments'' on major source determinations, the Agency should specifically recognize, in the preamble to the final NESHAP, that the calculations and the permit report used as the basis for the estimates referred to in the proposal notice are not the exclusive sources to be relied upon in making such major source determinations. The commenter requested the Agency to explicitly state that such determinations may be made upon any relevant data or information, including, but not limited to, the calculation procedure used by the Agency.

Response. It is a normal practice for the Agency to examine the impacts of its rules upon the environment and upon the regulated community. In its estimates of the impacts of the proposed rules, the Agency projected that 15 facilities may be major sources subject to this NESHAP. Those estimates are the Agency's expectations and do not constitute a determination of major source status for individual sources for purposes of Title V operating permits. However, the Agency does consider its methods of estimation to be sound and would carefully examine any analyses provided by sources that indicated lesser amounts of emissions. In particular, the argument by industry that silica or free ammonia remove all available HF is not supported by the FTIR data available for this rulemaking. If one could assume that sufficient quantities of reactants, such as silica and ammonia in this case, were present to theoretically drive a reaction to completion, real world actualities such as imperfect mixing or equilibrium limitations would prevent complete reactions of available ingredients from occurring. Thus, regardless of the silica or ammonia content of the emissions streams for this industry, it is expected that HF will be present in the final exhaust. The most definitive approach for sources to employ to determine their individual major source status would be for sources to directly measure for HAP compounds using FTIR via a test method validated per EPA Method 301.

2. NSPS Exemption

Comment. One commenter observed that proposed §§ 63.610 and 63.630 would exempt any ''process component'' subject to the NESHAP from otherwise applicable NSPS. The commenter stated that the term ''process component'' is not defined in the proposed NESHAP or in the Act. In order to avoid any subsequent confusion on the scope of the NSPS exemption, the commenter recommended that the term ''process component'' be replaced by the term ''affected source'' or, alternatively, that the term ''process component'' be specifically defined.

Response. The Agency agrees with the commenter and has replaced the term ''process component'' with the term ''affected source.'' Further, while reviewing the proposed exemption to determine its response to the commenter, the Agency found that the timing of the performance test as required in the general provisions could lead to further confusion as to a source's compliance status during the period between the compliance date of the NESHAP and completion of the performance test. The final rule has been re-worded to require the source to demonstrate compliance via a performance test by the compliance date for the NESHAP and to have a valid operating permit pursuant to Title V to qualify for the NSPS exemption.

3. Draft Technical Support Document (TSD)

Comment. One commenter said that throughout the draft TSD, companies involved in the manufacture of phosphoric acid or the production of phosphate fertilizer were often misidentified. Also, the commenter noted that several of the production and other values given in the TSD were inaccurate and urged the Agency to use the most accurate and up-to-date values available. With regard to the discussion on nutrient carry-over and industry trends, the commenter cited some concerns and asked that the sections quoted in his comment letter be deleted from the draft TSD or revised.

One commenter provided additional information on the type of processes present at two plants in its jurisdiction. The commenter highlighted the production of a unique kind of GTSP from phosphate ore and limestone at one plant. That source makes ''GTSP'' by acidizing limestone with phosphoric acid and is different from the normal process which acidifies phosphate ore with phosphoric acid. The commenter said GTSP thus made from limestone does not fall under the definition stated in the proposed standards. The information about the second source noted a change of ownership.

Response. The original draft of the TSD was sent to outside reviewers, including the commenters, and was subsequently revised according to comments received. The draft TSD in the docket was current as of May 1995. The purpose of the draft TSD was to assemble the information upon which MACT could be established and various environmental and economic impacts could be assessed. The draft TSD also presented the Agency's methodologies and projections of the impacts of the NESHAP as they were envisioned at that

time. Subsequently, companies have been bought and sold and the productive output of the industry has changed. Newer information and analyses pertinent to the rulemaking have since been made available and added to the docket. Thus, given that the draft TSD has served its original purpose and any newer relevant information is in the docket, the Agency will not revise the draft TSD.

4. Applicability Diammonium and/or Monoammonium Phosphate (DAP/MAP) Emission Limits

Comment. One commenter described one of his sources that manufactures MAP/DAP using thermal process phosphoric acid, instead of WPPA. The commenter cited the information in the TSD to support his observation that information available to the Agency indicate that HAP emissions are a concern only in those instances where WPPA is used to manufacture DAP/MAP. The commenter requested that the Agency clarify the applicability of the NESHAP to exclude those sources not using WPPA to manufacture DAP/MAP.

Response. The Agency agrees with the commenter and the regulations in subpart BB have been revised by incorporating language the commenter provided.

5. Applicability—Research and Development Facilities

Comment. One commenter recommended that the Agency include an exemption for research and development (R&D) facilities. The commenter cited section 112(c)(7) of the Clean Air Act (the Act) and its direction to establish a separate source category for R&D facilities as necessary to ensure equitable treatment of such facilities. The commenter cited other recent NESHAP that have included R&D exemptions and said that this rulemaking needed to include such an exemption for consistency. The commenter suggested that the following language be added to the definitions contained in the rule: ''Research and development activities means (1) activities conducted at a laboratory to analyze air, soil, water or product samples for contaminants, environmental impact, or quality control, (2) activities conducted to test more efficient production processes or methods for preventing or reducing adverse environmental impacts, provided that the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit, except in a de minimis manner, and (3) activities conducted at a research or laboratory facility that is operated under the close supervision of technically trained personnel the primary purpose of which is to conduct research and development into new processes and products and that is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.''

Response. The Agency agrees with the commenter and has added appropriate language, including an R&D facility definition similar to the commenter's, into the rules. The Agency plans to issue a NESHAP applicable to R&D facilities at a later date.

6. Notification

Comment. One commenter recommended that notification, recordkeeping and reporting requirements should be coextensive with those required under the current NSPS. The proposed rules would apply §§ 63.9 and 63.10 of the NESHAP general provisions with their recordkeeping and reporting that in the commenter's opinion is neither appropriate nor justified. The commenter said the record of the NESHAP general provisions rulemaking makes it clear that the notification, recordkeeping and reporting requirements were developed to address situations where the NESHAP for a particular chemical or process would be the initial federal regulation addressing that chemical or process. The commenter said that phosphoric acid manufacturing and phosphate fertilizer production facilities have long been subject to federal regulation under the NSPS and State regulation under provisions similar to the NSPS and owner/operators of regulated sources and government regulators are familiar and adept with these preexisting notification, recordkeeping and reporting requirements. The commenter recommended that notification, recordkeeping and reporting requirements be coextensive with the requirements of the pre-existing NSPS and submitted that such an approach is consistent with 40 CFR 63.10(a)(7) which permits owners and operators subject to both NSPS and NESHAP, along with the Administrator or the state permitting authority, to mutually agree on a common schedule for submitting required reports. The commenter said his recommendation was also consistent with 40 CFR 63.10(f) which permits the Administrator to waive the recordkeeping and reporting requirements of the NESHAP general provisions.

Response. The Agency discussion in the preambles proposing and promulgating the part 63 general provisions did not support the commenter's points concerning their application to sources subject to prior regulations. Instead, the discussions made clear that the part 63 requirements, while patterned after those parts 60 and 61, were made more extensive because of the need to incorporate specific legal requirements added by the 1990 Amendments to the Act. The Agency also mentioned the importance of maintaining consistent requirements for the various source categories affected by NESHAP and minimizing case-by-case negotiations on timing and content of notification and recordkeeping activities. Last, the Agency does not concur with the commenter's interpretation of 40 CFR 63.10(a)(7). That language is specifically aimed at instances where affected sources are subject to both NSPS and NESHAP. Since this rule specifically exempts those sources subject to its requirements from duplicate coverage by NSPS, the language of § 63.10(a)(7) is not applicable.

Comment. One commenter asked for the intent of §§ 63.608 and 63.628 to be clarified. The commenter said proposed §§ 63.608 and 63.628 specified that particular reporting requirements of § 63.10 would be applicable to owners and operators of phosphoric acid manufacturing and phosphate fertilizer production facilities. Furthermore, proposed §§ 63.604 and 63.605 specified the monitoring requirements applicable to owners and operators of such facilities. Certain of the monitoring requirements otherwise applicable under 40 CFR 63.8 were not made applicable to phosphoric acid manufacturing and phosphate fertilizer production facilities. Concomitantly, the reporting requirements of § 63.10 associated with those monitoring requirements also were not made applicable to such facilities by proposed §§ 63.608 and 63.628. However, the excess emissions report which was made applicable to such facilities by proposed §§ 63.608(a)(2) and 63.628(a)(2) was required, by the NESHAP general provisions, to include information concerning certain of the monitoring requirements not made applicable to phosphoric acid manufacturing and phosphate fertilizer production facilities. The commenter asked that the Agency's intent be made specific in the final NESHAP so that it would be clear that the excess emissions report required by proposed §§ 63.608(a)(2) and 63.628(a)(2) is to include only the information relevant to the monitoring requirements

specifically imposed on phosphoric acid manufacturing and phosphate fertilizer production facilities pursuant to proposed §§ 63.604 and 63.624.

Response. The Agency explored the commenter's concerns and came to agree that the coordination of the general provisions requirements for notification, recordkeeping, reporting, and compliance dates as proposed could be improved. The sections of the rule addressing those points have been restructured and a table has been added to specifically state the applicability of the components of the general provisions. The timing of the initial performance test relative to the compliance date and the exemption from new source performance standards were further clarified to eliminate ambiguity. These changes should ease implementation via Title V operating permits.

V. Administrative Requirements

A. Docket

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

B. 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 review by the Office of Management and Budget (OMB), 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 obligation 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 rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. The nationwide capital and annualized costs of the NESHAP, including emission controls and associated monitoring equipment, are estimated at $1.4 million and $862,000/yr, respectively.

C. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, the Agency 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 funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If the Agency complies by consulting, Executive Order 12875 requires the Agency to provide to the Office of Management and Budget a description of the extent of the Agency's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on State, local or tribal governments, because they do not own or operate any sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nevertheless, in developing this rule, EPA consulted with States to enable them to provide meaningful and timely input in the development of this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the 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 by State, local and tribal governments, in the aggregate, or by 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 the 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 the 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 the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The EPA projects that annual economic impacts would be far less than $100 million. Thus, today's final rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these final rules contain no regulatory requirements that might significantly or uniquely affect small governments because they do not impose any enforceable duties on small governments; such governments own or operate no sources subject to these proposed rules and therefore would not be required to purchase control systems to meet the requirements of these proposed rules.

E. Regulatory Flexibility

The Agency has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The Agency has also determined that this rule will not have a significant economic impact on a substantial number of small entities. The Agency has found that two of the twenty-one firms that potentially could be subject to the standards are small firms. Of the two, data indicate that one is an area source which would not be covered by the standards. The second source could be major and subject to the requirements of the standards. Information available to the Agency shows that the second source is able to achieve the control levels of the NESHAP using existing equipment. The testing, monitoring, recordkeeping and reporting requirements are essentially identical to current requirements and, thus, should cause little or no change in these burdens.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Agency 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). This rule will be effective on the date of publication in the **Federal Register**.

G. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0361.

The information to be collected includes the results of annual performance testing to be conducted to demonstrate compliance with the emissions limits in the rules. At the time that performance testing will be performed, sources will be required to measure and record operating parameters for the processes and control devices. Following the performance testing, sources will be required under authority of the Clean Air Act to monitor and record operating parameters to assure that they were maintained within approved ranges, based upon values determined during the performance tests. One source will be required to monitor potential emissions from equipment leaks and to keep records of leaks detected and repairs made to correct leaks. The purpose of the monitoring and recordkeeping requirements is to provide implementing agencies information to assure that MACT is implemented on an ongoing basis.

The Agency estimated the projected cost and hour burden of the standards. The average annual reporting burden was estimated to be 132 hours per response. There will be fifteen likely respondents and reports will required twice a year. The total burden would equate to 3790 hours per year nationwide and the corresponding cost was estimated to be $121,773 per year. The total capital cost of the monitoring devices was estimated to be $564,200 of which the major cost would be for the installation of sensors to measure and record the flow of scrubbing liquid to the control devices. The annualized cost of that capital would be $53,200 per year and the operation and maintenance of the monitoring equipment was estimated as $13,300 per year. Thus, the total annualized capital and operation and maintenance costs were estimated to be $66,500 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9, § 9.1 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), directs all Federal agencies to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adapted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the requirements of the NTTAA, today's rulemaking incorporates the analytical methods of two consensus standard bodies. Instead of developing its own methods for determining the phosphate content of feedstocks to the processes covered by the standards, the Agency is incorporating by reference into today's rules certain analytical protocols of the Association of Official Analytical Chemists and of The Association of Florida Phosphate Chemists.

Also, consistant with the NTTAA, the EPA conducted a search to identify voluntary consensus standards for emissions test methods. The search identified 17 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 12 of the candidate consensus standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Five of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date. This rule requires standard EPA methods known to the industry and States. Approved alternative methods also may be used with prior EPA epproval.

I. Executive Order 13045

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885,

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

This final rule is not subject to E.O. 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.

J. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on the communities of Indian tribal governments, because they do not own or operate any sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

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

Dated: April 14, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et. seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding new entries under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * *	
63.602–63.603	2060–0361
63.605–63.608	2060–0361
63.625–63.628	2060–0361
63.630	2060–0361
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

2. Section 63.14 is amended by adding new paragraphs (g) and (h) to read as follows:

§ 63.14 Incorporation by Reference.

* * * * *

(g) The materials listed below are available for purchase from AOAC International, Customer Services, Suite 400, 2200 Wilson Boulevard, Arlington, Virginia, 22201–3301, Telephone (703) 522–3032, Fax (703) 522–5468.

(1) AOAC Official Method 978.01 Phosphorus (Total) in Fertilizers, Automated Method, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(2) AOAC Official Method 969.02 Phosphorus (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(3) AOAC Official Method 962.02 Phosphorus (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(4) AOAC Official Method 957.02 Phosphorus (Total) in Fertilizers, Preparation of Sample Solution, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(5) AOAC Official Method 929.01 Sampling of Solid Fertilizers, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(6) AOAC Official Method 929.02 Preparation of Fertilizer Sample, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(7) AOAC Official Method 958.01 Phosphorus (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(h) The materials listed below are available for purchase from The Association of Florida Phosphate Chemists, P.O. Box 1645, Bartow, Florida, 33830, Book of Methods Used and Adopted By The Association of Florida Phosphate Chemists, Seventh Edition 1991, IBR.

(1) Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample, IBR approved for § 63.606(c)(3)(ii) and § 63.626(c)(3)(ii).

(2) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus—P_2O_5 or $Ca_3(PO_4)_2$, Method A-Volumetric Method, IBR approved for § 63.606(c)(3)(ii) and § 63.626(c)(3)(ii).

(3) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B—Gravimetric Quimociac Method, IBR

approved for § 63.606(c)(3)(ii) and § 63.626(c)(3)(ii).

(4) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method C—Spectrophotometric Method, IBR approved for § 63.606(c)(3)(ii) and § 63.626(c)(3)(ii).

(5) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A—Volumetric Method, IBR approved for § 63.606(c)(3)(ii), § 63.626(c)(3)(ii), and § 63.626(d)(3)(v).

(6) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B—Gravimetric Quimociac Method, IBR approved for § 63.606(c)(3)(ii), § 63.626(c)(3)(ii), and § 63.626(d)(3)(v).

(7) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C—Spectrophotometric Method, IBR approved for § 63.606(c)(3)(ii), § 63.626(c)(3)(ii), and § 63.626(d)(3)(v).

* * * * *

3. Part 63 is amended by adding subpart AA consisting of §§ 63.600 through 63.610 to read as follows:

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

Sec.
63.600 Applicability.
63.601 Definitions.
63.602 Standards for existing sources.
63.603 Standards for new sources.
63.604 Operating requirements.
63.605 Monitoring requirements.
63.606 Performance tests and compliance provisions.
63.607 Notification, recordkeeping, and reporting requirements.
63.608 Applicability of general provisions.
63.609 Compliance dates.
63.610 Exemption from new source performance standards.

Appendix A to Subpart AA of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart AA

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

§ 63.600 Applicability.

(a) Except as provided in paragraphs (c) and (d) of this section, the requirements of this subpart apply to the owner or operator of each phosphoric acid manufacturing plant.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAPs) emitted from the following new or existing affected sources at a phosphoric acid manufacturing plant:

(1) Each wet-process phosphoric acid process line. The requirements of this subpart apply to the following emission points which are components of a wet-process phosphoric acid process line: reactors, filters, evaporators, and hot wells;

(2) Each evaporative cooling tower at a phosphoric acid manufacturing plant;

(3) Each phosphate rock dryer located at a phosphoric acid manufacturing plant;

(4) Each phosphate rock calciner located at a phosphoric acid manufacturing plant;

(5) Each superphosphoric acid process line. The requirements of this subpart apply to the following emission points which are components of a superphosphoric acid process line: evaporators, hot wells, acid sumps, and cooling tanks; and

(6) Each purified acid process line. The requirements of this subpart apply to the following emission points which are components of a purified phosphoric acid process line: solvent extraction process equipment, solvent stripping and recovery equipment, seal tanks, carbon treatment equipment, cooling towers, storage tanks, pumps and process piping.

(c) The requirements of this subpart do not apply to the owner or operator of a new or existing phosphoric acid manufacturing plant that is not a major source as defined in § 63.2.

(d) The provisions of this subpart do not apply to research and development facilities as defined in § 63.601.

§ 63.601 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

Equivalent P_2O_5 feed means the quantity of phosphorus, expressed as phosphorous pentoxide, fed to the process.

Evaporative cooling tower means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to remove heat from process water by direct contact.

Exceedance means a departure from an indicator range established under this subpart, consistent with any averaging period specified for averaging the results of the monitoring.

HAP metals mean those metals and their compounds (in particulate or volatile form) that are included on the list of hazardous air pollutants in section 112 of the Clean Air Act. HAP metals include, but are not limited to: antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium expressed as particulate matter as measured by the methods and procedures in this subpart or an approved alternative method. For the purposes of this subpart, HAP metals are expressed as particulate matter as measured by 40 CFR part 60, appendix A, Method 5.

Phosphate rock calciner means the equipment used to remove moisture and organic matter from phosphate rock through direct or indirect heating.

Phosphate rock dryer means the equipment used to reduce the moisture content of phosphate rock through direct or indirect heating.

Phosphate rock feed means all material entering any phosphate rock dryer or phosphate rock calciner including moisture and extraneous material as well as the following ore materials: fluorapatite, hydroxylapatite, chlorapatite, and carbonateapatite.

Purified phosphoric acid process line means any process line which uses a HAP as a solvent in the separation of impurities from the product acid for the purposes of rendering that product suitable for industrial, manufacturing or food grade uses.

Research and development facility means research or laboratory operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and where the facility is not engaged in the manufacture of products for commercial sale in commerce or other off-site distribution, except in a de minimis manner.

Superphosphoric acid process line means any process line which concentrates wet-process phosphoric acid to 66 percent or greater P_2O_5 content by weight.

Total fluorides means elemental fluorine and all fluoride compounds, including the HAP hydrogen fluoride, as measured by reference methods specified in 40 CFR part 60, appendix A , Method 13 A or B, or by equivalent or alternative methods approved by the Administrator pursuant to § 63.7(f).

Wet process phosphoric acid process line means any process line manufacturing phosphoric acid by reacting phosphate rock and acid.

§ 63.602 Standards for existing sources.

(a) *Wet process phosphoric acid process line.* On and after the date on which the performance test required to

be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 10.0 gram/metric ton of equivalent P_2O_5 feed (0.020 lb/ton).

(b) *Superphosphoric acid process line.*

(1) *Vacuum evaporation process.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 5.0 gram/metric ton of equivalent P_2O_5 feed (0.010 lb/ton).

(2) *Submerged combustion process.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 100.0 gram/metric ton of equivalent P_2O_5 feed (0.20 lb/ton).

(c) *Phosphate rock dryer.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.10750 kilogram/metric ton of phosphate rock feed (0.2150 lb/ton).

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.1380 gram per dry standard cubic meter (g/dscm) [0.060 grains per dry standard cubic foot (gr/dscf)].

(e) *Evaporative cooling tower.* No owner or operator shall introduce into any evaporative cooling tower any liquid effluent from any wet scrubbing device installed to control emissions from process equipment. Each owner or operator of an affected source subject to this paragraph (e) must certify to the Administrator annually that he/she has complied with the requirements contained in this section.

(f) *Purified phosphoric acid process line.*

(1) Each owner or operator subject to the provisions of this subpart shall comply with the provisions of subpart H of this part.

(2) For any existing purified phosphoric acid process line, any of the following shall constitute a violation of this subpart:

(i) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of twenty parts per million for each product acid stream.

(ii) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of thirty parts per million for each raffinate stream.

(iii) A daily average chiller stack exit gas stream temperature in excess of fifty degrees Fahrenheit.

§ 63.603 Standards for new sources.

(a) *Wet process phosphoric acid process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 6.750 gram/metric ton of equivalent P_2O_5 feed (0.01350 lb/ton).

(b) *Superphosphoric acid process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 4.350 gram/metric ton of equivalent P_2O_5 feed (0.00870 lb/ton).

(c) *Phosphate rock dryer.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.030 kilogram/metric ton per megagram of phosphate rock feed (0.060 lb/ton).

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.0920 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)].

(e) *Evaporative cooling tower.* No owner or operator shall introduce into any evaporative cooling tower any liquid effluent from any wet scrubbing device installed to control emissions from process equipment. Each owner or operator of an affected source subject to this paragraph (e) must certify to the Administrator annually that he/she has complied with the requirements contained in this section.

(f) *Purified phosphoric acid process line.*

(1) Each owner or operator subject to the provisions of this subpart shall comply with the provisions of subpart H of this part.

(2) For any new purified phosphoric acid process line, any of the following shall constitute a violation of this subpart:

(i) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of twenty parts per million for each product acid stream.

(ii) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of thirty parts per million for each raffinate stream.

(iii) A daily average chiller stack exit gas stream temperature in excess of fifty degrees Fahrenheit.

§ 63.604 Operating requirements.

On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, the owner/operator using a wet scrubbing emission control system must maintain three-hour averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber within the allowable ranges established pursuant to the requirements of § 63.605(d)(1) or (2).

§ 63.605 Monitoring requirements.

(a) Each owner or operator of a new or existing wet-process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, or phosphate rock calciner subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record the mass flow of phosphorus-bearing feed material to the process. The monitoring system shall have an accuracy of ±5 percent over its operating range.

(b)(1) Each owner or operator of a new or existing wet-process phosphoric acid process line or superphosphoric acid process line subject to the provisions of this subpart shall maintain a daily record of equivalent P_2O_5 feed by first determining the total mass rate in metric ton/hour of phosphorus bearing feed using a monitoring system for

measuring mass flowrate which meets the requirements of paragraph (a) of this section and then by proceeding according to § 63.606(c)(3).

(2) Each owner or operator of a new or existing phosphate rock calciner or phosphate rock dryer subject to the provisions of this subpart shall maintain a daily record of phosphate rock feed by determining the total mass rate in metric ton/hour of phosphorus bearing feed using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a) of this section.

(c) Each owner or operator of a new or existing wet-process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer or phosphate rock calciner using a wet scrubbing emission control system shall install, calibrate, maintain, and operate the following monitoring systems:

(1) A monitoring system which continuously measures and permanently records the pressure drop across each scrubber in the process scrubbing system in 15-minute block averages. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(2) A monitoring system which continuously measures and permanently records the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system in 15-minute block averages. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(d) Following the date on which the performance test required in § 63.606 is completed, the owner or operator of a new or existing affected source using a wet scrubbing emission control system and subject to emissions limitations for total fluorides or particulate matter contained in this subpart must establish allowable ranges for operating parameters using the methodology of either paragraph (d)(1) or (2) of this section:

(1) The allowable range for the daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system is ± 20 percent of the baseline average value determined as a requirement of § 63.606(c)(4), (d)(4), or (e)(2). The Administrator retains the right to reduce the ± 20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard, but, in no instance shall the adjustment be reduced to less than ± 10 percent. The owner or operator must notify the Administrator of the baseline average value and must notify the Administrator each time that the baseline value is changed as a result of the most recent performance test. The baseline average values used for compliance shall be based on the values determined during the most recent performance test. The new baseline average value shall be effective on the date following the performance test.

(2) The owner or operator of any new or existing affected source shall establish, and provide to the Administrator for approval, allowable ranges of baseline average values for the pressure drop across and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with this subpart. Allowable ranges may be based upon baseline average values recorded during previous performance tests using the test methods required in this subpart and established in the manner required in § 63.606(c)(4), (d)(4), or (e)(2). As an alternative, the owner or operator can establish the allowable ranges of baseline average values using the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.606(c)(4), (d)(4), or (e)(2). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to establish the allowable ranges were obtained. The allowable ranges of baseline average values developed pursuant to the provisions of this paragraph must be submitted to the Administrator for approval. The owner or operator must request and obtain approval of the Administrator for changes to the allowable ranges of baseline values. When a source using the methodology of this paragraph is retested, the owner operator shall determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters from previous tests. Any new allowable ranges of baseline average values resulting from the most recent performance test shall be effective on the date following the retest. Until changes to allowable ranges of baseline average values are approved by the Administrator, the allowable ranges for use in § 63.604 shall be based upon the range of baseline average values proposed for approval.

(e) Each owner or operator of a new or existing purified phosphoric acid process line shall:

(1) Install, calibrate, maintain, and operate a monitoring system which continuously measures and permanently records the stack gas exit temperature for each chiller stack.

(2) Measure and record the concentration of methyl isobutyl ketone in each product acid stream and each raffinate stream once daily.

§ 63.606 Performance tests and compliance provisions.

(a)(1) On or before the applicable compliance date in § 63.609 and once per annum thereafter, each owner or operator of a phosphoric acid manufacturing plant shall conduct a performance test to demonstrate compliance with the applicable emission standard for each existing wet-process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, and phosphate rock calciner. The owner or operator shall conduct the performance test according to the procedures in subpart A of this part and in this section.

(2) As required by § 63.7(a)(2) and once per annum thereafter, each owner or operator of a phosphoric acid manufacturing plant shall conduct a performance test to demonstrate compliance with the applicable emission standard for each new wet-process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, and phosphate rock calciner. The owner or operator shall conduct the performance test according to the procedures in subpart A of this part and in this section.

(b) In conducting performance tests, each owner or operator of an affected source shall use as reference methods and procedures the test methods in 40 CFR part 60, appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(c) Each owner or operator of a new or existing wet-process phosphoric acid process line or superphosphoric acid process line shall determine compliance with the applicable total fluorides standards in § 63.602 or § 63.603 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (PK)$$

Where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si} = concentration of total fluorides from emission point ''i,'' mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point ''i,'' dscm/hr (dscf/hr).

N = number of emission points associated with the affected facility.

P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).

K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13B is used, the fusion of the filtered material described in Section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in section 7.3.3 and 7.3.4. in Method 13 A, may be omitted. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed using the following equation:

$$P = M_p R_p$$

Where:

M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).

R_p = P_2O_5 content, decimal fraction.

(i) The accountability system described in § 63.605(a) and (b) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The P_2O_5 content (R_p) of the feed shall be determined using as appropriate the following methods (incorporated by reference—see 40 CFR 63.14) specified in the Book of Methods Used and Adopted By The Association Of Florida Phosphate Chemists, Seventh Edition 1991, where applicable:

(A) Section IX, Methods of Analysis For Phosphate Rock, No. 1 Preparation of Sample.

(B) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method A-Volumetric Method.

(C) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B-Gravimetric Quimociac Method.

(D) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method C-Spectrophotometric Method.

(E) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A-Volumetric Method.

(F) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B-Gravimetric Quimociac Method.

(G) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C-Spectrophotometric Method.

(4) To comply with § 63.605(d) (1) or (2), the owner or operator shall use the monitoring systems in § 63.605(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.605(d) (1) or (2).

(d) Each owner or operator of a new or existing phosphate rock dryer shall demonstrate compliance with the particulate matter standards in § 63.602 or § 63.603 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E = (C_s Q_{sd})/(P K)$$

Where:

E = emission rate of particulate matter, kg/Mg (lb/ton) of phosphate rock feed.

C_s = concentration of particulate matter, g/dscm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P = phosphate rock feed rate, Mg/hr (ton/hr).

K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 (40 CFR part 60, appendix A) shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The system described in § 63.605(a) shall be used to determine the phosphate rock feed rate (P) for each run.

(4) To comply with § 63.605(d) (1) or (2), the owner or operator shall use the monitoring systems in § 63.605(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the particulate matter runs. The arithmetic average of the one-hour averages determined during the three test runs shall be used as the baseline average values for the purposes of § 63.605(d) (1) or (2).

(e) Each owner or operator of a new or existing phosphate rock calciner shall demonstrate compliance with the particulate matter standards in §§ 63.602 and 63.603 as follows:

(1) Method 5 (40 CFR part 60, appendix A) shall be used to determine the particulate matter concentration. The sampling time and volume for each test run shall be at least 60 minutes and 1.70 dscm.

(2) To comply with § 63.605(d) (1) or (2), the owner or operator shall use the monitoring systems in § 63.605(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the particulate matter runs. The arithmetic average of the one-hour averages determined during the three test runs shall be used as the baseline average values for the purposes of § 63.605(d) (1) or (2).

§ 63.607 Notification, recordkeeping, and reporting requirements.

(a) Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in § 63.9.

(b) Each owner or operator subject to the requirements of this subpart shall comply with the recordkeeping requirements in § 63.10.

(c) The owner or operator of an affected source shall comply with the reporting requirements specified in § 63.10 as follows:

(1) *Performance test report.* As required by § 63.10, the owner or operator shall report the results of the initial and annual performance tests as part of the notification of compliance status required in § 63.9.

(2) *Excess emissions report.* As required by § 63.10, the owner or operator of an affected source shall submit an excess emissions report for any exceedance of an operating parameter limit. The report shall contain the information specified in § 63.10. When no exceedances of an operating parameter have occurred, such information shall be included in the report. The report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half. If exceedances are reported, the owner or operator shall report quarterly until a request to reduce reporting frequency is approved as described in § 63.10.

(3) *Summary report.* If the total duration of control system exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, the owner or operator shall submit a summary report containing the information specified in § 63.10 rather than the full excess emissions report, unless required by the Administrator. The summary report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half.

(4) If the total duration of control system operating parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, the owner or operator shall submit a summary report and the excess emissions report.

§ 63.608 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are applicable to the owner or operator subject to the requirements of this subpart are shown in appendix A to this subpart.

§ 63.609 Compliance dates.

(a) Each owner or operator of an existing affected source at a phosphoric acid manufacturing plant shall achieve compliance with the requirements of this subpart no later than June 10, 2002. Notwithstanding the requirements of § 63.7(a)(2)(iii), each owner or operator of an existing source at an affected existing phosphoric acid manufacturing plant shall fulfill the applicable requirements of § 63.606 no later than June 10, 2002.

(b) Each owner or operator of a phosphoric acid manufacturing plant that commences construction or reconstruction of an affected source after December 27, 1996 shall achieve compliance with the requirements of this subpart upon startup of operations or by June 10, 1999, whichever is later.

§ 63.610 Exemption from new source performance standards.

Any affected source subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR part 60, subpart T, subpart U or subpart NN. To be exempt, a source must have a current operating permit pursuant to Title V of the Act and the source must be in compliance with all requirements of this subpart. For each affected source, this exemption is effective upon the date that the owner or operator demonstrates to the Administrator that the requirements of §§ 63.604, 63.605 and 63.606 have been met.

APPENDIX A TO SUBPART AA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA

40 CFR citation	Requirement	Applies to subpart AA	Comment
63.1(a)(1) through (4)	General Applicability	Yes.	
63.1(a)(5)		No	[Reserved].
63.1(a)(6) through (8)		Yes.	
63.1(a)(9)		No	[Reserved].
63.1(a)(10) through (14)		Yes.	
63.1(b)	Initial Applicability Determination	Yes.	
63.1(c)(1)	Applicability After Standard Established	Yes.	
63.1(c)(2)		Yes.	Some plants may be area sources.
63.1(c)(3)		No	[Reserved].
63.1(c)(4) and (5)		Yes.	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions	Yes.	Additional definitions in § 63.601.
63.3	Units and Abbreviations	Yes.	
63.4(a)(1) through (3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)		Yes.	
63.4(b) and (c)	Circumvention/Severability	Yes.	
63.5(a)	Construction/Reconstruction Applicability	Yes.	
63.5(b)(1)	Existing, New, Reconstructed Sources Requirements.	Yes.	
63.5(b)(2)		No	[Reserved].
63.5(b)(3) through (6)		Yes.	
63.5(c)		No	[Reserved].
63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes.	
63.5(e)	Approval of Construction/Reconstruction	Yes.	
63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
63.6(a)	Compliance with Standards and Maintenance Applicability.	Yes.	
63.6(b)(1) through (5)	New and Reconstructed Sources Dates	Yes.	See also § 63.609.
63.6(b)(6)		No	[Reserved].
63.6(b)(7)		Yes.	
63.6(c)(1)	Existing Sources Dates	Yes.	§ 63.609 specifies dates.
63.6(c)(2)		Yes.	
63.6(c)(3) and (4)		No	[Reserved].
63.6(c)(5)		Yes.	
63.6(d)		No	[Reserved].
63.6(e)(1) and (2)	Operation & Maintenance Requirements	Yes.	§ 63.604 specifies additional requirements.

APPENDIX A TO SUBPART AA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA—Continued

40 CFR citation	Requirement	Applies to subpart AA	Comment
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes.	§ 63.604 specifies additional requirements.
63.6(f)	Compliance with Emission Standards	Yes.	§§ 63.602 through 605 specify additional requirements.
63.6(g)	Alternative Standard	Yes.	
63.6(h)	Compliance with Opacity/VE Standards	No	Subpart AA does not include VE/opacity standards.
63.6(i)(1) through (14)	Extension of Compliance	Yes.	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)		Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)	Performance Test Requirements Applicability	Yes.	§ 63.609(a) applies rather than § 63.7(a)(2)(iii).
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)	Conduct of Tests	Yes.	§§ 63.604 and 63.605 specify additional requirements.
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	
63.8(a)(1)	Monitoring Requirements Applicability	Yes.	
63.8(a)(2)		No	Subpart AA does not require CMS performance specifications.
63.8(a)(3)		No	[Reserved].
63.8(a)(4)		Yes.	
63.8(b)	Conduct of Monitoring	Yes.	
63.8(c)(1) through (4)	CMS Operation/Maintenance	Yes.	
63.8(c)(5) through (8)		No	Subpart AA does not require COMS/CEMS or CMS performance specifications.
63.8(d)	Quality Control	Yes.	
63.8(e)	CMS Performance Evaluation	No	Subpart AA does not require CMS performance evaluations
63.8(f)(1) through (5)	Alternative Monitoring Method	Yes.	
63.8(f)(6)	Alternative to RATA Test	No	Subpart AA does not require CEMS.
63.8(g)(1)	Data Reduction	Yes.	
63.8(g)(2)		No	Subpart AA does not require COMS or CEMS
63.8(g)(3) through (5)		Yes.	
63.9(a)	Notification Requirements Applicability	Yes.	
63.9(b)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
63.9(f)	Notification of VE/Opacity Test	No	Subpart AA does not include VE/opacity standards.
63.9(g)	Additional CMS Notifications	No	Subpart AA does not require CMS performance evaluation, COMS, or CEMS.
63.9(h)(1) through (3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No	[Reserved].
63.9(h)(5) and (6)		Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting-Applicability	Yes.	
63.10(b)	General Recordkeeping Requirements	Yes.	
63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
63.10(c)(2) through (4)		No	[Reserved].
63.10(c)(5)		Yes.	
63.10(c)(6)		No	Subpart AA does not require CMS performance specifications.
63.10(c)(7) and (8)		Yes.	
63.10(c)(9)		No	[Reserved].
63.10(c)(10) through (13)		Yes.	
63.10(c)(14)		No	Subpart AA does not require a CMS quality control program.
63.10(c)(15)		Yes.	
63.10(d)(1)	General Reporting Requirements	Yes.	

APPENDIX A TO SUBPART AA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA—Continued

40 CFR citation	Requirement	Applies to subpart AA	Comment
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	No	Subpart AA does not include VE/opacity standards.
63.10(d)(4) and (5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes.	
63.10(e)(1) and (2)	Additional CMS Reports	No	Subpart AA does not require CEMS or CMS performance evaluations.
63.10(e)(3)	Excess Emissions/CMS Performance Reports	Yes.	§ 63.606(c)(2) includes additional requirements. A CMS performance report is not required.
63.10(e)(4)	COMS Data Reports	No	Subpart AA does not require COMS.
63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
63.11(a)	Control Device Requirements Applicability	Yes.	
63.11(b)	Flares	No	Flares not applicable.
63.12	State Authority and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporation by Reference	Yes.	
63.15	Information Availability/Confidentiality	Yes.	

4. Part 63 is amended by adding subpart BB consisting of §§ 63.620 through 63.631 to read as follows:

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

Sec.
63.620 Applicability
63.621 Definitions.
63.622 Standards for existing sources.
63.623 Standards for new sources.
63.624 Operating requirements.
63.625 Monitoring requirements.
63.626 Performance tests and compliance provisions.
63.627 Notification, recordkeeping, and reporting requirements.
63.628 Applicability of general provisions.
63.629 Miscellaneous requirements.
63.630 Compliance dates.
63.631 Exemption from new source performance standards.

Appendix A to Subpart BB of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart BB

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

§ 63.620 Applicability.

(a) Except as provided in paragraphs (c) and (d) of this section, the requirements of this subpart apply to the owner or operator of each phosphate fertilizers production plant.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAPs) emitted from the following new or existing affected sources at a phosphate fertilizers production plant:

(1) Each diammonium and/or monoammonium phosphate process line. The requirements of this subpart apply to the following emission points which are components of a diammonium and/or monoammonium phosphate process line: reactors, granulators, dryers, coolers, screens, and mills.

(2) Each granular triple superphosphate process line. The requirements of this subpart apply to the following emission points which are components of a granular triple superphosphate process line: mixers, curing belts (dens), reactors, granulators, dryers, coolers, screens, and mills.

(3) Each granular triple superphosphate storage building. The requirements of this subpart apply to the following emission points which are components of a granular triple superphosphate storage building: storage or curing buildings, conveyors, elevators, screens and mills.

(c) The requirements of this subpart do not apply to the owner or operator of a new or existing phosphate fertilizers production plant that is not a major source as defined in § 63.2.

(d) The provisions of this subpart do not apply to research and development facilities as defined in § 63.621.

§ 63.621 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

Diammonium and/or monoammonium phosphate process line means any process line manufacturing granular diammonium and/or monoammonium phosphate by reacting ammonia with phosphoric acid which has been derived from or manufactured by reacting phosphate rock and acid.

Equivalent P_2O_5 feed means the quantity of phosphorus, expressed as phosphorous pentoxide, fed to the process.

Equivalent P_2O_5 stored means the quantity of phosphorus, expressed as phosphorus pentoxide, being cured or stored in the affected facility.

Exceedance means a departure from an indicator range established for monitoring under this subpart, consistent with any averaging period specified for averaging the results of the monitoring.

Fresh granular triple superphosphate means granular triple superphosphate produced within the preceding 72 hours.

Granular triple superphosphate process line means any process line, not including storage buildings, manufacturing granular triple superphosphate by reacting phosphate rock with phosphoric acid.

Granular triple superphosphate storage building means any building curing or storing fresh granular triple superphosphate.

Research and development facility means research or laboratory operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and where the facility is not engaged in the manufacture of products for commercial sale in commerce or other off-site distribution, except in a de minimis manner.

Total fluorides means elemental fluorine and all fluoride compounds, including the HAP hydrogen fluoride, as measured by reference methods

specified in 40 CFR part 60, appendix A, Method 13 A or B, or by equivalent or alternative methods approved by the Administrator pursuant to § 63.7(f).

§ 63.622 Standards for existing sources.

(a) *Diammonium and/or monoammonium phosphate process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 30 grams/metric ton of equivalent P_2O_5 feed (0.060 lb/ton).

(b) *Granular triple superphosphate process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 75 grams/metric ton of equivalent P_2O_5 feed (0.150 lb/ton).

(c) *Granular triple superphosphate storage building.*

(1) On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 0.250 grams/hr/metric ton of equivalent P_2O_5 stored (5.0×10^{-4} lb/hr/ton of equivalent P_2O_5 stored).

(2) No owner or operator subject to the provisions of this subpart shall ship fresh granular triple superphosphate from an affected facility.

§ 63.623 Standards for new sources.

(a) *Diammonium and/or monoammonium phosphate process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 29.0 grams/metric ton of equivalent P_2O_5 feed (0.0580 lb/ton).

(b) *Granular triple superphosphate process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 61.50 grams/metric ton of equivalent P_2O_5 feed (0.1230 lb/ton).

(c) *Granular triple superphosphate storage building*

(1) On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 0.250 grams/hr/metric ton of equivalent P_2O_5 stored (5.0×10^{-4} lb/hr/ton of equivalent P_2O^5 stored).

(2) No owner or operator subject to the provisions of this subpart shall ship fresh granular triple superphosphate from an affected facility.

§ 63.624 Operating requirements.

On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, the owner/operator using a wet scrubbing emission control system must maintain three-hour averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber within the allowable ranges established pursuant to the requirements of § 63.625(f)(1) or (2).

§ 63.625 Monitoring requirements.

(a) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate process line or granular triple superphosphate process line subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record the mass flow of phosphorus-bearing feed material to the process. The monitoring system shall have an accuracy of ±5 percent over its operating range.

(b) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate process line or granular triple superphosphate process line subject to the provisions of this subpart shall maintain a daily record of equivalent P_2O_5 feed by first determining the total mass rate in metric ton/hour of phosphorus bearing feed using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a) of this section and then by proceeding according to § 63.626(c)(3).

(c) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, or granular triple superphosphate storage building using a wet scrubbing emission control system shall install, calibrate, maintain, and operate the following monitoring systems:

(1) A monitoring system which continuously measures and permanently records the pressure drop across each scrubber in the process scrubbing system in 15-minute block averages. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(2) A monitoring system which continuously measures and permanently records the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system in 15-minute block averages. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(d) The owner or operator of any granular triple superphosphate storage building subject to the provisions of this subpart shall maintain an accurate account of granular triple superphosphate in storage to permit the determination of the amount of equivalent P_2O_5 stored.

(e)(1) Each owner or operator of a new or existing granular triple superphosphate storage building subject to the provisions of this subpart shall maintain a daily record of total equivalent P_2O_5 stored by multiplying the percentage P_2O_5 content, as determined by § 63.626(d)(3), times the total mass of granular triple superphosphate stored.

(2) The owner or operator of any granular triple superphosphate storage building subject to the provisions of this subpart shall develop for approval by the Administrator a site-specific methodology including sufficient recordkeeping for the purposes of demonstrating compliance with § 63.622(c)(2) or § 63.623(c)(2), as applicable.

(f) Following the date on which the performance test required in § 63.626 is completed, the owner or operator of a new or existing affected source using a wet scrubbing emission control system and subject to emissions limitations for total fluorides or particulate matter contained in this subpart must establish allowable ranges for operating parameters using the methodology of either paragraph (f)(1) or (2) of this section:

(1) The allowable range for the daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system is ±20 percent of the baseline average value determined as a requirement of § 63.626(c)(4) or (d)(4). The

Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard, but, in no instance shall the adjustment be reduced to less than ±10 percent. The owner or operator must notify the Administrator of the baseline average value and must notify the Administrator each time that the baseline value is changed as a result of the most recent performance test. The baseline average values used for compliance shall be based on the values determined during the most recent performance test. The new baseline average value shall be effective on the date following the performance test.

(2) The owner or operator of any new or existing affected source shall establish, and provide to the Administrator for approval, allowable ranges of baseline average values for the pressure drop across and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with this subpart. Allowable ranges may be based upon baseline average values recorded during previous performance tests using the test methods required in this subpart and established in the manner required in § 63.626(c)(4) or (d)(4). As an alternative, the owner or operator can establish the allowable ranges of baseline average values using the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.626(c)(4) or (d)(4). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to establish the allowable ranges were obtained. The allowable ranges of baseline average values developed pursuant to the provisions of this paragraph must be submitted to the Administrator for approval. The owner or operator must request and obtain approval of the Administrator for changes to the allowable ranges of baseline average values. When a source using the methodology of this paragraph is retested, the owner operator shall determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters from previous tests. Any new allowable ranges of baseline average values resulting from the most recent performance test shall be effective on the date following the retest. Until changes to allowable ranges of baseline average values are approved by the Administrator, the allowable ranges for use in § 63.624 shall be based upon the range of baseline average values proposed for approval.

§ 63.626 Performance tests and compliance provisions.

(a)(1) On or before the applicable compliance date in § 63.630 and once per annum thereafter, each owner or operator of a phosphate fertilizers production plant subject to the provisions of this subpart shall conduct a performance test to demonstrate compliance with the applicable emission standard for each existing diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, or granular triple superphosphate storage building. The owner or operator shall conduct the performance test according to the procedures in subpart A of this part and in this section.

(2) As required by § 63.7(a)(2) and once per annum thereafter, each owner or operator of a phosphate fertilizers production plant subject to the provisions of this subpart shall conduct a performance test to demonstrate compliance with the applicable emission standard for each new diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, or granular triple superphosphate storage building. The owner or operator shall conduct the performance test according to the procedures in subpart A of this part and in this section.

(b) In conducting performance tests, each owner or operator of an affected source shall use as reference methods and procedures the test methods in 40 CFR part 60, appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(c) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate process line or granular triple superphosphate process line shall determine compliance with the applicable total fluorides standards in § 63.622 or § 63.623 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (PK)$$

Where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si} = concentration of total fluorides from emission point ''i,'' mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point ''i,'' dscm/hr (dscf/hr).

N = number of emission points associated with the affected facility.

P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).

K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13 B is used, the fusion of the filtered material described in section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in sections 7.3.3 and 7.3.4 in Method 13 A, may be omitted. The sampling time and sample volume for each run shall be at least one hour and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed using the following equation:

$$P = M_p R_p$$

Where:

M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).

R_p = P_2O_5 content, decimal fraction.

(i) The accountability system described in § 63.625(a) and (b) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The P_2O_5 content (R_p) of the feed shall be determined using as appropriate the following methods (incorporated by reference—see 40 CFR 63.14) specified in the Book of Methods Used and Adopted By The Association Of Florida Phosphate Chemists, Seventh Edition 1991, where applicable:

(A) Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample.

(B) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus—P_2O_5 or $Ca_3(PO_4)_2$, Method A—Volumetric Method.

(C) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B—Gravimetric Quimociac Method.

(D) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or Ca3$(PO_4)_2$, Method C—Spectrophotometric Method.

(E) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A—Volumetric Method.

(F) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate,

Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B—Gravimetric Quimociac Method.

(G) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C—Spectrophotometric Method.

(4) To comply with § 63.625(f)(1) or (2), the owner or operator shall use the monitoring systems in § 63.625(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.625(f)(1) or (2).

(d) Each owner or operator of a new or existing granular triple superphosphate storage building shall determine compliance with the applicable total fluorides standards in § 63.622 or § 63.623 as follows:

(1) The owner or operator shall conduct performance tests only when the following quantities of product are being cured or stored in the facility.

(i) Total granular triple superphosphate is at least 10 percent of the building capacity, and

(ii) Fresh granular triple superphosphate is at least six percent of the total amount of granular triple superphosphate, or

(iii) If the provision in paragraph (d)(1)(ii) of this section exceeds production capabilities for fresh granular triple superphosphate, fresh granular triple superphosphate is equal to at least 5 days maximum production.

(2) In conducting the performance test, the owner or operator shall use as reference methods and procedures the test methods in 40 CFR part 60, appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(3) The owner or operator shall determine compliance with the total fluorides standard in §§ 63.622 and 63.623 as follows:

(i) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (PK)$$

Where:

E = emission rate of total fluorides, g/hr/metric ton (lb/hr/ton) of equivalent P_2O_5 stored.

C_{si} = concentration of total fluorides from emission point ''i,'' mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point ''i,'' dscm/hr (dscf/hr).

N = number of emission points in the affected facility.

P = equivalent P_2O_5 stored, metric tons (tons).

K = conversion factor, 1000 mg/g (453,600 mg/lb).

(ii) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13B is used, the fusion of the filtered material described in section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in Sections 7.3.3 and 7.3.4 in Method 13 A, may be omitted. The sampling time and sample volume for each run shall be at least one hour and 0.85 dscm (30 dscf).

(iii) The equivalent P_2O_5 feed rate (P) shall be computed using the following equation:

$$P = M_p R_p$$

Where:

M_p = amount of product in storage, metric ton (ton).

R_p = P_2O_5 content of product in storage, weight fraction.

(iv) The accountability system described in § 63.625(d) and (e) shall be used to determine the amount of product (M_p) in storage.

(v) The P_2O_5 content (R_p) of the product stored shall be determined using as appropriate the following methods (incorporated by reference—see 40 CFR 63.14) specified in the Book of Methods Used and Adopted By The Association Of Florida Phosphate Chemists, Seventh Edition 1991, where applicable:

(A) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method A—Volumetric Method.

(B) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method B—Gravimetric Quimociac Method.

(C) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method C—Spectrophotometric Method, or,

(vi) The P_2O_5 content (R_p) of the product stored shall be determined using as appropriate the following methods (incorporated by reference—see 40 CFR 63.14) specified in the Official Methods of Analysis of AOAC International, sixteenth Edition, 1995, where applicable:

(A) AOAC Official Method 957.02 Phosphorus (Total) In Fertilizers, Preparation of Sample Solution.

(B) AOAC Official Method 929.01 Sampling of Solid Fertilizers.

(C) AOAC Official Method 929.02 Preparation of Fertilizer Sample.

(D) AOAC Official Method 978.01 Phosphorus (Total) in Fertilizers, Automated Method.

(E) AOAC Official Method 969.02 Phosphorus (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method.

(F) AOAC Official Method 962.02 Phosphorus (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method.

(G) AOAC Official Method 958.01 Phosphorus (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method.

(4) To comply with § 63.625(f) (1) or (2), the owner or operator shall use the monitoring systems described in § 63.625(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.625(f) (1) or (2).

§ 63.627 Notification, recordkeeping, and reporting requirements.

(a) Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in § 63.9.

(b) Each owner or operator subject to the requirements of this subpart shall comply with the recordkeeping requirements in § 63.10.

(c) The owner or operator of an affected source shall comply with the reporting requirements specified in § 63.10 as follows:

(1) *Performance test report.* As required by § 63.10, the owner or operator shall report the results of the initial and annual performance tests as part of the notification of compliance status required in § 63.9.

(2) *Excess emissions report.* As required by § 63.10, the owner or operator of an affected source shall submit an excess emissions report for any exceedance of an operating parameter limit. The report shall contain the information specified in

§ 63.10. When no exceedances of an operating parameter have occurred, such information shall be included in the report. The report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half. If exceedances are reported, the owner or operator shall report quarterly until a request to reduce reporting frequency is approved as described in § 63.10.

(3) *Summary report.* If the total duration of control system exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, the owner or operator shall submit a summary report containing the information specified in § 63.10 rather than the full excess emissions report, unless required by the Administrator. The summary report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half.

(4) If the total duration of control system operating parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, the owner or operator shall submit a summary report and the excess emissions report.

§ 63.628 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are applicable to the owner or operator subject to the requirements of this subpart are shown in appendix A to this subpart.

§ 63.629 Miscellaneous requirements.

The Administrator retains the authority to approve site-specific test plans for uncontrolled granular triple superphosphate storage buildings developed pursuant to § 63.7(c)(2)(i).

§ 63.630 Compliance dates.

(a) Each owner or operator of an existing affected source at a phosphate fertilizers production plant shall achieve compliance with the requirements of this subpart no later than June 10, 2002. Notwithstanding the requirements of § 63.7(a)(2)(iii), each owner or operator of an existing affected source at a phosphate fertilizers production plant shall fulfill the applicable requirements of § 63.626 no later than June 10, 2002.

(b) Each owner or operator of a phosphate fertilizers production plant that commences construction or reconstruction of an affected source after December 27, 1996 shall achieve compliance with the requirements of this subpart upon startup of operations or by June 10, 1999, whichever is later.

(c) The owner or operator of any existing uncontrolled granular triple superphosphate storage building subject to the provisions of this subpart shall submit for approval by the Administrator a site-specific test plan for each such building according to the provisions of § 63.7(b)(2)(i) no later than June 12, 2000.

§ 63.631 Exemption from new source performance standards.

Any affected source subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR part 60, subpart V, subpart W, or subpart X. To be exempt, a source must have a current operating permit pursuant to Title V of the Act and the source must be in compliance with all requirements of this subpart. For each affected source, this exemption is effective upon the date that the owner or operator demonstrates to the Administrator that the requirements of §§ 63.624, 63.625 and 63.626 have been met.

APPENDIX A TO SUBPART BB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB

40 CFR citation	Requirement	Applies to subpart BB	Comment
63.1(a)(1) through (4)	General Applicability	Yes.	
63.1(a)(5)		No	[Reserved].
63.1(a)(6) through (8)		Yes.	
63.1(a)(9)		No	[Reserved].
63.1(a)(10) through (14)		Yes.	
63.1(b)	Initial Applicability Determination	Yes.	
63.1(c)(1)	Applicability After Standard Established	Yes.	
63.1(c)(2)		Yes	Some plants may be area sources.
63.1(c)(3)		No	[Reserved].
63.1(c)(4) and (5)		Yes.	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions	Yes	Additional definitions in § 63.621.
63.3	Units and Abbreviations	Yes.	
63.4(a)(1) through (3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)		Yes.	
63.4(b) and (c)	Circumvention/Severability	Yes.	
63.5(a)	Construction/Reconstruction Applicability	Yes.	
63.5(b)(1)	Existing, New, Reconstructed Sources Requirements.	Yes.	
63.5(b)(2)		No	[Reserved].
63.5(b)(3) through (6)		Yes.	
63.5(c)		No	[Reserved].
63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
63.5(e)	Approval of Construction/Reconstruction	Yes.	
63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
63.6(a)	Compliance with Standards and Maintenance Applicability.	Yes.	
63.6(b)(1) through (5)	New and Reconstructed Sources Dates	Yes	See also § 63.629.
63.6(b)(6)		No	[Reserved].

APPENDIX A TO SUBPART BB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB—Continued

40 CFR citation	Requirement	Applies to subpart BB	Comment
63.6(b)(7)		Yes.	
63.6(c)(1)	Existing Sources Dates	Yes	§ 63.629 specifies dates.
63.6(c)(2)		Yes.	
63.6(c)(3) and (4)		No	[Reserved].
63.6(c)(5)		Yes.	
63.6(d)		No	[Reserved].
63.6(e)(1) and (2)	Operation & Maintenance Requirements	Yes	§ 63.624 specifies additional requirements.
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes	§ 63.624 specifies additional requirements.
63.6(f)	Compliance with Emission Standards	Yes	§§ 63.622 through 625 specify additional requirements.
63.6(g)	Alternative Standard	Yes.	
63.6(h)	Compliance with Opacity/VE Standards	No	Subpart BB does not include VE/opacity standards.
63.6(i)(1) through (14)	Extension of Compliance	Yes.	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)		Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)	Performance Test Requirements Applicability	Yes	§ 63.629(a) applies rather than § 63.7(a)(2)(iii).
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)	Conduct of Tests	Yes	§§ 63.624 and 63.625 specify additional requirements.
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	
63.8(a)(1)	Monitoring Requirements Applicability	Yes.	
63.8(a)(2)		No	Subpart BB does not require CMS performance specifications.
63.8(a)(3)		No	[Reserved].
63.8(a)(4)		Yes.	
63.8(b)	Conduct of Monitoring	Yes.	
63.8(c)(1) through (4)	CMS Operation/Maintenance	Yes.	
63.8(c)(5) through (8)		No	Subpart BB does not require COMS/CEMS or CMS performance specifications.
63.8(d)	Quality Control	Yes.	
63.8(e)	CMS Performance Evaluation	No	Subpart BB does not require CMS performance evaluations.
63.8(f)(1) through (5)	Alternative Monitoring Method	Yes.	
63.8(f)(6)	Alternative to RATA Test	No	Subpart BB does not require CEMS.
63.8(g)(1)	Data Reduction	Yes.	
63.8(g)(2)		No	Subpart BB does not require COMS or CEMS.
63.8(g)(3) through (5)		Yes.	
63.9(a)	Notification Requirements Applicability	Yes.	
63.9(b)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
63.9(f)	Notification of VE/Opacity Test	No	Subpart BB does not include VE/opacity standards.
63.9(g)	Additional CMS Notifications	No	Subpart BB does not require CMS performance evaluation, COMS, or CEMS.
63.9(h)(1) through (3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No	[Reserved].
63.9(h)(5) and (6)		Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting-Applicability	Yes.	
63.10(b)	General Recordkeeping Requirements	Yes.	
63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
63.10(c)(2) through (4)		No	[Reserved].
63.10(c)(5)		Yes.	

APPENDIX A TO SUBPART BB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB—Continued

40 CFR citation	Requirement	Applies to subpart BB	Comment
63.10(c)(6)		No	Subpart BB does not require CMS performance specifications.
63.10(c)(7) and (8)		Yes.	
63.10(c)(9)		No	[Reserved].
63.10(c)(10) through (13)		Yes.	
63.10(c)(14)		No	Subpart BB does not require a CMS quality control program.
63.10(c)(15)		Yes.	
63.10(d)(1)	General Reporting Requirements	Yes.	
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	No	Subpart BB does not include VE/opacity standards.
63.10(d)(4) and (5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes.	
63.10(e)(1) and (2)	Additional CMS Reports	No	Subpart BB does not require CEMS or CMS performance evaluations.
63.10(e)(3)	Excess Emissions/CMS Performance Reports	Yes	§ 63.626(c)(2) includes additional requirements. A CMS performance report is not required.
63.10(e)(4)	COMS Data Reports	No	Subpart BB does not require COMS.
63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
63.11(a)	Control Device Requirements Applicability	Yes.	
63.11(b)	Flares	No	Flares not applicable.
63.12	State Authority and Delegations	Yes	Authority for approval of site-specific test plans for GTSP storage buildings is retained (see § 63.628(a)).
63.13	Addresses	Yes.	
63.14	Incorporation by Reference	Yes.	
63.15	Information Availability/Confidentiality	Yes.	

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Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Regional Transmission Organizations; Proposed Rule

Regional Transmission Organizations; Intent To Prepare and Environmental Assessment for the Regional Transmission Organizations Rulemaking, Request for Comments on Environmental Issues, and Public Scoping Meeting; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Proposed Rulemaking

May 13, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations under the Federal Power Act (FPA) to facilitate the formation of Regional Transmission Organizations (RTOs). The Commission proposes to require that each public utility that owns, operates, or controls facilities for the transmission of electric energy in interstate commerce make certain filings with respect to forming and participating in an RTO. The Commission also proposes minimum characteristics and functions that a transmission entity must satisfy in order to be considered to be an RTO.

DATES: Initial comments are due August 16, 1999. Reply comments are due September 15, 1999.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

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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, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cips.master@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 Home page 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, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

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I. Introduction and Summary

In 1996 the Commission put in place the foundation necessary for

competitive wholesale power markets in this country—open access transmission.[1] Since that time, the industry has undergone sweeping restructuring activity, including a movement by many states to develop retail competition, the growing divestiture of generation plants by traditional electric utilities, a significant increase in the number of mergers among traditional electric utilities and among electric utilities and gas pipeline companies, large increases in the number of power marketers and independent generation facility developers entering the marketplace, and the establishment of independent system operators (ISOs) as managers of large parts of the transmission system. Trade in bulk power markets has continued to increase significantly and the Nation's transmission grid is being used more heavily and in new ways.

As a result, the traditional means of grid management is showing signs of strain and may be inadequate to support the efficient and reliable operation that is needed for the continued development of competitive electricity markets. In addition, there are indications that continued discrimination in the provision of transmission services by vertically integrated utilities may also be impeding fully competitive electricity markets. These problems may be depriving the Nation of the benefits of lower prices, more reliance on market solutions, and lighter-handed regulation that competitive markets can bring.

If electricity consumers are to realize the full benefits that competition can bring to wholesale markets, the Commission must address the extent of these problems and appropriate ways of mitigating them. Competition in wholesale electricity markets is the best way to protect the public interest and ensure that electricity consumers pay the lowest price possible for reliable service. We believe that further steps may need to be taken to address grid management if we are to achieve fully competitive power markets. We further believe that regional approaches to the numerous issues affecting the industry may be the best means to eliminate remaining impediments to properly functioning competitive markets.

Our objective is for all transmission owning entities in the Nation, including non-public utility entities, to place their transmission facilities under the control of appropriate regional transmission institutions in a timely manner. We seek to accomplish our objective by encouraging voluntary participation. We are therefore proposing in this rulemaking minimum characteristics and functions for appropriate regional transmission institutions; a collaborative process by which public utilities and non-public utilities that own, operate or control interstate transmission facilities, in consultation with the state officials as appropriate, will consider and develop regional transmission institutions; a willingness to consider incentive pricing on a case-specific basis and an offer of non-monetary regulatory benefits, such as deference in dispute resolution, reduced or eliminated codes of conduct, and streamlined filing and approval procedures; and a time line for public utilities to make appropriate filings with the Commission and initiate operation of regional transmission institutions. As a result, we expect jurisdictional utilities to form Regional Transmission Organizations (RTOs).

As discussed in detail herein, regional institutions can address the operational and reliability issues now confronting the industry, and any residual discrimination in transmission services that can occur when the operation of the transmission system remains in the control of a vertically integrated utility. Appropriate regional transmission institutions could: (1) improve efficiencies in transmission grid management[2]; (2) improve grid reliability; (3) remove the remaining opportunities for discriminatory transmission practices; (4) improve market performance; and (5) facilitate lighter handed regulation.

Thus, we believe that appropriate regional transmission institutions could successfully address the existing impediments to efficient grid operation and competition and could consequently benefit consumers through lower electricity rates resulting from a wider choice of services and service providers. There are likely to be substantial cost savings brought about by regional transmission institutions.

In light of important questions regarding the complexity of grid regionalization raised by state regulators and applicants in individual cases, we are proposing a flexible approach. We are not proposing to mandate that utilities participate in a regional transmission institution by a date certain. Instead, we act now to ensure that they consider doing so in good faith. Moreover, the Commission is not proposing a ''cookie cutter'' organizational format for regional transmission institutions or the establishment of fixed or specific regional boundaries under section 202(a) of the FPA.

Rather, the Commission is proposing to establish fundamental characteristics and functions for appropriate regional transmission institutions. We will designate institutions that satisfy all of the minimum characteristics and functions as Regional Transmission Organizations (RTOs). Hereinafter, the term Regional Transmission Organization, or RTO, will refer to an organization that satisfies all of the minimum characteristics and functions.

Pursuant to our authority under section 205 of the FPA to ensure that rates, terms and conditions of transmission and sales for resale in interstate commerce by public utilities are just, reasonable and not unduly discriminatory or preferential, and our authority under section 202(a) of the FPA to promote and encourage regional districts for the voluntary interconnection and coordination of transmission facilities by public utilities and non-public utilities for the purpose of assuring an abundant supply of electric energy throughout the U.S. with the greatest possible economy, we propose the following.[3]

First, the Commission proposes minimum characteristics and functions that an RTO must satisfy. Industry participants, however, retain flexibility in structuring RTOs that satisfy these characteristics and functions. For example, we do not propose to require or prohibit any one form of organization for RTOs or require or prohibit RTO ownership of transmission facilities. The characteristics and functions could be satisfied by different organizational forms, such as ISOs, transcos, combinations of the two, or even new organizational forms not yet discussed in the industry or proposed to the Commission.

Second, we propose to adopt an ''open architecture'' policy regarding RTOs, whereby all RTO proposals must

[1] See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 FR 21540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996) (*Order No. 888*), *order on reh'g*, Order No. 888–A, 62 FR 12274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 FR 64688, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *appeal docketed*, Transmission Access Policy Study Group, *et al.* v. FERC, Nos. 97–1715 *et al.* (D.C. Cir.).

[2] Appropriate regional institutions could improve efficiencies in grid management through improved pricing, congestion management, more accurate estimates of Available Transmission Capability, improved parallel path flow management, more efficient planning, and increased coordination between regulatory agencies.

[3] The Commission's legal authority is discussed in Section II.

allow the RTO and its members the flexibility to improve their organizations in the future in terms of structure, operations, market support and geographic scope to meet market needs. In turn, the Commission will provide the regulatory flexibility to accommodate such improvement.

Third, we propose guidance on flexible transmission ratemaking that may be proposed by RTOs, including ratemaking treatments that will address congestion pricing and performance based regulation. We also propose to consider on a case-by-case basis incentive pricing that may be appropriate for transmission facilities under RTO control.

Finally, all public utilities (with the exception of those participating in an approved regional transmission entity that conforms to the Commission's ISO principles) that own, operate or control interstate transmission facilities must file with the Commission by October 15, 2000 a proposal for an RTO with the minimum characteristics and functions adopted in the Final Rule,[4] or, alternatively, a description of efforts to participate in an RTO, any existing obstacles to RTO participation, and any plans to work toward RTO participation. Each proposed RTO must plan to be operational by December 15, 2001. We expect that such proposals would include the transmission facilities of public utilities as well as transmission facilities of public power and other non-public utility entities to the extent possible.

A public utility that is a member of an existing transmission entity that has been approved by the Commission as in conformance with the eleven ISO principles set forth in Order No. 888 must make a filing no later than January 15, 2001 that explains the extent to which the transmission entity in which it participates meets the minimum characteristics and functions for an RTO, or proposes to modify the existing institution to become an RTO. Alternatively, the public utility must file an explanation of efforts, obstacles and plans with respect to conforming to these characteristics and functions.

Through the required filings, utilities will make known to the public any plans for RTO participation so that other utilities and the competitive market can respond accordingly. This proposal relies primarily on the enlightened self-interest of stakeholders in each region. Such public disclosure of plans for transmission facilities will benefit the industry, the financial community, and public policy makers as the electric industry restructuring continues.

To facilitate RTO formation in all regions of the Nation, the Commission proposes to sponsor and support a collaborative process under section 202(a) to take place in the spring of 2000. Under this process, we expect that public utilities and non-public utilities, in coordination with state officials, Commission staff, and all affected interest groups, will actively work toward the voluntary development of specific RTOs.

Prior to undertaking this proposed rulemaking, we held eight technical conferences in 1998 with all industry stakeholders as well as three technical conferences this year with state regulatory commissions to obtain their views on the need for, and benefits of, regional organizations. We gained valuable insight from the participants, including many state commissions that have undertaken or are considering state retail choice programs for the consumers in their states. In light of the comments received, we wish to respond to several concerns that were raised.

First, we are not proposing to mandate RTOs, nor are we proposing detailed specifications on a particular organizational form for RTOs. The goal of this rulemaking is to get RTOs in place through voluntary participation. While this Commission has specific authorities and responsibilities under the FPA to protect against undue discrimination and remove impediments to wholesale competition, we believe it is preferable to meet these responsibilities in the first instance through an open and collaborative process that allows for regional flexibility and induces voluntary behavior.

Second, the development of RTOs is not intended to interfere with state prerogatives in setting retail competition policy. The Commission believes that RTOs can successfully accommodate the transmission systems of all states, whether or not a particular state has adopted retail competition. However, for those states that have chosen to adopt retail wheeling, RTOs can play a critical role in the realization of full competition at the retail level as well as at the wholesale level. In addition, the Commission believes that RTOs will not interfere with a state's prerogative to keep the benefits of low-cost power for the state's own retail consumers.

Third, we propose to allow RTOs to prevent transmission cost shifting by continuing our policy of flexibility with respect to recovery of sunk transmission costs, such as the ''license plate'' approach.

Fourth, the existence of RTOs has not, and will not in the future, interfere with traditional state and local regulatory responsibilities such as transmission siting, local reliability matters, and regulation of retail sales of generation and local distribution. In fact, RTOs offer the potential to assist the states in their regulation of retail markets and in resolving matters among states on a regional basis. They also provide a vehicle for amicably resolving state and Federal jurisdictional issues.

Finally, we do not propose to establish regional boundaries in this rulemaking. Our foremost concern is that a proposed RTO's regional configuration is sufficient to ensure that the required RTO characteristics and functions are satisfied. To this end, the Commission proposes guidance regarding the scope and regional configuration of RTOs.

We now turn to the state of the electric utility industry in the wake of Order No. 888 and how the development of RTOs achieves efficient, reliable and competitive power markets.

II. Background

In April 1996, in Order Nos. 888 and 889, the Commission established the foundation necessary to develop competitive bulk power markets in the United States: non-discriminatory open access transmission services by public utilities and stranded cost recovery rules that would provide a fair transition to competitive markets. Order Nos. 888 and 889 were very successful in accomplishing much of what they set out to do. However, they were not intended to address all problems that might arise in the development of competitive power markets. Indeed, the nature of the emerging markets and the remaining impediments to full competition have become apparent in the three years since the issuance of our orders.

A. The Foundation for Competitive Markets: Order Nos. 888 and 889

In Order Nos. 888 and 889, the Commission found that unduly discriminatory and anticompetitive

[4] An RTO proposal includes a basic agreement filed under section 205 of the FPA setting out the rules, practices and procedures under which an RTO will be governed and operated, and requests by the public utility members of the RTO under section 203 of the FPA to transfer control of their jurisdictional transmission facilities from individual public utilities to the RTO. Most RTO proposals by public utilities are likely to involve one or more filings under FPA sections 203, 205, or 206, but the number and types of filing may vary depending upon the type of RTO proposed, and the number of public utilities involved in the proposal. Under the proposed rule, a utility may file a petition for a declaratory order asking whether a proposed transmission entity would qualify as an RTO, to be followed by appropriate filings under sections 203, 205 and/or 206.

practices existed in the electric industry, and that transmission-owning utilities had discriminated against others seeking transmission access.[5] The Commission stated that its goal was to ensure that customers have the benefits of competitively priced generation, and determined that non-discriminatory open access transmission services (including access to transmission information) and stranded cost recovery were the most critical components of a successful transition to competitive wholesale electricity markets.[6]

Accordingly, Order No. 888 required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to (1) file open access non-discriminatory transmission tariffs containing, at a minimum, the non-price terms and conditions set forth in the Order, and (2) functionally unbundle wholesale power services. Under functional unbundling, the public utility must: (a) take transmission services under the same tariff of general applicability as do others; (b) state separate rates for wholesale generation, transmission, and ancillary services; and (c) rely on the same electronic information network that its transmission customers rely on to obtain information about its transmission system when buying or selling power.[7] Order No. 889 required that all public utilities establish or participate in an Open Access Same-Time Information System (OASIS) that meets certain specifications, and comply with standards of conduct designed to prevent employees of a public utility (or any employees of its affiliates) engaged in wholesale power marketing functions from obtaining preferential access to pertinent transmission system information.

During the course of the Order No. 888 proceeding, the Commission received comments urging it to require generation divestiture or structural institutional arrangements such as regional independent system operators (ISOs) to better assure non-discrimination. The Commission responded that, while it believed that ISOs had the potential to provide significant benefits, efforts to remedy undue discrimination should begin by requiring the less intrusive functional unbundling approach. Order No. 888 set forth eleven principles for assessing ISO proposals submitted to the Commission.[8] Order No. 888 also stated:

> [W]e see many benefits in ISOs, and encourage utilities to consider ISOs as a tool to meet the demands of the competitive marketplace.
>
> As a further precaution against discriminatory behavior, we will continue to monitor electricity markets to ensure that functional unbundling adequately protects transmission customers. At the same time, we will analyze all alternative proposals, including formation of ISOs, and, if it becomes apparent that functional unbundling is inadequate or unworkable in assuring non-discriminatory open access transmission, we will reevaluate our position and decide whether other mechanisms, such as ISOs, should be required.[9]

In section III.A.2 of this Notice of Proposed Rulemaking, we discuss our experiences to date with functional unbundling. It has become apparent that several types of regional transmission institutions, in addition to the kinds of ISOs approved to date, may also be able to provide the benefits attributed to ISOs in Order No. 888.

B. Developments Since Order Nos. 888 and 889

In the three years since Order Nos. 888 and 889 were issued, numerous significant developments have occurred in the electric utility industry. Some of these reflect changes in governmental policies; others are strictly industry driven. These activities have resulted in a considerably different industry landscape from the one faced at the time the Commission was developing Order No. 888, resulting in new regulatory and industry challenges.

Order Nos. 888 and 889 required a significant change in the way many public utilities have done business for most of this century, and most public utilities accepted these changes and made substantial good faith efforts to comply with the new requirements. Virtually all public utilities have filed tariffs stating rates, terms and conditions for third-party use of their transmission systems. In addition, improved information about the transmission system is available to all participants in the market at the same time that it is available to the public utility as a result of utility compliance with the OASIS regulations.

The availability of tariffs and information about the transmission system has fostered a rapid growth in dependence on wholesale markets for acquisition of generation resources. Areas that have experienced generation shortages have seen rapid development of new generation resources. For example, New England, where there was deep concern about adequacy of generation supply only three years ago, now has approximately 30,000 MW of generation proposed. That response comes almost entirely from independent generating plants that are able to sell power into the bulk power market through open access to the transmission system. Power resources are now acquired over increasingly large regional areas, and interregional transfers of electricity have increased.

The very success of Order Nos. 888 and 889, and the initiative of some utilities that have pursued voluntary restructuring beyond the minimum open access requirements , have put new stresses on regional transmission systems—stresses that call for regional solutions.

1. Industry Restructuring and New Stresses on the Transmission Grid

Open access transmission and the opening of wholesale competition in the electric industry have brought an array of changes in the past several years: divestiture by many integrated utilities of some or all of their generating assets; significantly increased merger activity both between electric utilities and between electric and natural gas utilities; increases in the number of new participants in the industry in the form of independent power marketers and generators; increases in the volume of trade in the industry, particularly as marketers make multiple sales; state efforts to create retail competition; and new and different uses of the transmission grid.

With respect to divestiture, since August 1997, approximately 50,000 MW of generating capacity have been sold (or are under contract to be sold) by utilities, and an additional 30,000 MW is currently for sale. In total, this represents more than 10 percent of U.S. generating capacity. In all, according to publicly available data, 27 utilities have sold all or some of their generating assets and 7 others have assets for sale. Buyers of this generating capacity have included traditional utilities with specified service territories as well as independent power producers with no required service territory.

Since Order No. 888 was issued, there have been more than 20 applications filed with us to approve proposed mergers involving public utilities. Most of these mergers have been approved by various regulatory authorities, including the Commission, although a few have been rejected or withdrawn, and several mergers are pending regulatory approval. Most of these merger proposals have been between electric utilities with contiguous service areas, while some of the proposed mergers have been between utilities with non-

[5] *Order No. 888,* FERC Stats & Regs. at 31,682.

[6] *Id.* at 31,652.

[7] *Id.* at 31,654–55.

[8] *Id.* at 31,730.

[9] *Id.* at 31,655.

contiguous service areas. The Commission has also been presented with merger applications involving the combination of electric and natural gas assets.

There has been significant growth in the volume of trading in the wholesale electricity market. In the first quarter of 1995, according to power marketer quarterly filings, marketer sales totaled 1.8 million MWh, but by the second quarter of 1998, such sales escalated to 513 million MWh.[10] Many new competitors have entered the industry. For example, in the first quarter of 1995, there were eight power marketers (either independent or affiliated with traditional utilities) actively trading in wholesale power markets, but by the second quarter of 1998, there were 108 actively trading power marketers. The Commission has granted market-based rate authority to well over 500 wholesale power marketers, of which some are independent of traditional investor-owned utilities, some are affiliated with traditional utilities, and some are traditional utilities themselves.[11]

State commissions and legislatures have been active in the past few years studying competitive options at the retail level, setting up pilot retail access programs, and, in some states, implementing full scale retail access programs. As of May 1, 1999, 18 states have enacted electric restructuring legislation, 3 have issued comprehensive regulatory orders, and 28 others have legislation or orders pending or investigations underway.[12] Fifteen states have implemented full-scale or pilot retail competition programs that offer a choice of suppliers to at least some retail customers. Eight states have set in motion programs to offer access to retail customers by a date certain.

Because of the changes in the structure of the electric industry, the transmission grid is now being used more intensively and in different ways than in the past. The Commission is concerned that the traditional approaches to operating the grid are showing signs of strain. According to the North American Electric Reliability Council (NERC), ''the adequacy of the bulk transmission system has been challenged to support the movement of power in unprecedented amounts and in unexpected directions.'' [13] These changes in the use of the transmission system ''will test the electric industry's ability to maintain system security in operating the transmission system under conditions for which it was not planned or designed.'' [14] It should be noted that, despite the increased transmission system loadings, NERC believes that the ''procedures and processes to mitigate potential reliability impacts appear to be working reliably for now,'' and that even though the system was particularly stressed during the summer of 1998, ''the system performed reliably and firm demand was not interrupted due to transmission transfer limitations.'' [15]

An indication that the increased and different use of the transmission system is stressing the grid is the increased use of transmission line loading relief (TLR) procedures. [16] NERC's TLR procedures were invoked 250 times between January 1 and September 1, 1998 to prevent facility or interface overloads on the Eastern Interconnection. [17]

It appears that the planning and construction of transmission and transmission-related facilities may not be keeping up with increased requirements. According to NERC, ''Business is increasing on the transmission system, but very little is being done to increase the load serving and transfer capability of the bulk transmission system.'' [18] The amount of new transmission capacity planned over the next ten years is significantly lower than the additions that had been planned five years ago, and most of the planned projects are for local system support. [19] NERC states that, ''The close coordination of generation and transmission planning is diminishing as vertically integrated utilities divest their generation assets and most new generation is being proposed and developed by independent power producers.'' [20]

The transition to new market structures has resulted in new challenges and circumstances. For example, during the week of June 22–26, 1998, the wholesale electric market in the Midwest experienced numerous events that led to unprecedented high spot market prices. Spot wholesale market prices for energy briefly rose as high as $7,500 per MWh, compared to an average price for the summer of approximately $40 per MWh in the Midwest if the price spikes are excluded. [21] This experience led to calls for price caps, allegations of market power, and a questioning of the effectiveness of transmission open access and wholesale electric competition.

The Commission staff undertook an investigation of the price spike incident. Staff's report concluded that the unusually high price levels were caused by a combination of factors, particularly above-average generation outages, unseasonably hot temperatures, storm-related transmission outages, transmission constraints, poor communication of price signals, lowered confidence in the market due to a few contract defaults, and inexperience in dealing with competitive markets. [22]

The Commission's staff found that the market institutions were not adequately prepared to deal with such a dramatic series of events. Regarding regional transmission entities, the staff report observed: ''The necessity for cooperation in meeting reliability concerns and the Commission's intent to foster competitive market conditions underscores the importance of better regional coordination in areas such as maintenance of transmission and generation systems and transmission planning and operation.'' [23] Support for this view comes from many sources. For example, the Public Utilities Commission of Ohio, in its own report on the price spikes, recommended that policy makers ''take unambiguous action to require coordination of transmission system operations by regionwide Independent System Operators.'' [24]

On September 29, 1998, the Secretary of Energy Advisory Board Task Force on Electric System Reliability published its

[10] Power marketer quarterly filings, *cited in Staff Report to the Federal Energy Regulatory Commission on the Causes of Wholesale Electric Pricing Abnormalities in the Midwest During June 1998*, (September 22, 1998) (Staff Price Spike Report) at 3–1 to 3–2. It must be noted that a significant portion of the sales represent the retrading of power by a number of different market participants. In other words, there may be multiple resales of the same generation.

[11] *Id.* at 3–1.

[12] ''Status of Electric Utility Deregulation Activity as of May 1, 1999,'' Energy Information Administration.

[13] Reliability Assessment 1998–2007, North American Electric Reliability Council (September 1998), at 26.

[14] *Id.*

[15] *Id.*

[16] The TLR procedures are designed to remedy overloads that result when a transmission line or other transmission equipment carries or will carry more power than its rating, which could result in either power outages or damage to property. The TLR procedures are designed to bring overloaded transmission equipment to within NERC's Operating Security Limits essentially by curtailing transactions contributing to the overload. *See* North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998) (*NERC*).

[17] Reliability Assessment 1998–2007 at 27.

[18] *Id.* at 26.

[19] *Id.* at 7.

[20] *Id.*

[21] Staff Price Spike Report at 3–8 to 3–11.

[22] *Id.* at v.

[23] *Id.* at 5–8.

[24] Ohio's Electric Market, June 22–26, 1998, What Happened and Why, A Report to the Ohio General Assembly, at iii.

final report.[25] The Task Force was convened in January 1997 to provide advice to the Department of Energy on critical institutional, technical, and policy issues that need to be addressed in order to maintain bulk power electric system reliability in a more competitive industry. The Task Force found that ''the traditional reliability institutions and processes that have served the Nation well in the past need to be modified to ensure that reliability is maintained in a competitively neutral fashion;'' that ''grid reliability depends heavily on system operators who monitor and control the grid in real time;'' and that ''because bulk power systems are regional in nature, they can and should be operated more reliably and efficiently when coordinated over large geographic areas.''[26]

The report noted that many regions of the United States are developing ISOs as a way to maintain electric system reliability as competitive markets develop. According to the Task Force, ISOs are significant institutions to assure both electric system reliability and competitive generation markets. The Task Force concluded that a large ISO would: (1) be able to identify and address reliability issues most effectively; (2) internalize much of the loop flow caused by the growing number of transactions; (3) facilitate transmission access across a larger portion of the network, consequently improving market efficiencies and promoting greater competition; and (4) eliminate ''pancaking'' of transmission rates, thus allowing a greater range of economic energy trades across the network.[27]

2. Successes, Failures, and Haphazard Development of Regional Transmission Entities

Since Order No. 888 was issued, there have been both successful and unsuccessful efforts to establish ISOs, and other efforts to form regional entities to operate the transmission facilities in various parts of the country. While we are encouraged by the success of some of these efforts, it is apparent that the results have been inconsistent, and much of the country's transmission facilities remain outside of an operational regional transmission institution.

Proposals for the establishment of five ISOs have been submitted to and approved, or conditionally approved, by the Commission. These are the California ISO,[28] the PJM ISO,[29] ISO New England ISO,[30] the New York ISO,[31] and the Midwest ISO.[32] In addition, the Texas Commission has ordered an ISO for the Electric Reliability Council of Texas (ERCOT).[33] Moreover, our international neighbors in Canada and Mexico are also pursuing electric restructuring efforts that include various forms of regional transmission entities.[34]

The PJM, New England and New York ISOs were established on the platform of existing tight power pools. It appears that the principal motivation for creating ISOs in these situations was the Order No. 888 requirement that there be a single system wide transmission tariff for tight pools. In contrast, the establishment of the California ISO and the ERCOT ISO was the direct result of mandates by state governments. The Midwest ISO, which is not yet operational, is unique. It began through a consensual process and was not driven by a pre-existing institution. Two states in the region subsequently required utilities in their states to participate in either a Commission-approved ISO (Illinois and Wisconsin), or sell their transmission assets to an independent transmission company (Wisconsin).

The approved ISOs have similarities as well as differences. All five Commission-approved ISOs operate, or propose to operate, as non-profit organizations. All five ISOs include both public and non-public utility members. However, among the five, there is considerable variation in governance, operational responsibilities, geographic scope and market operations. Four of the ISOs rely on a two-tier form of governance with a non-stakeholder governing board on top that is advised, either formally or informally, by one or more stakeholder groups. In general, the final decision making authority rests with the independent non-stakeholder board. One ISO, the California ISO, uses a board consisting of stakeholders and non-stakeholders.

Four of the five ISOs operate traditional control areas, but the Midwest ISO does not currently plan to operate a traditional control area. Three are multi-state ISOs (New England, PJM and Midwest), while two ISOs (California and New York) currently operate within a single state. The current Midwest ISO members do not encompass one contiguous geographic area and there are holes in its coverage. The ISO New England administers a separate NEPOOL tariff, while the other four administer their own ISO transmission tariffs.

Three ISOs operate or propose to operate centralized power markets (New England, PJM and New York), and one ISO (California) relies on a separate power exchange (PX) to operate such a market.[35] The Midwest ISO did not originally envision an ISO-related centralized market for its region.[36] In addition, at least one separate PX has begun to do business in California apart from the PX established through the restructuring legislation.[37]

Not all efforts to create ISOs have been successful. For example, after more than two years of effort, the proponents of the IndeGO ISO in the Pacific Northwest and Rocky Mountain regions ended their efforts to create an ISO. More recently, members of MAPP, an existing power pool that covers six U.S.

[25] Maintaining Reliability in a Competitive U.S. Electricity Industry; Final Report of the Task Force on Electric System Reliability (Sept. 29, 1998) (Task Force Report). The Task Force was comprised of 24 members representing all major segments of the electric industry, including private and public suppliers, power marketers, regulators, environmentalists, and academics.

[26] Task Force Report at x–xi.

[27] *Id.* at 76.

[28] Pacific Gas & Electric Company, *et al.*, 77 FERC ¶61,204 (1996), *order on reh'g*, 81 FERC ¶61,122 (1997) (*Pacific Gas & Electric*).

[29] Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 81 FERC ¶61,257 (1997), *reh'g pending* (PJM).

[30] New England Power Pool, 79 FERC ¶61,374 (1997), *order on reh'g*, 85 FERC ¶61,242 (1998) (order conditionally authorizing ISO New England); New England Power Pool, 83 FERC ¶61,045 (1998), *reh'g pending* (order on NEPOOL tariff and restructuring)(*NEPOOL*).

[31] Central Hudson Gas & Electric Corporation, *et al.*, 83 FERC ¶61,352 (1998), *order on reh'g*, 87 FERC ¶61,135 (1999) (*Central Hudson*).

[32] Midwest Independent Transmission System Operator, *et al.*, 84 FERC ¶61,231, *order on reconsideration*, 85 FERC ¶61,250, *order on reh'g*, 85 FERC ¶61,372 (1998) (*Midwest ISO*).

[33] *See* 16 Texas Administrative Code § 23.67(p).

[34] *See* Policy Proposal for Structural Reform of the Mexican Electricity Industry, Secretary of Energy, Mexico (February 1999); Third Interim Report of the Ontario Market Design Committee (October 1998); TransAlta Enterprises Corporation, 75 FERC ¶61,268 at 61,875 (1996) (recognition of the restructuring in the Province of Alberta, Canada to create a Grid Company of Alberta).

[35] The California PX offers day-ahead and hour-ahead markets and the ISO operates a real-time energy market. Participation in the PX market is voluntary except that the three traditional investor-owned utilities in California must bid their generation sales and purchases through the PX for the first five years. New York will offer day-ahead and real-time energy markets that will be operated by the ISO. PJM and New England offer only real-time energy markets, although PJM has proposed to operate a day-ahead market. The ERCOT ISO is the only other ISO that does not currently operate a PX.

[36] There are indications, however, that the Midwest ISO is considering the formation of a power exchange. *See* Joint Committee for the Development of a Midwest Independent Power Exchange, ''Solicitation of Interest-Creation of an Independent Power Exchange for the U.S. Midwest,'' February 5, 1999.

[37] *See* Automated Power Exchange, Inc., 82 FERC ¶ 61,287, *reh'g denied*, 84 FERC ¶ 61,020 (1998), *appeals docketed*, No. 98–1415 (D.C. Cir. Sept. 14, 1998) and No. 98–1419 (D.C. Cir. Sept. 14, 1998).

states and two Canadian provinces, failed to achieve consensus for establishing a long-planned ISO. In the Southwest, proponents of the Desert Star ISO have not been able to reach agreement on a formal proposal after more than two years of discussion.

Various reasons have been advanced to explain why it is difficult to form a voluntary, multi-state ISO. These include cost shifting in transmission capital costs; disagreements about sharing of ISO transmission revenues among transmission owners; difficulties in obtaining the participation of publicly-owned transmission facilities; concerns about the loss of transmission rights and prices embedded in existing transmission agreements; the likelihood of not being able to maintain or gain a competitive advantage in power markets through the use of transmission facilities; and the preference of certain transmission owners to sell or transfer their transmission assets to a for-profit transmission company in lieu of handing over control to a non-profit ISO.

Apart from these efforts to create ISOs, we have received proposals for other types of transmission entities. For example, in October 1998 a group of Arizona entities filed a request with the Commission to create an ''independent scheduling administrator'' (ISA) in Arizona.[38] Unlike an ISO, this entity would not administer its own transmission tariff nor would it have any direct operational responsibilities. Instead, it appears that its functions would be limited to monitoring the scheduling decisions and OASIS site operation of the Arizona utilities that operate transmission facilities.[39] In case of disputes, the ISA would provide a type of expedited dispute resolution process. The applicants state that the ISA would be a transitional organization that would ultimately evolve or be merged into a stronger, multi-state ISO.[40] In other developments, one public utility has recently made a filing with us to sell its transmission assets to a newly formed affiliate.[41] Another public utility recently filed a request for declaratory order asking us to find that its proposal to transfer its transmission assets (in the form of ownership or a lease) to a ''transco'' in return for a passive ownership interest in the transco, would satisfy the Commission's eleven ISO principles.[42]

As part of general restructuring initiatives, several states now require independent grid management organizations. For example, an Illinois law requires that its utilities become members of a FERC-approved regional ISO by March 31, 1999, and Wisconsin law gives its utilities the option of joining an ISO or selling their transmission assets to an independent transmission company by June 30, 2000. In both states, the backstop is a single-state organization if regional organizations are not developed. Recently, Virginia and Arkansas have also enacted legislation requiring their electric utilities to join or establish regional transmission entities.

3. The Commission's ISO and RTO Inquiries; Conferences with Stakeholders and State Regulators

In light of the various restructuring activities occurring throughout the U.S., the Commission has, within the past year, held 11 public conferences in 9 different cities across the country to hear the views of industry, consumers, and state regulators with respect to the need for RTOs and their appropriate roles and responsibilities.

The Commission initiated an inquiry in March 1998 pertaining to its policies on ISOs. A notice establishing procedures for a conference gave the following rationale:

> In Order Nos. 888 and 889 and their progeny, the Commission established the fundamental principles of non-discriminatory open access transmission services. Nevertheless, many issues remain to be addressed if the Nation is to fully realize the benefits of open access and more competitive electric markets.
>
> * * * * *
>
> Given the dramatic changes taking place in both wholesale and retail electric markets and the many proposals under consideration with respect to the creation of ISOs or other transmission entities, such as transmission-only utilities, it is time for the Commission to take stock of its policies in order to determine whether they appropriately support our dual goals of eliminating undue discrimination and promoting competition in electric power markets.[43]

Accordingly, the Commission held a series of eight conferences in 1998 to gain insight into participants' views on the formation and role of ISOs in the electric utility industry. The first conference was held in April 1998 at the Commission's offices in Washington, D.C. Between May 28 and June 8, 1998, the Commission held seven regional conferences in Phoenix, Kansas City, New Orleans, Indianapolis, Portland, Richmond and Orlando. As a result of these conferences, the Commission heard approximately 145 oral presentations and received a large number of written comments on the appropriate size, scope, organization and functions of regional transmission institutions. A number of different viewpoints were expressed. They will be discussed elsewhere in this NOPR and are summarized in Appendix A hereto.

On October 1, 1998, the Secretary of Energy delegated his authority under section 202(a) of the FPA to the Commission. In doing so the Secretary stated that section 202(a) ''provides DOE with sufficient authority to establish boundaries for Independent System Operators (ISOs) or other appropriate transmission entities.'' [44] The Secretary also stated,

> FERC is also increasingly faced with reliability-related issues. Providing FERC with the authority to establish boundaries for ISOs or other appropriate transmission entities could aid in the orderly formation of properly-sized transmission institutions and in addressing reliability-related issues, thereby increasing the reliability of the transmission system.

On November 24, 1998, we gave notice in this docket of our intent to initiate a consultation process with State commissions pursuant to section 202(a).[45] The purpose of the consultations was to afford State commissions a reasonable opportunity to present their views with respect to appropriate boundaries for regional transmission institutions and other issues relating to RTOs. Conferences with State commissioners were held in St. Louis, Missouri on February 11, 1999; in Las Vegas, Nevada on February 12, 1999; and in Washington, D.C. on February 17, 1999. In all, we heard oral presentations by representatives of 41 state commissions during these consultations, with others monitoring or providing written comments.[46] During these sessions, we received much valuable advice. We have set forth in Appendix B a summary of the comments received, and discuss in

[38] Arizona Independent Scheduling Administrator Association, Docket No. ER99–388–000 (filed October 29, 1998).

[39] A proposal for a similar entity has been in the Pacific Northwest. This entity, described as an independent grid scheduler, would make actual scheduling decisions rather than simply monitoring the decisions made by current transmission owners. *See* Regional ISO Conference (Portland), transcript at 39–40.

[40] *See* Applicant's filing, Docket No. ER99–388–000, at 3.

[41] FirstEnergy, Inc., Docket No. EC99–53–000 (filed March 19, 1999).

[42] Entergy Services, Inc., Docket No. EL99–57–000 (filed April 5, 1999).

[43] Inquiry Concerning the Commission's Policy on Independent System Operators, Notice of Conference, Docket No. PL98–5–000, at 1–2 (March 13, 1998).

[44] 63 FR 53889 (1998).

[45] Notice of Intent to Consult Under Section 202(a), 63 FR 66158 1998*), FERC Stats & Regs. ¶ 35,534 (1998).

[46] *See* Appendix B for a list of commenters.

Section III.B below our response to some of the major concerns expressed.

C. Statutory Framework

The Commission is granted the authority and responsibility by FPA sections 205 and 206, 16 U.S.C. 824d, 824e, to ensure that the rates, charges, classifications, and service of public utilities (and any rule, regulation, practice, or contract affecting any of these) are just and reasonable and not unduly discriminatory, and to remedy undue discrimination in the provision of such services. In fulfilling its responsibilities under FPA sections 205 and 206, the Commission is required to address, and has the authority to remedy, undue discrimination and anticompetitive effects. The Commission has a statutory mandate under these sections to ensure that transmission in interstate commerce and rates, contracts, and practices affecting transmission services, do not reflect an undue preference or advantage (or undue prejudice or disadvantage) and are just, reasonable, and not unduly discriminatory or preferential.[47] Additionally, as discussed in Order No. 888,[48] there is a substantial body of case law that holds that the Commission's regulatory authority under the FPA ''clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] §§ 202 and 203, and under like directives contained in §§ 205, 206, and 207.'' [49]

The Commission also has the authority and responsibility under section 203 of the FPA to review mergers and other transactions involving public utilities, including dispositions of jurisdictional facilities by public utilities. This includes public utilities' transfers of control of jurisdictional transmission facilities to entities such as RTOs. Under section 203, the Commission must approve a proposed disposition of jurisdictional facilities if it is consistent with the public interest. The Commission may grant an application under section 203 upon such terms and conditions as it finds necessary to secure the maintenance of adequate service and the coordination in the public interest of jurisdictional facilities.

Further, section 202(a) of the FPA, whose authority has recently been delegated to the Commission by the Secretary of Energy,[50] authorizes and directs the Commission ''to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy * * *.'' The purpose of this division into regional districts is for ''assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources * * *.'' Section 202(a) states that it is ''the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts.''

III. Discussion

A. Barriers to Assuring an Abundant Supply of Electric Energy Throughout the United States with the Greatest Possible Economy

In light of our experiences with ISOs and other utility restructuring activity in the aftermath of Order Nos. 888 and 889, and after almost three years of experience with implementation of Order Nos. 888 and 889, we believe that there remain important transmission-related impediments to a competitive wholesale electric market. We have grouped these remaining impediments into two broad categories. The first category of impediments consists of engineering and economic inefficiencies inherent in the current operation and expansion of the transmission grid—inefficiencies that, in and of themselves, are hindering fully competitive power markets and imposing unnecessary costs on electric consumers. The second category of impediments consists of continuing opportunities for transmission owners to unduly discriminate in the operation of their transmission systems so as to favor their own or their affiliates' power marketing activities. Both sets of impediments unnecessarily restrict the scope of bulk power markets and inhibit the large-scale competition that we sought in issuing Order Nos. 888 and 889.

The situation of the electric industry is somewhat analogous to the natural gas industry after the initial step of open access transportation was taken. In 1985, the Commission issued Order No. 436,[51] which instituted open-access, nondiscriminatory transportation of natural gas with the goal of increasing competition and permitting gas users to purchase gas directly from gas merchants. However, the Commission subsequently found that open access alone was not sufficient to remove all barriers to competition. [52] Because of the different structures of the electric and gas industries, the specific remaining impediments to competition may not be the same, but there are similarities in that open access, without sufficient mechanisms for ensuring that such access is equal and efficient for all participants, may not be enough to promote a fully competitive market. [53]

Our current understanding of industry conditions, as set forth below, will be enhanced by future consultations with and analysis from all industry stakeholders, including state commissions. The Commission seeks comments in order to achieve a deeper

[47] Once such a finding is made, the Commission is required to remedy it. *See, e.g.,* Southern California Edison Company, 40 FERC ¶ 61,371 at 62,151–52 (1987), *order on reh'g* 50 FERC ¶ 61,275 at 61,873 (1990), *modified sub nom.,* Cities of Anaheim v. FERC, 941 F.2d 1234 (D.C. Cir. 1991); Delmarva Power and Light Company, 24 FERC ¶ 61,199 at 61,466, *order on reh'g* 24 FERC ¶ 61,380 (1983).

[48] *Order No. 888,* FERC Stats. & Regs. at 31,669.

[49] Gulf States Utilities Co. v. FPC, 411 U.S. 747, 758–59, *reh'g denied,* 412 U.S. 944 (1973) (Gulf States). *See also* City of Huntingburg v. FPC, 498 F.2d 778, 783–84 (D.C. Cir. 1974) (Commission has a duty to consider the potential anticompetitive effects of a proposed Interconnection Agreement.)

[50] 63 FR 53889 (1998).

[51] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 1985), *vacated and remanded,* Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied,* 485 U.S. 1006 (1988), *readopted on an interim basis,* Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. & Regs. [Regulations Preambles, 1986–1990] ¶30,761 (1987), *remanded,* American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), *readopted,* Order No. 500–H, 54 FR 52334 (Dec. 21, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,867 (1989), *reh'g granted in part and denied in part,* Order No. 500–I, 55 FR 6605 (Feb. 26, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,880 (1990), *aff'd in part and remanded in part,* American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied,* 111 S. Ct. 957 (1991).

[52] In the case of natural gas, we found that the principal remaining barrier was the continued existence of bundled city-gate firm sales service that had a transportation component of higher quality than available through open access. Hence, we issued Order No. 636 to unbundle services and equalize the quality of service offered. *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. ¶ 30,939 (April 8, 1992), *reh'g granted and denied in part,* Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. ¶ 30,950 (August 3, 1992), *order on reh'g* Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), Notice of Denial of Rehearing (January 8, 1993), 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part,* United Dist. Companies v. FERC, 88 F.3d 1105 (D.C. Cir. July 16, 1996), *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[53] For a discussion of the similarities and differences in the structure and regulation of the natural gas and electric industries, *see generally Santa and Sikora, Open Access And Transition Costs: Will The Electric Industry Transition Track The Natural Gas Restructuring?, 15 Energy L.J. 273 (1994).*

appreciation of any impediments to competition in the Nation's electricity markets and how they should be addressed.

1. Engineering and Economic Inefficiencies in the Operation, Planning and Expansion of Regional Transmission Grids

The transmission facilities of any one utility in a region are part of a larger, integrated transmission system. From an electrical engineering perspective, each of the three interconnections in the United States (the Eastern, the Western and ERCOT) operates as a single ''machine.'' [54] The Eastern Interconnection also extends into Canada, and the Western Interconnection includes parts of Canada and Mexico.

Problems have arisen over the last three years, in part, because we have multiple operators of each of these machines. Each separate operator usually makes independent decisions about the use, limitations and expansion of its piece of the interconnected grid based on incomplete information. This approach—separate operation of each utility's own transmission facilities—would make engineering sense only if each system operated independently of the others. But the physical reality is that, within the three interconnected grids, any action taken by one transmission provider can have major and instantaneous effects on the transmission facilities of all other transmission providers.[55]

This is not a new phenomenon. Since the very first transmission interconnection between two neighboring utilities, interconnected utilities have had to cope with the fact that electricity will flow over others' lines. In the past, these effects were often small or infrequent and the utility could generally pass any costs through to captive customers. Today, with the increase in bulk power trade and the large shifts in power flows, the effects may be large, frequent and not recoverable by the utility bearing the cost.

Another important change is that the structure of the industry that exists today is very different from the industry that existed three years ago when we issued Order No. 888. The industry is no longer composed uniformly of vertically-integrated, self-sufficient public utilities that do not compete with each other. Instead, it is an increasingly de-integrated and decentralized industry with many new and existing participants that actively compete against each other.[56]

As a consequence of these changes in trade patterns and industry structure, certain operational problems have become more significant and more difficult to resolve. These include: maintaining reliable grid operations; determining available transmission capability (ATC); [57] managing transmission congestion; and planning and investing in new transmission facilities. In addition, traditional approaches to the pricing and provision of transmission service may be hindering the further development of competitive and efficient bulk power markets. These impediments include: pancaking of transmission access charges; non-market approaches to managing congestion; the absence of clear transmission rights; the absence of secondary markets in transmission service; and the possible disincentives created by the level and structure of transmission rates. The Commission believes that properly structured RTOs can address both sets of problems and further the development of competitive bulk power markets.

a. Reliable Grid Operations

The United States has one of the most reliable power systems in the world. For over thirty years, NERC and the regional reliability councils have developed and implemented voluntary standards to maintain the security of the transmission systems. There is no net public policy benefit to promoting competition if reliability suffers as a consequence.[58] The promotion of competition must therefore go hand-in-hand with the creation of new institutions to ensure that reliability is maintained or improved in any new industry structure.[59] We fully agree with the findings of the DOE Reliability Task Force:

> * * * there is a critical need to be sure that reliability is not taken for granted as the industry restructures, and thus does not ''fall through the cracks.'' [60]

The DOE Reliability Task Force also pointed out that with the entry of many new participants, dramatic increases in unbundled power sales and shifts in electrical flows, the nation's bulk power system is being stressed in ways that have never been experienced before. A similar conclusion was reached by NERC in its 1998 summer assessment of bulk power reliability:

> Throughout the Regions, parallel path flows from increased electricity transfers are stressing the transmission systems. These flows are at magnitudes and in directions not anticipated at the time the systems were designed.* * *The transmission system will be required to operate under unprecedented, and sometimes unstudied, conditions.[61]

These stresses have always existed but not in these magnitudes. Moreover, they could be more readily accommodated through voluntary ad hoc agreements when there were fewer industry participants who generally did not compete against each other in any significant way.[62] But as we have noted, this traditional industry structure is rapidly disappearing. Our concern is that the reliability fault lines may become more prominent and dangerous.

It is well accepted that the operation of interconnected transmission networks requires careful coordination and the exchange of information between many individual systems. Any operational change on one system in the network instantly affects other systems. For example, the shipment of power from one location to another will divide among all transmission paths from source to destination based on the laws of physics.[63] This is referred to as

[54] North American Electric Reliability Council, Electric Reliability Panel, ''Reliable Power: Renewing the North American Electric Reliability Oversight System,'' December 1997, at 9.

[55] U.S. Congress, Office of Technology Assessment, ''Electric Power Wheeling and Dealing, Technological Considerations for Increasing Competition,'' May, 1989.

[56] For example, there are now about 550 Commission-approved power marketers. Decentralization has also increased because of divestiture of generating plants by traditionally vertically integrated utilities. Such sales are frequently required by state governments as one element of the structural reforms that accompany the introduction of retail competition. During the last three years, utilities have sold or have contracts to sell more than 50,000 MW of existing generating capacity. About 30,000 MW of additional capacity is currently being offered for sale.

[57] *See* definition of ATC *infra.*

[58] Unless otherwise noted, we use the term ''reliability'' to refer to the reliable or secure operation of the bulk power grid. This is one component of the broader NERC definition, which also includes ''adequacy'' (i.e., sufficient generation and transmission capacity) as a second component of overall reliability. *See* North American Electric Reliability Council, ''Glossary of Terms,'' August 1996, at 21.

[59] *See* George C. Loehr, ''Ten Myths About Electric Deregulation: Electrons May Seem Imaginary, But Reliability Is Real,'' Public Utilities Fortnightly, April 15, 1998, at 28–31.

[60] DOE Task Force Report, at xv.

[61] NERC, ''1998 Summer Assessment: Reliability of Bulk Electricity Supply in North America,'' May 1998, at 2–3.

[62] In assessing the continued viability of the current system, NERC's blue-ribbon Electric Reliability Panel concluded that: ''The competitive dynamics among a much larger universe of players is not at all conducive to a system of voluntary peer compliance.'' Electric Reliability Panel Report, December 1997, at 28.

[63] The amount of power flowing on any path in an electrical network is inversely proportional to that path's impedance. Impedance will depend on the actual length of the line and its voltage. *See* U.S. Congress, Office of Technology Assessment, Electric

parallel path or loop flow. Such flows will also affect a neighboring system's ability to determine ATC accurately. In addition, if a transmission facility is already loaded close to its operating limit, the additional flow resulting from a transaction contracted for on a neighboring system may overload the facility and threaten reliability. In order to operate the system in a reliable manner, a single, independent grid operator must know all sources and destinations for each transaction. The Commission believes that an RTO, as the only transmission provider and security coordinator in its region, would have the information needed to identify the effects of parallel flows and accommodate them in its operations.

At present, the industry's ability to maintain reliable grid operation is hindered by the existence of many separate organizations that directly or indirectly affect the operation and expansion of the grid. There are more than 100 owners of the Nation's grid who operate about 140 separate control areas.[64] In addition, there are 10 regional reliability councils, 23 security coordinators, 5 regional transmission groups (RTGs) and 5 independent system operators. With so many entities, the lines of authority and communication are not always as clear as they should be.[65] An additional complication is that many of these entities also own generation or have a decision making process that continues to be dominated by traditional vertically integrated utilities.[66] Therefore, their independence and commercial neutrality as grid operators is subject to question.

It appears that information that is critical for maintaining reliability is not being shared as readily now as was generally the case in the past. NERC recently observed that there is a growing ''reluctance on the part of the market participants to share operational real-time and operational planning data with TPs [transmission providers].'' [67] This is not surprising because, as we have noted before, information that is needed for reliability purposes may also have a commercial value.[68] If market participants believe that the entity that receives operational information for reliability reasons may use it for commercial advantage, they will understandably be reluctant to supply the information. After spending more than 18 months reviewing the current reliability system, the DOE Reliability Task Force concluded that this inherited system, with its patchwork of organizations, inadequate information sharing and overlapping and sometimes unclear responsibilities, is ''clearly unsustainable'' and that until new policies and institutions are in place, ''substantial parts of North America will be exposed to unacceptable risk.'' [69]

This is not just a theoretical concern. During last year's regional ISO conferences, several industry participants described three ''reliability near misses'' in the Midwest. The three incidents on July 22, 1993, August 7, 1996 and July 11, 1997 came very close to producing major outages throughout the Midwest.[70] While there has been some improvement in coordination among different systems, we believe that there are limits to the amount of coordination that can be achieved between separate organizations, especially if they are competing for the right to use the same limited transmission capacity and sometimes competing for the same customers. While competition requires decentralization, we think that reliable and efficient grid operation requires more coordination. The Commission believes that a beneficial platform for both competition and reliability is a single independent grid operator that sees the ''big picture'' by having access to real-time information on conditions and schedules for the entire regional grid.[71] Such an entity does not exist in several regions of the country. As a consequence, there is, at present, a disconnect between electrical flows and information flows that could have major reliability consequences.

b. Determining Available Transmission Capability (ATC)

Any transportation service provider should know how much commodity it can carry. For electric transmission service providers, the calculations of total transmission capability (TTC) and ATC are needed to make this determination. TTC and ATC are key elements of the OASIS information system.[72] Order No. 889 requires each transmission provider to calculate and post TTC and ATC numbers to give its transmission customers a reasonable estimate of how much power can be carried between any two locations on the grid and how much capacity is available to support additional trade at any given time.

We have received many complaints about the accuracy and usefulness of posted ATC numbers. There are several reasons why it is difficult to determine available transmission capability accurately.

First, ATC numbers are still calculated on an individual company basis in many areas of the country. Separate calculations of ATC by individual companies are fundamentally inconsistent with the physical reality of an interconnected transmission system. An individual transmission provider may post ATC numbers in good faith, and attempt to provide transmission service based on these numbers, only to learn later that the transfer capability that it thought was available no longer exists because of decisions made by other transmission providers that it did not know about at the time it made its calculations. Accurate ATC numbers would require reliable and timely information about load, generation, facility outages and transactions on neighboring systems. Individual transmission operators will generally not have this information. They also may apply differing assumptions and criteria to ATC calculations, which may produce wide variations in posted ATC values for the same transmission path.[73] All these considerations make it virtually impossible for an individual transmission provider that operates one

Power Wheeling and Dealing: Technological Considerations for Increasing Competition, OTA–E–409, May 1989, at 110–11.

[64] A control area is an electrical system bounded by interconnection (tie-line) metering and telemetry. Within a control area, resources are balanced against load, and generation is regulated to maintain interchange schedules with other control areas and to achieve the target frequency (60 hz) for the entire Interconnection. *See* NERC Operating Policies Manual (available on the NERC website at www.nerc.com).

[65] *See, e.g.,* Western Systems Coordinating Council, EL99–23–000, comments of Enron Power Marketing, Inc. at 4–5.

[66] *See, e.g.,* New England Power Pool, 86 FERC ¶ 61,262 at 61,965 (1999).

[67] NERC, Reliability Assessment 1998–2007 at 39 (1998).

[68] *Midwest ISO,* 84 FERC at 62, 158–159.

[69] DOE Task Force Report at vii and xi.

[70] Regional ISO Conference (Indianapolis), transcript at 24–29.

[71] The importance of a single operator for reliability was stressed in comments of AMEREN and Commonwealth Edison. *See* Regional ISO Conference (Indianapolis), transcript at 19–29.

[72] ATC is a measure of transfer capability remaining in the physical transmission network for further commercial activity over and above already committed uses. TTC is the amount of electric power that can be transferred over the interconnected transmission network in a reliable manner based on certain specified conditions, North American Reliability Council, Glossary of Terms (1996).

[73] This, in turn, creates other problems. According to NERC, the ''inconsistent calculation [of ATC] can increase the use of TLR and other operational complexities, which has the potential to cause reliability problems.'' NERC, Reliability Assessment, 1998–2007, September, 1998, at 40. (*See* definition of TLR in section II.)

part of a large interconnected grid to calculate ATC accurately.[74]

Second, requests for transmission service are usually based on ''contract path'' scheduling. This is the practice of finding a contiguous chain of utilities from the power supplier to the power consumer and contracting with those utilities to transmit the power. The implicit assumption is that all the power flows through the utilities along this ''contract path.'' In fact, the power divides up and flows along all paths from the supplier to the buyer. All utilities in the region are affected. Contract path scheduling provides little or no information about actual flows on the grid.[75] In its October 1997 report to the Commission, the Commercial Practices Working Group commented that: ''Reserving and scheduling transmission on a contract path basis does not even closely resemble the physical impact on the system.'' [76] We note that NERC is encouraging initiatives that would move the industry toward recognizing actual flows in scheduling.[77]

c. Managing Congestion

Congestion occurs when requests for transmission service exceed the capability of the grid. When transmission constraints limit the amount of power that can be transmitted, the loads on the system may not be able to be served by the least-cost mix of available generators. The constraints may reflect voltage, temperature and dynamic limits. Relieving congestion leads to a more costly pattern of generation dispatch. The cost of congestion is the additional energy cost associated with the new pattern of dispatch.

We recognize that even optimally designed systems will normally experience at least occasional congestion that at times can be significant and costly. In general, congestion can be managed in two ways: the construction of new transmission facilities that increase grid capacity; or the redispatch of existing or new generators to reduce flows or create counterflows on the constrained facility. The complete elimination of congestion would typically require the construction of new transmission facilities. While this may be a physically effective solution, it may not always be cost effective. Because of this, we believe that an efficiently operated transmission system should have in place mechanisms for pricing congestion and then managing congestion through changes in the pattern of dispatch. Without mechanisms for determining the cost of congestion, it will be virtually impossible to make rational, cost effective decisions to expand the grid.

The Commission believes that efficient congestion management is best performed at the regional level. At present, outside of the operational ISOs, transaction curtailment through transmission loading relief (TLR) procedures is the dominant approach for dealing with congestion in the Eastern Interconnection. NERC has reported that its TLR procedures were invoked 329 times between July 1997 and October 1998 on the Eastern Interconnection.[78] Current TLR procedures are cumbersome, inefficient and disruptive to bulk power markets because they rely exclusively on physical measures of flows with no attempt to assess the relative costs of different congestion management options. Moreover, TLR actions are typically taken by one utility without assessing the costs imposed on other grid users. This inevitably raises the suspicion that the TLR request could be motivated by competitive rather than reliability concerns. For these reasons, the Commission has encouraged NERC to develop regional market approaches to managing congestion.[79]

The Commission recognizes, however, that NERC may not be able to comply fully with this policy in the absence of regional organizations that have the authority and ability to promote regional congestion markets. There are three considerations that support this conclusion.

First, a regional organization would have accurate and reliable information about existing and possible future conditions on the grid. Such information is generally not available to individual transmission providers. RTOs would have this information because they would function as both regional security coordinators and regional transmission providers.

Second, congestion management is best performed at a regional level. This is shown in the largely unsuccessful efforts of Commonwealth Edison to create congestion markets that would allow transmission customers to ''buy-through'' (*i.e.*, firm up) transmission rights on congested flow gates. After six months of its one year experiment, we note that Commonwealth concluded that it is ''difficult for one transmission owner to identify and implement redispatch'' when the physical limitations and cost effective options for relief exist on other transmission systems that are beyond their reach.[80]

Third, RTOs will be able to establish and define rights to the use of the grid. At present, with multiple and independent operators of the grid, individual users and owners have unclear and conflicting rights to the grid. This makes it difficult to establish congestion markets. A congestion market, like any other market, cannot develop in the absence of clear rights.[81] Such rights, whether held by transmission users or owners, are a necessary prerequisite for establishing congestion markets. Without establishing such rights, the industry will continue to grapple with the problem of incomplete markets. Thus, it is difficult to achieve efficient and competitive regional bulk power markets if congestion on the transmission grid is not accurately priced.

d. Planning and Expanding Transmission Facilities

Transmission planning and expansion are more difficult today than three years ago. While uncertainty has always been a fact of life for any transmission planning exercise, the level of uncertainty has increased with the increasing number and distance of unbundled transactions and the wider variation in generation dispatch patterns. Uncertainty has also increased because:

> Generation developers are reluctant to disclose their plans for future capacity additions. Similarly, utilities intending to purchase from others are reluctant to speculate on whom or where their suppliers might be, making modeling of such transactions for transmission analysis virtually impossible.[82]

One troubling consequence of this uncertainty has been a noticeable decline in planned transmission investments. NERC recently reported that the level of planned transmission

[74] In addition, it has been frequently alleged that individual transmission may intentionally post inaccurate ATC numbers to favor their own power marketing efforts. These allegations are discussed in section III.A.2.

[75] *See* Allegheny Power Service Corporation *et al.*, 78 FERC ¶ 61,314 at 62,339.

[76] October 31, 1997 report, at 39.

[77] *See NERC*, 85 FERC at 62,363.

[78] North American Electricity Reliability Council, Interim Market Interface Committee, Minutes of Jan. 12 and 13, 1999 meeting, Exhibit D.

[79] *See NERC*, 85 FERC at 62,364.

[80] Commonwealth Edison, Interim Report on Non-Firm Redispatch, Docket No. ER98–2279, December 17, 1998, at 4, 10.

[81] Robert Cooter and Thomas Ulen, Law and Economics, Scott, Foresman and Company, 1988, at 91 (''From a legal viewpoint, property is a bundle of rights'').

[82] NERC, ''Reliability Assessment, 1998–2007,'' September 1998, at 39.

additions is significantly lower than five years ago despite an overall increase in load growth and unbundled transmission service.[83] While this could simply reflect better utilization of the existing grid, the Commission is concerned that it may also reflect an incompatibility of existing planning institutions with the new market realities.

We are also concerned that the existing approach to transmission pricing may not sufficiently encourage the investments in transmission facilities that are needed to improve the reliability and efficiency of the grid. Inadequate investment could be a major impediment to the development of regional bulk power markets and a possible source of future reliability problems. There are at least three concerns about the way transmission prices are set.

First, although there are varying degrees of investment coordination around the country, utilities ultimately make transmission investment decisions individually rather than through joint decisions that internalize commercial and reliability effects of the investment. It may be unclear which utility should have the responsibility for expanding capacity to relieve a transmission constraint. For example, power flows scheduled by one utility with ample transmission capacity on its own lines may overload a neighbor's lines. The first utility may be unwilling to expand transmission capacity because it needs no extra transmission capacity itself, and the second utility may be unwilling to expand transmission capacity because it collects no revenues from the power flows scheduled by others. In a multi-utility region, decisions about where to site new facilities and who should pay for capacity expansions can be even more complex unless a regional body provides a forum for discussions and a method for resolving disputes.

Second, the motivation for constructing new facilities is changing as the industry changes. Formerly, a utility built transmission primarily to deliver power from its generating plants to its customers. Inadequate transmission would have hurt power sales, the principal source of utility revenue. Today, facility expansion may be needed to transmit power sold by others. As generation and transmission ownership become increasingly separate and as many states implement or even merely consider retail access, the transmission owner's traditional incentive for making new transmission investment to support its power sales erodes. Incentives for transmission investment need to be related more to the power needs of the region than the generation stock of the transmission owners.

Third, the transmission owner that does invest in transmission to overcome a constraint may be concerned about recovering its investment. Under traditional ratemaking practices, it must recover its investment over a long period of time, typically thirty years. But subsequent generation construction on the power-poor side of the constraint may obviate the need for the line and threaten recovery of its capital cost. In addition, where there is higher risk, a higher return commensurate with the higher risk may be appropriate. To support this, customers and regulators would want assurance that the decision to invest in transmission is made in the best interests of the region, considering not only all the transmission options but also the generation and demand management alternatives to transmission construction. Therefore, as discussed below, we will consider concrete proposals from regional transmission organizations for transmission pricing reforms and the explicit use of pricing incentives to encourage RTOs to make efficient investments in new transmission facilities.

e. Pancaked Transmission Rates

With the exception of power pools, open access under Order No. 888 focuses on individual, existing transmission providers. Order No. 888 does not require transmission pricing reforms that are needed to support efficient and competitive bulk power markets. The ''missing'' reforms include, among others, the elimination of pancaked transmission access charges, the use of reservation-based (as opposed to load-based) transmission tariffs and the availability of secondary markets in transmission rights.[84] In this section, we will focus on the problems created by the widespread pancaking of transmission access charges.[85]

In most of the United States, a transmission customer pays separate, additive access charges every time its contract path crosses the boundary of a transmission owner. By raising the cost of transmission, pancaking reduces the size of geographic power markets. This, in turn, can result in concentrated electricity markets. Balkanization of electricity markets hurts electricity consumers, in general, by forcing them to pay higher prices than they would in a larger, more competitive, bulk power market.[86]

The Commission has heard from many states about the negative effects of pancaked rates in their efforts to introduce retail competition. At this time, about 21 states have introduced or are planning to introduce competition for retail loads under their jurisdiction.[87] Because the Commission has jurisdiction over transmission service and rates for unbundled retail customers, we have an obligation to address these concerns.[88] A retail choice initiative, no matter how well designed at the state level, may fail if the pool of potential competitors is effectively limited to a few nearby supply sources because of pancaked transmission charges.

This concern of pancaked rates was highlighted to us in the recent consultations with our state commission colleagues. Several state commissioners emphasized that the success of their retail competition initiatives is related to the adoption of non-pancaked transmission tariffs and other ISO policies.[89] We believe that the likelihood of success for existing and planned retail choice initiatives is significantly enhanced if the Commission can ensure fair and efficient access to a regional market without pancaked transmission access charges, and that we need to take steps beyond Order No. 888 to accomplish this.

f. Conclusion

We believe that the preferred solution to the engineering and economic problems discussed in this section is a regional solution. Notwithstanding it success, Order No. 888 has not been able to produce a fully efficient and competitive outcome because it does not address ATC calculations, congestion

[83] *Id.* at 7.

[84] *See, e.g.,* Capacity Reservation Open Access Transmission Tariffs, Notice of Proposed Rulemaking, FERC Stats. and Regs. ¶ 32,519 (1996) and Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act: Policy Statement, 69 FERC ¶ 61,086 (1994).

[85] We did, however, require non-pancaked rates for power pools that offer non-pancaked rates to their own members in Order No. 888. *Order No. 888,* FERC Stats, and Regs. at 31,727–28.

[86] While it is difficult to estimate the exact impact on consumers, we note that there have been studies of the deregulated British power markets that have found excessive concentration in generation has produced prices 20 to 40 percent above competitive levels at certain times. Richard Green and David Newbery, *Competition in the British Electricity Spot Market,* 100 J. Pol. Econ., 929, 1992.

[87] ''Status of Electric Utility Deregulation as of May 1, 1999,'' Energy Information Administration.

[88] *Order No. 888,* FERC Stats. and Regs. at 31,651–52.

[89] *See, e.g.,* Comments of Gerald Thorpe (Maryland) and President Herbert Tate (New Jersey), RTO Conference (Washington, DC), transcript at 37–39; 49–51.

management, reliability, pancaking of transmission access charges, and grid planning and expansion. These are regional problems. Therefore, we are proposing a rule to encourage the development of independent regional transmission operators that can promote both electric system reliability and competitive generation markets.

2. Actual and Perceived Discriminatory Conduct by Transmission Owners to Favor Their Own or Affiliated Merchant Operations

In addition to operational inefficiencies impeding full competition, there also exist questions about residual discrimination in the provision of transmission services by public utilities. As discussed below, many in the industry have expressed a fundamental mistrust of transmission owners. In addition, there are allegations, and in some circumstances findings, of actual discrimination by transmission owners. We discuss below indications of discriminatory conduct by vertically integrated utilities and seek further comment on utility practices subsequent to Order No. 888.

Utilities that control monopoly transmission facilities and also have power marketing interests [90] have poor incentives to provide equal quality transmission service to their power marketing competitors. It is, in fact, in the economic self-interest of transmission-owning utilities to favor their own power marketing interests and frustrate their competitors. As the Commission stated in Order No. 888:

> It is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide themselves. The inherent characteristics of monopolists make it inevitable that they will act in their own self-interest to the detriment of others by refusing transmission and/or providing inferior transmission to competitors in the bulk power markets to favor their own generation, and it is our duty to eradicate unduly discriminatory practices.[91]

The exercise of transmission market power allows transmission providers with power marketing interests to benefit in the short-run by making more power sales at higher prices, and benefit in the long-run by deterring entry by other market participants. As a result, prices to the Nation's electricity consumers will be higher than need be.

It was to eliminate this inherent tendency of a vertically-integrated utility to favor its own power sales that Order Nos. 888 and 889 required utilities to functionally unbundle their transmission and power merchant services. Generally, functional unbundling requires a public utility to: separate its transmission system functions and staff from wholesale generation marketing functions and staff; abide by a standard of conduct to define impermissible contact between generation and transmission personnel; take transmission services under the same open access tariff of general applicability as do others; state separate rates for wholesale generation, transmission, and ancillary services; and rely on the same Open Access Same-Time Information System (OASIS) that its transmission customers rely on to obtain information about its transmission system when buying or selling power.[92] The Commission imposed these requirements to establish a foundation for open grid access and competitive electricity markets.

Functional unbundling did not change the incentives of vertically-integrated utilities to use their transmission assets to favor their own generation, but instead attempted to reduce the ability of utilities to act on those incentives. In Order No. 888, the Commission received and considered numerous comments that functional unbundling was unlikely to work, and that more drastic restructuring, such as corporate unbundling, was needed.[93] However, the Commission decided at the time to adopt what it considered to be the less intrusive and less costly remedy.

Clearly, Order No. 888 has resulted in wholesale power markets becoming more competitive, more transmission services being made available to more potential users than ever before, and generally lower transaction costs.

However, market participants increasingly have alleged that numerous transmission service problems related to discriminatory conduct remain, and that these problems are impeding competitive wholesale power markets.[94] Our information about alleged continued discriminatory practices comes from several sources. These include formal complaints filed with the Commission, informal complaints made to the Commission's enforcement hotline, oral and written comments made in conjunction with public conferences held by the Commission, and pleadings filed with the Commission in various dockets.

Compared to the situation before Order No. 888, transmission-owning utilities must now resort to more subtle means to frustrate their marketing competitors and favor their own marketing interests. Continued discrimination may be conscious and deliberate, but it may also result from the failure to make sufficient efforts to change the way integrated utilities have done business for many years. In either case, the tendency of transmission owners to confer advantages, however subtle, upon their own marketing interests is discriminatory as against other marketers.

In the sections that follow, we will outline the information derived from filings and other sources about remaining impediments to competition caused by continued discriminatory conduct by transmission owners. We note, and we are well aware, that many allegations that have been made in various forums are unproved, and perceived discrimination may in fact turn out to have justifiable explanations. It is often hard to determine, on an after-the-fact basis, whether an action was motivated by an intent to favor affiliates or simply resulted from the need to serve native load customers or the impartial application of operating or technical requirements. Given our considerable difficulty in determining whether there has been compliance with our regulations, the question arises whether functional unbundling is an appropriate long-term regulatory solution.

We consider allegations of discrimination, even if not reduced to formal findings, to be a serious concern for two reasons. First, we may be seeing only the ''tip of the iceberg.'' We are aware that instances of actual discriminatory conduct may be undetectable in a non-transparent market. In addition, there are significant disincentives to filing and pursuing formal complaints that would result in definitive findings. Transmission customers often tell the Commission's enforcement staff that they are reluctant to make even informal complaints because of concerns that the Commission will not take strong action, and fear, perhaps most importantly, of retribution by their transmission supplier.[95] We also have been told that

[90] The term power marketing interests is used as shorthand herein to include the utility's own wholesale merchant function as well as any affiliates with wholesale merchant functions.

[91] *Order No.* 888, FERC Stats. and Regs. at 31,682.

[92] *Id.* at 31,654–55.

[93] *Id.* at 31,653–54.

[94] *See, e.g.,* of Roger Fontes on behalf of the Northern California Power Agency, Regional ISO Conference (Phoenix), Transcript at 136 (''In general, orders 888 and 889 have not fully remedied undue discrimination in providing transmission service in this country.'')

[95] *See* Comments of Dan Jones on behalf of the Public Utilities Commission of Texas, Regional ISO

the complaint process is costly and time-consuming,[96] and that the Commission's remedies for transmission violations do not impose sufficient financial harms on the transmission provider to act as a significant deterrent.[97]

Perhaps the most problematic aspect of relying on after-the-fact enforcement in the fast-paced business of power marketing, however, is that there may be no adequate remedy for lost short-term sale opportunities. For example, the Electric Power Supply Association has told us:

> Furthermore, even if the exercise of such discrimination could be adequately documented and packaged in the form of a complaint under Section 206 of the Federal Power Act under a more streamlined complaint process contemplated by the Commission, it would still be extremely costly and inefficient to deal with such complaints on a case-by-case basis. More than likely, the potential power transactions for which transmission principally was sought would disappear by the time a Commission ruling was obtained.[98]

Accordingly, actual problems with functional unbundling may be more pervasive than formally adjudicated complaints would suggest, and the informal allegations we hear provide valuable insight.

Second, we consider the allegations of discrimination to be serious because, if nothing else, they represent a *perception* by market participants that the market is not working fairly because such participants know that integrated utilities have the incentive and opportunity to discriminate. Mistrust in the market can itself be a serious impediment to competition. If market participants perceive that other participants have an unfair advantage through the affiliation with the transmission provider, it can inhibit their willingness to participate in the market, including, for example, building new generating units, thus thwarting the development of robust competition. Such mistrust can also harm reliability. As stated by NERC, there is a reluctance on the part of market participants to share operational real-time and planning data with transmission providers because of the suspicion that they could be providing an advantage to their affiliated marketing groups.[99]

The functional unbundling policy underlying Order No. 888 was an attempt to regulate the behavior of transmission owners. There are growing indications, however, that the conflicting incentives that vertically integrated utilities have regarding transmission access may be too difficult to police. Many have asserted that it is not realistic even to expect functional unbundling to eliminate attempts by transmission owners to gain economic advantage. Companies have an obligation to maximize value for shareholders, and it should be no surprise that they will be aggressive in doing so. For example, in comments to the Commission in the Order No. 888 proceeding, the Federal Trade Commission advised the Commission that a functional unbundling approach "* * * would leave in place the incentive and opportunity for some utilities to exercise market power in the regulated system. Preventing them from doing so by enforcing regulations to control their behavior may prove difficult." A representative of Lafayette Utilities told us at the New Orleans ISO Conference:

> Notwithstanding functional separation and the requirement not to discriminate, transmission personnel are well aware of the interests of their company's generation function, and can find a way to give preferential treatment. * * *[100]

A representative of a Wisconsin public utility told us:

> Administration of the tariff entails a myriad of decisions that require discretion, as well as "technical" judgments (like [available transmission capability] and [capacity benefit margin]) that have significant competitive ramifications. It is inevitable that these decisions and judgments will be made with competitive concerns in mind. Functional separation does not solve this problem.[101]

Similarly, at our regional ISO conference in Indianapolis, we were told:

> In a capital intensive industry where a high percentage of the investment is in generation assets, it is inconceivable that a utility, which in some cases has very high generation cost, would somehow manage its transmission system so as not to give its generation a competitive advantage. I think this is self-evident.[102]

While it should not be assumed that such problems exist in every circumstance, clearly many market participants do not believe the market can yet be trusted with respect to their commercial interests, at least in some areas. We now turn to some of the areas that have produced the most complaints about continuing discrimination.

a. Calculation and Posting of Available Transmission Capability in a Manner Favorable to the Transmission Provider

Perhaps the most significant complaint with respect to alleged discriminatory conduct under functional unbundling concerns the important function of calculating and posting the amount of transmission capability that is available on a transmission provider's system. The transmission provider is required to calculate and post on its OASIS the TTC and ATC for each posted transmission path.[103] ATC is the capacity that is stated to be available for transmission service requests. As we discussed above in Section III.A.1, it is not possible to calculate accurately the transmission capability of one system without knowing the flows scheduled by all other interconnected transmission providers in the region. Given this technical problem, it may be impossible to distinguish an inaccurate ATC presented in good faith from an inaccurate ATC presented for the purpose of favoring the transmission provider's marketing interests.

Transmission providers with power marketing interests have incentives to understate ATC on those paths valuable to its marketing competitors, or to divert transmission capacity so that it is available for use by its own marketing interests. If there is insufficient ATC, competitors may be forced to forego power sale transactions or use a less desirable alternative path if one is available.

The Commission has found violations of ATC postings in three cases. In *Washington Water Power Company*,[104] the transmission owning utility showed that it had no firm ATC, which would have discouraged any potential marketers who needed firm transmission service to make a sale. However, the utility then offered its power marketing affiliate, Avista

Conference (Kansas City), Transcript at 1985 ("And we've also heard that these entities are hesitant to bring those complaints forward because they have to deal with both sides of that utility").

[96] We note that we have recently issued a Final Rule regarding complaint procedures designed to make them more efficient. *See* Complaint Procedures, Final Rule, Docket No. RM98–13–000, 86 FERC ¶ 61,324 (issued March 31, 1999).

[97] Comments of National Energy Marketers Association, Docket No. RM98–5–000 (filed January 22, 1999).

[98] Motion to Intervene and Comments of Electric Power Supply Association in Support of Petition for Rulemaking, Docket No. RM98–5–000 (filed Sept. 21, 1998), at 3.

[99] NERC Reliability Assessment 1998–2007, at 39.

[100] Comments of Frank Ledoux on behalf of Lafayette Utilities System, Regional ISO Conference (New Orleans), Transcript at 180.

[101] Statement of Roy Thilly on behalf of Wisconsin Public Power, Inc. at 2, Docket No. PL98–5–000 (filed April 15, 1998).

[102] Comments of Kenneth Hegemann on behalf of American Municipal Power, Ohio, Regional ISO Conference (Indianapolis), Transcript at 174.

[103] *See* 18 CFR 37.6(b) (1998).

[104] 83 FERC ¶ 61,097 (1998), *further order*, 83 FERC ¶ 61,282 (1998).

Energy, an ''interruptible firm'' transmission service that was not available to competitors. As the Commission explained in finding a violation of Order No. 888:

Avista received a preference from Washington Water Power that was not available to any of its competitors. Simply stated, Avista's customer was deprived of the benefit of choosing among all potential power suppliers.

The case of *Wisconsin Public Power Inc. SYSTEM* v. *Wisconsin Public Service Corporation, et al.* (*Wisconsin Public*)[105] demonstrates both the difficulties and suspicions of discrimination resulting from when a transmission customer requests transmission service from an integrated utility. WPPI was seeking additional network transmission service from both Wisconsin Public Service Corporation (WPSC) and Wisconsin Power & Light Company (WP&L). In both cases, the requests were denied because of claims that the transmission owners were using all available capacity. In the case of WPSC, the Commission initially found that the utility had not properly reserved capacity for its merchant function and directed that it recompute its ATC without that reservation. After WPSC submitted additional documentation, the Commission accepted some of WPSC's merchant priority, but still found that it had violated its obligations under its tariff, and that its actions raised serious concerns about the functional separation of its staff. With respect to WP&L, the Commission found that it provided unduly preferential treatment to its merchant function, had been changing its ATC without posting those changes on OASIS, and had been computing ATC where none exists.[106]

The *Wisconsin Public* cases demonstrate, if nothing else, the difficulty of achieving, and enforcing, functional separation of a utility's transmission and merchant functions. These types of cases require substantial Commission investigative and adjudicative resources, not to mention the resources of the parties involved. The Commission recognized in *Wisconsin Public* how RTOs could help eliminate these problems. The Commission stated:

As we recently explained in *Louisville Gas & Electric Company, et al.*, 82 FERC ¶ 61,308 at 62,222 & n. 39 (1998), a properly structured ISO, or other transmission entity can eliminate the potential for the strategic use of a transmission owner's priority to use internal system capacity for native load. The ISO or other transmission entity can also eliminate the incentive to engage in strategic curtailments of generation that a transmission operator's generation service competitors own and can remove any incentive to game OASIS operations. This will promote generation entry and competition, since a properly structured ISO or other transmission entity would have no economic stake in favoring certain market participants over others and potential entrants would likely see the transmission market as fair. An ISO, therefore, could help to solve the problems established in the instant complaints.[107]

The case of *Morgan Stanley Capital Group* v. *Illinois Power Company*[108] also demonstrated problems associated with ATC and a transmission provider's use of its system for its own purposes. Morgan Stanley complained that Illinois Power failed to accurately post ATC, failed to award transmission capacity in a non-discriminatory manner, and allocated transmission in favor of its own bulk power marketing arm. Illinois Power admitted the ATC posting error, and the Commission found other violations of its tariff in responding to Morgan Stanley's request for service. Although the Commission initially also found that Illinois Power did not designate its own network resources in the same manner as network customers are required to designate them, Illinois Power disputed this, and after showing that its network resource was legitimate, the Commission dismissed its rehearing as moot. Nevertheless, this case demonstrates that a combination of ATC errors and unclear procedures feeds the mistrust in the marketplace with respect to a transmission owner's ability to use its system to favor itself.

We also have currently pending before us several formal complaints alleging that a transmission provider is improperly keeping its transmission capability for its merchant function. In one case, a power marketer asserts that a transmission provider has refused service over an interconnection on the basis that the transmission provider needs all the ATC for native load. The marketer has alleged that the transmission provider's claims of reliability concerns are a mask to block competitors from importing power into the transmission provider's system when the transmission provider has higher cost generation available.[109] In another recent formal complaint filing, it is alleged that a transmission provider denied transmission service and then improperly provided it to its merchant group.[110]

Aside from these cases involving formal complaints, there have been a number of other complaints with respect to ATC calculation. For example, our enforcement staff receives hotline complaints concerning ATC posting problems. The enforcement staff has confirmed a number of such ATC errors. In most cases, these errors were corrected within several months of having them pointed out, and the utilities often offered explanations based on hardware or software problems. We make no judgment whether such identified errors were an intentional attempt to thwart competition; however, they had the potential to have that effect.

In July 1997, the Commission held a technical conference concerning how well the OASIS system was working. Several commenters suggested that erroneous ATC calculation and posting was hurting competition. A representative from Electric Clearinghouse told us that there is a pervasive problem of incorrect or stale information on the OASIS sites, and that ''competition is blocked when this occurs.'' That same representative stated that very little firm ATC is offered due to the utility's caution or strategy, and that some providers will not offer firm ATC because they do not want to curtail their own transactions.[111] At the same conference, a representative from the American Public Power Association told us:

ATC is often understated and inconsistently posted on adjacent OASIS nodes. Inter-regional coordination is lacking. This fact limits the usefulness of the system for commercial purposes.[112]

In March 1998, a group referring to themselves as power industry stakeholders[113] filed a petition for rulemaking on electric power industry structure.[114] Although we are not addressing here the specific relief they are requesting in that Petition, the

[105] 83 FERC ¶ 61,198 (1998), *order on reh'g*, 84 FERC ¶ 61,120 (1998).

[106] 83 FERC at 61,860.

[107] *Id.* at 61,859.

[108] 83 FERC ¶ 61,204, *order granting clarification and dismissing reh'g*, 83 FERC ¶ 61,299 (1998).

[109] Aquila Power Corporation v. Entergy Services, Inc., Docket No. EL98–36–000, Amended and Restated Complaint at 6 (filed June 23, 1998).

[110] Arizona Public Service Company v. Idaho Power Company, Docket No. EL99–44–000 (filed March 3, 1999).

[111] Open Access Same Time Information Technical Conference, Docket No. RM95–9–003 (July 18, 1997), transcript at 23.

[112] *Id.* at 28.

[113] The group consists of a number of power marketers and users, including, for example, Coalition for a Competitive Electric Market, ELCON, Electric Clearinghouse, Inc., and Enron Power Marketing, Inc.

[114] Petition for a Rulemaking on Electric Power Industry Structure and Commercial Practices and Motion to Clarify or Reconsider Certain Open-Access Commercial Practices, Docket No. RM98–5–000.

Petition does contain a number of fairly specific allegations indicating problems in the market. For example, the Petition asserts:

Concepts such as ATC and the OASIS have become vehicles for obstructing and curtailing, rather than accommodating, transactions. Incumbents are able to deny new entrants access to critical, accurate information across control areas. This can take the form of out-of-date or incorrect postings of ATC or, in some instances, intentional withholding of actual ATC. Regardless of the cause, more transmission capability is physically available than is being released for sale.[115]

The Petition alleges the existence of ''ATC exclusions, inaccuracies and misuses that deny new entrants the ability to evaluate market opportunities, and therefore, prevent reasonable access to the grid.'' [116] The Petition cited specific instances of inconsistent ATC calculations for the same interconnection by the systems on either side; an OASIS showing ATC that was not in fact made available for scheduling; and an OASIS showing no ATC but the utility then using that path for a sale.[117]

EPSA, the trade association representing certain power suppliers, filed comments in support of the Petition and echoed many of the same experiences:

EPSA agrees that this discriminatory conduct persists principally because of the continuing incentives and opportunity for transmission owning public utilities covertly to discriminate against other transmission customers, by, for example, minimizing reported available transmission capability (ATC), delaying or inaccurately posting ATC on the OASIS, or otherwise manipulating market operations.[118]

EPSA further stated that, ''The manipulation of ATC—whether with the intent to deceive or as the result of poor OASIS management—is a serious entrance barrier for competitive power suppliers.'' [119]

At our regional ISO conference in New Orleans, we were told by a representative from the Public Service Commission of Yazoo City, Mississippi, of a specific instance of what it considered to be discriminatory treatment:

Yazoo City, as a participant, has experienced first hand an individual [transmission] owner's continued ability to use its ownership and control [of] transmission to disadvantage competitors, notwithstanding Order 888's mandate of non-discriminatory transmission access.

The representative then went on to describe an instance where a marketer could not complete a 10 MW power sale because of transmission restrictions, but then the transmission provider offered to supply the capacity itself.[120] The representative concluded that Orders Nos. 888 and 889 have not fully eliminated undue discrimination and this will not be achieved ''as long as transmission owners are allowed to fence in transmission-dependent utilities and others located on their transmission system to enhance the value of their generation assets at increased cost to competitors.''

One specific area where there have been allegations that transmission owners are using ATC to favor their own merchant operations concerns the calculation and use of Capacity Benefit Margin (CBM). Although there is no single accepted definition, CBM is generally used to mean an amount of transmission transfer capability reserved by load serving entities to ensure access to generation from interconnected systems to meet their generation reliability requirements.[121] Some utilities subtract CBM from their total transmission capability to arrive at ATC. There is no uniform method for calculating CBM. The ability to withhold CBM to ensure reliability not only confers a reliability advantage for the transmission provider, but may give the transmission provider the opportunity to selectively withhold ATC over paths and interconnections useful to its generation competitors.

The use of CBM is an issue that is currently being considered in several cases pending before the Commission.[122] For example, with respect to the formation of the PJM ISO, the Commission noted that it was not demonstrated that the PJM Pool's historical practice of withholding firm transmission interface capacity as a substitute for installed generating reserves is consistent with our open access policies. The Commission observed that the load serving entities that own generating capacity within the PJM control area appeared to benefit from this practice as suppliers in addition to benefitting as load serving entities.[123] The Commission set the issue for further briefing and it remains pending. In another pending proceeding concerning WPSC's CBM calculation, two of the parties assert that CBM ''removes firm transmission capacity from open access offerings, thereby raising an unnecessary and unjustifiable barrier to competition,'' and ''fosters discrimination by giving merchant functions gatekeeping control over CBM-related transmission access and by giving individual interface transmission owners broad discretion over where and how much CBM is withdrawn from ATC.'' [124] In the same proceeding, Electric Clearinghouse, Inc. asserts that ''the CBM set-aside embodies undue discrimination in access to the monopoly owned transmission wires because it ensures certain users a priority over the reserved transmission interface capacity to the exclusion of other firm transmission users.'' [125]

As we stated above, we fully recognize that these are assertions made in pending cases in which we have not yet made findings. They are referenced here as illustrative of the suspicions in the industry of continuing opportunities for discriminatory treatment that may disadvantage certain competitors where generation owners continue to operate transmission.

b. Standards of Conduct Violations

To ensure the functional separation of a transmission provider's transmission and merchant functions, the Commission adopted standards of conduct that prohibit the transmission provider's marketing interest employees from having any more access to transmission system information than is available on OASIS, and requires the transmission provider's transmission employees to provide impartial service to all transmission customers.[126] If a transmission provider's marketing interests have favorable access to transmission system information or receive more favorable treatment of their transmission requests, this obviously creates a disadvantage for marketing competitors.

In spite of the standards of conduct, there continues to be a perception by

[115] Petition at 7–8.

[116] *Id*. at 15.

[117] *Id*. at Appendix D.

[118] EPSA Comments, Docket No. RM98–5–000, at 2 (filed September 21, 1998).

[119] *Id*. at 8.

[120] Comments of Rebert D. Priest on behalf of the Public Service Commission of Yazoo City, Regional ISO Conference (New Orleans), Transcript at 201–03. After hearing this assertion, Entergy Services, Inc. filed a letter in which it stated that it was unable to identify any Entergy-imposed restrictions that would have prevented the power purchase. *See* Letter in Docket No. PL98–5–000 (filed July 1, 1998).

[121] NERC, Available Transfer Capability Definitions and Determinations (June 1996), at 14.

[122] The Commission recently noticed a technical conference, to be held May 20 and 21, 1999, on the issue of CBM. *See* Capacity Benefit Margin in Computing Available Transmission Capacity, Notice of Technical Conference, Docket No. EL99–46–000.

[123] *PJM*, 81 FERC at 62,277.

[124] Protest of Madison Gas & Electric Company and Wisconsin Public Power Inc., Docket No. EL98–2–003 at 3 (filed August 21, 1998).

[125] Protest of Electric Clearinghouse, Inc., Docket No. EL98–2–003, at 3 (filed Ausust 21, 1998).

[126] *See* 18 CFR Part 37 (1998).

many market participants that the transmission provider's marketing and transmission interests are not fully functionally separated. In cases in which the Commission has issued formal orders, we have found serious concerns with functional separation and improper information sharing with respect to at least four public utilities.[127] In addition, our enforcement staff receives numerous telephone calls about standards of conduct issues; some of these are simply questions about what is permissible conduct, but others are complaints of a violation. In a number of cases, our staff has verified non-compliance with the standards of conduct.[128]

The petitioners for rulemaking in Docket No. RM98–5–000 allege that there are common instances of ''unauthorized exchanges of competitively valuable information on reservations and schedules between transmission system operators and their own or affiliated merchant operation employees.'' [129] They also cite OASIS data showing an instance where a transmission provider quickly confirmed requests for firm transmission service by an affiliate, while service requests from independent marketers took much longer to approve.

We believe that some of the identified standards of conduct violations are transitional issues resulting from a new way of doing business, and we acknowledge that many utilities are making good-faith efforts to properly implement standards of conduct. However, we also believe that there is great potential for standards of conduct violations that will never even be reported or detected. The use of standards of conduct is not the optimal procedure for ensuring a fair marketplace, and may be unnecessary in a properly structured and operated market.

We are increasingly concerned about the extensive regulatory oversight and administrative burdens that have resulted from policing compliance with standards of conduct. We have discussed above some of the cases in which the Commission had to address potential violations of the standards of conduct. In addition, transmission providers were required to file their standards of conduct for Commission review. In response, the Commission initially issued 8 orders concerning 126 public utilities' standards of conduct.[130] Generally, these orders required the utilities to revise their standards of conduct and post, on the OASIS, organizational charts and job descriptions for transmission/reliability and wholesale merchant function employees. The Commission subsequently issued 13 more orders requiring the public utilities to further revise their standards of conduct and/or organizational charts and job descriptions.[131] The Commission has also issued three orders on rehearing of the standards of conduct orders.[132]

As of April 1, 1999, 51 utilities' standards of conduct and organizational charts and job descriptions have been accepted and 75 utilities' standards of conduct and/or organizational charts and job descriptions have not been accepted and are pending review. This is an indication of the significant regulatory effort required by both public utilities and the Commission to make the standards of conduct approach workable—a regulatory effort that could be greatly reduced through more distinct organizational separation.

c. Line Loading Relief and Congestion Management

A number of complaints have been made alleging that transmission providers are acting in a discriminatory manner in implementing line loading relief, which is required when a transmission line is in danger of being overloaded. Such complaints allege that the transmission providers are not providing redispatch service, are favoring their own transactions, and are failing to follow curtailment priorities established in Order No. 888.[133] All of these actions by transmission providers may provide subtle competitive advantages in wholesale markets. For example, for those purchasers for whom service reliability is particularly important, purchasing power from a transmission provider may be viewed as offering enhanced reliability.

Like the issue of calculating ATC, the fact that curtailment of service in times of congestion is in the control of the transmission provider, who also has power transactions on the affected transmission lines, leads to suspicions of discriminatory behavior that are difficult to verify. For example, a representative of Blue Ridge Power Agency told us at one of our ISO conferences:

> There simply is no shaking the notion that integrated generation and transmission-owning utilities have strategic and competitive interests to consider when addressing transmission constraints. Functional unbundling and enforcement of [standard of] conduct standards require herculean policing efforts, and they are not practical. [134]

Likewise, we were told at another ISO conference that operators with reliability responsibility possess actual controlling authority over transactions, ''thereby giving them a tremendous advantage over competitors.'' [135]

d. OASIS Sites That Are Difficult To Use

Aside from the problems alleged with respect to posting inaccurate ATC calculations on OASIS sites, there have been complaints that some transmission providers have implemented their OASIS sites as a tool to impede competition rather than as it was intended—as a tool to foster competition. It has been alleged that transmission providers have no incentive to make the sites easier to use, because it is primarily the transmission providers' marketing competitors who would benefit from better OASIS sites.[136] The petitioners in Docket No. RM98–5–000 asserted:

[127] *See Wisconsin Public*, 83 FERC at 61,855, 61,860 (WPSC's actions raised ''serious concerns'' as to functional separation; WP&L's actions demonstrated that it provided unduly preferential treatment to its merchant function); *Washington Water Power*, 83 FERC at 61,463 (utility found to have violated standards in connection with its marketing affiliate); Utah Associated Municipal Power Systems v. PacifiCorp, 87 FERC ¶ 61,044 (1999) (finding that PacifiCorp had failed to maintain functional separation between merchant and transmission functions).

[128] *See, e.g.*, Communications of Market Information Between Affiliates, Docket No. IN99–2–000, 87 FERC ¶ 61,012 (1999) (Commission issued declaratory order based on hotline complaint clarifying that it is an undue preference in violation of section 205 for a public utility to tell an affiliate to look for a marketing offer prior to posting the offer publicly).

[129] Petition at 15.

[130] The citations for these orders are: 81 FERC ¶ 61,332 (1997), 81 FERC ¶ 61,338 (1997), 81 FERC ¶ 61,339 (1997), 82 FERC ¶ 61,028 (1998), 82 FERC ¶ 61,073 (1998), 82 FERC ¶ 61,132 (1998), 82 FERC ¶ 61,193 (1998) and 82 FERC ¶ 61,246 (1998).

[131] The citations for these orders are: 84 FERC ¶ 61,131 (1998), 84 FERC ¶ 61,255 (1998), 84 FERC ¶ 61,320 (1998), 84 FERC ¶ 61,327 (1998), 85 FERC ¶ 61,068 (1998), 85 FERC ¶ 61,145 (1998), 85 FERC ¶ 61,227 (1998), 85 FERC ¶ 61,390 (1998), 86 FERC ¶ 61,044 (1999), 86 FERC ¶ 61,079 (1999), 86 FERC ¶ 61,146 (1999), 86 FERC ¶ 61,185 (1999) and 86 FERC ¶ 61,246

[132] The citations for these orders are: 82 FERC ¶ 61,131 (1998), 83 FERC ¶ 61,357 (1998), and 85 FERC ¶ 61,382 (1998).

[133] We set for evidentiary hearing a formal complaint by Wisconsin Electric Power Company making these types of allegations. Wisconsin Electric Power Company v. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), 86 FERC ¶ 61,121 (1999). The parties subsequently filed a settlement agreement.

[134] Regional ISO Conference (Richmond), Transcript at 20.

[135] Comments of Marvin Carraway on behalf of Clarksdale Public Utilities Commission, Regional ISO Conference (Kansas City), Transcript at 107.

[136] *See, e.g.*, Comments of representative from Enron Power Marketing speaking at Commission's

Indeed, to gain a competitive advantage over those who are dependent on the timeliness and accuracy of OASIS, vertically integrated transmission owners have an incentive to make OASIS as slow and uninformative as possible.[137]

Similarly, EPSA has told us that ''the present transmission regime gives existing transmission-distribution utilities an inherent advantage to reserve capacity for their own native load use, and provides them with no incentive to maintain a properly functioning OASIS.'' [138]

As we stated above with respect to ATC calculation, we are not in a position to make a judgment that transmission providers are deliberately making their OASIS sites difficult to use in order to disadvantage marketing competitors. In fact, we are aware that some OASIS sites are well run and engender few complaints from users, and that there may be legitimate technical and transitional difficulties responsible for some of the problems complained of. However, this is another example of the situation where market participants perceive discriminatory intent, whether or not one exists, because of the apparent opportunity and incentive to discriminate.

e. Other Issues Related to Functional Unbundling and Dealing With Remaining Undue Discrimination

While the Commission here has not attempted to provide an exhaustive compilation of the remaining opportunities for discriminatory practices by transmission operators who are also in the power business,[139] it believes that the potential for such problems increases in a competitive environment *unless* the market can be made structurally efficient and transparent with respect to information, and equitable in its treatment of competing participants. We invite public comments on the extent to which there remains undue discrimination in transmission services, and if it remains, in what forms. Those comments should address both the areas of alleged discrimination we have discussed above, as well as any other areas that commenters may have experienced. In addition, we are asking for comments about what remedies we should impose in an effort to eliminate any remaining discriminatory conduct. For example, should we require mandatory participation in an RTO, or are there other possible remedies? Could a performance-based rate system be designed to realign economic interests to remove the motive for discrimination?

One thing that seems apparent is that a system that attempts to control behavior that is motivated by economic self-interest through the use of standards of conduct will require constant and extensive policing. This kind of regulation goes beyond traditional price regulation and forces us to regulate very detailed aspects of internal company policy and communication. For functional unbundling to be successful, we have to be concerned, in some sense, about ''who spoke to whom'' in the company cafeteria. Functional unbundling does not necessarily promote light-handed regulation. It also undoubtedly imposes a cost on those entities that have to comply with the standards of conduct who face additional training and rules that create rigidities in their internal management activities.

It appears, based upon our experience thus far, that no matter how detailed the standards of conduct and how intensive our enforcement, competitors will continue to be suspicious that the wall between transmission operations and power sales is being breached in subtle and hard to detect ways. The perception that many entities that operate the transmission system cannot be trusted is not a good foundation on which to build a competitive power market. It creates needless uncertainty and risk for new investments in generation.

In section III.B below, we will address how the use of independent RTOs can help eliminate the opportunity for unduly discriminatory practices by transmission providers, restore the trust among competitors that all are playing by the same rules, and reduce the need for overly intrusive regulatory oversight.

B. Benefits That Regional Transmission Organizations Can Offer

In the preceding sections, we have set forth what we consider to be at least some of the remaining transmission related impediments to full competition in the electricity markets. These impediments include engineering and economic inefficiencies in the operation and structure of the existing transmission grid that inhibit the development of broad-based markets for electric power, and remaining opportunities for discriminatory practices by transmission owners with power marketing interests.

We now believe that the establishment of properly structured RTOs throughout the U.S. can effectively remove the remaining impediments to competition in the power markets. As discussed elsewhere in this NOPR, a properly structured RTO will be an entity that is independent from all generation and power marketing interests, and has the exclusive responsibility for grid operations, short-term reliability, and transmission service within a region. Such an entity would not only confer benefits related to removing impediments to competition, but would also enhance reliability and allow for less intrusive government regulation of transmission providers.

We note that the Commission's recognition of the benefits of regional transmission organizations is not new. The Commission has encouraged the industry to create such institutions for more than six years. In 1993, the Commission issued a policy statement encouraging the formation of RTGs, which were defined as voluntary organizations of transmission owners, users, and other entities interested in coordinating transmission planning (and expansion), operation and use on a regional and inter-regional basis. [140] The Commission summarized the benefits of such entities as enabling the market for electric power to operate in a more competitive, and thus more efficient manner; providing coordinated regional planning of the transmission system to assure that system capabilities are adequate to meet system demands; decreasing the delays that are inherent in the regulatory process, resulting in a more market-responsive industry; and resolving technical transmission issues (*e.g.*, loop flow).[141]

One year later, the Commission issued a transmission pricing policy statement which encouraged RTGs to address transmission pricing and offered to provide more latitude to RTGs than to individual utilities for innovative pricing proposals, recognizing that issues such as loop flow required a regional approach.[142] Then, two years after that in Order No. 888, the Commission encouraged the industry to consider ISOs, and gave specific guidance on characteristics and functions in the form of 11 principles.

July 1997 OASIS Technical Conference, transcript at 43–44.

[137] Petition at 37.

[138] EPSA Comments, Docket No. RM98–5–000. at 8 (filed September 21, 1998).

[139] There have been other violations alleged. For example, many relate to pricing and discounting.

[140] Policy Statement Regarding Regional Transmission Groups, FERC Stats. & Regs. ¶ 30,976 at 30,870 and n.4 (1993) (*RTG Policy Statement*).

[141] *RTG Policy Statement*, FERC Stats. & Regs. at 30,871.

[142] Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, 59 FR 55031 (November 3, 1994), FERC Stats. & Regs., Regulations Preambles ¶ 31,005, at 31,140, 31,145 (*Transmission Pricing Policy Statement.*)

The Commission has not been alone in recognizing the benefits of RTOs. In fact, there is surprising unanimity about the benefits of regional transmission solutions to grid management. For example, the Edison Electric Institute adopted a resolution that ''recognizes the potential benefits of voluntary grid regionalization in addressing pancaked transmission rates, congestion management and reliability, transmission planning, and market power * * *'' and supported ''flexible, voluntary, market-based approaches'' toward grid regionalization.[143] The American Public Power Association has stated that ''mandating RTOs will prevent further inequities in the provision of wholesale transmission service, provide guidance to the states, advance regional solutions to reliability issues to head off future crisis situations such as the 1998 Midwest Price Spikes, and partially mitigate serious market power concerns that have arisen due to the high number of recent mergers in the electric utility industry.'' [144] The National Energy Marketers Association urges the Commission to ''take bold steps necessary to create larger regional transmission organizations (RTOs) and to force maximum participation into (sic) these organizations.'' [145] Other industry groups representing very different interests have reached similar conclusions.[146]

States are also recognizing the need for regional approaches to grid operation. At least five states have passed laws or issued regulations requiring transmission owning utilities in their states to participate in regional transmission entities.[147] Other state regulators have highly praised the new regional transmission entities that are functioning in their regions.[148]

While these industry groups and state regulators may not agree on the form of such regional organizations and how aggressive the Commission should be in encouraging their development, they do generally agree that such entities would provide substantial benefits.

We note, additionally, that this same conclusion has also been reached in other countries. In almost every country that has chosen to introduce competition in its power sector, a single regional or national grid management organization has or will be created as the necessary platform for achieving fair and efficient bulk power competition.[149]

In the following discussion, we address the significant benefits of establishing RTOs.

1. An RTO Would Improve Efficiencies in the Management of the Transmission Grid

As discussed in section III.A above, numerous inefficiencies in the current operation and structure of the transmission grid may be impeding full competition. Establishing RTOs could help remove most, if not all, of those inefficiencies in a number of ways.

First, an RTO would improve efficiency through regional transmission pricing. The Commission has long recognized that transmission pricing reform is most effectively accomplished on a regional basis.[150] An RTO would have the geographic scope needed to eliminate pancaked transmission rates within its region. This would broaden the generation market and could result in more potential suppliers and less concentrated generation markets, thereby fostering more competitive markets and lower prices to consumers.

Second, regional scope would improve congestion management on the grid. An RTO would improve the way congestion is managed over a large area, thus expanding the number of potential transactions over existing facilities while reducing the number of curtailments.

The scheduling of power by multiple utilities over a regional grid can lead to unexpected overloads on constrained facilities. This can be a serious barrier to competitive power trading because some power sale transactions may have to be curtailed. With a regional scope, an RTO would be better able to manage congestion. An RTO would be in a better position to prevent congestion or control it through application of appropriate regionwide congestion pricing to ration use of the grid if necessary. An RTO would also more readily identify schedules that could lead to congestion, and relieve congestion through regional redispatch authority. A pricing approach to capacity allocation would improve efficiency by ensuring that the most highly valued transactions remain on the grid and possibly result in less curtailment than under the present approach.

Third, an RTO would improve efficiency by providing more accurate estimates of ATC than those currently provided by individual systems. Conditions on all parts of the regional grid affect ATC on individual utility systems. Factors such as load estimates, generation and transmission outages, generation dispatch orders and transactions on individual systems can affect the determination of ATC. An individual utility may not have complete or timely information regarding such factors and may apply assumptions and criteria in its ATC estimates that are different from those of neighboring transmission operators, leading to wide variations in ATC values for the same transmission path. The information needed may be considered confidential, and market participants would be more willing to share it with an independent body.

An RTO would produce better ATC estimates because it would have access to complete regional usage information, would have current information because the RTO will be the security coordinator as well as the OASIS site administrator, and would calculate ATC values on a consistent region-wide basis using a regional flow model. An RTO would also resolve most, and perhaps all, of the complaints of inaccurate ATC

[143] Edison Electric Institute, Resolution Regarding Grid Regionalization, adopted by the Board of Directors, January 7, 1999.

[144] Motion of American Public Power Association For Leave To Lodge, Docket No. RM99–2–000, filed March 17, 1999, at 2.

[145] NEA, ''National Guidelines For Restructuring The Electric Generation Transmission and Distribution Industries,'' January 1999, at 6.

[146] The Electric Power Supply Association recommends that ''ISOs Must be Regional in Scope.'' (EPSA Position Statement on Independent System Operators, January 1997, at 1.) The Electricity Consumers Resource Council (ELCON) states that ''a competitive electricity marketplace requires the formation of large, regional independent system operators.'' (ELCON, ''Independent System Operators,'' Profiles On Electricity Issues, No. 18, March 1997, at 2.

[147] Laws to encourage participation in regional ISOs or transcos have been passed in Wisconsin, Illinois, Virginia, and Arkansas. Regulations to encourage this outcome have been issued by the Nevada commission.

[148] *See, e.g.*, Comments of Commissioner Marlene Johnson, RTO Conference (District of Columbia), transcript at 23–24; Commissioner Gerald Thorpe (Maryland), transcript at 39–40; President Herbert Tate (New Jersey), transcript at 47–50; and Commissioner Nora Mead Brownell (Pennsylvania), transcript at 54.

[149] Government of Mexico, Secretaria de Energia, *Policy proposal for structural reform of the Mexican electricity sector*, 1999; World Bank, *Reforms and Private Participation in the Power Sector of Selected Latin American and Caribbean and Industrialized Countries*, 1994; National Regulatory Research Institute, *Electric Power industry Restructuring in Australia: Lessons From Down Under*, Occasional Paper #20, Ohio State University, January 1997; World Bank (Industry and Energy Department), *Central and Eastern Europe: Power Sector Reform in Selected Countries* 1997; Ontario (Canada) Market Design Committee, *The Fourth and Final Report*, January, 1999; Alberta (Canada) Department of Energy, *Moving To Competition, A Guide to Alberta's New Electricity Structure*, 1994; Jan Moen, *A Common Electricity Market in Norway and Sweden: Prerequisites, Development and Results So Far*, Norwegian Water Resources and Energy Administration, May, 1996; National Grid Company, *Grid System Management*, Coventry, England; and J. Culy, E. Read and B. Wright, ''The Evolution of New Zealand's Electricity Supply Structure,'' in *International Comparisons of Electricity Regulation*, Gilbert and Kahn, editors, Cambridge University Press, 1996.

[150] *Transmission Pricing Policy Statement*, FERC Stats. & Regs. at 31,145.

postings. Problems are likely to remain only to the extent that scheduling reservations across several RTOs continue to be made on a contract path basis.

Fourth, an RTO also would more effectively manage parallel path flows. With an RTO in place, the geographic scope for scheduling and pricing transmission would be widened and parallel path flows would be internalized within the RTO. This should result in more accurate ATC calculations, improve reliability, and, with appropriate transmission pricing, eliminate or reduce disputes among transmission owners regarding uncompensated uses of facilities.

Fifth, an RTO would promote more efficient planning for transmission or generation investments needed to increase transmission capacity. One advantage of an RTO that is helpful in planning is that it will be able to see the ''big picture.'' Planning and expansion of grid facilities will no longer be done on a piecemeal basis. An RTO would help identify the best place on the grid to locate new generation.[151] An RTO also will have more options available to it because of its size and configuration. It has the potential to select and implement the most efficient investment or operating option within the region for relieving a bottleneck. This is in marked contrast to the current situation in many regions where individual transmission owners are generally limited to investment options in their particular service areas even though better (*i.e.*, less costly) options may be available elsewhere in the region.

Sixth, an RTO would increase coordination between separate state regulatory agencies by providing a single point of focus for transmission expansion review, possibly even encouraging multi-state agreements to review and approve new transmission facilities.[152] As RTOs develop viable regional planning processes, there may be a growing willingness on the part of individual states to accommodate regional regulatory review on either a formal or informal basis.[153]

Seventh, transactions costs would also be reduced with an RTO in place. For example, the consolidation of transmission control operations would cut general and administrative costs over the long term. In addition, an RTO would administer a single regional transmission tariff, thereby permitting ''one stop shopping'' for regional transmission service and resulting in simpler and more efficient procedures for transmission users to transmit power over greater distances.

Eighth, through regional standardization of transmission services and the terms and conditions under which they are transacted, an RTO would facilitate establishing transmission rights and the ''tradeability'' of transmission rights. The early experience suggests that independent regional transmission organizations are in the best position to establish well-defined rights to the use of the grid.[154] Such rights are essential to establishing congestion markets. Clear rights are also needed for the ability to trade transmission rights between customers that place different values on capacity. Such trade helps ensure an efficient allocation of current capacity and helps ensure that new capacity is built only when and where necessary. [155]

Ninth, an RTO would facilitate the success of state retail access programs by providing greater confidence in the markets and a larger regional market with access to more potential suppliers.

2. An RTO Would Improve Grid Reliability

With the improved transmission access that has resulted from industry compliance with Order No. 888, the volume of wholesale electricity transactions has significantly increased along with the number of market participants. This has led to industry concerns that traditional reliability rules may not guarantee that the bulk power system remains secure. Many transmission owners in a region make independent decisions about use of a common regional transmission grid. A reliability problem on one utility's transmission system may threaten the reliability of its neighbor's system. A regional body that operates the regional grid and enforces reliability rules for the entire region could prove helpful to current efforts and should be considered. An RTO would enhance reliability by (1) operating the system for a large region, (2) ensuring coordination during system emergencies and restorations, (3) conducting comprehensive and objective reliability studies, (4) coordinating generation and transmission outage schedules, and (5) sharing of ancillary services responsibilities.

3. An RTO Would Remove Opportunities for Discriminatory Transmission Practices

In an RTO, the control of transmission operation is cleanly separated from power market participants. An RTO would have no financial interests in any power market participant, and no power market participant would be able to control an RTO. This separation will eliminate the economic incentive and ability for the transmission provider to act in a way that favors or disfavors any market participant in the provision of transmission service.[156] Accordingly, ATC calculations can be made in an unquestionably objective manner, OASIS sites can be equally relied upon by all transmission users, and line loading relief should be free from preferences for certain market participants.

In addition, the separation of transmission operation from power marketing activities also would reduce opportunities for intentional or inadvertent communication of commercially valuable information from the transmission provider to any market participant, and should eliminate any advantage that market participants may now have with respect to arranging transmission service with an affiliated transmission provider.

Finally, removing the opportunity for discriminatory transmission practices will help ensure the openness and integrity of the commercial process. We have been told repeatedly of the importance of transparency and fairness in the relationship between transmission users and transmission providers. This was a prominent topic at our ISO conferences last year. Fairness, impartiality and market confidence are also important to reliability. If the operator orders certain actions to be taken for system reliability purposes that might harm the interests of some users, those users must know that the action being ordered has been made

[151] One of the benefits of the ERCOT (Texas) ISO has been, due to the ISO's comprehensive view of the grid, the ability to identify the most effective spots on the grid to locate new generation facilities. *See* Chairman Patrick Wood (Texas), transcript at 205–06.

[152] The Commission recognizes that there may be legal impediments to such a shift. For example, most state siting laws typically require that the proposed facility must be assessed in terms of its benefits for the state rather than the region. *See* Ileana Elsa Garcia, ''State Electric Facility Siting Practices,'' background paper prepared for the Harvard Electric Policy Group, April 10, 1997.

[153] To encourage this movement, we propose requiring that the RTO's planning and expansion process must '' accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities.'' *See* section III.E.

[154] *See* Central Hudson Gas & Electric Corporation, *et al.*, 86 FERC ¶ 61, 062 at 61, 228–33 (1999); *PJM*, 81 FERC at 62,240.

[155] Capacity Reservation Open-Access Transmission Tariffs, Notice of Proposed Rulemaking, 61 FR 21847 (May 10, 1996), FERC Stats. & Regs. ¶ 32, 519 (*CRT NOPR*).

[156] Appropriate price regulation of RTOs would still be needed.

fairly and with only technical factors in mind.

One important benefit of an RTO is that it could help eliminate the suspicions about, or remaining actual discriminatory practices by, grid operators. The DOE Reliability Task Force concluded that regional reliability entities such as RTOs must be ''truly independent of commercial interests so that their reliability actions are—and are seen to be—unbiased and untainted * * *'' [emphasis added] [157] The same conclusion was reached by the blue-ribbon Electric Reliability Panel convened by NERC to recommend reforms in the current U.S. reliability system. The panel concluded that: ''(t)o dispel suspicions that the system operator favors one participant over another * * *, the operator must be independent from market participants.'' [158]

4. An RTO Would Result in Improved Market Performance

By improving efficiencies in the management of the grid, improving grid reliability, and removing any remaining opportunities for discriminatory transmission practices, the widespread development of RTOs would also improve the performance of electricity markets in several ways and consequently lower prices to the Nation's electricity consumers.

The RTO benefits discussed so far in this section would result in improving the competitiveness of wholesale electricity markets. To the extent that RTOs foster fully competitive wholesale markets, the incentives to operate generating plants efficiently are bolstered. Suppliers will continuously seek to avoid being made uncompetitive by rivals. We have now had close to two decades of experience with generating plants being operated in at least partially competitive markets. Non-traditional generators have had the opportunity to realize increased profits through reduced costs and improved operating performance. For years, the growing presence of independent power generators has led to highly efficient new capacity coming on line. The evidence is clear that market incentives can lead to highly efficient plant operations.

The incentives for more efficient plant operation can also affect existing generation facilities. Especially noteworthy is the recent experience that indicates improvements in the generation sector in regions with RTOs. Regions which have ISOs in place are undergoing dramatic shifts in the ownership of generating facilities. Large-scale divestiture and high levels of new entry in California and the Northeast are changing the ownership structure of these regions' generators. Availability of customers, and the presence of competing suppliers, are creating the incentives for better-performing plants. All plants are coming under pressure to improve their availabilities and operating efficiencies. Individual firms have made strategic decisions to seek to become more competitive, or to prepare themselves for future competition.[159]

By improving competition, RTOs will also reduce the potential for market power abuse. As discussed earlier, eliminating pancaked transmission prices will expand the scope of markets and bring more players into the markets.[160] By eliminating the mistrust in the current grid management, entry by new generation into the market will become more likely as new entrants will perceive the market as more fair and attractive for investment. And with more players, the market becomes deeper and more fluid, allowing for more sophisticated forms of transacting and smoother matching of buyers and sellers.

The full value of the benefits of RTOs to improve market performance cannot be known with precision before their development, and we do not yet have a long enough track record with existing institutions with which to measure. The Commission will estimate the potential cost savings from RTOs as part of its National Environmental Protection Act analysis. At this time, we foresee several billion dollars annually in efficiency gains to the economy.[161]

The Commission seeks comment on the effect of RTOs on electricity market performance, including any data or other information that could shed light on quantifying the extent of those benefits.

5. An RTO Would Facilitate Lighter-Handed Governmental Regulation

There are several ways that the existence of a properly structured RTO would reduce the need for Commission oversight and scrutiny, which would benefit both the Commission and the industry.

A number of regulatory benefits depend critically on the RTO being truly independent of power marketing interests. For example, to the extent an RTO is independent of power marketing interests, there would be no need for this Commission to monitor and attempt to enforce compliance with the standards of conduct designed to unbundle a utility's transmission and generation functions.

An independent RTO with an impartial dispute resolution mechanism would resolve disputes without resort to the Commission complaint process. The Commission has demonstrated its willingness to defer to such mechanisms.[162] It is generally more efficient for these organizations to resolve many disputes internally rather than bringing every dispute to the Commission. We seek comment on what types of disputes or other matters would be appropriate for the Commission to defer to the decisions of the RTO? In granting deference to decisions that result from an acceptable ADR process,

[157] *See* Secretary of Energy Advisory Board, U.S. Department of Energy, ''Maintaining Reliability in a Competitive U.S. Electricity Industry,'' September 29, 1998 at xv.

[158] Electric Reliability Panel of the North American Reliability Council, ''Reliable Power: Renewing the North American Electric Reliability Oversight System,'' December 1997, at 17.

[159] Examples include: Virginia Power, which has made more than $1 billion in capital improvements and other investments (without raising rates) between 1992 and 1998, including $921 million in generating plant and approximately $125 million in transmission line upgrades. *See* Virginia Power, Virginia Power Statement on SCC Report, May 24, 1998. This document is available on Virginia Power's website at http://www.vapower.com/news/archive/releases980324.html; Entergy, which has achieved high performance at its nuclear units in terms of capacity factors, outage times and refueling periods, *See* Entergy Operation Services, Inc., Entergy Nuclear Units Have Outstanding Year as Entergy Forges Ahead with National Nuclear Company, January 26, 1999, press release. This document is available on Entergy's website at http://www.entergy.com/news/1999/nr012699.htm.; New York Power Authority, which has lowered operating and maintenance budgets, refinanced debt, and invested $181 million in capital improvements. *See* New York Power Authority, NYPA Exceeds Performance Goals in 1998, February 12, 1999, press release. This document is available on NYPA's website at http://www.nypa.gov/press/0212a.htm.; Green Mountain Power, which reduced operations and maintenance expenditures by 50% between 1998 and 1995. *See* Green Mountain Power Corporation, Sales and Expenditures, 1995 Annual Report. This document is available on Green Mountain Power Corporation's website at http://www.gmpvt.com/annrpt95/salesex2.htm; and the Tennessee Valley Athority, which realized cost savings of 22% on fossil-fueled and hydroelectric plant outage projects which were subject to a continuous improvement process. *See* Hans E. Picard and C. Robert Seay, Jr., Competitive Advantage Through Continous Outage Improvement, Electric Power Research Institute Fossil Plant Maintenance Conference, July 29, 1996. This document is avialable at website http://www.iac.net/ pconsult/epri.html..

[160] Evidence from the UK and strategic behavior studies, however, indicates that such market power can lead to ongoing cost impacts as well as outright efficiency losses. *See* Richard Green and David Newbery, Competition in the British Electricity Spot Market, 100 J. POL. ECON., 929, 1992.

[161] The benefits are likely to come substantially from lower generation operation and maintenance costs that result from new plants, improved performance of existing plants, and improved congestion management.

[162] *See PJM*, 81 FERC at 62,269.

would there be a need to distinguish between RTOs that are ISOs and RTOs that are transcos?

The Commission could also consider adopting streamlined filing and approval procedures. The Commission could consider different filing requirements for established RTOS. For example, should we lower the threshold for the types of changes to operations or practices that would not require a filing with the Commission? Should such a policy be applied equally for non-profit and for-profit RTOs?

Another regulatory benefit is that an RTO could result in more streamlined transmission rate proceedings. The Commission has indicated its willingness to grant more latitude to transmission pricing proposals from appropriately constituted regional groups, and RTOs would be such groups.[163]

To the extent that RTOs increase market size and decrease market concentration, the competitive consequences of proposed mergers would become less problematic and thereby help further streamline the Commission's utility merger decision making process.

6. Conclusion

The Commission believes that the widespread formation of RTOs can provide substantial benefits. The Commission invites comment on the benefits of RTOs and the magnitude of these benefits.

C. Concerns Expressed by the State Commissions

Our Notice of Intent to Consult with State Commissions in this proceeding initiated our commitment to take into account the advice and concerns of the states in formulating an RTO policy. Through written and oral comments made during the consultations in February 1999, and in response to a series of follow-up questions, state commissioners raised a number of concerns regarding RTO policy. The Commission appreciates the state commissioners' serious consideration and their comments have helped shape our proposal. We take the opportunity to summarize the principal concerns and how our proposal addresses those concerns.

1. Federal Mandate

Most states oppose a FERC mandate to form RTOs.[164] The proposed rule would not generically require public utilities to transfer control of their transmission facilities to an RTO; however, we do seek comment on the issue. We are proposing to provide the impetus needed to help form RTOs by engaging the industry and the states in a national dialogue regarding RTO characteristics, setting minimum characteristics and functions for RTOs, providing flexibility for innovative transmission rate proposals, including a willingness to consider incentive pricing proposals, and establishing regional processes with Commission staff participation after a Final Rule is issued for fostering RTO formation. Thus, the proposed rule stops short of generically ordering utilities into RTOs but instead, as WUTC expresses it, we are at this time adopting: ''* * * a policy of encouraging voluntary RTO participation and filings * * *''[165] The Commission is, however, concerned that the current transmission grid management framework may be preventing electricity markets from reaching their full competitive potential. We will evaluate the comments received in response to our proposals to determine if additional action is needed.

2. Regional Flexibility

At all three consultations with the state commissions and in written comments, we were urged by almost every state commission not to impose a ''one size fits all'' approach to RTO design.[166] The vast majority of the respondents to the Commission's follow-up questions were unwilling to designate a particular type of RTO organization as superior in all cases. The Commission agrees and does not propose to establish a mandatory national template for RTOs. Such a policy would be ill advised at this time. Neither this Commission, nor, we suspect, anyone else in the industry knows now what is the best combination of ownership and control to achieve an optimal RTO. Given the lack of experience to date, the Commission believes that the best policy is to encourage regional experimentation. Thus, as discussed below, the proposed rule would establish only minimum characteristics and functions needed for Commission approval as an appropriate RTO. We also propose to initiate collaborative regional processes in which each region would be encouraged to design an RTO that best meets its needs. This collaborative process is discussed below.

Our proposed policy of regional flexibility should also help some states' concerns with the cost of an RTO. As discussed above, we believe RTO development will result in substantial benefits for the Nation. However, some states are concerned that the costs of an RTO will exceed its benefits. The cost of meeting the minimum RTO characteristics need not be large, but it is not always easy to measure the long-term RTO benefits that would offset these costs. By permitting regional flexibility, subject to our minimum characteristics and functions, the proposed rule allows each region to design an RTO that has costs commensurate with the regional benefits expected.

3. Retail Markets

States that have not adopted a retail access policy are concerned that an RTO in their state might interfere with their prerogatives regarding adopting, or not adopting, retail access. The comments and responses of some state commissions reiterate the concern that RTO formation will lead to retail access where it does not yet exist.[167] The proposed rule does not require retail access. The Commission agrees with FPSC that, ''FERC should not pursue any policy that would interfere with or contravene a state's authority to adopt or refrain from adopting direct retail access.''[168] Having an RTO in a state does nothing to interfere with the state's authority to decide retail access policy. Some states whose utilities are in RTOs can have retail access while others can choose not to have retail access. This is demonstrated today by the presence of ISOs in the Middle Atlantic and New England regions, but not all of the states in those regions have yet adopted retail competition. Some states with retail access believe that an RTO is needed to support their customer choice plan because the RTO allows customers, aggregators and marketers to reach supplies over a larger area. Those states that do not have retail access can nevertheless benefit from an RTO as their utilities enjoy the benefits of the RTO to lower native load generation rates by buying and selling power over a larger market area.

Some states are also concerned that having a Commission-regulated RTO provide transmission service for retail

[163] *See Transmission Pricing Policy Statement*, FERC Stats. & Regs. at 31,145, 31,148.

[164] *See, e.g*, Comments in Docket No. RM99–2–000 of North Carolina Utilities Commission (NCUC) at 1; Washington Utilities and Transportation Commission at (WUTC) at 4; Georgia Public Service Commission (GPSC) at 10; Mississippi Public Service Commission (MPSC) at 3; and South Carolina Public Service Commission (SCPSC) at 1.

[165] WUTC at 4–5.

[166] *See, e.g.*, comments of Florida Public Service Commission (FPSC) at 3.

[167] *See, e.g.* response of Kentucky Public Service Commission (KPSC) at 1.

[168] FPSC comments at 4.

customers would lead to some loss of control over retail market services, such as the ability to assure reliability. A primary purpose of an RTO is to ensure transmission reliability. Whether there is any decrease in state control over any aspects of retail market services would depend on the design of the particular RTO. Under any RTO design, the states would retain full control over the generation adequacy of franchised power suppliers, transmission siting and local distribution reliability. Further, the proposed rule would encourage state involvement both in RTO design and ongoing oversight, providing states a vehicle to protect all aspects of transmission reliability on behalf of retail customers.

4. Effect on States with Low Cost Generation

States with relatively low cost power are concerned that an RTO would result in local utilities selling their low cost power to other states. However, the vast majority of the respondents to a follow-up question on this issue stated that this is not a likely problem.[169] Similarly, we do not believe RTOs will cause such a result. The presence or absence of retail access is the principal factor affecting potential out-of-state sales of low-cost power, and this is in the hands of state policy makers. Arguably, retail access could lead to low cost power being sold out of state if incumbent utilities no longer have an obligation to serve retail customers. However, this could happen with or without an RTO. Where there is no retail access, state authorities can continue to ensure that a utility with a monopoly franchise sells its lowest cost power to local native load, even if the utility's transmission is operated by an RTO. Indeed, an RTO could actually lower retail rates by expanding the market region for the utility to sell the higher cost power not sold to native load and sharing in the benefits of regionwide resource planning and congestion management.[170] And finally, utilities that now have low cost generation will help assure access to future low cost generation plants by participating in an RTO. New low-cost generation plants are more likely to be attracted to regions with a well-functioning regional market governed by an RTO.[171] In other words, a state that is low-cost today may not be low-cost tomorrow without an RTO in its area.

We seek comment from state commissions regarding how an RTO in their state would affect power costs.

5. Need for Independent Transmission Operation

Many states believe that transmission operators should be structurally independent of other market participants. Responses to follow-up questions indicated that independence of the transmission operator is a basic assumption for an effective RTO.[172] As the Pennsylvania Public Utility Commission (PaPUC) states, ''It is therefore the case that RTOs must have sufficient independence from direct control by any single entity or interest group to perform these functions well and honestly.'' [173] As discussed below, our proposed rule would require strict independence of transmission operation from market participants for approval of an RTO application.

6. Transmission Cost Shifting

There is a concern by some states with utilities with relatively low cost transmission facilities that, by joining an RTO, their utilities' transmission costs will be averaged with the higher cost facilities of utilities in other states in determining RTO transmission rates.[174] As a result, these states are concerned that joining an RTO will increase local transmission rates. This is known as transmission cost shifting. It has been an issue in every ISO the Commission has approved to date. That is why, in each of those ISO cases, we have allowed a transition period in which access fees are based on some form of ''license plate'' pricing: access fees are paid by load serving entities based on the fixed transmission costs of the local utility. As discussed below, we propose to continue and perhaps expand such flexibility in allowing the license plate approach or other approaches to recover current sunk transmission costs during a transition period.

7. Boundary Drawing

Many states expressed opposition to the Commission drawing regional or RTO boundaries in a rulemaking.[175] The proposed rule does not set boundaries. Instead, we propose factors for assessing whether a proposed RTO's geographic configuration will ensure that the required RTO functions, such as assuring reliability, internalizing loop flow, managing congestion, and eliminating pancaked rates, are satisfied. In other words, we are proposing that the boundaries and other factors affecting scope and regional configuration will depend on the functions that an RTO performs. We note, however, that some RTO functions are likely to be carried out more effectively in a large region.

8. Regional Approach to Reliability

Many states believe that regional operation of transmission is needed to assure the continued reliability of the transmission system.[176] The proposed rule would require regional operation of transmission by an RTO with primary responsibility for short-term reliability as a condition for approval of an RTO application. This is discussed below.

9. Pricing Reform

Many states want regional approaches to transmission pricing reform. In particular, they would like to decrease the incidence of pancaked transmission rates. Our proposal is aimed at developing RTOs that would provide the forum and have the geographic scope for a regional approach to transmission pricing reform. The proposed rule would also permit flexibility for experimenting with innovative forms of congestion management, which would mean fewer TLR curtailments and more assurance that native load is served.

10. Participation of Public Power

In some regions of the Nation, substantial portions of the transmission grid are owned by pubic agencies. The states in these regions have expressed a concern that our RTO initiative must address how to assure that such public agencies join the RTO. Some of the responses to follow-up questions reiterated the need to include public power agencies in any RTO formation.[177]

The proposed rule would not require RTO formation and so does not address

[169] *See, e.g.,* responses of Virginia State Corporation Commission (VSCC) at 1; WUTC comments at 2; Wisconsin Public Service Commission (WPSC) comments at 1; and Florida Public Service Commission (FPSC) comments at 1. *But see, e.g.,* response of Alabama Public Service Commission (APSC) at 1, and response of District of Columbia Public Service Commission (DCPSC) at 1.

[170] *See* response of Indian Utility Regulatory Commission (IURC) at 1.

[171] According to data in a recent survey, about 64% of announced merchant power plants will be located in California, Texas, New York, New England, and the middle Atlantic area, while such states account for only about 30% of total electricity load in the U.S. *See* Announced Merchant Plants, survey prepared by the Electric Power Supply Association, Appril 13, 1999.

[172] *See e.g.,* responses of KPSC at 2 and Missouri Public Service Commission (MoPSC) at 1.

[173] Supplemental comments at 7.

[174] *See, e.g.,* comments of WUTC at 6.

[175] *See, e.g.,* comments of NCUC at 1 and WUTC at 3.

[176] *See, e.g.,* comments of NCUC at 3.

[177] *See, e.g.,* responses of Iowa Utilities Board (IUB) at 1 and New Mexico Public Regulation Commission (NMPRC) at 1.

how to require public agency transmission owners to join RTOs. As suggested by KPSC,[178] we will allow flexibility in RTO formation in order to meet, where possible, the requirements of public agencies. Nevertheless, the Commission's objective is to encourage the placement of all transmission facilities under the control of an RTO. In section III–G of this notice, we have requested comments on ways the Commission can facilitate public power participation in RTOs. We are also proposing regional processes to help facilitate RTO formation under section 202(a) of the Federal Power Act. Because section 202(a) applies to public power as well as public utilities, the regional processes will include publicly owned transmission entities.

11. State Role in RTO Governance

States want a role in the governance of any RTOs for their states, and the Commission proposes to be as flexible as possible in accommodating their needs. The state commission responses to follow-up questions show that some states want to be closely involved in RTO operation [179] while others believe it better to remain independent of the RTO in order to engage in better oversight.[180] Practically all respondents see siting authority remaining with the states.

As discussed below, the proposed rule encourages RTO design to accommodate appropriate state oversight, especially with regard to planning and siting new multi-state transmission facilities. We request comments on the appropriate state role in RTO governance. For example, should state government officials participate as voting members of an RTO?

12. Existing Regional Transmission Entities

During our consultations, many of the state commissioners from the northeastern region and a representative from California, where transmission facilities are already, or soon will be, under the control of Commission-approved ISOs, asked that the Commission not require major changes to these ISOs during their implementation periods.[181] The commissioners observed that their states' ISOs were still undergoing an implementation and learning period and, in some instances, are important to retail choice program implementation.

The Commission respects the investment of time and other resources made in the existing ISOs. We understand the importance of avoiding change during the critical implementation periods. Due to these considerations, and our proposed policy of regional flexibility, the proposed rule does not require major changes to the existing transmission entities that the Commission has found in conformance with the ISO principles of Order No. 888 at this time, absent compelling circumstances. However, any entity must meet our minimum RTO characteristics and functions to receive any of the benefits to be accorded RTOs. Our objective is to have all of the Nation's transmission grid under the control of RTOs that have the minimum characteristics and functions adopted in the Final Rule. That is why we propose to require the public utility members of existing transmission entities that have been found in conformance with the Commission's ISO principles to make a filing, individually or jointly, with the Commission no later than October 15, 2000, that explains the extent to which the entity in which it or they participate meets the minimum RTO characteristics and functions. The Commission is also concerned about impediments to transactions between existing ISOs (as well as any future RTOs). We therefore encourage existing ISOs to consider ways to reduce any impediments to transactions among them.

The Commission invites further comments from the state commissions on all aspects of the proposed rule.

D. Minimum Characteristics and Functions for a Regional Transmission Organization

In this section, we propose minimum characteristics and functions for a transmission entity to qualify as an RTO. These characteristics and functions are designed to ensure that any RTO will be independent and able to provide reliable, non-discriminatory and efficiently priced transmission service to support competitive regional bulk power markets. There are four minimum characteristics for an RTO:

(1) Independence from market participants;

(2) Appropriate scope and regional configuration;

(3) Possession of operational authority for all transmission facilities under the RTO's control; and

(4) Exclusive authority to maintain short-term reliability.

In addition, there are seven minimum functions that an RTO must perform. An RTO must:

(1) Administer its own tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities;

(2) Create market mechanisms to manage transmission congestion;

(3) Develop and implement procedures to address parallel path flow issues;

(4) Serve as a supplier of last resort for all ancillary services required in Order No. 888 and subsequent orders;

(5) Operate a single OASIS site for all transmission facilities under its control with responsibility for independently calculating TTC and ATC;

(6) Monitor markets to identify design flaws and market power; and

(7) Plan and coordinate necessary transmission additions and upgrades.

The Commission seeks comment on the following questions: (1) whether the Commission's enumeration of minimum criteria omits a necessary minimum characteristic or function, or includes an unnecessary characteristic or function; (2) whether there is a need to distinguish between minimum characteristics and minimum functions (*i.e.*, adopt separate categories for the minimum requirements); and (3) if so, whether any of the minimum characteristics should be re-characterized as minimum functions, and vice versa. Comments on these questions should take into account the Commission's objective in this rulemaking of encouraging the formation of RTOs that promote competitive markets and non-discriminatory access to, and reliable operation of, the electric grid.

Under this proposal, all RTOs must satisfy the four minimum characteristics on their first day of operation as approved RTOs. The Commission also proposes that all RTOs be prepared to perform at least four of the seven minimum functions on their first day of operation as approved RTOs. Recognizing that more time may be needed to perform certain functions, we are proposing that for the other three of the functions—establishing procedures for addressing parallel path flows with neighboring systems, managing congestion, and planning transmission expansion—additional time ranging from one to three years after initial operation will be allowed.

The Commission seeks comments on whether we should grant RTO status to entities that are not able to perform immediately these three functions. The Commission also seeks comments on

[178] Response at 1.

[179] *See, e.g.*, responses of WUTC at 4 and Arizona Corporation Commission (ACC) at 2.

[180] *See, e.g.*, response of Wisconsin Public Service Commission (WPSC) at 3.

[181] *See, e.g.*, Comments at the Washington, DC conference of New England Conference of Public Utilities Commissioners, Inc. (NECPUC) at 4 and remarks of California Senator Peace, RTO Conference (Las Vegas), transcript at 3–4.

whether we should grant RTO status to entities that may not be able to perform on the first day of operation certain other (i.e., any of the remaining four) of the minimum functions. Should we differentiate, for purposes of initial implementation, between any of the seven minimum functions? If so, has the Commission appropriately identified those minimum functions that are most likely to require additional time to perform?

We propose to give transmission entities flexibility in deciding how to meet these seven minimum functions. For five of the functions (tariff administration, congestion management, ancillary services, market monitoring and planning and expansion), we propose to establish standards for how the function is performed, but an RTO will have the option of demonstrating that an alternative proposal is consistent with or superior to the standards in the proposed rule.[182] The Commission seeks comment on whether this flexibility—i.e., the option of demonstrating that an alternative proposal is consistent with or superior to the proposed rulemaking standards—should apply to any or all of the minimum characteristics.[183]

We also propose that the RTOs would have flexibility in designing their organizational structures. We are receptive to all types of RTO proposals as long as they satisfy the specified minimum characteristics and functions. For example, we will consider proposals for non-profit or for-profit organizations. An RTO can be an operator of the grid that it controls, an operator and owner of the grid that it controls, or a combination of the two.[184] The minimum characteristics and functions provide a wide range of implementation flexibility and discretion. They represent a floor, not a ceiling. To encourage further evolution, the Commission is proposing an ''open architecture'' requirement. Under this requirement, the RTO must permit further improvements that will enhance the efficient operation of regional bulk power markets.

Minimum Characteristics

1. Characteristic 1: Independence. The RTO Must be Independent of Market Participants. (Proposed § 35.34(i)(1))

Market participants must be assured that the RTO will provide transmission access to all market participants on a fair and non-discriminatory basis. The Commission believes that it is a prerequisite for achieving fair, open and competitive power markets. An RTO needs to be independent in both reality and perception.[185] As we have said before in the context of ISOs, we think that ''the principle of independence is the bedrock upon which the ISO must be built * * *''[186] It is the Commission's view that independence can be achieved if the RTO satisfies three conditions. First, the RTO, its non-stakeholder governing board members and its employees must have no financial interests in market participants.[187] Second, the RTO's decision making must not be controlled by any market participants. Third, the RTO must have independent authority to file changes to its transmission tariff. We now discuss these conditions.

a. The RTO, its employees and any non-stakeholder directors must not have financial interests in any electricity market participants. (Proposed § 35.34(i)(1)(i))

We propose that the RTO, the non-stakeholder members of its governing board and all employees be prohibited from having financial interests in any market participants. The prohibition clearly applies to current financial interests. It does not preclude past financial ties with market participants. Nor does it require a total or permanent prohibition on all future financial ties with market participants in the region. Such a prohibition would make it difficult for the RTO to hire experienced and knowledgeable employees. Therefore, we will employ a rule of reason standard in deciding what financial ties with market participants would be acceptable after an individual leaves the RTO. As has been the case in our review of conflict of interest standards for ISOs, the Commission would establish these standards on a case-by-case basis.[188]

The Commission requests commenters to address some or all of the following issues related to the proposed requirements. Do we need to define the financial independence requirement in more specific terms or is it sufficient to enunciate the general principle and then apply it on a case-by-case basis? Should the definition of stakeholders or market participants be expanded to include entities that operate distribution-only facilities (*i.e.*, entities that perform the ''wires'' function at lower voltages) and transmission entities in neighboring regions? Should this definition be broadened to include sellers and buyers of ancillary services? Are there any circumstances in which the definition should be expanded to include entities that do not participate in power markets in the region but that provide transmission services to the RTO or buy transmission service from the RTO? Do we need to add more specificity to the requirement that RTOs have conflict of interest standards? Are there lessons to be learned from the experience of ISOs with conflict of interest standards that can now be applied more generally to RTOs?

b. An RTO must have a decisionmaking process that is independent of control by any market participant or class of participants. (Proposed § 35.34(i)(1)(ii))

This requirement would be satisfied, for example, by an RTO with (a) a non-stakeholder governing board and (b) a prohibition on market participants having more than a *de minimis* (one percent) ownership interest in the RTO.[189] The Commission seeks

[182] We use the term ''standard'' to refer to the required sub-elements under each characteristic and function.

[183] Alternative proposals may include requests for appropriate transition periods. We will consider such proposals on a case-by-case basis, based on an assessment of their effect on regional power markets.

[184] One example of an arrangement that combines these two approaches would be a transmission entity that owns and operates some transmission facilities and operates other facilities under long-term leases or other agreements with existing or new transmission owners.

[185] This is also the conclusion of almost every one of the state commission representatives who attended our recent consultatons with the state regulatory community. *See, e.g.*, Comments of Commissioners Marlene Johnson and Herbert Tate, Regional ISO Conference (Washington, D.C.), transcript at 66–67, 95; Comments of Judy Sheldrew, RTO Conference (Las Vegas), transcript at 58.

[186] Atlantic City Electric Company, *et al.*, 77 FERC ¶ 61,148 at 61,574 (1996). The same conclusion was reached by the DOE Reliability Task Force and the NERC Reliability Panel. The DOE Task Force concluded that regional reliability entities must be ''truly independent of commercial interests so that their reliability actions are—and are seen to be—unbiased and untainted * * *'' Task Force Report at xv. The Electric Reliability Panel concluded that ''(t)o dispel suspicions that the system operator favors one particular over another * * * the operator must be independent from market participants.'' North American Electric Reliability Council, Electric Reliability Panel, Reliability Power: Renewing the North American Electric Reliability Oversight System, December 22, 1997, at 17.

[187] We use the terms ''stakeholder'' and ''market participant'' interchangeably. They mean any entity that buys or sells electric energy in the RTO's region or in any neghboring region that might be affected by the RTO's actions, or any affiliate of such entity.

[188] *See, e.g. Midwest ISO*, 84 FERC at 62,152–53, *order on reh'g* 85 FERC at 62,036; *NEPOOL*, 79 FERC at 62,586–87.

[189] It is our understanding that a similar standard was established by the British government when it created the National Grid Company (NGC), the largest, for profit transmission company in the world. The company's basic corporate documents

comments on whether this kind of RTO should be deemed to satisfy automatically this element of the independence requirement. We also request comments on whether there should be a single standard for independent decision making for all RTOs regardless of whether they are for-profit or non-profit entities. The Commission recognizes that there may be other ways to satisfy the independent decision making requirement. Therefore, we propose to consider other governance and ownership proposals, which will be judged on a case-by-case basis against the general requirement of independent decisionmaking.

With regard to the RTO governing board, we propose to define a non-stakeholder governing board as a governing board of individuals without any financial ties to market participants or their affiliates. Individuals on such a board are independent, rather than representative, of market participants. Board members usually have experience in a variety of fields related to the RTO's operations. These could include, among others, transmission operations and planning, law, electricity regulation, business management, market analysis, and risk management. The non-stakeholder board would be the ultimate decision making authority, though it could choose to delegate decisions to its staff or committees of stakeholders.[190] The board would be advised by the RTO staff and perhaps by a committee of stakeholders. In recent proceedings, we have accepted this two tier approach because it represents a middle ground in that it attempts to balance independence with expertise.

In the case of a non-stakeholder board, how can we ensure that the concerns of market participants are communicated effectively to the board? We request comments on what, if any, additional requirements should apply to a governing board that is not a stakeholder board or to a governing board with both stakeholders and non-stakeholders. For either stakeholder or non-stakeholder boards, should we impose an upper limit on the size of the board? How should the Commission consider proposals for state regulatory or other governmental officials to select board members for either stakeholders or non-stakeholder boards? How should the Commission view proposals for state government officials to serve as voting members of RTO boards?

With regard to market participants having no more than a *de minimis* interest in the ownership of the RTO, we propose to consider a *de minimis* interest as having no more than a one percent interest in the ownership of an RTO. We seek comment on whether one percent is an appropriate *de minimis* ownership interest and, if not, what would constitute appropriate *de minimis* ownership for purposes of establishing independence. We also request comment on whether there are conditions under which market participants should be allowed to have more than a *de minimis* ownership interest in an RTO. Should the Commission have a different standard for passive interests? How should the Commission treat preferred equity shares?

There are several reasons why we are proposing that the independent decision making standard can be satisfied by an RTO with (a) a non-stakeholder governing board and (b) a prohibition on market participants having more than a *de minimis* (one percent) ownership interest in the RTO. First, affiliated transmission companies (*i.e.*, transmission companies in which one or more market participants have more than a *de minimis* ownership interest) may not be trusted by market participants even with elaborate protections (*e.g.*, voting trusts, independent trustees and corporate boards not chosen by the owners). We believe that market participants are likely to suspect that the safeguards will be gamed. This, in turn, could affect investment behavior. In particular, market participants may be reluctant to make needed investments in generation or marketing of electricity if they believe that the RTO is likely to give favored treatment to its affiliates.

Second, affiliated transmission entities that are not independent of market participants would continue the regulatory need for detailed and hard to enforce codes of conduct. If we permit RTOs to be affiliated with one or more market participants, we believe that the Commission may have to devote considerable regulatory resources to ''chasing after conduct'' (*i.e.*, allegations of favoritism). If our experience with functional unbundling as well as with affiliated natural gas pipelines provides any lessons, we will probably find it necessary to issue detailed rules that deal with internal corporate matters relating to organizational responsibilities, corporate communications, etc.[191] For this reason, the existence of affiliated transmission entities also could make it difficult to pursue light-handed regulation.

Commenters are asked to address whether these are reasonable assessments of the effects of allowing market participants to have more than a *de minimis* ownership interest in RTOs. Is there relevant experience from other regulated industries? If we were to allow market participants to have more than a *de minimis* ownership interest for a transition period, how long should the transition period be? Would any additional safeguards be required during such a transition period? In general, which type of institution would better serve the goal of independence: a transco with *de minimis* ownership and a non-stakeholder board or an ISO with a non-stakeholder board?

c. The RTO Must Have Exclusive and Independent Authority To File Changes to Its Transmission Tariff with the Commission under Section 205 of the Federal Power Act. (Proposed § 35.34(i)(1)(iii)

We believe that independence requires that the RTO provide service under its own open access transmission tariff and that it has the right to file changes to its tariff with the Commission on its own authority. In other words, the RTO should not be required to get the prior approval of transmission customers, transmission owners or any other entities to make Section 205 filings with the Commission. The rationale is that if the RTO is taking over the open access transmission service obligation from current transmission providers, the RTO

prohibit market participants from serving on NGC's board and from owning more than one percent of the shares in its voting equity. A similar prohibition appears to exist in the Wisconsin state law that mandates Wisconsin utilities to join either an ISO or an independent transmission company by a specific date. *See* 1997 Wisconsin Act 204, Section 30.

[190] An ISO governing board's delegation of decisions to a stakeholder committee would be contingent on this committee not being dominated by one segment of the industry. We recently found that the existing tiered governance arrangements of the New York and New England ISOs failed to meet this standard and we ordered both ISOs to reduce the voting power of dominant utilities in the lower tier of stakeholders charged with advising the non-stakeholder governing boards. *See Central Hudson*, 87 FERC at __, slip. op. at 12–13; New England Power Pool, 86 FERC ¶ 61,262 at 61,965.

[191] Natural gas pipelines that transport gas for others and are affiliated with gas marketers or brokers must conform to the standards of conduct outlined in Section 161.3 of the Commission's regulations. Further, such pipelines, pursuant to Section 250.16 of the Commission's regulations must maintain: (a) provisions in their effective tariffs that divulge operating employees and facilities shared by the pipeline and its affiliate(s) and the procedures used to address complaints; (b) a data log showing, by customer (affiliate and non-affiliate), how capacity on the pipeline was allocated; and (c) information concerning shippers receiving discounted rates. Within the natural gas pipeline industry, these requirements are sometimes viewed as overly intrusive regulation. *See* ''FERC Clarifies Affiliate Etiquette For Gas Pipelines,'' The Energy Daily, November 17, 1998, at 1.

must be able to independently and unilaterally propose changes in its tariff.[192] While this is not likely to be a concern for transcos, our recent experience suggests that it is an important issue for ISOs that seek to become RTOs. We have approved ISOs that appear not to meet this standard. For example, the New England ISO provides transmission service under the tariff of the NEPOOL RTG rather than its own tariff.[193] In our order approving the Midwest ISO, we stated that: ''We believe that any problems that may arise can be addressed by the Midwest ISO's authority to file changes unilaterally to the congestion management procedures.'' [194] However, our order also accepted a requirement that the ISO get the prior approval of existing transmission owners before filing certain types of changes in its tariff with us.[195] Separately, we have a pending request for clarification on this issue from the PJM ISO.[196] Can an RTO be truly independent if it does not have the authority to file changes in its tariff without the approval of other entities such as transmission owners? Should the ISO's unilateral filing authority be limited to transmission rate design and terms and conditions that directly affect access but not to changes that would affect transmission owners' ability to collect their overall revenue requirements? In practice, is this a viable distinction? If an RTO's filed rate schedule also includes market design rules, should the RTO have Section 205 filing authority to make changes in these rules?

2. Characteristic 2: Scope and Regional Configuration. The RTO must serve an appropriate region. The region must be of sufficient scope and configuration to permit the RTO to effectively perform its required functions and to support efficient and nondiscriminatory power markets. (Proposed § 35.34(i)(2))

We propose that all RTO proposals filed with us identify a region of appropriate scope and configuration. The scope and configuration of the regions in which RTOs are to operate, and the extent to which RTOs control the transmission facilities within a region, will significantly affect how well they will be able to achieve the desired regulatory, reliability, operational, and competitive benefits. Accordingly, we set forth below what we consider to be relevant factors that may affect the appropriate scope and configuration for a region that an RTO will serve.[197] If the formation of RTOs is undertaken without considering the goals that large regions can best achieve, it is unlikely that RTOs will be configured to provide maximum benefits. Transmission owners could seek to gain strategic advantage by the way an RTO is formed. For example, an RTO could be placed to act as a toll collector on a critical corridor.[198] Alternatively, an RTO could propose configurations that interfere with the formation of a larger, more appropriately configured RTO.

The Commission is aware that there is likely no one ''right'' configuration of regions. One particular boundary may satisfy one desirable RTO objective and conflict with another. The industry will continue to evolve, and the appropriate regional configurations will likely change over time with technological and market developments. The Commission is also mindful of the interests of individual states regarding RTO boundaries. Given all these considerations, the Commission believes that the public interest will best be served if we establish at the time of the Final Rule a set of factors that encourage appropriate regional configuration, without actually prescribing boundaries.

In the discussion that follows, the Commission sets forth, and solicits comments on, the factors that it believes are important for an appropriately configured region in which an RTO would operate.

a. Factors Affecting The Appropriate Scope And Regional Configuration Of An Acceptable Region

The Commission has grouped the factors that it believes are significant to developing appropriate regions into regional configuration factors and factors for evaluating boundaries.

i. Regional Configuration Factors

The Commission believes that the most important consideration in evaluating the geographic configuration of an RTO is that such configuration permit the RTO to perform its functions effectively. We believe that many of the characteristics and functions for an RTO proposed in this section suggest that the regional configuration of a proposed RTO should be large in scope.[199] For example:

- Making accurate and reliable ATC determinations: An RTO of sufficient regional scope can make more accurate determinations of ATC across a larger portion of the grid using consistent assumptions and criteria.
- Resolving loop flow issues: An RTO of sufficient regional scope would internalize loop flow and address loop flow problems over a larger region.
- Managing transmission congestion: A single transmission operator over a large area can more effectively prevent and manage transmission congestion.
- Offering transmission service at non-pancaked rates: Competitive benefits result from eliminating pancaked transmission rates within the broadest possible energy trading area.
- Operations: A single OASIS operator over an area of sufficient regional scope will better allocate scarcity as regional transmission demand is assessed; promote simplicity and ''one-stop shopping'' by reserving and scheduling transmission use over a larger area; and lower costs by reducing the number of OASIS sites.
- Planning and coordinating transmission expansion: Necessary transmission expansion would be more efficient when planned and coordinated over a larger region.

The Commission recognizes, however, that there may be other factors that limit how large a region may be, for example, the requirement that an RTO be the grid operator. There may be a limitation on how many facilities or transactions can be reliably overseen by a single operator, imposed either by hardware

[192] The Commission has previously stated that the ''[a]uthority to act unilaterally . . . is a crucial element of a truly independent ISO.'' 79 FERC ¶ 61,374 at 62,585 (1997).

[193] This has been protested by the New England Conference of Public Utility Commissioners. *See* ''Motion For Leave To Submit Answer. . . .,'' Docket Nos. OA97–237 and ER97–1079, April 8, 1997.

[194] *See Midwest ISO,* 84 FERC at 62,163.

[195] *Id.* at 62,151.

[196] ''PJM Interconnection, LLC's Request For Clarification, Or In The Alternative, Rehearing,'' Docket No. OA97–261, December 27, 1997.

[197] We note that a number of parties have asked the Commission to take the initiative to make the RTO formation process more orderly. For example, 11 state commissions filed a petition with FERC in February 1998 (which was noticed in both the Midwest ISO proceeding and in the generic ISO inquiry) asking FERC to take action on the geographic configuration of ISOs, arguing that inappropriate borders for ISOs could result in reduced customer benefits, economic inefficiencies, unnecessary complication of coordinated operations, and detrimental impacts on planning. However, in our three RTO conferences, representatives of several other state commissions expressed concern about the Commission playing too strong a role in RTO formation, arguing, for example, that we should not define RTO geographic boundaries but should leave this to the parties in each area of the country to determine.

[198] *See* Statement of Ohio Commission Chairman Craig Glazer, RTO Conference (St. Louis), transcript at 85–87.

[199] This reiterates the conclusion we reached in the eleven ISO principles in Order No. 888, where we stated that ''[t]he portion of the transmission grid operated by a single ISO should be as large as possible.'' *Order No. 888,* FERC Stats. & Regs. at 31,731.

design or costs, or imposed by human limitations to process the required amount of information.

The Commission is not proposing that the RTO must be a control area operator, although four of the five ISOs approved so far by the Commission are each a single control area.[200] If those forming an RTO decide that the RTO should be a control area operator, this too may limit the RTO's size. However, control area functions might be performed over a large area by a master-satellite (or other hierarchical) structure. The Commission solicits comments on the technical limitations or cost limitations on how large an RTO can be if it is to have control area responsibilities.

The difficulty and cost of transferring operational control over many transmission systems to one RTO may also affect regional configuration. The larger the number of transmission systems, the more complex the task may be and the longer it may take to accomplish. The Commission solicits comments on how the number of transmission systems to be combined would affect the cost and time required to form an RTO.

A third factor that may limit size is rate treatment. As regions get larger and involve more existing owners of transmission, reaching consensus on an appropriate transmission rate design for the region may prove challenging. Also, a uniform transmission rate treatment which averages the costs of existing transmission assets across the region could subject some RTO participants to higher transmission rates. Moreover, sharing the costs of future transmission improvements may raise issues regarding whether the transmission improvements provide benefits to the entire region and who should pay those costs. These issues are discussed further below with respect to cost shifting concerns.

Are there other factors that may limit the geographic scope of an RTO? The Commission solicits comments on this issue.

ii. Factors for Evaluating Boundaries

In addition to the factors affecting the size of a region, other factors may affect the location of regional boundaries. The Commission believes that RTO boundaries should be drawn so as to facilitate and optimize the competitive, reliability, efficiency, and other benefits that RTOs are intended to achieve, as well as to avoid unnecessary disruption to existing institutions. The Commission proposes below a list of factors it would consider in evaluating the configuration for a proposed RTO. Various factors may indicate different configurations, and assessing the appropriateness of a region's configuration will require a balancing of factors.

Given this qualification, the Commission proposes that the following factors should be considered in evaluating an RTO's boundaries:

Facilitate performing essential RTO functions and achieving RTO goals, as discussed elsewhere in this proposed rule: The regions should be configured so that an RTO operating therein can ensure non-discrimination and enhance efficiency in the provision of transmission and ancillary services, maintain and enhance reliability, encourage competitive energy markets, promote overall operating efficiency, and facilitate efficient expansion of the transmission grid. For example, we understand that there have been instances where transmission system reliability was jeopardized due to the lack of adequate real-time communication between separate transmission operators in times of system emergencies. To the extent possible, RTO boundaries should encompass areas for which real-time communication is critical, and unified operation is preferred.

Recognize trading patterns: Given that a goal of this initiative is to promote competition in electricity markets, regions should be configured so as to recognize trading patterns, and be capable of supporting trade over a large area, and not perpetuate unnecessary barriers between energy buyers and sellers. There may exist today some infrastructure or institutional barriers inhibiting trade between regions that could be mitigated economically. It would be desirable that RTO boundaries not perpetuate these barriers.

Not facilitate the exercise of market power. While the industry should work toward a goal of virtually seamless trade between RTOs, it may be that initially a significant amount of trade may be contained within RTOs. Thus, it is important to avoid creating an RTO region that is dominated by a only a few buyers or sellers of energy, or a region where an RTO of inappropriate scope and configuration can exercise transmission market power by acting as an unnecessary toll collector on a critical corridor.

Encompass existing control areas: Existing control areas have established systems for load balancing within their area. Most existing control areas are relatively small. For the sake of efficiency, it may be advisable not to divide them. However, the affected parties would not be precluded from proposing to divide control areas if they found it otherwise advantageous.

Encompass existing regional transmission entities: Because existing ISOs, and any other regional transmission entities we may hereafter approve, already integrate transmission systems, it may not be efficient to divide them into different regions. This is not to say, however, that RTO boundaries must coincide with existing regional transmission entities. An appropriate region may well be larger, and there may be circumstances that support combining or reconfiguring existing entities.

Encompass one contiguous geographic area: The competitive, efficiency, reliability, and other benefits of RTOs can be best achieved if there is one transmission operator in a region. To be most effective, that operator should have control over all transmission facilities within a large geographic area, including the transmission facilities of non-public utility entities. This consideration could preclude a noncontiguous region, or a region with ''holes.''

Encompass a highly interconnected portion of the grid: To promote reliability and efficiency, portions of the transmission grid that are highly integrated and interdependent should not be divided into separate RTOs. One RTO operating the integrated facilities can better manage the grid. This is not to say, however, that every weak interconnection belongs on a regional boundary. Where a weak interface is frequently constrained and acts as a barrier to trade, it may be appropriate to place that interface within an RTO region. It may be more difficult to expand a weak interface on the boundary between two regions; this may act as a barrier to trade between the two regions. The Commission welcomes comments on the relative merits of internalizing constraints within a region versus having constraints act as natural boundaries between regions.

Take into account existing regional boundaries (e.g. North American Electric Reliability Council (NERC) regions) to the extent consistent with the Commission's goals for RTOs: An RTO's configuration should, to the extent possible, not disrupt existing useful institutions. The Commission recognizes that utilities have been working together regionally in different contexts for some time. There is value in keeping together parties that have been working together.

Take into account international boundaries: The Commission recognizes

[200] The Midwest ISO is the only Commission-approved ISO that has not proposed a single control area.

that natural transmission boundaries do not necessarily coincide with international boundaries. Indeed, a large part of Canada's transmission system, and a small part of Mexico's, is interconnected on a synchronous basis with that of the U.S. Accordingly, an appropriate region need not stop at the international boundary. However, this Commission does not have, and does not seek, jurisdiction over the facilities in a foreign country. We will ask our international neighbors to participate in discussion of these issues. Perhaps what may be thought of as a ''dotted line'' boundary at the international border could be used to indicate that a natural transmission region does not necessarily stop at the border, while this Commission's jurisdiction does.

The Commission seeks comments on the appropriateness of these factors to determine an appropriate configuration for the regions in which RTOs would operate, and also asks if any additional factors may be appropriate.

b. Potential Geographic Configurations

Any number of RTO configurations could be appropriate regions. One approach to establishing RTO regions is to use existing configurations. These include the three electric interconnections within the continental United States, the ten NERC reliability councils, and the twenty-three NERC security coordinator areas. (*See* Appendix C to this NOPR for depictions of these configurations [201]). These configurations are offered only for the purposes of having three examples for assessing how well selected regions can satisfy the minimum RTO characteristics and functions and for focusing commenters on the trade-offs involved in determining an RTO configuration. The Commission has not concluded that the example sets of boundaries are acceptable configurations. The Commission seeks comments on how well the regions served by existing institutions would satisfy the factors enunciated above, and specifically how well they would be able to satisfy the minimum RTO characteristics and functions outlined in this section, and the advantages and disadvantages of these three examples. The Commission also welcomes presentation and evaluation of other methods to define appropriate regions.

c. Control of Facilities within a Region

In addition to the scope and configuration of the region, effective performance also requires that most or all of the transmission facilities in a region be included in the RTO. Any RTO proposal filed with us should plan to operate all transmission facilities within its proposed region. We recognize, however, that there may be cases where the proponents of an RTO may not be able to obtain agreement by all transmission owners within a region of appropriate scope and configuration to transfer operating control of their facilities to the RTO. This may occur, for example, because certain facilities may be owned by governmental entities that have restrictions on transfer of control that may require time to resolve. We do not believe that it would be desirable to deny RTO status or delay RTO start-up where the transmission owners representing a significant portion of the facilities within a region are ready to move forward, while a few others are not. On the other hand, we do not believe it would be desirable to approve an RTO proposal for a proposed region if the proponents represent only a small portion of the facilities in that region.

We therefore propose to accept as RTOs only those proposals for which a region of appropriate scope and configuration is identified and the proponents represent a sufficient portion of the transmission facilities within the identified region. Where the proponents do not represent all the facilities within a region, they should identify the reasons why all facilities are not represented, any efforts that will be made to eventually include all facilities, and any interim arrangements that could be made with the non-represented facility owners to maximize coordination within the region.

We solicit comments on how best to balance our goal of having RTOs in place that operate all transmission facilities within an appropriately sized and configured region against the reality that there may be difficulties in obtaining 100 percent participation in all regions in the near term. Should we deny RTO status for any proposal that does not include all transmission facilities within an appropriate region? If we do not deny RTO status for less than 100 percent participation, is there some guideline that we should use for determining when the proponents represent an appropriate ''critical mass'' for the region? Should we require that the RTO at least negotiate certain agreements with any non-participants within its region to ensure maximum coordination? If so, what should be the terms of such agreements?

Finally, we seek comment on the question of how much deference, if any, we should give to the proposed scope and regional configuration of a proposed RTO. How readily, if at all, after balancing all appropriate factors, should the Commission be willing to substitute its vision of an appropriate RTO configuration for that of its proponents? To what extent should the Commission take into account the degree of support in assessing a proposed RTO configuration? Should approval or disapproval by affected state commissions of the scope or configuration of a proposed RTO affect the level of deference the Commission should afford such a proposal?

3. Characteristic 3: Operational Authority. The RTO must have operational responsibility for all transmission facilities under its control.[202] (Proposed § 35.34(i)(3))

a. The Regional Transmission Organization May Choose to Directly Operate Facilities (Direct control), delegate certain tasks to other entities (Functional Control) or Use a Combination of the Two Approaches. (Proposed § 35.34(i)(3)(i))

Operational control raises two basic questions: What functions should be performed by an RTO? How should an RTO perform the functions that it has reserved for itself? With respect to the first question, there is a concern that some splits of functions between an RTO that is an ISO and existing control area operators could compromise reliability and allow the control area operators to continue to favor their own power marketing efforts.[203]

One solution would be for all RTOs to operate a single control area. We have decided not to propose this as a requirement or two reasons. First, the recent experience with the California ISO suggests that the cost of investing in new control centers and telecommunications systems and developing new operating systems can be very high.[204] Second, there is some uncertainty as to whether it is technically feasible to establish a single traditional control area over a large

[201] While the maps in Appendix C accurately depict the existing configurations extending into Canada, this is not intended to suggest that our jurisdiction under this proposed rule reaches there.

[202] Transmission facilities will be distinguished from local distribution facilities using the criteria that were established in Order No. 888. *Order No. 888*, FERC Stats. and Regs. ¶ 31,036 at 31,770–71.

[203] *Midwest ISO*, 84 FERC at 62,156–60, 62,181.

[204] A recent report commissioned by the California ISO found that the higher costs of the California ISO relative to other ISOs could be explained, in part, by the decisions ''to build a privately dedicated communications network, to have a hot standby backup center half a state away, to not rely on existing infrastructure more than necessary, to attempt full functionality on day one, to accomplish the job in about one year. . .'' *See* ''A Comparative Analysis Of Operating Independent System Operators In The United States,'' prepared by James H. Caldwell Jr. (TGAL, Inc.) For the California ISO, October 15, 1998, at 13.

geographic area. In light of these considerations, we do not propose to require that an RTO must operate a single control area. However, the RTO must have ultimate responsibility for providing non-discriminatory transmission service for all market participants and for ensuring the short-term reliability of the grid.[205] We propose to give an RTO considerable flexibility in deciding on the particular division of operational responsibilities with existing control areas that will allow it to achieve this outcome.

We will also grant an RTO considerable flexibility in deciding how best to perform the functions that it has reserved for itself. The RTO may choose to operate the grid through direct physical operation by RTO employees, contractual agreements with other entities (*e.g.*, transmission owners and control area operators) or combinations of the two. For example, an RTO could lease some control equipment from the owners of existing control centers or convert some employees at these control centers into RTO employees. Or alternatively, the RTO could establish a system of hierarchical control in which it operates a master control center and existing control centers become satellites of the RTO control center for certain specified functions. [206] Under this arrangement, the personnel of the existing control centers might become employees of the RTO or remain as employees of the control center owner but supervised by RTO personnel. We will leave it to the discretion of the RTO to decide on the combination of direct and functional control that works best for its circumstances.[207] Our only requirement is that the system of operational control chosen by the RTO must ensure reliable operation of the grid and non-discriminatory access to the grid by all market participants. In addition, to ensure that the RTO does not become locked into an operational system that is unsatisfactory, the Commission will require an RTO to prepare a public report that assesses the efficacy of its operational arrangements no later than two years after it begins operations.

The Commission requests commenters to address the following questions. What has been the experience of existing tight power pools with master-satellite and hierarchical forms of control? Was there a need to modify these operational arrangements when the pool was replaced by an ISO? Outside of tight power pools, has the functional unbundling requirement in Order No. 888 led to any divisions of previously integrated internal operational systems? If so, have these new divisions of operational responsibilities created any reliability problems?

b. The RTO must be the security coordinator for the transmission facilities that it controls. (Proposed § 35.34(i)(3)(ii))

The Commission will also require that any qualifying RTO be the NERC approved security coordinator for its region. A security coordinator is a new type of grid entity that typically coordinates reliability between multiple control areas across a region. It has been promoted by NERC since 1995 to improve coordination and communication across control areas. At present, there are more than 20 security coordinators.[208]

Up to now, the job of a security coordinator has been to anticipate reliability problems and to take actions to correct these problems if they arise. Among the key functions of a security coordinator are to: (1) perform load-flow and stability studies of the transmission system to identify and address security problems; (2) exchange necessary security information with control area operators, ISOs and regional reliability councils; (3) monitor real-time operating characteristics (*e.g.*, availability of operating reserves, interchange schedules, system frequency, actual flows versus limits, generation capacity deficiencies) that could affect reliability; (4) take appropriate action including, if necessary, the shedding of load in the event of a reliability problem.[209]

In our Midwest ISO order, we required that the proposed ISO must be the security coordinator for its region. Our justification for this requirement was that:

This role [the role of a security coordinator] is central to maintaining grid reliability and non-discriminatory access. Under proposed NERC policies, security coordinators would be required to anticipate problems that could jeopardize the reliability of the interconnected grid. In the course of performing these reliability functions, the Security Coordinator would receive considerable information which is commercially sensitive. Therefore, it is important that the proposed Midwest ISO Security Coordinator be performed by an entity that is independent of market participants.

The same logic applies to any RTO proposal. Therefore, we will require that a qualifying RTO must be the security coordinator for its region. [210]

4. *Characteristic 4: Short-term Reliability.* The RTO must have exclusive authority for maintaining the short-term reliability of the grid that it operates. (Proposed § 35.34(i)(4))

a. The RTO must have exclusive authority for receiving, confirming and implementing all interchange schedules. (Proposed § 35.34(i)(4)(i))

Historically, interchange schedules have referred to the scheduling actions between adjacent control areas. These schedules could be triggered by the sale or exchange of electricity or the wheeling of electricity between the two control areas. The first type of action, the sale or exchange of electricity between control areas, usually has not been accompanied by a separate transmission transaction. Instead, the transmission service was implicit in the overall transaction and, therefore, its cost was not quoted separately. With the growth of unbundled transmission service, triggered in part by our Order No. 888 requirements, bundled interchange transactions will become rarer. This means that in the future, interchange schedules will generally be accompanied by, and coincide with, transmission schedules.

We are proposing that an RTO ''must receive and evaluate all requests for transmission service under its own FERC approved tariff.'' [211] If the RTO operates a control area, this implies that the RTO will also be receiving, confirming and implementing interchange schedules. Therefore, the three actions should go hand-in-hand for an RTO that operates a control area.

[205] In our order approving the Midwest ISO, we stated that our approval of the ISO was based on the applicants' commitment that the ISO would be able to ''take *all* actions necessary to provide nondiscriminatory transmission service, promote and maintain reliability.'' *Midwest ISO*, 84 FERC at 62,159.

[206] *See, e.g.*, Marija Ilic and Shell Liu, Hierarchical Power System Control: Its Value in a Changing Industry, Springer-Verlag, 1996. It appears that certain types of hierarchical arrangements have operated successfully in the PJM and NEPOOL pools for many years.

[207] This topic is also addressed in our discussion of the RTO's role as a provider of ancillary services. See the discussion of Function 4.

[208] *See* NERC, Operating Policy 9—Security Coordinator Procedures. The current version of this document is available on the NERC website at http://www.nerc.com/~oc/opermanl.html. *See also*, NERC TLR Order, 85 FERC ¶ 61,353 at 62,360–62.

[209] *Midwest ISO*, 84 FERC at 62, 155–56.

[210] We note that this was also the conclusion of the blue-ribbon Electric Reliability Panel of NERC. In its final report, the panel concluded that ''it is essential that the security coordinators perform their functions independent of any market influences.'' The panel recommended that security coordinators should be ''structured as independent entities, or their role subsumed into independent system operator-type organizations.'' NERC, Electric Reliability Panel, ''Reliable Power: Renewing the North American Electric Reliability Oversight System,'' December 1997, at 35.

[211] *See* the discussion of Function 1 (Tariff Administration and Design), *infra*.

However, this may not be the case for RTOs that do not operate control areas. As we stated in our Midwest ISO order, our basic concern is that non-RTO control area operators who are also competitors in power markets may be ''able to know their competitors' schedules or transactions* * *'' [212] If this is true, such knowledge would give the control area operators an unfair competitive advantage. The Commission directed the ISO to monitor for this potential problem and report to us immediately if the problem arises. We recognize, however, that it may be difficult to detect this discrimination. In addition to our current code of conduct standards, are there any actions that the Commission should require to reduce the likelihood of this problem that do not require the consolidation of all existing control areas within the region? Is it feasible for a non-RTO control area operator, operating within an RTO region, to perform its functions without having access to commercially sensitive information involving its competitors? For example, could an RTO provide control area operators with information about scheduled net interchanges between control areas without disclosing the individual transactions making up the new interchanges? [213]

b. The RTO must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities. (Proposed § 35.34(i)(4)(ii))

As we have stated before, the dividing line ''between transmission control and generation control is not always clear because both sets of functions are ultimately required for reliable operation of the overall system.'' [214] The entity that controls the transmission system must have some degree of control over some generation.[215] In general, we do not think that this authority should extend to initial unit commitment and dispatch decisions of generators. However, the Commission believes that it is necessary and appropriate that the RTO have authority to order redispatch of any generating unit when necessary for the reliability of the grid.

c. When the RTO operates transmission facilities owned by other entities, the RTO must have authority to approve and disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards. (Proposed § 35.34(i)(4)(iii))

Control over transmission maintenance is a necessary RTO function because planned and unplanned outages of individual transmission facilities affect the overall transfer capability of the grid. If a facility is removed from service for any reason, the power flows on all regional facilities are affected. These shifting power flows may cause other facilities to become overloaded, and so adversely affect system reliability. The availability or unavailability of specific transmission facilities can also have major effects on electricity market prices.[216]

Under this proposed requirement, the RTO would determine whether the proposed maintenance of transmission facilities could be accommodated within established state, regional and national reliability standards. The RTO's regional perspective will allow it to coordinate individual maintenance schedules with each other as well as with expected seasonal system demand variations. Since the RTO will have access to extensive information, it will see the ''big picture'' and be able to make more accurate assessments of the reliability effect of proposed maintenance schedules than individual, sub-regional transmission owners.

If the RTO is a transmission company that owns and operates transmission facilities, these assessments would be an internal company matter. If the RTO is an ISO, it would need to review transmission requests made by various transmission owners (TOs) of its region.[217] In this latter case, we would expect the RTO to: receive requests for authorization of preferred maintenance outage schedules; review and test these schedules against reliability criteria; approve specific requests for scheduled outages; require changes to maintenance schedules when they fail to meet reliability standards; and update and publish maintenance schedules on a regular basis.

The Commission requests commenters to address a number of questions related to this proposed requirement. Does it cede too much or too little authority to the RTO? If the RTO requires a transmission owner to reschedule its planned maintenance, should the transmission owner be compensated for any costs created by the required rescheduling? Would it be feasible to create a market mechanism to induce transmission owners to plan their maintenance so as to minimize reliability effects? Should an RTO that is an ISO have any authority to require rescheduling of maintenance if it anticipates that the planned maintenance schedule will adversely affect power markets? If the RTO is a transco, can it manipulate its transmission maintenance schedules in a manner that harms competition?

The proposed requirement does not give the RTO any authority over proposed generation maintenance schedules. However, in our order approving the Midwest ISO, we observed that ''the dividing line between transmission control and generation control is not always clear because both sets of functions are ultimately required for reliable operation of the overall system.'' [218] Should the RTO have some authority over generation maintenance schedules? If so, how much authority should it have?

We also anticipate that the RTO will need to establish performance standards for transmission facilities under its direct or contractual control. Such standards could take the form of targets for planned and unplanned outages. The rationale for this requirement is that two transmission owners should not receive equal compensation if one owner operates a reliable transmission facility while the other operates an unreliable facility. For RTOs that are transcos, we would anticipate that such quality standards would be implicit or explicit in any performance based regulatory proposal. [219]/ Is it possible for a non-profit ISO to establish similar incentive schemes for the transmission owners whose facilities it operates?

Facility ratings. It is widely recognized that reliable operation of the transmission system in the short-term requires both continuous monitoring of equipment availability and loading, and actions to maintain loading levels within the established operating ranges

[212] *See Midwest ISO,* 84 FERC at 62,154–55.

[213] *See Id.* at 62,160.

[214] Id. at 62,151.

[215] This seems to be generally recognized in the industry. For example, the participants in the Midwest ISO proposed that the ISO ''will possess authority over generation to the extent that generation affects transmission.'' *See* ER98–1438–000, Applicants' Response at 3.

[216] *See* ''Staff Report to the FERC on the Causes of Wholesale Electric Pricing Abnormalities in the Midwest During June 1998,'' September 22, 1998, at 4–3.

[217] Since some of these transmission owners may also own generation, they may have an incentive to schedule transmission maintenance at times that would increase the prices received from their power sales. A transmission company, not affiliated with any generators, would not have these same incentives.

[218] *Midwest ISO,* 84 FERC at 62,180.

[219] We note that the National Grid Company in England and Wales reports annually on quality of service in certain dimensions (systems availability, interconnector availability, system security and quality of supply) to the Director General of Electricity Supply. *See* National Grid Company ''Report of the Director General of Electricity Supply, Financial Year 1997–98.'' A copy of this report will be placed in the public record.

and equipment ratings. If a transmission line or other facility becomes overloaded or experiences a forced outage, the short-term reliability of the power system may be threatened. Therefore, we anticipate that the RTO will need to monitor equipment availability and loading so that it can determine which control actions or redispatch options are necessary. The options open to the RTO for ensuring short-term reliability, such as direct control of transmission facilities, initiating transmission loading relief procedures or pursuing redispatch options and bids, are discussed in other sections.

To determine whether existing or scheduled power flows will threaten short-term system reliability, flow levels must be compared to ratings established in power flow reliability studies. The entity that establishes these ratings and operating ranges will have a major influence on the reliable operation of the power system. Its determinations will not only affect system reliability but also ATC. The Commission believes that RTOs are best situated to establish ratings and operating ranges for two reasons. First, they will have the most complete information about expected and real-time operating conditions. Second, RTOs will be trusted since they will be independent in two ways: they will not have any economic interests in electricity market outcomes and they will not be owned or controlled by any market participants.

The Commission recognizes that an RTO that is an ISO may initially need to rely upon existing values for equipment ratings and operating ranges so as not to disrupt reliable system operation. The RTO will then have the ongoing task of validating and updating these existing values, focusing initially on those identified as critical to the development of a competitive electricity market.

The Commission understands that transmission owners may be concerned that changes in existing equipment ratings may lead to problems of equipment safety and possible damage. These concerns could trigger disputes over the values established by the RTO. We propose that if there is a dispute over values established for equipment ratings, the RTO values will prevail until the outcome of the dispute resolution process. It is the intent of the Commission to promote RTOs that have the expertise and personnel capable of determining both equipment ratings and operating ranges necessary to maintain system reliability. In addition, since RTOs will be independent of all stakeholders in the electricity market, they will not have an incentive to distort the operation of electricity markets by manipulating equipment ratings and reliability assumptions. And most significantly, since the RTO is ultimately responsible for system reliability, it will be careful not to harm system equipment. Therefore, to avoid an impasse over equipment ratings that are determined by one market participant and contested by a second, we believe that the RTO's values should prevail when there is disagreement, until resolution is reached through an ADR process approved by the Commission.[220]

The Commission asks commenters to address the following issues. Given that an RTO has responsibility for system reliability, what should be the extent of its liability for its actions? Would this differ depending on whether the RTO owns the facilities?

d. If the RTO operates under reliability standards established by another entity (*e.g.,* a regional reliability council), the RTO must report to the Commission if these standards hinder it from providing reliable, non-discriminatory and efficiently priced transmission service. (Proposed § 35.30(i)(4)(iv))

RTOs may be new organizations. However, they will be sharing some of their responsibilities with existing organizations. For example, the New England ISO shares its responsibilities with the NEPOOL RTG.[221] The New York ISO shares its reliability responsibilities with the New York State Reliability Council. We anticipate that, in the near future, RTOs will be implementing reliability standards that are established by a separate regional reliability council.[222] We believe this is necessary to maintain the reliable operation of the grid, but it also raises concerns because almost every reliability standard will have a commercial consequence, and regional or sub-regional reliability groups may not be as independent of market participants as RTOs.[223] As a consequence, an RTO could be required to implement a reliability standard that may favor the commercial interests of certain types of market participants when an equally effective, but more commercially neutral, variant of the standard might be feasible. Therefore, it is important that the RTO notify us immediately if implementation of externally established reliability standards will prevent it from meeting its obligation to provide reliable, non-discriminatory transmission service.

Minimum Functions

1. Function 1: Tariff Administration and Design. The RTO must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities. (Proposed § 35.30(j)(1))

The pro forma open access transmission tariff that accompanied Order No. 888's functional unbundling is based on a traditional approach to transmission service: it relies on embedded cost ratemaking, contract path scheduling and physical rights to service. We recognized that it did not break new ground on transmission pricing because it was based ''on the practices and procedures'' that were traditionally used by public utilities that owned transmission facilities. Instead, the focus of the pro forma tariff is on the non-price terms and conditions of transmission service needed to get non-discriminatory transmission service. Our intent was to ''initiate open access'' for individual transmission providers. We stated that our issuance of the pro forma tariff was ''* * * not intended to signal a preference for contract path/embedded cost pricing for the future.''[224] In the Capacity Reservation Tariff (CRT) NOPR that was issued at the same time, we emphasized that: ''* * * the Commission is not committed to traditional tariff design.''[225] Since the issuance of Order No. 888, the Commission has encouraged transmission providers to come forward with other open access transmission tariffs that they believe have pricing

[220] This is the same policy that we adopted in approving the Midwest ISO. *See Midwest ISO,* 84 FERC at 62,165–66.

[221] Commissioner Malachowski, representing the New England Conference of Public Utility Commissions (NECPUC), stated that the current sharing of power between the New England ISO and NEPOOL is unsatisfactory. He said that the New England commissions believe that more decision making authority must be transferred to the ISO. As a specific example, the mentioned the need for the ISO to have more direct authority over market design. RTO Conference (Washington, D.C.), transcript at 123.

[222] In Order 888, we required that any ISO should ''comply with their applicable standards set by NERC and the regional reliability council.'' (ISO Principle No. 4)

[223] *See Central Hudson,* 83 FERC at 62,411 for a discussion of our concerns about the relationship between the New York ISO and the New York State Reliability Council. In this instance, we were willing to accept the fact that the NYSRC will establish rules that the ISO would implement because any new rule or revisions to existing rules would be ''subject to immediate suspension by the NYSRC if requested to do so by the New York ISO.'' *Id.*

[224] *Order No. 888,* FERC Stats. & Regs. at 31,666–67.

[225] *CRT NOPR,* FERC Statutes and Regulations at 33,228 (1996).

provisions that are equal or superior to the mandated tariff that was part of the Order No. 888 initiative.

To date, the most significant innovations in transmission access and pricing have been brought to us by ISOs. This is not surprising. Given the interconnectedness of the grid, it is necessary to introduce regional pricing innovations through some kind of regional organization. This cannot be done by individual transmission providers acting alone. We anticipated that regional organizations would be the likely innovators in our Transmission Pricing Policy Statement. Among the innovations that have been proposed since the issuance of Order No. 888 are: locational pricing; fixed transmission rights (FTRs) and transmission congestion contracts (TCCs) that give defined financial rights to grid users (*i.e.*, financial rather than physical rights to the grid); and explicit market-based pricing of congestion and ancillary services.[226] In almost every instance, we have approved these proposals because they offer the promise of promoting overall operating efficiency and encouraging fair, open and competitive energy markets.

Therefore, we take this opportunity to reaffirm the importance of such reform by establishing it as an explicit obligation for qualifying RTOs. The wording of this requirement is general and this is intentional. The Commission believes that RTOs are in the best position at this time to develop innovative transmission access and pricing regimes that will promote competition and meet the needs of their region. The Commission invites commenters to address whether more specific guidance is required.

In carrying out Function 1, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnections.[227] (Proposed § 35.30(j)(1)(i))

The rationale for this standard is straightforward. The RTO cannot ensure nondiscriminatory transmission service to all market participants unless it is the sole provider of transmission service over facilities that it owns or controls. If it is to be an effective ''provider'', it must be the only entity that receives, evaluates and approves or denies requests for transmission service. However, it cannot make informed decisions unless it has accurate and unbiased information about pending transmission requests and current system conditions. This, in turn, implies that in addition to being the transmission service provider, the RTO must be the operator of the OASIS site as well as the regional security coordinator (see the discussion of function 5 and characteristic 3).

An organization like an independent scheduling administrator that simply monitors the scheduling decisions of current transmission owners and offers dispute resolution services in case of a dispute would not qualify as an RTO. Similarly, a transmission organization that offers service under another entity's tariff would not meet this standard.

An RTO's obligation to provide nondiscriminatory transmission service is not limited just to existing users. It is important that the RTO ensures nondiscriminatory access to transmission service for new entrants such as new generators. This requires that the RTO, rather than existing transmission owners, have the authority to review and approve requests for interconnections. The Commission believes that the RTO cannot be an effective provider of transmission service if it lacks the authority to ensure that new customers are interconnected to the grid. This standard should be relatively easy to implement for an RTO that owns transmission facilities. However, it may be more difficult for an RTO that does not own transmission facilities because actual physical construction of the interconnection facilities will usually be made by an existing transmission owner who may also be a competitor of the new generator. Therefore, the Commission invites comments on how this standard can be made effective for RTOs that are ISOs. Are there lessons to be learned from the experience of qualifying facilities (QFs) under PURPA in getting interconnections to the grid that would be applicable to ISOs? Should this standard be expanded to give the RTO the authority to review and approve all new interconnections (*e.g.*, to connect new generators, to improve reliability, to increase trading opportunities with neighboring regions) or all transmission investments above some threshold dollar amount?

b. The RTO tariff must not result in transmission customers paying multiple access charges to recover capital costs over facilities that it controls (*i.e.*, no pancaking of transmission access charges). (Proposed § 35.34(j)(1)(ii))

The elimination of transmission rate pancaking for large regions is a central goal of the Commission's RTO policy. Therefore, the offering of non-pancaked transmission access charges is a requirement for a conforming RTO. In the existing world of many individual transmission service providers, transmission customers have generally been required to pay an access charge to each transmission provider along the contract path (and pay nothing to providers off the contract path). This is a form of distance-based transmission pricing, but the charge is a function of corporate boundaries crossed on the contract path rather than distance traveled on actual flow paths. Such pancaked transmission charges have led to multiple transmission charges across several transmission systems and make it difficult to create region-wide power markets. Competition is clearly enhanced when customers are able to access larger numbers of generators over a wide geographic region when they pay a single transmission access charge. In Order No. 888, we required tight power pools and holding companies to offer a system-wide tariff with non-pancaked rates.[228] To date, non-pancaked transmission access charges have been a feature of all five ISOs that we have approved. In this NOPR, we are proposing to extend that requirement to RTOs.

[226] *See, e.g., Pacific Gas & Electric,* 81 FERC ¶ 61,122 (1997), *Central Hudson,* 83 FERC ¶ 61,352 (1998), *NEPOOL,* 85 FERC ¶ 61,242 (1998); *PJM;* 81 FERC ¶ 61,257 (1997).

[227] The Commission, of course, retains ultimate authority to order transmission services and interconnections pursuant to the FPA.

[228] *Order No. 888,* FERC Stats. & Regs. at 31,727–29, 31,731.

Would the requirement for a tariff with non-pancaked rates make the voluntary formation of RTOs more difficult because it might result in the potential for sudden and unacceptable transmission rate charges? Is the severity of any such problem related to the scope and regional configuration of the proposed RTO? Does the use of so-called license plate design allow the RTO to meet this requirement without cost shifting? Would the provision for a reasonable transition period help?

Waiving of access charges. While the Commission wishes to encourage more efficient intra-regional trade, it also would like to encourage inter-regional trade. Boundaries are always a potential impediment to trade, whether between states, RTOs or countries. Therefore, we encourage RTOs to negotiate the mutual waiving of transmission access charges to increase the size of effective trading areas. In the Midwest ISO proceeding, we were told that this was difficult to implement.[229] Therefore, commenters are requested to recommend actions that the Commission could take to facilitate reciprocal waiving of access charges. Even if there is mutual waiving of access charges, are there other pricing impediments to inter-regional trade (*e.g.*, differences in scheduling and curtailment conventions between regions) that are likely to impede trade?

2. Function 2: Congestion Management. The RTO must ensure the development and operation of market mechanisms to manage transmission congestion. (Proposed § 35.34(j)(2)).

In carrying out Function 2, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. The market mechanisms must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals regarding the consequences of their transmission usage decisions. The RTO must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant. (Proposed § 35.34(j)(2)(i))

As we stated in our recent order addressing NERC's transmission loading relief (TLR) procedures, the traditional approaches to congestion management may no longer be acceptable in a competitive, vertically de-integrated industry.[230] For example, the use of administrative curtailment procedures has important economic consequences for market participants, yet such procedures are usually invoked without regard to the relative value of transactions that are curtailed. This can lead to a considerable disruption of power markets and can be financially damaging for market participants. The Commission has concluded that efficient congestion management requires a greater reliance on market mechanisms.[231] Recent experience suggests that only a large regional organization like an RTO will be able to create a workable and effective congestion management market.[232]

As we noted in our order approving the PJM ISO, markets that are based on locational marginal pricing and financial rights for firm transmission service provide a sound framework for efficient congestion management.[233] However, just as we do not intend to mandate a single corporate form for RTOs, we will not require one specific market approach to congestion management. It is our intent to give RTOs considerable flexibility in experimenting with different market approaches to managing congestion. However, we believe that a workable market approach to congestion management should generally establish clear and tradeable rights for transmission usage, promote efficient regional dispatch, support the emergence of secondary markets for transmission rights, and provide market participants with the opportunity to hedge locational differences in energy prices.

A market approach to congestion management should lead to more efficient transmission prices. As we explained in our Transmission Pricing Policy Statement, an efficient pricing policy must meet certain objectives.[234] Of the four objectives set forth in the Policy Statement, two are particularly relevant for congestion management. First, the generators that are dispatched in the presence of transmission constraints should be those that can serve system loads at least cost, given the constraints. Second, given that the demand for transmission services during periods of congestion exceeds the system's ability to supply them, the limited transmission capacity should be used by market participants that value that use most highly.

In designing market mechanisms for congestion management, the Commission recognizes that it is important to consider the time frame in which decisions must be made and actions must be taken. It is the nature of electric systems that operating conditions, including those that lead to the presence or absence of congestion, are constantly changing. Thus, to manage congestion efficiently while ensuring safety and reliability, system operators must be able to take decisive action quickly.

One possible implication of this need for quick, decisive action is that markets that directly support congestion management may have to be subject to some coordination by the RTO. For example, a congestion market that is not coordinated by the RTO might require transmission customers to negotiate individually with generators to pre-arrange an alternative dispatch that would allow the transmission customer's transaction to proceed (or to be efficiently altered) if and when congestion arises. However, because congestion can occur suddenly and unexpectedly, time may not permit the operator to (1) identify impending transmission constraints, (2) inform customers whose transactions are affected, (3) allow customers to contact generators, and (4) receive instructions from customers as to what actions they wish the operator to take with respect to their pending transactions. We have expressed concerns that such a process may be unwieldy and even unworkable in the limited time in which operators must act.[235] Although the process could be simplified by completing some of these activities in advance, such simplifications may come at the cost of eliminating some potentially efficient options.

The Commission invites comments on our requirement that RTOs must be responsible for managing congestion with a market mechanism. Can

[229] *See* Response of Midwest ISO Participants, May 1, 1998, at 11–13.

[230] *See NERC,* 85 FERC at 62,364.

[231] *Id.*

[232] The recent experience of Commonwealth Edison suggests that redispatch markets operated by individual utilities will not be able to elicit an adequate response by generators. After six months of an experimental program, Commonwealth concluded that it is ''difficult for one transmission owner to identify and implement redispatch'' when the physical limitations and cost effective options for relief are on other transmission systems. According to Commonwealth, the only viable solution would be for the redispatch market to be operated by a regional transmission system operator. *See* Commonwealth Edison, Interim Report on Non-Firm Redispatch, Docket No. ER98–2279, December 17, 1998, at 4 and 10.

[233] *See, e.g., PJM,* FERC 62,252–53.

[234] *Transmission Pricing Policy Statement,* FERC Stats. & Regs. at 31,140–44.

[235] We expressed similar concerns in our order authorizing the formation of the Midwest ISO. *See Midwest ISO,* 84 FERC at 62,165–66. Nevertheless, we opted to allow the Midwest ISO to go forward with its proposal in order to gain actual operating experience.

decentralized markets for congestion management be made to work effectively and quickly? Can the RTO's role be limited to that of a facilitator that simply brings together market participants for the purpose of engaging in bilateral transactions to relieve congestion? If not, will these markets require centralized operation by the RTO or some other independent entity? How can an RTO ensure that enough generators will participate in the congestion management market to make possible a least-cost dispatch? Are there any special considerations in evaluating market power in a congestion market operated or facilitated by an RTO?

We propose that the congestion management function need not necessarily be in place on the first day of RTO operation, and propose to allow up to one year after start-up for this function to be implemented. We recognize that the new approaches to congestion management called for by newly competitive markets may take additional time to work out. We seek comment on whether such an additional implementation time period is warranted, and whether one year is an appropriate additional time period.

3. Function 3: Parallel Path Flow. The RTO must develop and implement procedures to address parallel path flow issues within its region and with other regions. The RTO must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operation. (Proposed § 35.34(j)(3))

Many power sales and transmission service contracts are written under the assumption that the power delivered will flow on a particular contract path. This relatively straightforward and easy to administer ''contract path'' approach assumes that it is possible to determine and fix the path through the transmission network along which power will flow from source to sink. However, this assumption often does not accurately reflect what actually occurs because the scheduled power transfer will flow across the interconnected electrical path between source and destination according to laws of physics, which means that some power may flow over the lines of adjoining transmission systems. This power flow effect is commonly referred to as ''parallel path flow'' or ''loop flow.''

Parallel path flows have the potential to create, and have in the past created, disputes among transmission system owners. There are efficiency and economic equity issues involved when a scheduled transaction in fact causes power flows over the facilities of an entity that is not compensated, or when the costs of mitigating parallel flows are allocated to various transmission owners.[236] There are also reliability issues involved when parallel path flows overload a transmission line, and decisions must be made as to what actions to take, and who should bear responsibility for taking necessary steps to unload that line.[237] The interdependent nature of electricity flow implies that one party's ability to transmit energy will depend upon the actions of others, and, for scheduling and pricing purposes, the capacity of the entire network and not just individual systems is the most important factor.[238]

The Commission has previously expressed its view that the issues surrounding parallel path flow are best resolved by mutual arrangements between the utilities that have chosen to interconnect.[239] More recently, the Commission directed all public utilities in the Eastern Interconnection to file an interim redispatch plan if they are not currently participating in a regional congestion management program through a power pool.[240]

The Commission believes that the formation of RTOs, with their widened geographic scope of transmission scheduling and expanded coverage of uniform transmission pricing structures provides an opportunity to ''internalize'' most, if not all, of the effect of parallel path/loop flow in their scheduling and pricing processes within a region. In particular, we believe that RTO access to region-wide information on network conditions and power transactions, coupled with efficient congestion management and well specified physical and financial transmission usage rights, could help RTOs, as regional grid managers, in taking preemptive action against curtailment incidents that would otherwise be induced by parallel path/loop flow loading of critical transmission facilities. We anticipate that parallel path/loop flow related disputes will diminish to the extent that RTOs are relatively large and able to implement more realistic scheduling and pricing procedures that subsume the effect of parallel path/loop flow within their regions.

We propose that measures to address parallel path flow may not necessarily be in place on the first day of RTO operation, and propose to allow up to three years after start-up for this function to be implemented. We seek comment on whether such an additional implementation time period is warranted, and whether three years is an appropriate additional time period.

4. Function 4: Ancillary Services. An RTO must serve as the supplier of last resort of all ancillary services required by Order No. 888, FERC Stats. & Regs. ¶31,038 (Final Rule on Open Access and Stranded Costs), and subsequent orders. (Proposed § 35.34(j)(4))

In carrying out Function 4, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. All market participants must have the option of self-supplying or acquiring ancillary services from third parties subject to any general restrictions imposed by the Commissions's ancillary services regulations in Order No. 888, FERC Stats. & Regs. ¶ 31,038 (Final Rule on Open Access and Stranded Costs), and subsequent orders. (Proposed § 35.34(j)(4)(i))

An RTO is a transmission provider and therefore is subject to the general requirements established by the Commission for the provision of ancillary services under Order Nos. 888 and 889 and succeeding orders. Specifically, these require that the transmission provider must provide or cause to be provided six ancillary services on an unbundled basis.[241] Of the six ancillary services, a transmission customer is obligated to purchase two of the services from the transmission provider (the RTO)—scheduling, system control and dispatch service and reactive supply and voltage control from generation. For the remaining four services, a transmission customer has the option of self-providing these services, either by acquiring them from

[236] *See* Indiana Michigan Power Company and Ohio Power Company, 64 FERC ¶ 61,184 (1993) (*Indiana Michigan*) (complaint that 95% of a power sale flowed over transmission system that was not compensated); Southern California Edison Company, *et al.*, 73 FERC ¶ 61,219 (1995) (*Southern California*) (Commission approved plan for mitigating loop flows within the WSSC).

[237] *See NERC*, 85 FERC ¶ 61,353 (1998).

[238] The Order No. 888 *pro forma* open access tariff does not explicitly recognize the effect of parallel path/loop flow.

[239] *See Indiana Michigan*, 64 FERC at 62,554.

[240] *NERC*, 85 FERC at 62,363–64.

[241] The six ancillary services are: (1) Scheduling, System Control and Dispatching Service; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve-Spinning Reserve; and (6) Operating Reserve-Supplemental Reserve Service. *Order No. 888*, FERC Stats. & Regs. at 31,706–17; *Order No. 888–A*, FERC Stats. & Regs. at 30,227–34.

a third party or providing them from the customer's own resources.

Our rationale for imposing the ultimate supply obligation on the RTO is that not all transmission customers may be equally able to self-supply (some own generation, others do not) and that in many circumstances it may be more efficient (i.e., less costly) for the RTO to provide the service for all transmission users on an aggregated basis. Our rationale for allowing self-supply is that it provides a possible competitive check on the RTO to ensure that it acquires the services at lowest cost. In addition, the Commission believes, as a matter of policy, that legal monopolies should not be granted (i.e., serving as the sole provider of ancillary services) unless they are natural monopolies.

The ancillary services policies in Order Nos. 888 and 889 were developed for transmission providers that were generally vertically integrated utilities. There was an expectation that they would be able to provide many of the generation based ancillary services from their own generating resources. An RTO by definition will not own any generating resources. Does this difference necessitate a different set of ancillary service requirements for RTOs? Are there other ancillary services, in addition to scheduling, system control and dispatch, and reactive supply and voltage control from generation sources, for which the self-supply option should be eliminated? Under what circumstances can the RTO's obligation as the ancillary services supplier of last resort be eliminated?

b. The RTO must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided. All ancillary service providers must be subject to direct or indirect operational control by the RTO. The RTO must promote the development of competitive markets for ancillary services whenever feasible. (Proposed § 35.34(j)(4)(ii))

This policy would, in effect, grant RTOs the exclusive right, subject to national and regional reliability norms, to determine the quantities and, in some instances, the locations at which certain ancillary services must be provided. It would also require that the RTO be able to exercise complete operational control, either directly or indirectly, over any supplier of ancillary services.

Direct control (sometimes referred to as hands-on control or actual physical operation) would require, for example, that RTO employees ''push the button'' or that RTO computers send instructions directly to generating units or other facilities to take certain physical actions. Automatic generation control (AGC) might be one example of direct control. If the RTO has direct control, it would have authority, by contract or other means, to send direct electronic signals to those generators who have offered, in return for a payment, to increase or decrease the output of their units in response to the RTO's signals. Indirect control (sometimes referred to as functional control, directed control or contractual control) requires that the RTO send instructions to the owner of the facility who then, in turn, performs the actual physical actions to implement these instructions. Indirect control usually requires that there be a contractual agreement between the RTO and the owner of the facilities that has agreed to provide ancillary services.

The Commission requests commenters to address whether these are minimum requirements needed to ensure that the RTO can satisfy its obligation to maintain targeted levels of reliability. Would it be feasible for the RTO to maintain reliability with less authority?

In our Midwest ISO order, we stated that the ISO ''* * * should use competitive procurement for all services needed to operate the system.'' [242] This general requirement would apply to ancillary services since they are clearly needed to operate a reliable bulk power system. One prerequisite for competitive procurement is a competitive market.[243] The Commission would anticipate that many of the generation-based ancillary services (*e.g.*, balancing and reserves) could be acquired in short-term markets that would operate in parallel to basic energy markets.[244] This has been the approach taken by most of the ISOs that we have approved and we see no reason why this would be different for transcos or other types of RTO entities. Other services such as black start capability and voltage support are probably best acquired in long-term markets where potential suppliers would compete for the right to enter into a long-term contract with the RTO. Apart from establishing the general requirement to use competitive markets, the Commission believes that it is best to leave many of the detailed market design questions to the individual RTOs with case-by-case review by us.[245] As we noted earlier, we intend to permit regional flexibility and encourage experimentation. Such experimentation would be discouraged if we issued regulations that are too detailed.

The Commission believes that, whenever it is economically feasible, it is important for the RTO to provide accurate price signals that reflect the costs of supplying ancillary services to particular customers. Accurate price signals are especially important because some of the RTO's customers may be competing against each other in other power sales markets. It is important that the RTO's actions not distort regional power market competition by charging potential competitors inaccurate prices for ancillary services that they purchase from the RTO.

c. The RTO must ensure that its transmission customers have access to a real-time balancing market. The RTO must either develop and operate such markets itself or ensure that this task is performed by another entity that is not affiliated with any market participant. (Proposed § 35.34(j)(4)(iii))

Real-time balancing refers to the moment-to-moment matching of loads and generation on a system-wide basis. It is a function that control area operators must perform to maintain frequency at 60 hz. Real-time balancing is usually achieved through the direct control of select generators (and, in some cases, loads) who increase or decrease their output (or consumption in the case of loads) in response to instructions from the system operator. Over the last two years, the Commission has seen an increasing use by system operators of market mechanisms that rely on bids from generators to achieve

[242] *See* Midwest ISO, 84 FERC ¶ 61,231 at 62,164 (1998).

[243] However, we recognize that the existence of a competitive supply market for ancillary services is no guarantee that the RTO will automatically buy efficiently. Therefore, since the RTO may be the de facto buyer of many of these services, the Commission is receptive to performance-based regulatory proposals that would give RTOs explicit incentives to be efficient buyers of ancillary services. *See* section III.F.

[244] *See* Eric Hirst and Brendan Kirby, Unbundling Generation and Transmission Services for Competitive Electricity Markets, a report prepared for the National Regulatory Research Institute (NRRI 98–05), January 1998.

[245] These would include design issues such as: Are ancillary service bids received before, after or at the same time as energy market bids? Do ancillary service markets clear simultaneously or sequentially? Must the RTO publicly announce the amount of each ancillary service that it needs prior to bidding? What do generators bid (capacity, energy or both)? If there are multiple bid components, are they evaluated together or separately? Should the RTO acquire ancillary services from outside its region? These are some of the design issues that have arisen in the operation of ancillary markets by the California ISO. We expect that there will be other design issues as other ancillary market proposals are presented to us.

overall, real-time balancing.[246] Since system-wide balancing is a critical element of reliable short-term grid operation, we will require that it be a responsibility of the RTO. The Commission would expect that an RTO will perform the overall system balancing function directly if it operates a control area or indirectly if it supervises the operation of sub-regional control areas.

A separate, but related, issue is balancing by individual grid users. The fact that the overall system must be in balance to maintain frequency does not necessarily require that there be a moment-to-moment balance between the individual loads and resources of bilateral traders and load-serving entities and the schedules and actual production of individual generators. Imbalances are inevitable since generators do not exactly meet their schedules and loads always vary from moment-to-moment.

As we noted in the Midwest ISO order, unequal access to balancing options for individual customers can lead to unequal access in the quality of transmission service available to different customers. This could be a significant problem for RTOs that serve some customers who operate control areas and other customers who do not. Under current NERC regulations, control area operators have access to inadvertent energy accounts so they can pay back imbalances in kind and thereby avoid any penalties.[247] In contrast, non-control area transmission customers do not have access to such accounts. Instead, under the pro forma tariff, load serving entities are subject to a deadband and then penalties if the magnitude of their imbalances fall outside the deadband. Our concern, as we stated in our Midwest ISO order, is that ''nondiscriminatory access would suffer'' under such a system.[248] Therefore, the Commission proposes to require that RTOs operate a real-time balancing market that would be available to all transmission customers, or ensure that this task is performed by another entity not affiliated with market participants.[249]

The Commission believes that it is important to give RTOs considerable discretion in how such a market would be operated. An RTO may choose to operate the market itself or assign the task to another entity (*e.g.*, a for-profit exchange) that would operate the market under the RTO's supervision. In addition, the Commission would expect that the design of such a market will necessarily vary between RTOs that operate control areas and those that do not. However, in those instances where RTO does not operate a control area, the RTO must be especially vigilant that transmission customers who continue to operate control areas cannot use that functional responsibility to the disadvantage of non-control area customers.[250]

The Commission invites comments on the use of market mechanisms to support overall system balancing and imbalances of individual transmission users. Is it feasible to rely on markets to support a function that is so time-sensitive? Can such markets be made to function efficiently if the RTO is not a control area operator? For the imbalances of individual transmission customers, should a distinction be made between loads and generators? Should customers have the option of paying for all imbalances in such a market or only imbalances within a specified band?

5. *Function 5: OASIS and TTC and ATC.* The RTO must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC. (Proposed § 35.34(j)(5))

The operation of an OASIS site has many dimensions. For example, it includes specific practices and terminology. In response to a consensus request from the industry, we recently issued a NOPR that proposes to standardize various practices and terms. The focus of that NOPR is on standardization of protocols for posting, naming and responding to posted information.[251] Apart from these practices, the central and probably most controversial aspect of OASIS operation is the calculation and posting of ATC numbers. The calculation of ATC depends, in turn, on the calculation of TTC.[252] These calculations are different from business practices in that the focus is on content rather than procedures and practices. There is widespread dissatisfaction with the reliability of posted ATC numbers. The Commission has received formal and informal complaints from transmission customers stating that they cannot rely on posted ATC numbers. Criticisms of posted ATC numbers have also been the subject of a widely publicized report issued by a major industry group.[253] It is been alleged that transmission providers who also compete in power markets against their competitors have both the incentive and ability to post unreliable ATC numbers.[254]

We recognize that an individual transmission provider may post ATC numbers on OASIS in good faith only to find that the projected capability does not exist because of scheduling decisions taken by other transmission providers elsewhere on the grid. In such circumstances, transmission providers are not acting unscrupulously. Instead, the problem is simply a mismatch between information flows and electrical flows. Regional transmission organizations that perform ATC calculations based on complete and timely information would tend to eliminate this problem. This seems to be supported by fact that the Commission has received very few complaints about ATC calculations made by ISOs.

The essential feature of our proposed requirement is that the RTO become the administrator of a single OASIS site for all transmission facilities over which it is the transmission provider. This is consistent with earlier orders.[255] Moreover, every ISO that we have approved so far has become the OASIS site administrator for the customers that it serves. However, we recognize that this generally stated requirement inevitably raises questions as to the level of RTO involvement in ATC calculations. An RTO could be involved in ATC calculations at three general levels. At Level 1, the RTO's role would be limited to receiving and posting ATC numbers received from transmission owners. At Level 2, the RTO would receive raw data from transmission

[246] *See Pacific Gas & Electric,* 81 FERC ¶ 61,122 (1997), *Central Hudson,* 83 FERC ¶ 61,352 (1998), *NEPOOL,* 85 FERC ¶ 61,242 (1998); *PJM,* 81 FERC ¶ 61,257 (1997).

[247] NERC Operating Manual, at P1–9.

[248] Midwest ISO, 84 FERC at 62,155.

[249] We have already approved such markets for four ISOs. *See e.g.*, PJM Interconnection, L.L.C., Order Accepting In Part and Rejecting In Part Proposed Revisions To Rate Schedules, September 16, 1998 and New England Power Pool, ''Order Conditionally Accepting Market Rules and Conditionally Approving Market Based Rates, 85 FERC ¶ 61,379 (1998). These markets generally allow all transmission customers to settle their imbalances at real time energy market prices. We note that participants in the Midwest ISO have issued a request for proposals that could lead to the establishment of such a market in their region. *See* Solicitation of Interest, Creation of an Independent Power Exchange for the U.S. Midwest, Joint Committee for the Development of a Midwest Independent Power Exchange (Feb. 5, 1999).

[250] *See Midwest ISO,* 84 FERC at 62,159–160.

[251] Open Access Same-Time Information System, Notice of Proposed Rulemaking, FERC Statutes and Regulations ¶ 32,531 (1998).

[252] *See* section III.A.1 for definitions of these terms.

[253] Commercial Practices Working Group and the OASIS How Working Group, ''Industry Report to the Federal Energy Regulatory Commission on the Future of OASIS, October 31, 1997.

[254] This is discussed more fully in Section III.A.

[255] In the Primergy merger order, we required that the proposed ISO should be ''responsible for calculating ATC.'' *See* Primergy, 79 FERC ¶ 61,158, May 14, 1997.

owners and centrally calculate ATC values. At Level 3, the RTO would centrally calculate ATC values on data partially or totally developed by the RTO. The proposed requirement that the RTO be the OASIS site administrator is based on the expectation that the RTO will operate at Level 3.

The RTO must eventually operate at Level 3 to ensure that ATC values are based on accurate information that is based on consistent assumptions and to minimize the opportunities for conscious manipulation. In general, the RTO must perform all the calculations and studies necessary to develop the underlying data. When data are supplied by others, the RTO must create a system for regularly validating the data for accuracy and assumptions. If there is a dispute over ATC values, the RTO's values should be used pending the outcome of the dispute resolution process.[256] The RTO must also establish the operating standards (subject to regional and national reliability requirements) underlying the ATC calculations.

6. *Function 6: Market Monitoring.* The RTO must monitor markets for transmission services, ancillary services and bulk power to identify design flaws and market power and propose appropriate remedial actions. (Proposed § 35.34(j)(6))

In carrying out Function No. 6, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. The RTO must monitor markets for transmission service and the behavior of transmission owners, if any, to determine if their actions hinder the RTO in providing reliable, efficient and nondiscriminatory transmission service. (Proposed § 35.34(j)(6)(i))

b. The RTO must monitor markets for ancillary services and bulk power. This obligation is limited to markets that the RTO operates. (Proposed § 35.34(j)(6)(ii))

c. The RTO must periodically assess how behavior in markets operated by others (*e.g.,* bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects RTO operations and conversely how RTO operations affect the performance of power markets operated by others. (Proposed § 35.34(j)(6)(iii))

The RTO's role as market monitor. To date, the Commission has found monitoring to be essential in helping to ensure non-discrimination and efficiency in the provision of transmission and ancillary services; encourage fair, open, and competitive energy markets; and promote overall operating efficiency. [257] As we stated in the New England ISO order, ''markets are likely to evolve in ways that may not be totally anticipated. To ensure that the markets operate competitively and efficiently, it is important that any problems involving market power or market design are quickly identified so that appropriate solutions can be crafted.'' [258] To date, we have been willing to use ISOs, or their independent monitoring organizations, as a ''first line of defense'' in detecting both market power abuses and market design flaws.

The proposed requirements are arguably based on the presumption that an RTO will be a non-profit, system operator that does not own any facilities. The requirements may not be appropriate for a for-profit transco that owns the facilities that it operates.[259] Therefore, a threshold question is: what should be the market monitoring role, if any, of an independent, for-profit transco? Is it reasonable to expect that such an RTO could be objective in its assessments? If the RTO is an ISO, do its monitoring activities need to be further insulated to ensure independence and objectivity? For example, should monitoring be performed by one or more individuals or organizations that are funded by the RTO but that have the right to issue reports without the RTO's approval?

The Commission believes that RTOs that are ISOs have a significant comparative advantage over other entities in monitoring markets.[260] First, RTOs have access to considerable information about market conduct and performance. For example, we would expect that an RTO, in the normal course of business, will develop or receive information on quantities of bulk power and transmission services bought and sold by different market participants, expected and real time transmission system conditions, planned maintenance of both generation and transmission facilities and anticipated and real time patterns of load and generation. Second, RTOs will be completely independent of all market participants. For these reasons, the Commission believes that we and our colleagues in state commissions can have great confidence in the RTO market assessments.[261] Our early experience with market assessments performed by the New England and California ISOs has been encouraging. The assessments have been comprehensive and objective even to the point of criticizing past actions by the ISOs themselves.[262]

Despite the advantages of better information and incentives, the Commission believes that it is neither fair nor feasible to impose a monitoring obligation on RTOs for markets that they do not operate. Our preliminary assessment is that it would be difficult for an RTO to monitor a market in which it does not have information on prices, bidding patterns and marginal costs. However, our experience with ISOs has shown that markets for power, ancillary services and transmission service are inextricably intertwined regardless of how they are organized or who operates them.[263] Therefore, we are proposing a middle ground for monitoring regional markets not operated by the RTO. The RTO's monitoring of markets operated by others will be limited to assessing how behavior in these markets affects RTO markets and operations and conversely how RTO markets and operations affect these other markets.

The Commission also recognizes that any markets, whether operated by the RTO or others, will inevitably be affected by basic structural characteristics such as the existing pattern of ownership and control of generation and transmission facilities. Such characteristics are often beyond the control of the RTO. Since our overarching goal in promoting RTOs is to promote fair, open and competitive electricity markets, we and our state commission colleagues need to understand how these structural features affect the potential for competition. Therefore, we propose to require RTOs to provide periodic assessments as to the effect of existing structural conditions on the competitiveness of their region's

[256] This is the same requirement that the Commission imposed on the Midwest ISO. *See Midwest ISO,* 84 FERC at 62,154.

[257] *Pacific Gas & Electric,* 81 FERC at 61,552; *PJM,* 81 FERC at 62,282; *NEPOOL,* 85 FERC at 62,479–480; *Midwest ISO,* 84 FERC at 62,180–181.

[258] New England ISO, 85 FERC ¶ 62,379 at 62,479–480 (1998).

[259] We note that at least one entity that is contemplating the creation of a for-profit transmission company has proposed that this company would perform a market monitoring function. *See* Statement of Mr. Frank Gallaher on behalf of Entergy Corporation, Regional ISO Conference (New Orleans), transcript at 18.

[260] *See Midwest ISO,* 84 FERC at 62,181.

[261] The early experience with market assessments in California and New England seems to support this conclusion. *See* AES Redondo Beach, *et al.,* 85 FERC ¶ 61,123 at 61,462 (1998).

[262] *See* Peter Cramton and Robert Wilson, A Review of ISO New England's Proposed Market Rules, Docket No. ER97–1079, September 9, 1998, and the California ISO Market Surveillance Committee's Preliminary Report On the Operation of the Ancillary Services Markets., Docket No. ER98–2843, August 19, 1998 Markets.

[263] *See* AES Redondo Beach, *et al.,* 85 FERC ¶ 61,123 at 61,453 and 61,459–460 (1998).

electricity markets. Of all the industry organizations that may exist in a region, we think that an RTO is best suited to make this assessment because of its first hand knowledge of day-to-day grid and generation operations and its independence.

The Commission requests comments on several threshold issues related to these proposed market monitoring requirements. Some argue that RTOs should not be charged with any monitoring responsibilities particularly with respect to market power abuses.[264] They argue that the antitrust laws and the Commission offer sufficient protection against competitive abuses. Others have argued that RTOS are somewhat akin to organized stock exchanges and that the Commission should follow the SEC precedent of requiring extensive and sophisticated market monitoring by all of the organized exchanges. Are there features of electricity and transmission markets that argue for imposing similar market monitoring responsibilities on RTOs?

If the Commission decides to require RTOs to provide some form of market monitoring, there are several other questions that arise. Should the Commission rely on RTOs as the ''first line of defense'' for detecting both design flaws and market power abuses? If this were our approach, what would be an appropriate role for the Commission in market monitoring? If the RTO is operating one or more markets (*e.g.*, ancillary services), is it reasonable to expect that it can perform an objective self-assessment? Is there a difference in the market monitoring that the Commission can expect from RTOs? For example, if the RTO proposes to take a market position in secondary transmission rights, is it plausible to expect that the RTO can perform an objective assessment of this market? Since the success of retail competition will often depend critically on the actions of RTOs, what should be the role of state commissions in market monitoring?

Scope of monitoring activities: design flaws. In observing the experience of ISOs over the last year, we have learned that new market designs almost inevitably include design flaws that become apparent only after the markets begin operation.[265] Often these problems arise because of unexpected interactions between different related markets and unanticipated incentives for buyers and sellers. Electricity market restructuring in other countries has also experienced the need to make many revisions to market designs and rules.[266] These experiences indicate that monitoring is essential to ensure that the markets and structures evolve to ensure just and reasonable rates to consumers. The Commission recognizes that market monitoring can be expensive. We would welcome estimates of the amount of money spent by ISOs to monitor markets and their assessments as to whether they will need to spend more or less money in the future.

Scope of monitoring activities: market power abuses. As we have noted before, it is often difficult to predict whether certain entities will have market power in the future. This is especially true in new markets which operate with new participants and new transmission flow patterns. In situations like this, the past is often not a very good predictor of the future. As a consequence, the Commission has found that in certain situations the better approach is to institute an effective monitoring plan rather than to debate numerous assumptions and projections that inevitably underlie competing market power analyses.[267] For abuses that arise from market power, should the RTO's role be limited to detecting and describing the abuses? In the case of localized market power (*e.g.*, generating units that must run for reliability reasons), should the RTO have the authority to take corrective actions? If the market power has structural causes, what role should the RTO have in developing structural solutions? Should RTOs that are ISOs be required to make regular assessments as to whether they have sufficient operational authority?

Sanctions and penalties. The Commission seeks comment on whether RTOs should be allowed to impose penalties and sanctions. Should the penalties be limited to violations of RTO rules and procedures? Should the RTO be allowed to impose penalties for the exercise of market power? How much discretion should the RTO have in setting penalties? For example, should the RTO's penalty authority be limited to collecting liquidated damages?

d. The RTO must provide reports on market power abuses and market design flaws to the Commission and affected regulatory authorities. The reports must contain specific recommendations about how observed market power abuses and market flaws can be corrected. (Proposed § 35.34(j)(6)(iv)).

In order for regulatory agencies, interested parties and the general public to benefit from monitoring activities, regular reporting of findings is critical. Other than this general requirement, we do not propose at this time to establish detailed standards on the format, length and content of monitoring reports. We think that these decisions are best left to the RTO.

Should this reporting requirement be limited to producing reports only when a specific problem is encountered? Or should RTOs be required to make periodic reports that assess the state of competition and transmission access even in the absence of specific problems? We note that the California and New England ISOs have committed to producing annual public reports. Arguably such reports give market participants and others a regular opportunity to say whether they agree or disagree with the RTO assessment. Also, it is conceivable that such reports would be helpful to any market monitoring activities that this Commission and state commissions may wish to pursue in the future.

7. *Function 7: Planning and Expansion.* The RTO must be responsible for planning necessary transmission additions and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. (Proposed § 35.34(j)(7))

In carrying out Function 7, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. The RTO planning and expansion process must encourage market-driven operating and investment actions for preventing and relieving congestion. (Proposed § 35.34(j)(7)(i))

RTOs should be designed to promote efficient usage and efficient expansion of their regional grids. The former requires efficient price signals, such as congestion pricing; the latter requires control over planning and expansion. Our specific proposal is that the RTO should have ultimate responsibility for both transmission planning and expansion within its region.[268] This

[264] *See, e.g.*, David B. Raskin, ISOs; The New Antitrust Regulators? The Electricity Journal (April 1998).

[265] For example, the ancillary services markets in the summer of 1998 in California behaved at odds with what one would expect in an efficient market. The California ISO market surveillance committee produced an extensive evaluation of this problem which led to discussions of possible solutions.

[266] *See, e.g.*, James Barker, Jr., Bernard Tenenbaum, and Fiona Wolfe, ''Governance and Regulation of Power Pools and System Operators: An International Comparison,'' Energy Law Journal, Volume 18, 1997, at 308–309.

[267] *Pacific Gas & Electric*, 77 FERC ¶ 61,265 (1996). *NEPOOL*, 85 FERC ¶ 61,379 (1998).

[268] Investments in new transmission facilities might be needed for a variety of reasons such as interconnecting new generation or load, protecting

requirement is motivated by the fact that investments in new transmission facilities must be coordinated to ensure a least cost outcome that maintains or improves existing reliability levels. In the absence of a single entity with overall responsibility, there would be danger that transmission investments would work at cross-purposes and possibly even hurt reliability. We recognize that the RTO's implementation of this general requirement will require addressing many specific design issues.[269] Once again, we propose to give RTOs considerable flexibility in designing a planning and expansion process that works best for its region. We recognize that the specific features of this process must take account of and accommodate existing institutions and physical characteristics of the region.

Within these constraints, the Commission has a clear preference for market-driven operating and investment actions for preventing and relieving congestion.[270] However, we understand that the feasibility of obtaining market driven solutions requires satisfying other prerequisites. For example, transmission prices must accurately reflect existing patterns of congestion. Accurate congestion prices are the link between current usage and future expansion. Therefore, we place considerable emphasis on the need for RTOs to establish a system of congestion management that establishes clear rights for existing and new transmission facilities and price signals that reflect congestion. (*See* section III.F) Independent governance is also a necessary condition for efficient expansion. While accurate price signals can signal the need for expansion, such expansion may never be achieved if the RTO operates under a faulty governance system (*e.g.*, a governance system that allows market participants to block expansions that will hurt their commercial interests).

b. The RTO's planning and expansion process must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The RTO's planning and expansion process must be coordinated with programs of existing Regional Transmission Groups (RTGs) where necessary. (Proposed § 35.34(j)(7)(ii))

At present, certification and siting of new transmission facilities is almost always performed by a state agency, typically the public utilities commission, in the state in which the facility will be located.[271] While there have been discussions about the need for regional certification and siting since most new transmission lines are integral elements of a regional grid system, such proposals have met with little success.[272] With the growth of RTOs, this could conceivably change. The emergence of a single regional transmission organization on the industry side may encourage the development of regional organizations or agreements that deal with transmission siting and certification on the regulatory side. The Commission believes that this would be a positive development if it is a voluntary decision of the affected states and replaces existing state-by-state determinations that often lack a regional perspective. To facilitate any voluntary actions taken by our state colleagues, we will require that the RTO planning and coordination system must be able to accommodate the possible future emergence of a regional regulatory system.

The Commission recognizes that regional transmission planning in some areas is being performed to varying degrees by RTGs.[273] It would be inefficient for RTOs initially to replicate the efforts of RTGs. Therefore, we require that RTOs discuss their planning and expansion with existing RTGs. However, over time, we would expect that the RTG's planning process would become an RTO function and the need for such coordination would be reduced or eliminated.

c. If the Regional Transmission Organization is unable to satisfy this requirement when it commences operation, it must file a plan with the Commission with specified milestones that will ensure that it meets this requirement no later than three years after initial operation. (Proposed § 35.34(j)(7)(iii))

We recognize that establishing an efficient procedure for transmission planning and expansion may require coordination and agreements among multiple parties and regulatory jurisdictions, and that this may take some time to accomplish. Accordingly, we do not propose that an RTO be capable of performing this function on its first day of operation. We do expect, however, that RTO proposals contain at least a plan explaining how the RTO intends to work toward implementing this function. Such a plan should set forth milestones that will result in this function being performed within three years after initial operation. We seek comment on whether three years is an appropriate amount of time for implementation of this function.

E. Open Architecture

The Commission believes that RTOs hold great promise in accomplishing our goal of promoting competition in regional wholesale electricity markets. That is why we want to accelerate their development. We understand that there are many difficult organizational, technical, and policy issues that must be addressed in realizing proposals, and that markets are evolving quickly and possibly in ways that cannot be foreseen at the time of RTO organization. Further, the nature of the institutions supporting the markets may change over time as well.

For these reasons, the Commission will require that RTO design have the ability to evolve over time. The Commission is committed to a policy of ''open architecture.'' Simply put, open architecture requires that there be no provision in any RTO proposal that precludes the RTO and its members from improving their organizations to meet market needs. The Commission will provide the regulatory flexibility to allow such evolution.

Under open architecture, an RTO should be able to evolve in several ways, as long as it continues to satisfy the minimum RTO characteristics and

or enhancing system reliability, improving system operating efficiency and flexibility, reducing or eliminating congestion and minimizing the need for ''must-run'' contracts with one or more generators.

[269] Our experience with regional transmission groups suggests that the following issues, among others, will need to be addressed: Who establishes the planning criteria? Who sets the design criteria? Should they be uniform across the system or vary with location? Who can initiate studies for transmission investments? Who evaluates and publishes different options? Who recommends which projects should be built and how the costs and benefits of the project should be allocated?

[270] This is a topic that has been discussed widely within the industry. *See, e.g.*, the papers of Steven L. Walton, Indego Transmission Expansion Strategy, Steven Stoft, Five Things You Should Know About Grid Investment and Ray Coxe, New Paradigms for Siting Transmission in Competitive Electric Markets. These papers are available through the Harvard Electric Policy Group website http://ksgwww.harvard.edu/hepg.

[271] *See* Ileana Elsa Garcia, State Electric Facility Siting Practices, prepared for the Harvard Electric Policy Group (HEPG), April 10, 1997. Available through the HEPG website at http://ksgwww.harvard.edu/hepg.

[272] *See* NARUC, ''Options for Jurisdiction over Transmission Facility Siting,'' a resource document for the NARUC Committee on Electricity, 1991 and Charles D. Gray, NARUC Assistant General Counsel, Memorandum, January 1995. Available through the HEPG/website at http://ksgwww.harvard.edu/hepg.

[273] The Commission has approved RTGs for the New England Power Pool, *et al.*, 83 FERC ¶ 61,045 (1998), Mid-Continent Area Power Pool, 76 FERC ¶ 61,261 (1996), Northwest Regional Transmission Association, 71 FERC ¶ 61,397 (1995), Western Regional Transmission Association, 71 FERC ¶ 651,158 (1995), and Southwest Regional Transmission Association, 69 FERC ¶ 61,100 (1994).

functions. For example, open architecture would allow basic changes in the organizational form of the RTO. An RTO that initially does not own any transmission facilities might acquire ownership of some or all of those facilities. The RTO's enabling agreements should at best anticipate and facilitate such a change, but at minimum should not prevent it or make it more difficult than necessary.

Market trading patterns, technological change, and changes in corporate strategies will make changes in RTO membership inevitable and desirable. Accommodating change will require flexibility and adaptability in the RTO organization and open architecture will permit this.

Market support and operations is another RTO dimension that could benefit from open architecture. For example, an RTO may not initially operate a PX to support a regional spot market, but if RTO members later find that a PX would help the region, the RTO could propose to add the PX function as well as a PX market monitoring function. It is important that the basic RTO agreement not close off such development. Our proposed open architecture policy will ensure that such future development is not foreclosed.

The Commission is interested in receiving comments regarding an open architecture policy to ensure that initial RTOs can develop. What flexibility needs to be built into RTO contracts? What regulatory flexibility is needed from the Commission as part of an open architecture policy? In which areas of RTO organization or operations is it especially important for the Commission to expect improvement?

F. Ratemaking for Transmission Facilities Under RTO Control

The Commission expects RTOs to reform transmission pricing, and in return we propose to allow RTOs greater flexibility in designing pricing proposals. In 1994, the Commission issued its Transmission Pricing Policy Statement encouraging transmission pricing reform and setting out standards to be used to evaluate innovative transmission pricing proposals.[274] In the Transmission Pricing Policy Statement the Commission allowed ''substantial flexibility'' to be given to RTGs in justifying non-conforming proposals. The Commission allowed this because RTGs represent the combined interests of transmission owners, users and state authorities and because pricing proposals for treating loop flow problems work better if all utilities in the region use the same method.

In this section, we discuss a number of areas in which we expect RTOs to provide innovative pricing and in which the Commission may be expected to allow flexibility. We seek comments on the issues discussed and other RTO pricing issues.

1. Single Transmission Access Rate for Capital Cost Recovery

One issue in ISO proposals that have come before the Commission is the recovery of transmission capital costs through a single access rate. Under such a rate, the capital costs of all RTO members would be averaged, resulting in a rate that is higher than the individual system rate for relatively low-cost transmission systems and lower than the rate for high-cost transmission systems. This can cause two kinds of ''cost-shifting'' concerns: high-cost transmission providers are concerned about cost recovery, and customers of the low-cost providers are concerned about increased rates.

Transmission cost shifting has been an issue in every ISO the Commission has approved to date, and we have allowed a flexible approach to resolving the issue. In each of those cases, we have allowed a transition period of between five and ten years during which access fees are based on some form of ''license plate'' pricing: access fees are paid by load serving entities based on the fixed transmission costs of the local utility.[275]

We propose to continue our flexibility in allowing the recovery of current sunk transmission costs as transition mechanisms to single rates if proposed by RTOs, including the license plate approach as well as others. We request comment regarding whether the license plate approach to fixed cost recovery is an appropriate long-term measure.

2. Congestion Pricing

As discussed in prior sections, managing regional congestion is one of the problems that an RTO can help solve. We believe that efficient congestion management requires a greater reliance on market mechanisms[276] and this can be effectively accomplished with price signals. We propose to allow RTOs considerable flexibility in experimenting with different market approaches to managing congestion through pricing.[277] Proposals should, however, ensure that the generators that are dispatched in the presence of transmission constraints must be those that can serve system loads at least cost, and limited transmission capacity should be used by market participants that value that use most highly.[278]

The Commission intends to be flexible in reviewing pricing innovations, and we ask for comments as to what specific requirements, if any, may best suit our RTO goals.

3. Performance Based Rate Regulation

Once RTOs are formed, the Commission is interested in finding ways to ensure their satisfactory performance. One way to induce good grid operation by an RTO is through performance-based regulation, or PBR. PBR may consist of price/revenue caps, price incentives, or performance standards.[279] Performance-based regulation identifies factors of good performance such as efficient congestion management, lowering operator costs, and meeting reliability targets. Great care must be taken in selecting the performance factors. RTOs should have a reasonable chance of meeting or exceeding the performance targets, but the targets must not be too easy to meet. We would reward only performance that is truly superior to that which individual transmission owners could achieve outside an RTO.

The Commission seeks comments on applying PBR to RTOs. Should PBR be voluntary or applied to all RTOs? What degree of regulatory scrutiny would a PBR regime require? In addition, the Commission seeks comment on the specifics of how PBR would be applied

[274] The Policy Statement sets out five principles that transmission pricing proposals should conform to: meet the traditional revenue requirement; reflect comparability (open access tariff); promote economic efficiency; promote fairness; and be practical. The Policy Statement requires non-conforming proposals to satisfy additional factors: promote competitive markets and produce greater overall consumer benefits. Overall consumer benefits are measured principally by greater access and customer choice, projected price decreases to power customers, and service flexibility and products to meet customer needs.

[275] *See, e.g.,* Order Directing Amendments to Proposals to Restructure the Pennsylvania-New Jersey-Maryland Interconnection and Providing Guidance, 77 FERC ¶ 61,148 at 61,577 (addressing concerns about cost-shifting between high- and low-cost transmission providers).

[276] *See NERC,* 85 FERC at 62,364.

[277] This is consistent with our *Transmission Pricing Policy Statement's* allowance of substantial flexibility to pricing proposals from RTGs because RTGs are comprised of broad membership to facilitate transmission access, develop a comprehensive regional plan for transmission expansion, share transmission information and provide for dispute resolution. 64 FERC 61,138 (1993). RTOs possess these same characteristics.

[278] *Transmission Pricing Policy Statement,* FERC Stats. & Regs. at 31,140–44.

[279] *See* Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities, Policy Statement on Incentive Regulation, 61 FERC ¶ 61,168 at 61,590–92 (1992), and L. Brown, Michael Einhorn, and Ingo Vogelsang, Incentive Regulation: A Research Report (1989).

effectively to an RTO. For productivity incentives, what productivity objectives should be adopted and how should productivity be measured? How would a revenue cap or a price cap be set? What intermediate adjustments to the cap should be allowed? How often should base costs be examined?

4. Consideration of Incentive Pricing Proposals

RTOs would bring extensive benefits to North American electricity markets and would further the objectives of sections 202(a), 205 and 206 of the FPA. We would be willing to consider, on a case by case basis, allowing the transmission owners that bring about those benefits to share in them through incentive pricing for public utility transmission owners that turn over control of their transmission facilities to an RTO.[280] RTOs would be expected to propose and justify specific proposals on a case-by-case basis.

One potential treatment that could be considered is allowing transmission owners that participate in RTOs to receive a higher return on equity (ROE) on transmission plant than under current policy because a transmission owner participating in an RTO puts its grid to a higher valued use than one operating individually. This relates the incentive to the benefit produced by the RTO. The simplest way to create a higher ROE is to share the benefits of an RTO between transmission owners and customers. Alternatively, a higher ROE could be implemented by either allowing an ROE at the high end of the zone of reasonable returns for RTO participants and an ROE in the current range for non-participants. Is it appropriate to allow a higher ROE as a means of sharing the benefits created by RTOs or should higher ROEs be limited only to increases in risk? Is the risk of transmission capital recovery increased or decreased by transferring transmission facilities to an RTO from a vertically integrated firm?

With improved grid operation and investment in new facilities to relieve constraints, RTOs may lower grid operating costs. Another incentive that could be considered would be to keep transmission rates at current levels and allow participating RTO transmission owners to keep the benefits from cost savings over time or to lower transmission rates partly while owners keep part of the benefits. Would such treatment encourage better performance?

The Commission could also consider flexibility in cost recovery for RTO participation. The capital cost of transmission plant is normally recovered over a relatively long time period. RTO participants could be allowed accelerated recovery for the costs of transmission expansion. Similarly, the recovery of capital start-up costs of RTO participation could be accelerated as well. Is it appropriate to allow such accelerated recovery as an incentive to transfer transmission facilities to an RTO or should capital recovery periods continue to be based on the useful life of transmission facilities? Is industry restructuring and the potential introduction of distributed generation technology likely to affect the risk associated with transmission investment recovery periods?

The Commission may also be willing to consider non-traditional methods for valuing transmission assets that are under the control of a RTO. The Commission's traditional ratemaking policy values assets at original cost, less depreciation. One alternative may be for rate base to reflect a higher valuation through some measure of replacement cost. Where an RTO or other independent owner purchases transmission assets and pay a price that reflects such an enhanced valuation of assets, the Commission may want to consider allowing the RTO to include in its rates an acquisition premium that reflects the enhanced value.

The Commission might also consider flexibility in allowing levelized or non-levelized rate methods. Both methods can produce reasonable results in particular circumstances, especially when one method is used consistently throughout the life of a utility's facilities. The Commission has, however, been reluctant to allow switching from a non-levelized to a levelized rate design during the life of a facility. The Commission's current policy is that a utility must prove that switching methods is reasonable in light of its past recovery of capital.[281] The Commission could consider granting some latitude for RTO pricing proposals for levelized rate cost recovery.

The Commission seeks comments on whether to entertain case-by-case proposals of rate incentive treatments for RTO participants. Will transmission owners respond to incentives, and will incentives be sufficient to achieve our objective of RTO formation? Which incentives are most likely to be successful in so doing? Are there specific forms of incentive pricing that are inappropriate and problematic? Are safeguards needed if the Commission decides to allow incentive treatments? In justifying a proposed rate treatment, should an RTO be required to demonstrate that its benefits are likely to outweigh the pecuniary ''costs'' of the proposal? Would certain incentive pricing encourage RTOs to favor capital-based resource decisions (at the expense of more efficient alternatives) or to favor transmission solutions over alternative ways of relieving particular transmission constraints? We also seek comment on whether and how public power transmission owners that participate in RTOs could benefit from flexible ratemaking and incentive pricing treatments.

Finally, our willingness to consider incentive pricing proposals is conditioned on an RTO meeting all of the proposed minimum characteristics and functions. Allowing any incentive pricing to RTO participants is based on a sharing of the extensive benefits that an RTO brings to electricity markets. Only an RTO that meets the minimum characteristics and functions can produce such extensive benefits, and it would be inappropriate for the Commission to consider incentive pricing to members of an RTO that falls short. We would, however, be open to considering other innovative transmission rate treatments, such as providing service at non-pancaked rates and regional congestion management proposals, for an organization that does not meet all of the minimum RTO characteristics and functions.

G. Public Power Participation in RTOs

The Commission's objective of encouraging all transmission owning entities in the Nation to place their transmission facilities under the control of an RTO includes transmission owned or controlled by public power entities [*e.g.*, municipals, cooperatives, Federal Power Marketing Agencies (PMAs), Tennessee Valley Authority (TVA), and other state and local entities]. We are aware that some public power entities have filed open access tariffs with the Commission and others are participating in ISOs and other regional institutions. We also are aware, however, that many public power entities may face several difficult issues regarding RTO participation. The Commission is concerned about any obstacle to public power participation in the formation and successful operation of any form of RTO. Accordingly, we request comments that identify issues that

[280] As discussed above in section III–B, there are also a number of non-pricing regulatory benefits that could be offered to RTO members, such as deference in dispute resolution, reduced or eliminated codes of conduct, and streamlined filing and approval procedures.

[281] *See* Consumers Energy Company, 85 FERC ¶ 61,100, at 61,366–367, 1998); Kentucky Utilities Company, 85 FERC ¶ 61,274, at 62,103–105 (1998).

public power entities and others face regarding RTO participation and that suggest ways the Commission might facilitate their resolution. We expect public power entities to fully participate in the proposed collaborative process for forming RTOs after our Final Rule is issued, as discussed in section III–I below.

One issue is the Internal Revenue Service (IRS) Code ''private use'' restrictions on the transmission facilities of public power entities financed by tax-exempt bonds. IRS temporary regulations may allow facilities financed by outstanding tax-exempt bonds to be used to wheel power in accordance with Order No. 888, but they may not allow the issuance of additional tax-exempt bonds for expanded transmission or permit transfer of operational control of existing transmission facilities financed by tax-exempt bonds to a for-profit transco.[282] In addition, there is uncertainty regarding what may happen after the temporary regulations expire on January 22, 2001.

We solicit comments on the extent to which IRS Code restrictions may limit the transfer of operational control or other forms of control, or ownership, of public power transmission facilities to a for-profit transco. What impact would IRS Code restrictions have on public power participation in other forms of an RTO? While IRS Code restrictions might prevent issue of additional tax-exempt bonds for transmission expansions made in accordance with RTO participation, are non-tax exempt forms of financing a viable option for public power participation in selected transmission additions?

In addition to private use restrictions, are there other restrictions on public power institutions that may limit their participation in RTOs? For example, to what extent would state or local charter limitations, prohibitions on participating in stock-owning entities, or the current policies of various local regulatory entities affect or impede full public power participation in RTOs? Are there some forms of associate membership or participation in RTOs, or other special accommodations, that the Commission should consider to make it more feasible for public power entities to overcome obstacles to participation in RTOs?

The Commission seeks comment on legal restrictions or other considerations regarding the PMAs that prevent their participation in RTOs. For example, Bonneville Power Administration and other entities in the Pacific Northwest may face unique circumstances that may affect RTO formation in that area. These include the design of the power and transmission system for the production of hydroelectric energy involving the 1961 Columbia River Treaty, the Bonneville Project Act, the Federal Columbia River Transmission System Act, the Pacific Northwest Electric Power Planning and Conservation Act of 1980, and the Northwest Preference Act. There may also be obstacles to TVA participation in an RTO. How can the Commission help overcome any such limiting factors to full RTO formation?

H. Other Issues

The Commission seeks comment on a number of other issues regarding RTO participation. These issues are presented in this section.

1. Pre-existing Transmission Contracts

What is the appropriate treatment of existing transmission agreements when an RTO is formed? In Order Nos. 888 and 888–A, we specifically chose not to abrogate existing requirements and transmission contracts when the utility filed an open access tariff.[283] However, an RTO represents an entirely different context. We must balance the need for a uniform approach for transmission pricing and the elimination of pancaked rates—one of the principal benefits of an RTO—with the need to recognize the equities inherent in existing transmission contracts. The potential financial impact of giving up an advantageous transmission arrangement may act as a disincentive to joining an RTO.

In the ISO filings that we have acted on to date, we have evaluated various ''transition plans'' regarding existing contracts on a case-by-case basis.[284] At this juncture, we do not intend to resolve this issue generically but instead propose to confine our policy to addressing this issue on an RTO-by-RTO basis. We solicit comments on this approach. How critical is this concern to transmission owners' and others' decisions on whether to support RTO formation? Is the financial impact of giving up an advantageous transmission arrangement significant enough to act as a disincentive to RTO membership?

2. Treatment of Existing Regional Transmission Entities

We propose to adopt in the Final Rule certain characteristics and functions to be required of RTOs. It could turn out that the ISOs and any other regional transmission entities that conform to the Commission's ISO principles that we have approved to date do not meet all of these characteristics and functions. It is our expectation that, to the extent this is the case, the existing regional transmission entities will over time evolve to be consistent with the characteristics and functions adopted in the Final Rule. The Commission recognizes that a number of operational, financial and political issues will need to be addressed in the course of such an evolution and that it cannot be accomplished overnight. We also respect the investment of time and other resources made in the existing transmission entities, and understand the importance of avoiding change during the critical implementation period these institutions are now undergoing. Given these considerations, and our policy of regional flexibility, the proposed rule does not require major changes to the existing transmission entities. However, our objective is to encourage all of the Nation's transmission grid to be under the control of RTOs that have the minimum characteristics and functions adopted in the Final Rule. We therefore propose to require each public utility that is a member of an existing regional transmission entity that has been approved by the Commission as in conformance with the eleven ISO principles set forth in Order No. 888 to make a filing no later than January 15, 2001 that explains the extent to which the transmission entity in which it participates meets the minimum characteristics and functions for an RTO, or proposes to modify the existing institution to become an RTO. Alternatively, the public utility may file an explanation of efforts, obstacles and plans with respect to conforming to these characteristics and functions.[285] The Commission is also concerned about impediments to transactions between existing transmission entities, as well as any future RTOs. We therefore encourage existing transmission entities to consider ways to reduce any impediments to transactions among them and direct

[282] *See* Uncrossing the Wires, Transmission in a Restructured Market, a report by The Large Public Power Council, December 1998, at 10.

[283] *See* Order No. 888 at 31,664–65; Order No. 88–A at 30,181, 30,199; clarified, 76 FERC at 61,027; Order No. 888–B, 81 FERC at 62,072, 62, 090, 62,100.

[284] *See PJM,* 81 FERC at 62,280–81; *Midwest ISO,* 84 FERC at 62,169–70 and *order on reh'g,* 85 FERC at 62,418–20 (1998); *Pacific Gas & Electric,* 777 FERC at 61,821, 81 FERC at 61,470–71; *NEPOOL,* 83 FERC at 61,241–42; Central Hudson Gas & Electric Co. *et al.,* 86 FERC at 61,218–19.

[285] Of course, there is nothing to prevent an existing transmission entity from making an RTO filing prior to this date if it so chooses.

them to provide the Commission with a progress report by January 15, 2001.

The Commission seeks comment on this issue.

3. Participation by Canadian and Mexican Entities

Canadian and Mexican involvement in RTO formation would be beneficial to both, as well as to the United States. In certain areas, ''natural'' electricity trading regions already cross national borders. Expansion of electricity trade in the North American bulk power market requires that regional institutions include all market participants so that they may enjoy direct access to market information and the benefits of non-pancaked transmission rates. In addition, any reliability standards implemented by RTOs must be acceptable to the affected nations and consider all resources to avoid wasteful duplication of grid facilities.[286]

We encourage electric utilities in Canada and Mexico, and their regulatory authorities, to participate in the discussions of the rulemaking. Perhaps what may be thought of as a ''dotted line'' RTO boundary could be used at international borders to indicate an unwillingness to artificially limit an RTO's scope while recognizing jurisdictional limits. The Commission emphasizes that Canadian and Mexican authorities would be responsible for approving prices and other terms and conditions of transmission service provided over any RTO transmission facilities located in their countries. We invite the comments of Canadian and Mexican authorities on these and other issues.

4. Providing Service to Transmission-owning Utilities that do not Participate in an RTO

The transmission owners that turn control of transmission facilities over to an RTO will help bring significant operational and commercial benefits to a region. To what extent should transmission owners who do not participate in their region's RTO share in those benefits? Would it be appropriate to allow RTO members to provide transmission service at individual system rates to non-participating transmission owners located in the RTO region, thereby denying non-participants the benefits of non-pancaked transmission rates? The Commission seeks comment on the treatment by an RTO of non-participating transmission owners in the RTO region.

5. RTO Filing Requirements

Any transfer of control of jurisdictional transmission facilities owned, operated, or controlled by public utilities required by RTO formation must be approved by the Commission pursuant to its Section 203 authority under the FPA. The RTO transmission rates, terms, and conditions of service must also be approved pursuant to Section 205 of the FPA. We request comments on whether the Commission should provide for expedited or streamlined processing procedures for Section 203 transfers of jurisdictional facilities to RTOs that meet the characteristics and functions of the Final Rule, and for the related Section 205 transmission rates, terms, and conditions. We also welcome specific suggestions regarding how we can further expedite or streamline our procedures.

6. Power Exchanges (PXs)

Another important issue is the relationship between RTOs and power exchanges. Of the five ISOs approved to date, only the Midwest ISO chose not to include a power exchange in the design submitted to us.[287] However, after the Commission approved this proposal, several ISO participants joined with other Midwestern power entities in issuing a public request for proposals that would create an independent power exchange that would operate in conjunction with the ISO.[288] This recent Midwest initiative appears to have been motivated, at least in part, by the large price spikes that were experienced last summer. Our staff's report concluded that one of probable causes of the price spikes was the lack of price transparency and that ''centralized trading institutions such as power exchanges could have provided better price signals in the market and helped to reduce price volatility.''[289]

Regions may want to consider establishing a PX that is operated by an RTO. However, some oppose RTO-operated PXs, contending that the two principal functions of PXs, market making and price discovery, are not natural monopoly functions.[290] They also contend that power exchanges force market participants to buy and sell electricity using standardized contracts that may not meet their particular needs. They argue that the full benefits of electricity competition can be achieved only if there is competition for the market as well as in the market. Finally, they assert that if power exchanges are introduced, an RTO should be specifically prohibited from operating the exchange because this would compromise the RTO's independence in fulfilling its principal responsibilities as a transmission service provider and system operator.[291]

In contrast, those who recommend that an RTO should operate a PX contend that the two functions of short-term forward or spot market operations and system operations are difficult to separate.[292] It is their view that there will be significant inefficiencies unless the two functions are performed simultaneously by a single entity.[293] In addition, they contend that there is no inherent conflict between the RTO as a transmission service provider and a spot market operator as long as the RTO has no commercial interest in whether prices are high or low in the markets that it operates.

We leave it to each region to decide whether there is a need for a PX and whether the RTO should operate the PX. The Commission will accept an RTO

[286] Historically, Canada and Mexico have participated in North American utility organizations such as NERC and Western Systems Coordinating Council (WSCC). Maintaining Reliability in a Competitive U.S. Electricity Industry, Final Report of the Task Force on Electric System Reliability, Secretary of Energy Advisory Board, DOE, September 29, 1998 at 9, 58.

[287] In California, PXs are operated by separate organizations that coordinate with the ISO.

[288] *See* Joint Committee for the Development of a Midwest Independent Power Exchange, ''Solicitation of Interest-Creation of an Independent Power Exchange for the U.S. Midwest,'' February 5, 1999.

[289] Staff Report to the Federal Energy Regulatory Commission on the Causes of Wholesale Electric Pricing Abnormalities in the Midwest During June 1998, September 1998, at 4–4. Centralized power exchanges appear to have other benefits. Since most power exchanges establish credit and security standards as a condition for participation and reserve funds to cover defaults, they create a type of insurance by spreading counterparty risks among all participants and thereby reducing the likelihood of cascading transaction defaults such as those that occurred in the Midwest. In addition, it is generally accepted that an organized and transparent spot market is a prerequisite for a viable futures market which would allow market participants to hedge the risk of future price fluctuations. Finally, we note that during our recent consultations with state commissions, several state commissioners informed us that organized and open spot markets were critical to the success of their efforts to introduce retail competition in their respective states.

[290] *See, e.g.*, comments of Enron in PL98–5, Washington, D.C., transcript at 211.

[291] *See, e.g.*, comments of Automated Power Exchange, Inc., in PL98–5 at 3.

[292] *See* Professor William W. Hogan, ''Enabling The Power Of Markets,'' presentation at the EEI Chief Executive Conference, Scottsdale, Arizona, January 7, 1999, at 8. A copy of this presentation is available on Professor Hogan's website (www.ksg.harvard.edu/people.whogan).

[293] *See* Dr. Larry Ruff, ''Competition in Electricity: Where Do We Go From Here?'', lecture at the Institute of Economic Affairs, London Business School, October 13, 1998. Available through the website of the Harvard Electric Policy Group (http://ksgwww.harvard.edu/hepg/FPpapers.html).

proposal that includes a PX in its design as long as its operation of the PX does not compromise its independence as a transmission service provider. We request comments on the following questions. Given that a power exchange is useful, should it be part of an RTO or otherwise associated with an RTO? If an area has more than one PX, should the PXs have equal standing before the RTO? Is an organized PX necessary for successful retail competition? If an RTO operates congestion markets and balancing markets, are there efficiencies to be gained by allowing or encouraging the RTO to operate day ahead or hour ahead energy markets? Is it feasible for an RTO to operate a spot energy market without compromising its ability to provide non-discriminatory transmission service to all market participants? If a PX is operated by a non-RTO entity, is there a need to require certain specified forms of coordination between the two organizations?

I. Implementation of the Rule

The Commission seeks to support timely RTO formation in every region of the country. To that end, the Commission envisions regional collaborations soon after issuance of the Final Rule, building on progress made to that date. Further, pursuant to our expectation that utilities and other participants in the electric industry form RTOs, the Commission proposes to require that certain filings be made by October 15, 2000 concerning RTO formation. The collaborative process and filing requirements are discussed in more detail below.

1. Collaborative Process

During our consultations with the state commissions, many said that Commission leadership is needed to facilitate RTO formation and that only we could facilitate broad regional participation. To facilitate RTO formation in all regions of the Nation, the Commission proposes a collaborative process under section 202(a) to take place in the spring of 2000, after adoption of a Final Rule. The Commission expects public utilities and non-public utilities, in coordination with appropriate state officials, and affected interest groups in a region to fully participate in working to develop an RTO.

To assist in structuring the regional collaborations and to further inform the Commission on activities in each region, we propose that regional workshops be held throughout the Nation after the Final Rule is issued. The goal of these workshops would be to share information about the status of RTOs or RTO proposals in the region, to identify any impediments to RTO formation in the area, to explore what process could most expeditiously advance agreements on RTO formation, and to determine what role, if any, Commission staff should play in advancing discussions in the region. These regional workshops would be convened by Commission staff in cooperation with the affected state officials. The Commission would specifically invite each entity in the Nation that owns or operates transmission facilities, and representatives from Canada and Mexico as appropriate, to the public workshops. The Commission proposes to make staff resources, including settlement judges, available through our Dispute Resolution Service to assist in designing and possibly facilitating regional collaborations following the workshops. Commission technical staff will be made available for participation in the regional collaborations.

Would regional workshops advance RTO formation? Under whose auspices should regional workshops be held? Would it be beneficial to have the Commission's Dispute Resolution Service staff facilitate discussions regarding RTO formation? Should the Commission staff convene the regional workshops or should Commission staff be made available to attend meetings convened by others? If the Commission staff convenes workshops, in how many cities should meetings be convened and how should the cities be chosen? Would the three U.S. interconnections be appropriate starting points? Would participation of Commission staff aid or stifle negotiations on RTO development?

2. Filing Requirement

The Commission is hopeful that the direction provided by this rulemaking, the regional collaborations described above, and the possibility of incentive rate treatments will lead to the prompt development of RTO proposals. Thus, we propose that all public utilities that own, operate or control interstate transmission facilities (except those already participating in a regional transmission entity in conformance with our eleven ISO principles) must file with the Commission by October 15, 2000, either (1) a proposal to participate in an RTO that will be operational no later than December 15, 2001, or (2) an alternative filing describing efforts to participate in an RTO, obstacles to RTO participation, and any plans and timetables for future efforts (see proposed § 35.34(c)).[294] To the extent possible, RTO proposals should include the transmission facilities of public power and other non-public utility entities.

The number and type of filings necessary to effectuate an RTO proposal necessarily will vary depending upon the type of RTO being proposed and the circumstances of each individual public utility participant. At a minimum, an RTO proposal must include a basic agreement filed under section 205 of the FPA setting out the rules, practices and procedures under which an RTO will be governed and operated, and requests by the public utility members of the RTO for approval under section 203 of the FPA to transfer control of their jurisdictional transmission facilities. However, depending upon the circumstances, there may need to be additional section 205 or 206 amendments to existing public utility contracts or rate schedules in order to effectuate an RTO proposal.

For those public utilities that file an RTO proposal on or before October 15, 2000, we will permit them to file a petition for declaratory order asking whether a proposed transmission entity would qualify as an RTO, with a description of the organizational and operational structure and the intended participants of the institution, an explanation of how the institution would satisfy each of the RTO minimum characteristics and functions, and a commitment to submit necessary section 203, 205 and 206 filing promptly after receiving the Commission's determination on the declaratory order petition (see proposed § 35.34(d)(3)). This declaratory order petition option thus is to be used only in conjunction with the filing of a proposal for an RTO that is to begin operation no later than December 15, 2001.

If a public utility is not able to file an RTO proposal on or before October 15, 2000, it must alternatively file by that date a description of any efforts made by the public utility to participate in an RTO, the reasons it has not participated in an RTO, including identifying specific obstacles to RTO participation, and any plans and timetables the public

[294] A proposal to form a transmission institution that does not meet all of the minimum RTO characteristics and functions will not be approved as an RTO. This does not necessarily mean that the proposal will not otherwise be approved as consistent with the FPA. However, the proposal will not qualify as an RTO. For transmission organizations that do not meet all of the minimum RTO characteristics and functions, however, we would still be open to considering, and indeed encourage, regional filings for providing service at non-pancaked rates and regional congestion management proposals.

utility has for further work toward RTO participation (see proposed § 35.34(f)). If a public utility makes such an alternative filing, the Commission at that time will determine what steps, if any, need to be taken.

The above requirements, however, do not apply to a public utility that is a member of an existing transmission entity that the Commission has found to be in conformance with the Order No. 888 ISO principles. Rather, each such public utility must make a filing no later than January 15, 2001 that (1) explains the extent to which the transmission entity in which it participates meets the minimum characteristics and functions for an RTO, (2) proposes to modify the existing institution to become an RTO, or (3) explains efforts, obstacles and plans with respect to conforming to these characteristics and functions (see proposed § 35.34(g)).[295]

The Commission does not propose to mandate RTO participation by rule, and instead proposes to induce voluntary participation through a combination of guidance on the minimum characteristics and functions of an RTO, possible rate incentives, a collaborative process for structuring regional dialogues, and filing requirements. The Commission seeks comment on whether the filing requirements discussed above are inconsistent with or otherwise would inhibit voluntary participation in RTOs. The Commission also seeks comment on whether it needs to generically mandate RTO participation by all public utilities to remedy undue discrimination under sections 205 and 206 of the FPA. We also seek comment on whether a performance based system could be designed to realign economic interests to remove the motive for discrimination.

In considering what actions might be appropriate if a utility fails to voluntarily join an RTO, the Commission seeks comment on whether market-based rates for generation services could continue to be justified for a public utility that does not participate in an RTO, whether a merger involving a public utility that is not a member of an RTO would be consistent with the public interest, whether non-participants that own transmission facilities should be allowed to use the non-pancaked transmission rates of the RTO participants in that region, whether transmission services provided by a transmitting utility need to be under RTO control to satisfy the discrimination standards of sections 211 and 212 of the FPA, and whether a public utility's lack of participation would otherwise be in violation of the FPA. Does the possibility of any of these remedial actions for RTO non-participation undermine or otherwise inhibit voluntary participation in RTOs? How should the Commission consider the efficiency, reliability, and discrimination implications of RTO non-participation? How should the Commission consider non-participation by utilities that constitute ''holes'' in an RTO region?

The Commission anticipates that public utilities will file proposals for ISOs, transcos, or other types of regional transmission institutions prior to the effective date of the Final Rule. We clarify that the Commission will continue to apply to these proposals the ISO principles contained in Order No. 888 and the case precedent established for ISOs. However, a public utility that files such a proposal prior to the effective date of the Final Rule would still be subject to the October 15, 2000 or January 15, 2001 filing requirement, as appropriate, in the Final Rule.

IV. Environmental Statement

In furtherance of the National Environmental Policy Act of 1969, the staff of the Federal Energy Regulatory Commission will prepare an environmental assessment (EA) that will consider the environmental impacts of the proposed rule. A notice of intent to prepare the EA, request comments on the scope of the EA, and notice of a public scoping meeting is published elsewhere in this issue of the **Federal Register**.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601–612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. If this proposed rule goes into effect, it will establish minimum characteristics and functions for RTOs, none of which is likely to meet the SBA's definition of a small electric utility, i.e., one that disposes of 4,000,000 MWh per year or less. 13 C.F.R. § 121.201. Furthermore, the rule will not have the requisite impact upon transmission owners.

In *Mid-Tex Elec. Coop.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration ''to small entities that would be directly regulated'' by proposed rules. *Id.* at 342. The court further concluded that ''the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'' *Id.* at 342.

The proposed rule will not regulate any small entities, nor will it impose upon them any significant costs of compliance. Small entities will be free to determine for themselves whether to participate in an RTO and whether any costs associated with joining an RTO will be adequately offset by attendant benefits. The only requirement the rule would impose upon a small entity would be the need to file a statement explaining its efforts to join an RTO, any barriers it encountered, and any future plans to seek to join an RTO. The Commission believes that the costs associated with preparing and filing such a statement will be minimal. Consequently, the Commission certifies that this proposed rule will not have a significant economic impact upon a substantial number of small entities.

VI. Public Reporting Burden and Information Collection Statement

The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. FERC identifies the information provided under Part 35 as FERC–516 and under Part 33 as FERC–519.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

Public Reporting Burden: Estimated Annual Burden:

[295] Of course, there is nothing to prevent an existing entity from making an RTO filing prior to this date if it so chooses.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–516	12	1	300	3,600
FERC–519	[1] 50	1	80	4,000
Totals				7,600

[1] Includes respondents who make application to form an RTO and the responses of utilities who choose not to participate.

Total Annual Hours for Collection (reporting+record keeping, (if appropriate))=7,600.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs—Annualized Costs (Operations & Maintenance) − $401,518 (7,600 hours ÷ 2080 hours per year × $109,889 =$401,518). The cost per respondent is equal to $8,030 (participants and non-participants).

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. *(Footnote 5 CFR 1320.11)*

Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–516, Electric Rate Schedule Filings; FERC–519 Application for Sale, Lease, or Other Disposition, Merger or Consolidation of Facilities or for the Purchase or Acquisition of Securities of a Public Utility.

Action: Proposed Data Collections.

OMB Control No.: 1902–0096 and 1902–0082.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: One time.

Necessity of Information: The proposed rule revises the requirements contained in 18 CFR part 35. The Commission is seeking to establish RTOs nationwide by December 2001. In particular, the Commission will establish in this proposed rule characteristics and functions which applicants must meet to become Commission approved RTOs. The Commission will engage in a collaborative process with state officials and others to facilitate RTO development. The proposed rule will require that each public utility that owns, operates or controls transmission facilities participate in one-time filings proposing an RTO or make a filing explaining why they are not participating in an RTO proposal.

Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Offices of Electric Power Regulation and Economic Policy will use the data included in filings under Section 203 and 205 of the Federal Power Act to evaluate efforts for the interconnection and coordination of the U.S. electric transmission system and to ensure the orderly formation of RTOs as well as for general industry oversight. These information requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208–1415, fax: (202) 208–2425, E-mail: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

VII. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Initial comments should not exceed 100 double-spaced pages and should include an executive summary. The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. on August 16, 1999.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should not exceed 50 double-spaced pages and should include an executive summary. The original and 14 copies of the reply comments must be received by the Commission before 5:00 p.m. on September 15, 1999.

Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM99–2–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–2–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM99–2–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18 of the *Code of Federal Regulations,* as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by adding a new Subpart F consisting of § 35.34 to read as follows:

Subpart F—Procedures and Requirements Regarding Regional Transmission Organizations

§ 35.34 Regional Transmission Organizations.

(a) *Purpose.* This section establishes required characteristics and functions for Regional Transmission Organizations for the purpose of promoting efficiency and reliability in the operation and planning of the electric transmission grid and ensuring nondiscrimination in the provision of electric transmission services. This section further directs each public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce to make certain filings with respect to forming and participating in a Regional Transmission Organization.

(b) *Definitions.*

(1) *Regional Transmission Organization* means an entity that satisfies the minimum characteristics set forth in paragraph (i) of this section, performs the functions set forth in paragraph (j) of this section, and accommodates the open architecture conditions set forth in paragraph (k) of this section.

(2) *Market participant* means any entity that buys or sells electric energy in the Regional Transmission Organization's region or in any neighboring region that might be affected by the Regional Transmission Organization's actions, or any affiliate of such an entity.

(c) *General rule.* Except for those public utilities subject to the requirements of paragraph (g) of this section, every public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of [effective date of the final regulation] must file with the Commission, no later than October 15, 2000, one of the following:

(1) A proposal to participate in a Regional Transmission Organization consisting of one of the types of submittals set forth in paragraph (d) of this section; or

(2) A submittal consistent with paragraph (f) of this section.

(d) *Proposal to participate in a Regional Transmission Organization.* For purposes of this section, a proposal to participate in a Regional Transmission Organization means:

(1) Necessary filings, made individually or jointly with other entities, pursuant to sections 203, 205 and/or 206 of the Federal Power Act (16 U.S.C. 824b, 824d, and 824c), as appropriate, to create a new Regional Transmission Organization;

(2) Necessary filings, made individually or jointly with other entities, pursuant to sections 203, 205 and/or 206 of the Federal Power Act, as appropriate, to join a Regional Transmission Organization approved by the Commission on or before the date of the filing; or

(3) A petition for declaratory order, filed individually or jointly with other entities, asking whether a proposed transmission entity would qualify as a Regional Transmission Organization and containing at least the following:

(i) A detailed description of the proposed transmission entity, including a description of the organizational and operational structure and the intended participants;

(ii) A discussion of how the transmission entity would satisfy each of the characteristics and functions of a Regional Transmission Organization specified in paragraphs (i), (j) and (k) of this section;

(iii) A detailed description of the section 205 rates that will be filed for the transmission entity; and

(iv) A commitment to make necessary filings pursuant to sections 203, 205 and/or 206 of the Federal Power Act, as appropriate, promptly after the Commission issues an order in response to the petition.

Note to paragraph (d): Under this paragraph (d), the Commission would consider a request for incentive rate treatment or another form of innovative transmission pricing, such as performance based rates. Such a filing must include a detailed explanation of how the proposed rate treatment would help achieve each of the minimum characteristics and functions and would result in benefits to consumers.

(e) *Transfer of operational control.* Any public utility's proposal to participate in a Regional Transmission Organization filed pursuant to paragraph (c)(1) of this section must propose that operational control of that public utility's transmission facilities will be transferred to the Regional Transmission Organization on a schedule that will allow the Regional Transmission Organization to commence operating the facilities no later than December 15, 2001.

Note to paragraph (e): The requirement in this paragraph (e) may be satisfied by proposing to transfer to the Regional Transmission Organization ownership of the facilities in addition to operational control.

(f) *Alternative filing.* The submittal referred to in paragraph (c)(2) of this section must contain a description of any efforts made by that public utility to participate in a Regional Transmission Organization; the reasons it has not, to date, participated in a Regional Transmission Organization, including identification of any existing obstacles to participation in a Regional Transmission Organization; and any plans the public utility has for further work toward participation in a Regional Transmission Organization.

(g) *Public utilities participating in approved transmission entities.* Every public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of [effective date of the final regulation], and that has filed with the Commission to transfer operational control of its facilities to a transmission entity that has been approved or conditionally approved by the Commission as being in conformance with the eleven ISO principles set forth in Order No. 888, FERC Stats. & Regs. ¶31,036 (Final Rule on Open Access and Stranded Costs) on or before [effective date of the final regulation], must, individually or jointly with other entities, file with the Commission, no later than January 15, 2001:

(1) A statement that it is participating in a transmission entity that has been so approved;

(2) A detailed explanation of the extent to which the transmission entity in which it participates has the characteristics and performs the functions of a Regional Transmission Organization specified in paragraphs (i) and (j) of this section and accommodates the open architecture conditions in paragraph (k) of this section; and

(3) To the extent the transmission entity in which the public utility participates does not meet all the requirements of a Regional Transmission Organization specified in paragraphs (i), (j), and (k) of this section, the public utility must file either a proposal to participate in a Regional Transmission Organization that meets such requirements in accordance with paragraph (d) of this section, a proposal to modify the existing transmission entity so that it conforms to the requirements of a Regional Transmission Organization, or a filing containing the information specified in paragraph (f) of this section addressing any efforts, obstacles, and plans with respect to conformance with those requirements.

(h) *Entities that become public utilities with transmission facilities.* An entity that is not a public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of [effective date of the final regulation], but later becomes such a public utility, must file a proposal to participate in a Regional Transmission Organization in accordance with paragraph (d) of this section, or an alternative filing in accordance with paragraph (f) of this section, by October 15, 2000 or 60 days prior to the date on which the public utility engages in any transmission of electric energy in interstate commerce, whichever comes later. If a proposal to participate in accordance with paragraph (d) of this section is filed, it must propose that operational control of the applicant's transmission system will be transferred to the Regional Transmission Organization within 6 months of filing the proposal.

(i) *Required characteristics for a Regional Transmission Organization.* A Regional Transmission Organization must satisfy the following characteristics when it commences operation:

(1) *Independence.* The Regional Transmission Organization must be independent of market participants.

(i) The Regional Transmission Organization, its employees, and any non-stakeholder directors must not have financial interests in any market participants.

(ii) A Regional Transmission Organization must have a decision making process that is independent of control by any market participant or class of participants.

(iii) The Regional Transmission Organization must have exclusive and independent authority to file changes to its transmission tariff with the Commission under Section 205 of the Federal Power Act.

(2) *Scope and regional configuration.* The Regional Transmission Organization must serve an appropriate region. The region must be of sufficient scope and configuration to permit the Regional Transmission Organization to effectively perform its required functions and to support efficient and non-discriminatory power markets.

(3) *Operational authority.* The Regional Transmission Organization must have operational responsibility for all transmission facilities under its control.

(i) The Regional Transmission Organization may choose to directly operate facilities (direct control), delegate certain tasks to other entities (functional control) or use a combination of the two approaches. If certain operational functions are delegated to, or shared with, entities other than the Regional Transmission Organization, the Regional Transmission Organization must ensure that this sharing of operational responsibility will not adversely affect reliability or provide some market participants with an unfair competitive advantage. Within two years after initial operation as a Regional Transmission Organization, the Regional Transmission Organization must prepare a public report that assesses whether any division of operational responsibilities hinders the Regional Transmission Organization in providing reliable, non-discriminatory and efficiently priced transmission service.

(ii) The Regional Transmission Organization must be the security coordinator for the facilities that it controls.

Note to paragraph (i)(3)(ii): The provision in this paragraph (i)(3)(ii) requires that the Regional Transmission Organization undertake the functions in its region currently assigned to security coordinators by NERC in ''NERC Operating Policy 9—Security Coordinator Procedures.'' It is recognized that NERC ''security coordinators'' are relatively new and that they may not necessarily be permanent institutions. However, the functions NERC currently assigns to security coordinators are critical ones that should be performed by the entity with operational authority for transmission facilities within the region.

(4) *Short-term Reliability.* The Regional Transmission Organization must have exclusive authority for maintaining the short-term reliability of the grid that it operates.

(i) The Regional Transmission Organization must have exclusive authority for receiving, confirming and implementing all interchange schedules.

(ii) The Regional Transmission Organization must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities.

(iii) When the Regional Transmission Organization operates transmission facilities owned by other entities, the Regional Transmission Organization must have authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards.

(iv) If the Regional Transmission Organization operates under reliability standards established by another entity (*e.g.*, a regional reliability council), the Regional Transmission Organization must report to the Commission if these standards hinder it from providing reliable, non-discriminatory and efficiently priced transmission service.

(j) *Required functions of a Regional Transmission Organization.* The Regional Transmission Organization must perform the following functions. Unless otherwise noted, the Regional Transmission Organization must satisfy these obligations when it commences operations.

(1) *Tariff administration and design.* The Regional Transmission Organization must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraphs (j)(1)(i) and (ii) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for

transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnections.

(ii) The Regional Transmission Organization tariff must not result in transmission customers paying multiple access charges to recover capital costs for transmission service over facilities that the Regional Transmission Organization controls (*i.e,* no pancaking of transmission access charges).

(2) *Congestion management.* The Regional Transmission Organization must ensure the development and operation of market mechanisms to manage transmission congestion. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraph (j)(2)(i) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The market mechanisms must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions. The Regional Transmission Organization must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant.

(ii) The Regional Transmission Organization must satisfy this requirement no later than one year after it commences initial operation.

(3) *Parallel path flow.* The Regional Transmission Organization must develop and implement procedures to address parallel path flow issues within its region and with other regions. The Regional Transmission Organization must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operation.

(4) *Ancillary services.* The Regional Transmission Organization must serve as a supplier of last resort of all ancillary services required by Order No. 888, FERC Stats. & Regs. ¶31,036 (Final Rule on Open Access and Stranded Costs), and subsequent orders. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraphs (j)(4)(i)-(iii) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) All market participants must have the option of self-supplying or acquiring ancillary services from third parties subject to any restrictions imposed by the Commission in Order No. 888, FERC Stats. & Regs. ¶31,036 (Final Rule on Open Access and Stranded Costs), and subsequent orders.

(ii) The Regional Transmission Organization must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided. All ancillary service providers must be subject to direct or indirect operational control by the Regional Transmission Organization. The Regional Transmission Organization must promote the development of competitive markets for ancillary services whenever feasible.

(iii) The Regional Transmission Organization must ensure that its transmission customers have access to a real-time balancing market. The Regional Transmission Organization must either develop and operate such markets itself or ensure that this task is performed by another entity that is not affiliated with any market participant.

(5) *OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC).* The Regional Transmission Organization must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC.

(6) *Market monitoring.* The Regional Transmission Organization must monitor markets for transmission services, ancillary services and bulk power to identify design flaws and market power and propose appropriate remedial actions. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraphs (j)(6)(i)-(iv) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization must monitor markets for transmission service and the behavior of transmission owners, if any, to determine if their actions hinder the Regional Transmission Organization in providing reliable, efficient and nondiscriminatory transmission service.

(ii) The Regional Transmission Organization must monitor markets for ancillary services and bulk power. This obligation is limited to markets that the Regional Transmission Organization operates.

(iii) The Regional Transmission Organization must periodically assess how behavior in markets operated by others (e.g., bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects Regional Transmission Organization operations and conversely how Regional Transmission Organization operations affect the performance of power markets operated by others.

(iv) The Regional Transmission Organization must provide reports on market power abuses and market design flaws to the Commission and affected regulatory authorities. The reports must contain specific recommendations about how observed market power abuses and market flaws can be corrected.

(7) *Planning and expansion.* The Regional Transmission Organization must be responsible for planning necessary transmission additions and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraphs (j)(7)(i) and (ii) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization planning and expansion process must encourage market-driven operating and investment actions for preventing and relieving congestion.

(ii) The Regional Transmission Organization's planning and expansion process must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The Regional Transmission Organization's planning and expansion process must be coordinated with programs of existing RTGs where necessary.

(iii) If the Regional Transmission Organization is unable to satisfy this requirement when it commences operation, it must file a plan with the Commission with specified milestones that will ensure that it meets this requirement no later than three years after initial operation.

(k) *Open architecture.* (1) Any proposal to participate in a Regional Transmission Organization must not contain any provision that would limit the capability of the Regional Transmission Organization to evolve in ways that would improve its efficiency, consistent with the requirements in paragraphs (i) and (j) of this section.

(2) Nothing in this regulation precludes an approved Regional Transmission Organization from seeking to evolve with respect to its organizational design, market design, geographic scope, ownership arrangements, methods of operational control and other appropriate ways if the changes are consistent with the

requirements of this section. Any future filing seeking approval of such changes must demonstrate that the proposed changes will meet the requirements of paragraphs (i) and (j) of this section and this paragraph (k).

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A—Staff Summary of FERC-Industry ISO Conferences

[Docket No. PL98–5–000]

During 1998, the Commission conducted a series of eight public conferences with the electric power industry for the purpose of examining its ISO policies. The Commission wanted to learn whether any changes to its policies that affect the development of ISOs and other forms of regional grid management structures are appropriate to further promote competition and reliability in bulk power markets. The Commission also wanted to learn whether it should also be more prescriptive in this area. The Commission also focused on the future of ISOs in administering the electric transmission grid on a regional basis. [1]

ISO Trust, Flexibility and Mandate

Participants largely agreed on the need for improved regional organizations to operate the grid and implement reliability rules. They emphasized the need for transmission operations to be structurally independent, trustworthy, and fair in order for competitive generation markets to flourish. There seemed to be a consensus that any Commission ISO policy should be flexible to meet the needs and characteristics of each region and its state commissions, and that the Commission should avoid any one-size-fits-all approach to ISO structure and functions that might stifle innovation. Participants differed, however, on whether the Commission should require or merely encourage ISOs.

Reasons offered as to why the voluntary approach to ISO formation has not worked uniformly across the Nation included: (1) some states that have not yet decided on retail access believe that an ISO inevitably will lead to retail access; (2) some low-cost states are concerned that ISOs and retail access will increase their electric rates because utilities will be able to use ISOs to sell their low-cost power elsewhere; (3) some see ISOs as overly expensive, burdensome, and bureaucratic; and (4) some see transmission access as having improved enough through the on-going implementation of Order Nos. 888 and 889.

Recommendations on what the Commission should do next ranged from wait and see, to act decisively now. Some in the first camp claimed that the Commission lacks the authority to mandate participation in ISOs. Some counseled that the Commission should continue to just nurture the formation of ISOs and allow development of organizations that best fit the local needs of a particular region and avoid stifling innovation by continuing the case-by-case approval of voluntary ISO submittals. Some suggested that the Commission merely define its basic objective as the availability of efficient and reliable transmission service on a non-discriminatory basis, and to encourage hold-outs to join.

Those conference participants favoring stronger action contended that functional unbundling has not worked well enough and that it is unrealistic to expect it to do so. Many claimed that some vertically integrated utilities are employing preferential reliability practices or manipulating postings of ATC and capacity benefit margin values to favor their own wholesale merchant functions. They further claimed that there is a reluctance to lodge complaints out of concern that the Commission may not take strong action or there might be reprisals by the utilities. Others contended that some utilities are impeding ISO formation by refusing to participate, and that, as long as ISO boundaries are drawn by the voluntary decisions of the transmission owners to pick and choose the ISO which most advances their individual corporate and competitive objectives, the result is likely to be ISOs whose shape and composition impede its ability to create a true competitive market. Strong action advocates also seemed to be looking for clear guidance on transmission pricing, operation of energy markets, and the phase-in of certain ISO responsibilities.

Many of those concerned about a patchwork of ISO grid coverage suggested that now is the time for the Commission to mandate ISOs (possibly tempered with incentives), or at least mandate participation in negotiations on ISO formation. Several suggested that the Commission work with the states to develop specific directives and guidelines as a way to assure that enough momentum on ISO formation is achieved. One guideline that was suggested would incorporate a standardized ISO tariff and a standardized set of rules governing reciprocity among ISOs. It would be coupled with a flexible ISO design that could accommodate varying regional needs. Others variously recommended (1) specification of minimum ISO functions as a basic model and letting the regions justify any departure therefrom; (2) ordering the formation of ISOs and allowing enough time for each region to develop a proposal that best suits its local needs; and (3) exercising all Commission authority to monitor and manage comprehensive ISO formation.

ISO Purposes and Functions

The many notions about what the proper functions of an ISO should be seemed to reflect what each participant saw as the critical regional objectives (*e.g.,* promotion of retail access; more efficient grid operation, planning and expansion; enhanced system reliability; elimination of loop flow issues; solution of ''seams'' problems between control areas; elimination of rate pancaking; improved congestion management; enhanced reserve sharing; establishment of one-stop shopping through creation of a regional OASIS; enhanced market monitoring, and improved real-time communication among all transmission entities). Accordingly, suggested ISO functions included: control area responsibilities; numerous security coordinator and reliability duties; impartial operation of a regional OASIS to improve ATC postings; administration of an ISO-wide tariff; generation redispatch duties to relieve congestion; and ancillary services markets coordination responsibilities.

Some participants argued, however, that certain functions should not be foisted upon ISOs. Some contended that it would be detrimental to the markets and the administration of ISOs if ISOs become involved with functions that are not natural monopolies such as power exchange activities because this would compromise the ISO's independence in fulfilling its primary transmission responsibilities. Many cautioned that an ISO should not be involved in market monitoring beyond data gathering tasks, due to the attendant administrative burden and cost, and because enforcement should be the sole prerogative of regulatory authorities.

ISO Size

Most participants agreed that, as a general proposition, bigger ISOs can be more effective than smaller ISOs, given the growth in unbundled power sales and the lessening of traditional cooperation among utilities that have now become competitors. For example, with regard to the connection between size and effective reliability management, it was pointed out that an excessive number of control areas in the Midwest has inhibited communication and coordination, and contributed to several of the Midwest's recent reliability ''near misses.''

Basically, participants saw the ''proper'' size as depending upon a number of factors: (1) The purposes and functions of the ISO (such as enhancing reliability or accommodating regional power markets); (2) the operating characteristics and make-up of the local regional transmission system; (3) being large enough to capture scale economies yet not too big to operate without difficulty and handle large volumes of next-hour transactions; (4) recognizing historic coordination arrangements, trading patterns, and load patterns; and (5) remaining responsive to local transmission concerns and conventions on such matters as how wide an area over which costs associated with transmission construction and generation redispatch should be spread.

Alternatives to ISOs

A number of participants counseled that the Commission should seriously consider alternatives to ISOs such as investor-owned transcos, and independent grid administrators or schedulers (IGA or ISA).

IGA/ISA supporters were concerned about what could be quickly implemented that would avoid the high costs that seem to be associated with comprehensive ISO initiatives, yet would provide immediate control over the more egregious actions of some transmission providers. IGA/ISA structures were described to include any of the following: (1) One-stop shopping through an OASIS that uniformly calculates ATC

[1] *See* Inquiry Concerning the Commission's Policy on Independent System Operators, Notice of Conference (dated March 13, 1998), and Notice of Panels for Conference (dated April 7, 1998). *See also,* Inquiry Concerning the Commission's Policy on Independent System Operators, Notice of Regional Conferences (dated April 27, 1998).

values; (2) independent coordination of reservations and power flow scheduling; and (3) fast-track dispute resolution. It was claimed that such structures would avoid cost-shifting controversies and congestion management complications because the IGA/ISA members would continue to operate their own transmission and set their own individual rates. While there was some support for IGA/ISA structures as an interim step toward full ISO formation, many participants expressed concern about the Commission approving ''watered-down'' versions of an ISO that fail to address pressing needs for grid expansion and pricing reform.

Transco supporters argued that a transco can offer everything that a full ISO can provide, plus the additional efficiency that is inherent in combining operation and ownership of transmission assets driven by the same corporate and market incentives. Transcos were also said to provide more opportunity for shareholders to benefit from the strong performance of any facilities placed under an ISO. As such, transcos were touted as the natural end-state of transmission restructuring. ISO supporters countered that the ISO structure need not foreclose passing incentive-rate revenues on to transmission owners. They also claimed that, unlike a transco, an ISO is not dependent upon the successful transfer of all of the transmission assets within a region and, if an ISO is sized wrong, it can be more readily corrected than a transco for the same reason.

Finally, some participants suggested that ISOs and transcos are actually complementary forms. Others claimed that who owns the transmission is irrelevant as long as the regional grid operator is independent; it is big enough to internalize loop flows; it directs region-wide transmission planning; and it allows for competitive bidding on the installation of new facilities to expand the grid.

ISO Pricing and Cost-shifting Concerns

Some participants supported differing forms of ISO rate structures: flow-based rates, distance-based pricing, average-cost based rates, and locational marginal cost-based pricing. Many cautioned that a Commission mandate on the use of any particular tariff structure would be a major obstacle to the voluntary formation of ISOs; therefore, they recommended that the Commission provide great deference to the needs of each region as to what locally is seen to be fair and reasonable pricing.

In particular, many participants raised concerns about cost-shifting within an ISO that might result from membership with significantly disparate embedded transmission costs and imposition of an ISO-wide access tariff that reflects some composite of such costs. These participants counseled that the Commission should allow ''license plate'' access rates that reflect only the cost of the transmission zone within the ISO in which the load to be served is located. One participant suggested, however, that even license plate rates can raise cost-shifting concerns, if the cost of an upgrade that is used primarily for the benefit of external loads is included in the cost basis for the affected zone.

Non-jurisdictional Transmission Participation

Most participants expressed the view that government-owned and other regional non-jurisdictional transmission owners need to fully participate in an ISO in order for it to be completely successful. It was suggested that this is especially true for the West, where large amounts of non-jurisdictional transmission is controlled by Bonneville Power Administration, Western Area Power Administration, Southwestern Power Administration, large municipals, cooperatives, public power districts, British Columbia Hydro, and the Alberta grid. Some participants wanted the Commission to provide guidance on how to bring public power and other non-jurisdictional transmission owners into an ISO. In this regard, some suggested that the Department of Energy needs to issue guidance to the federal power marketing agencies on their active support of any ISO initiatives. Public power participants, who strongly supported ISOs, expressed concern that any ISO participation on their part could adversely affect the financing of their facilities due to Internal Revenue Code ''private-use'' restrictions.

Existing Transmission Contracts

Some participants emphasized the need for ISOs to honor (grandfather) existing transmission contract arrangements to maintain any benefits that were bargained. Others emphasized the need for ISOs to abrogate any existing transmission contracts to eliminate any preferential transmission treatment. Those favoring grandfathering, however, acknowledged that it could become a very complicated administrative matter in the event that there is insufficient transmission capacity to serve everyone.

Panelists

The Commission held conferences in Washington, D.C. and in seven cities in different regions of the country.

Washington, D.C.

In the lead-off two-day conference held on April 15–16, 1998, in Washington, D.C., approximately 400 individuals attended each day. Panelists represented:

American Electric Power Company
American Public Power Association
California Independent System Operator
California Independent System Operator, Market Surveillance Committee (by Stanford University)
California Public Utilities Commission
Cameron McKenna LLP
Cinergy Energy Services, Inc.
Commonwealth Edison Company
Coalition For A Competitive Electric Market (by Enron Corporation)
Economic Analysis Group
Edison Electric Institute
Edison Electric Institute (by NERA)
Electric Power Supply Association.
Entergy Services, Inc.
Harvard University (John F. Kennedy School of Government)
Industrial Consumers (by Electricity Consumers Resource Council)
ISO New England
Members Systems of the New York Power Pool (by Putnam, Hayes & Bartlette, Inc.)
Mid-Continent Area Power Pool (by Morgan, Lewis & Bockius)
Montana Power Company
National Association of Regulatory Utility Commissioners (by Iowa Utilities Board)
National Rural Electric Cooperative Association
NGC Corporation
Pennsylvania Public Utility Commission
PJM Interconnection, L.L.C.
Public Utilities Commission of Ohio
Public Service Commission of the State of New York
Rhode Island Public Utilities Commission
Secretary of Energy's Task Force on Electric System Reliability
Sithe Energies, Inc. (By Economics Resource Group)
Transmission Access Study Group (by Wisconsin Public Power, Inc.)
Transmission Alliance (by Merrill Lynch)
Transmission Dependent Utility Systems (by Arkansas Electric Corporation
U.S. Department of Justice
U.S. Generating Company and PJM Supporting Companies (by Steptoe & Johnson LLP)
Wabash Valley Power Association, Inc.
Wisconsin Electric Power Company

Phoenix

Almost 90 people attended the May 28, 1998, Phoenix conference. Panelists represented:

Arizona Corporation Commission
Arizona Public Service Company
Automated Power Exchange, Inc.
California ISO
Desert STAR
K.R. Saline & Associates
Colorado Springs Utilities
Cyprus Climax Metals, BHP Copper, Phelps Dodge, ASARCO and Motorola (by Energy Strategies, Inc.)
Goldman Sachs & Co.
Northern California Power Agency.
Salt River Project Agricultural Improvement and Power District
Southwest Power Trading Council (by Enron Corp.)
Tri-State Generation and Transmission Cooperative, Inc.

Kansas City

About 90 people attended the May 29, 1998, Kansas City conference. Panelists represented:

City Utilities of Springfield, Missouri
Clarksdale Public Utilities Commission
Cooperative Power Association
Iowa Utilities Board
Kansas Corporation Commission
Mid-America Regulatory Conference (by Kansas Corporation Commission)
Midwest Coalition for Effective Competition (by MCES and Environmental Law and Policy Center)
Midwest ISO Participants (by Wisconsin Electric Power Company and Ameren Services)
Minnesota Department of Public Service

Missouri Office of Public Counsel
Missouri Public Service Commission
Nebraska Public Power District
Northern States Power Company
Public Utility Commission of Texas
Shook, Hardy, Bacon, LLP
Southwest Power Pool

New Orleans

The June 1, 1998, New Orleans conference panelists represented:

Arkansas Electric Cooperative
Entergy Corporation
Gulf Coast Power Marketers Coalition
Houston Industries Power Corporation, Inc.
Lafayette Utilities System
Louisiana Energy Users Group
Public Service Commission of Yazoo City, Mississippi
Southern Company Services, Inc.
Southwest Power Pool
Southwestern Public Service Company

Indianapolis

About two hundred people attended the June 4, 1998, Indianapolis conference. Among the panelists represented:

AMEREN
American Municipal Power of Ohio
Cinergy Services Inc.
Citizens Action Coalition of Indiana
Consumers Energy Company
Detroit Edison Company
Energy Michigan
FirstEnergy Corporation
Illinois Industrial Energy Consumers
Indiana Municipal Power Agency
Indiana Utility Regulatory Commission
Kentucky Public Service Commission
Madison Gas and Electric Company
Mid-America Regulatory Commissioners (by Michigan Public Service Commission)
Midwest Coalition for Effective Competition
Midwest ISO Participants
Michigan Public Power Agency
Minnesota Public Utilities Commission
Public Utilities Commission of Ohio
Wisconsin Electric Power Company

Portland

About 160 people attended the June 5, 1998, Portland conference. Panelists represented:

Automated Power Exchange
Bonneville Power Administration
California ISO
California Municipal Utilities Association
California Public Utilities Commission
Chelen County PUD (on behalf of Independent Grid Scheduler)
CIBC Oppenheimer Corp.
Columbia Falls Aluminum Company, et al.
Idaho Power Company
Idaho Public Utilities Commission
Industrial Customers of Northwest Utilities
Land and Water Fund of the Rockies Energy Project
Montana Department of Environmental Quality
Montana Power Company
Northern California Power Agency.
Oregon Public Utilities Commission
Pacific Northwest Generating Cooperative
PacifiCorp
Platte River Power Authority
Public Power Council
Public Service Company of Colorado
Puget Sound Energy, Inc.
Transmission Agency of Northern California
Turlock Irrigation District
University of California
Washington Utilities and Transportation Commission
Western Power Trading Forum
Western Regional Transmission Association

Richmond

About 55 people attended the June 8, 1998, Richmond conference. Panelists represented:

Blue Ridge Power Agency
LG&E Energy (on behalf of Midwest ISO Participants)
Mid-Atlantic Power Association
North Carolina Electric Membership Corporation
Old Dominion Electric Cooperative
TransEnergie U.S., Ltd.
Virginia State Corporation Commission
Virginia Committee for Fair Utility Rates and Old Dominion Committee for Fair Utility Rates
Virginia Electric & Power Company

Orlando

The June 8, 1998, Orlando conference was attended by about 100 people. Panelists represented:

Dynergy
Enron Power Marketing (by Basford & Associates)
Florida Municipal Power Agency
Florida Power & Light Company
Florida Power Corporation
Florida Public Service Commission
Florida Reliability Coordinating Council, Inc.
Morgan Stanley & Company
Municipal Electric Authority of Georgia
National Grid Company of England and Wales
Seminole Electric Cooperative, Inc.

Other Commenters

Alabama Electric Cooperative, Inc.
Allegheny Power, et al.
Barbara R. Barkovich
California Department of Water Resources
California Electricity Oversight Board
California Independent Energy Producers Association
Central Illinois Light Company
Citizens Group Responsible Use of Rural & Agricultural Land
Commonwealth of Pennsylvania Utility Commission
Commonwealth of Virginia, Division of Energy Regulations
Commonwealth of Virginia State Corporation Commission
Consumer Counsel Office of the Attorney General of Virginia
Consumers Energy Company
Cooperative Power Association
CSW Operating Companies
CSX Transportation
D. Basford & Associates, Inc.
Dairyland Power Cooperative
Department of Energy, Bonneville Power Administration
Desert Southwest Power Trading Council
Dominion Resources Inc.
Economic Resources Group, Inc.
Electricities of North Carolina, Inc.
Electricity Consumers Resource Council, et al.
Energy Strategies, Inc.
Fiona Woolf
Georgia System Operations Corporation, et al.
Goldman, Sachs & Company
Gregory J. Werden
Gridco Commenters
Houston Industries, Inc.
IES Utilities Inc., et al.
Illinois Commerce Commission
Independent Grid Scheduler Organizing Group
Independent Power Producers of New York, Inc.
Indiana Energy Michigan
Indiana Office of Utility Consumer Counsel
Kentucky Utilities Company
Kentucky Public Service Commission
Large Public Power Council
Marija D. Ilic
Mid-Atlantic Public Service Commissions
Midwest Independent Transmission System Operator, Inc.
Midwest Municipal Intervenors, et al.
Minnesota Power Company
Minnesota Public Utilities Commission
Mississippi Office of Public Counsel
Montana Public Service Commission
Multiple Public Interest Organizations
New York Mercantile Exchange
New Mexico Industrial Energy Consumers
Northern Indiana Public Service Company
Northwest Power Plant Planning Council
Oak Ridge National Laboratory
Office of Ohio Consumers' Counsel
Oklahoma Corporation Commission
Oklahoma Gas and Electric Company
Orange & Rockland Utilities
Oregon Public Utilities Commission
Otter Tail Power Company
Pacific Gas & Electric Company
PECO Energy Company
Pennsylvania Office of Consumers Advocate
PJM Supporting Companies
Portland General Electric Company
Powersmiths International, Inc.
Project For Sustainable FERC Policy
ProLiance Energy, LLC
Public Service Commission of Wisconsin
Public Service Electric & Gas Company
Public Utilities Board of the City of Brownsville, Texas
Public Utility District No. 1 of Chelan County, Washington
Selkirk Cogen Partners, L.P.
Sierra Pacific Power
Southern California Gas Company, et al.
Southwest Transmission Dependent Utility Group
Staff of Bureau of Economics of the Federal Trade Commission
State of California Public Utilities Commission
State of Florida Public Service Commission
State of Idaho & Idaho Public Utilities Commission
State of Kansas Citizens' Utility Ratepayer Board's
State of Minnesota Public Utilities Commission
State of Montana Department of Environmental Quality
State of New York Public Service Commission
State of Rhode Island and Province Plantations

The Williams Companies Inc.
Transmission Operators of Public Service Company of Colorado
Tucson Electric Power Company
University of Arizona
Virginia Committee for Fair Utility Rates, et al.
Washington Department of Community, Trade and Economic Development Energy Policy Group
Western Area Power Administration
Wisconsin Intervenors
Wisconsin Public Power, Inc.
Wisconsin Public Service Corporation

Appendix B—Staff Summary of FERC Consultations With the States

[Docket No. RM99–2–000]

In Docket No. RM99–2–000, as part of a broader inquiry into its RTO policies, the Commission held a series of three regional conferences to elicit the views and recommendations of state regulatory authorities with respect to the development of independent RTOs and whether and how it should use its authority under section 202(a) of the Federal Power Act.[1] The Commission also wanted to learn whether the goals of full competition and non-discriminatory transmission access can be achieved in the absence of broad participation by transmission-owning utilities in RTOs. Conferences were held in St. Louis, Las Vegas, and Washington, D.C. in February 1999.

Need for Commission Mandate

There was little real dispute by participants over the need for independent and impartial regional grid management, whether it be for improved grid operation, increased reliability, identifying promising new generation locations, broadening markets by reducing rate pancaking, or all of these. Most of the states also recognized that the Commission is the necessary and appropriate facilitator for forming RTOs, due to its broad jurisdiction. However, comments as to how best the Commission should proceed next were mixed.

One state wondered whether the Commission has the authority to mandate RTOs. Several Northeastern and Mid-Atlantic states that already have strong ISOs were concerned that the Commission might disturb their ISOs before an adequate period of time has elapsed to reveal their strengths and weaknesses. One state suggested that the Commission should look into setting up a joint board of state and federal regulators on RTO issues. Some Southeastern states saw no need for a Federal policy on RTOs right now. They felt that the grid is operated adequately and preferred to let the market sort RTO developments.

States west of the Appalachians generally recognized the need for structural independence of transmission through RTOs beyond functional unbundling sooner rather than later and saw a need for strong Commission leadership on RTO formation. They differed on the urgency and the necessary extent of Commission involvement. Many of the states advocating a more aggressive role were located in the Midwest, which had experienced price spikes during the summer of 1998.

One state insisted that Commission action is needed to quicken the pace of RTO formation so that development of competitive electricity markets is not delayed. One vigorously complained about the persistent lack of fuller RTO participation in the Midwest and the possible strategic advantage to vertically integrated utilities not participating. To counter the fragmentation in the Midwest, it recommended that the Commission mandate utility participation or, at a minimum, eliminate pancaked transmission rates within each regional reliability council. Another suggested that the Commission interpret any utility's refusal to join an RTO as an indicator of undue discrimination. One recommended that the Commission strongly promote fuller participation in RTOs by using a combination of ''carrots'' and ''sticks'' as incentives.

Flexibility

A pervasive theme was the need for the Commission to avoid taking a one-size-fits-all approach to RTOs. Many states recommended that, if the Commission wants to establish RTO policy pursuant to its section 202(a) authority, the policy must be implemented in a way that adequately recognizes any regional differences in industry structures. One Midwestern state counseled that the Commission should partner with the states to develop a memorandum of understanding (MOU) on regional transmission matters. The MOU would outline common desires and objectives, describe the regulatory tools to get there, and the circumstances under which the tools would be used.

Other states suggested that the Commission, before it considers taking any stronger action, issue guidelines and allow enough time for each state to determine which are appropriate for it in forming regional RTOs. The guidelines would reflect determinations on such issues as how to encourage participation by and otherwise deal with non-jurisdictional transmission entities; whether to allow a state to opt out of a mandatory RTO policy; and how to ensure that no state's economy is harmed by an RTO. Several states suggested that cost/benefit analyses be done for each region. Finally, numerous states recommended that the Commission not mingle retail competition issues with RTO issues, contending that retail choice is a state prerogative.

RTO Size

Several states were concerned about how large is large enough for an RTO, and how the Commission expects to set the proper regional boundaries. In the East, states served by established ISOs expressed concern that their ISOs might have to incur additional costs for modifications that might be required to meet a potential Commission size criterion before market forces have had the chance to suggest an appropriate size. Some suggested that because the existing ISOs are so crucial to promoting retail competition in states that have already adopted retail choice, the Commission should carefully consider any order that would expand, merge, or restructure an existing ISO. Some states cautioned that expanding their existing ISOs beyond a certain point might also lead to reliability problems or inheriting problems from adjacent regions.

One state recommended that only minimum size criteria be established rather than the specific locations of boundaries. Other states recommended that, if the Commission insists on establishing regional boundaries, that it consider the relative costs and benefits of an RTO sized according to each regional boundary set. One state suggested that the Commission rely on the existing NERC regional councils as the starting point for determining proper RTO boundaries. Another state suggested that the Mid-Continent Area Power Pool (MAPP) and Mid-American Interconnected Network (MAIN) interfaces should be placed within a single RTO. Some western states contended that, while only one regional reliability council serves the West, many non-jurisdictional cooperative and government utilities control such a substantial amount of transmission that creating RTOs in the West will be difficult absent clear direction from the Commission.

Alternative Forms of RTOs

While several states argued that competing ISO and transco structures could lead to further fragmentation and limited RTO operations, others argued that mandating specific forms of RTOs now would impede the ability of the states and regions to adopt models that are best suited for their particular needs and that the Commission should not lock in particular RTO structures but should instead retain flexibility to address changing future needs. One state favored a non-profit ISO structure, because it doubted that the industry would lend itself to the development of any transco with sufficient geographic coverage and adequate independence from generation interests. It noted, however, that if a for-profit transco could meet the size and independence criteria, the transco would have advantages over an ISO in the form of a stronger business orientation and superior access to capital for grid expansion.

Transmission Cost Shifting and Low Power Cost States

Many states counseled that the Commission should allow a region to opt-out of an average cost based RTO-wide rate, if such a rate would shift highly disparate embedded transmission costs among its RTO customers and force some to suffer transmission rate increases. Many western states suggested that concern over the enhanced ability of utilities to export their low cost power to other regions through an RTO, as well as concerns about transmission cost shifting, not only led to the demise of the IndeGo ISO but has thwarted further RTO development in the West.

[1] *See* Regional Transmission Organizations, Notice Of Intent To Consult Under Section 202(a) dated November 24, 1998, and Notice Of Dates And Locations For Consultation Sessions With State Commissions (dated January 13, 1999).

Panelists

St. Louis

About 120 people attended the February 11, 1999, conference in St. Louis. Panelists represented commissions in:

Arkansas
Florida
Illinois
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
Oklahoma
South Dakota
Tennessee
Texas
Wisconsin

Las Vegas

About 96 people attended the February 12, 1999, conference held in Las Vegas. Panelists represented commissions in:

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Washington, D.C.

The panelists at the February 17, 1999, conference in Washington, D.C. represented commissions in:

Alabama
Connecticut
District of Columbia
Georgia
Maryland
Massachusetts
Mississippi
New Jersey
New York
North Carolina
Pennsylvania
Rhode Island
West Virginia

Other Commenters

Canadian Electricity Association
ISO New England
Mid-American Regulatory Commissioners
National Association of Regulatory Utility Commissioners
New England Conference of Public Utilities Commissioners, Inc.
Regional Electric Power Cooperation
Virginia State Corporation Commission
Western Interstate Energy Board

Appendix C—Existing Configurations

This Appendix depicts the three existing configurations discussed in Section III.D.2: the three electric interconnections within the continental United States, the ten NERC reliability councils, and the twenty-three NERC security coordinator areas.

[The attachments to this Appendix are available for public inspection and copying during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, and through the Commission's Records and Information Management System (RIMS). RIMS is available remotely via Internet through FERC's Home page using the RIMS link or the Energy Information Online icon.]

[FR Doc. 99–12553 Filed 6–9–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Intent To Prepare an Environmental Assessment for the Regional Transmission Organizations Rulemaking, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

May 14, 1999.

To further the policies and goals of the National Environmental Policy Act of 1969 (NEPA), the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment (EA) that will consider the environmental impacts of the proposed rulemaking on Regional Transmission Organizations (RTO). The proposed rule was issued by the Commission on May 13, 1999, and appears elsewhere in this issue of the **Federal Register**. The Commission requests public comments on the scope of the issues it will address in the EA. All comments received will be considered during the preparation of the EA. A comment period will be allotted for public review of the EA.

Scoping comments are due on or before June 14, 1999; the public scoping meeting will be held at 10:00 a.m. on July 8, 1999 in the Commission Meeting Room, 888 First Street, NE, Room 2C, Washington, D.C. 20426.

Summary of the Proposed Action

In Order Nos. 888 and 889, the Commission established the foundation necessary to develop competitive bulk power markets in the United States: Non-discriminatory open access transmission services by public utilities and stranded cost recovery rules that would provide a fair transition to competitive markets. Order Nos. 888 and 889 were not intended to address all problems that might arise in the development of competitive power markets. Indeed, since the issuance of Order Nos. 888 and 889, the industry has undergone changes. Trade in bulk power markets has continued to increase significantly and the Nation's transmission grid is being used more heavily and in new ways.

After almost three years of experience with implementation of Order Nos. 888 and 889, there remain transmission-related impediments to a competitive wholesale electric market. In an effort to ensure that electricity consumers realize the full benefits that competition can bring to wholesale markets, the Commission has issued a Notice of Proposed Rulemaking, the objective of which is to encourage all transmission facilities in the Nation, including transmission facilities owned or controlled by non-public utility entities, to form appropriate regional transmission institutions in a timely manner.

Accordingly, as set forth in detail in the Notice of Proposed Rulemaking, the Commission proposes the following:

- Minimum characteristics and functions that an RTO must satisfy. Industry participants will retain flexibility in structuring RTOs that satisfy the standards.
- An ''open architecture'' policy regarding RTOs, whereby all RTO proposals must allow the RTO and its members the flexibility to improve their organizations in terms of structure, operations, market support and geographic scope to meet market needs. In turn, the Commission will provide the regulatory flexibility to accommodate such improvement.
- Guidance on flexible transmission ratemaking that may be proposed by RTOs, including ratemaking treatments that will address congestion pricing and performance based regulation. The Commission will consider on a case-by-case basis incentive pricing that may be appropriate for transmission facilities under RTO control.
- A plan for encouraging formation of RTOs across the Nation that includes: (1) A collaborative process to take place in the spring of 2000 for all stakeholders to actively work toward the voluntary development of specific RTOs; and (2) filing requirements whereby all public utilities that own, operate or control interstate transmission facilities must file with the Commission by October 15, 2000 a proposal for an RTO with the standards adopted in the final rule, or a description of reasons that it has not filed such a proposal. Each proposed RTO must plan to be operational by December 15, 2001.

Public Participation

The public is invited to provide comments that will assist us in conducting an accurate and thorough analysis of the potential environmental impacts of the proposed rule. Comments should address environmental issues, including any potential environmental effects of the proposed rule, alternatives to the proposed rule, and measures to avoid or lessen environmental impacts (if any). The more specific the comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, D.C. 20426.
- Label one copy of the comments for the attention of Jim Turnure, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE, Room 64–09, Washington, D.C. 20426.
- Mail your comments so that they will be received in Washington, D.C. on or before June 14, 1999.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskettes or via Internet e-mail. Comments may be filed in the following formats: WordPerfect 6.1 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–2–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM99–2–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt.

Questions on electronic filings should be directed to Brooks Carter at 202–501–8145, e-mail address: Brooks.Carter@FERC.FED.US.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolve by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS submitted in electronic format all available on CIPS. User

assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

In addition to asking for written comments, we invite any interested parties to attend our public scoping meeting that will be held on July 8, 1999. The meeting will be held at 10:00 a.m. in the Commission Meeting Room, 888 First Street, N.E., Room 2C, Washington, D.C. 20426. The purpose of the public meeting is to provide interested parties another opportunity to offer comments on the proposed rule.

A copy of the EA will be made available for review and comment to all interested parties. A 30-day comment period will be provided for reviewing the EA. The Commission will consider all comments on the EA in developing the final rule.

David P. Boergers,

Secretary.

[FR Doc. 99–12667 Filed 6–9–99; 8:45 am]

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federal register

Thursday
June 10, 1999

Part IV

Nuclear Regulatory Commission

10 CFR Parts 170 and 171

Revision of Fee Schedules; 100% Fee Recovery, FY 1999; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG08

Revision of Fee Schedules; 100% Fee Recovery, FY 1999

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1999, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1999 is approximately $449.6 million.

EFFECTIVE DATE: August 9, 1999.

ADDRESSES: Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments.
III. Final Action.
IV. Voluntary Consensus Standards.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.
X. Small Business Regulatory Enforcement Fairness Act.

I. Background

OBRA–90, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF). Certain NRC costs related to reviews and other assistance provided to the Department of Energy were excluded from the fee recovery requirement for FY 1999 by the FY 1999 Energy and Water Development Appropriations Act.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established at 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees. The NRC published a proposed rule that presented the amendments to parts 170 and 171 necessary to comply with OBRA–90 for FY 1999 on April 1, 1999 (64 FR 15876).

II. Responses to Comments

A total of thirty-four comments were received on the proposed rule. Although the comment period ended on May 3, 1999, the NRC evaluated the 26 comments which were received by the close of business on May 5, 1999. The NRC was unable to consider the eight comments received after May 5, 1999, as they were not received in sufficient time for the NRC staff and the Commission to evaluate them fully in the limited period available for preparing a final rule in this expedited rulemaking proceeding. In any event, a cursory review of those late comments did not reveal any substantive new issues.

Many of the comments were similar. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows:

A. Legal Issues

Several commenters raised questions about NRC's legal interpretation of OBRA–90 and the IOAA. These comments are addressed first because their resolution establishes the framework for addressing subsequent issues raised by commenters.

The commenters attempted to present a balanced view of the proposed fee schedule, and even applauded the NRC's ''considerable effort over the past year to reduce inefficiencies through strategic planning and reorganizations.'' Nonetheless, it is abundantly clear that most commenters believe that the NRC has a long way to go to reach a truly fair and equitable system of fee allocation. Several commenters asserted that the NRC lacks the legal authority to set fees in accordance with the proposed fee schedule. These commenters challenged the agency's interpretation of the statutes underpinning NRC's fee collection proposal. These same questions have been raised since the inception of the 100 percent fee collection requirement in 1991. The Commission has consistently interpreted its statutory mandate, but in the face of continuing complaints, the Commission will again address the concerns raised by commenters.

1. *Comment.* Comments submitted by or on behalf of commercial nuclear power reactors, the uranium recovery industry, and a materials licensee expressed serious concern over inequities caused by the statutory mandate that NRC collect an annual charge from licensees aggregating approximately 100 percent of the budget authority for the fiscal year, less fees collected under Part 170 and any amount appropriated from the Nuclear Waste Fund or the General Fund. These commenters are particularly distressed at having to absorb charges in their annual fees for activities that do not directly benefit them, such as international activities, Agreement State oversight and regulatory support, activities for other Federal agencies, and fee reductions or exemptions for small entities and nonprofit educational institutions. One commenter, speaking on behalf of several commercial power reactors, questioned the NRC's legal and constitutional authority to impose these charges. The commenter did not believe the 100 percent budget recovery requirement could be reconciled with OBRA–90, which requires that annual fees bear a reasonable relationship to the cost of regulatory services and to be fairly and equitably allocated among licensees.

Commenters concluded that the desired relief for this problem can come only by legislative changes to OBRA–90 to relax the 100 percent budget recovery requirement so that certain costs can be removed from the fee base. They remained hopeful that the desired relief may be forthcoming in spite of their awareness that the Administration has not supported such a relaxation. In some cases, however, commenters perceived that the NRC has alternatives it is not using, such as charging Agreement States for services provided. In addition, they insisted that the NRC should recover these types of costs through General Funds appropriations from the Congress. In their view, when all else fails, the NRC must simply discontinue the ''unfunded'' program rather than pass along these costs to the licensees. These commenters asserted

that this becomes particularly necessary in today's era of utility deregulation because reactor licensees' ability to pass through costs to their customers has been reduced.

One commenter maintained that the NRC has the authority to charge other Federal agencies part 170 fees. Another commenter went so far as to say that the NRC is not at liberty to relieve anyone from paying fees for associated services, *i.e.*, to grant exemptions from user fees because, under OBRA–90, Congress directed NRC to recover its costs by collecting fees from ''any person who receives a service or thing of value.'' This commenter maintained that there was no exemption authority for this requirement, relying on the definition of ''person'' under the Atomic Energy Act to argue not only that the NRC has authority to impose charges for these types of activities, but also that it is compelled to charge the recipients for them. Thus, it would have the NRC recover Agreement State oversight and support costs through fees assessed on the Agreement States or their licensees. The commenter also stated that costs of international activities should be recovered through fees imposed on the Department of State; that other Federal agency licensing and inspection charges should be assessed against the regulated Federal agency; that small entities and nonprofit educational institutions should not be relieved of fees for the costs associated with them; and that either a General Fund appropriation should be sought to recover those expenses or they should pay their own costs. Other commenters also advocated these proposals.

In support of these arguments, commenters charged that OBRA–90 does not permit charging licensees for programs not directly related to the licensees charged, that the surcharge imposed to recover these costs is unlawful, unfair, arbitrary, and discriminatory. These commenters charged that OBRA–90 is unconstitutional in that it denies reactor licensees equal protection under the due process clause of the Constitution and constitutes an unfair taking of property without just compensation. They believed, uniformly, that the surcharge bears no relation to services or benefits to the licensees against whom it is assessed and that these costs should be recovered from the beneficiaries. Commenters cited the reduced ability of reactor licensees to pass through costs to their ultimate customers in an era of utility deregulation and reasserted their view that power reactor licensees should only be assessed for programs of direct relevance to them.

Response. OBRA–90 requires that the sum total of annual charges NRC collects from its licensees equal approximately 100 percent of NRC total budget authority for each fiscal year, less fees assessed under the IOAA and amounts appropriated to NRC from the Nuclear Waste Fund. The NRC is expected to establish a schedule of annual charges that fairly and equitably allocates this amount among licensees and reasonably reflects the costs of providing services to licensees or classes of licensees, to the maximum extent practicable. This means that the NRC must promulgate each fiscal year a fee schedule that is as fair and equitable as can be achieved, given the other constraints with which it is faced. The NRC does not have discretion to assess less than this amount, as several commenters suggested. The costs of services that do not directly benefit licensees must be recovered under our current statutory mandate.

In the Statement of Considerations for the 1991 final fee rule the Commission concluded that the Congressional intent behind the requirement to collect ''approximately 100 percent'' of its budget was for the NRC to identify and allocate as close as possible to 100 percent of its budget authority to the various classes of NRC licensees. The NRC has historically interpreted this requirement as referring to the inherent uncertainties in estimating and collecting fees, such that additional fees would not need to be collected in case of shortfall, nor refunds necessarily made in case of over collection. (*See* 56 FR 31472, 31473; July 10, 1991).

Moreover, the Conference Report for OBRA–90 specifically acknowledged the fact that there would be certain ''expenses that cannot be attributed either to an individual licensee or a class of licensees.'' The NRC is expected to

> fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributable to individual licensees or classes of licensees. These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

H.R. Conf. Rep. No. 101–964, at 963, *reprinted* in 1990 U.S.C.C.A.N. 2374, 2668. Thus, Congress has directed that licensees, of necessity, will have to pay for some of the expenses that are not generated by efforts directly on their behalf, regrettable as that may be. While every effort is made to impose such costs equitably, there is one controlling requirement which is inflexible: the NRC must set its schedule so that it can recoup approximately 100 percent of its budget authority, less the amounts it properly may recover from other areas, such as charges for services (IOAA fees) and Nuclear Waste Fund Appropriations. In order to meet that mandate, the NRC has been forced to assess fees to licensees to recover the costs of certain types of activities that, while not necessarily directly benefitting the licensees charged, leave no other means to be recovered. This includes functions such as services provided to other Federal agencies, Agreement State oversight and international activities. It is understandable that licensees who absorb the impact of these charges will object to them and wish to be relieved of them. However, their arguments overlook an important qualifier in the standard: namely, ''to the maximum extent practicable.'' That is, when Congress enacted this admittedly rigorous requirement, it was aware of the fact that there would be certain costs that would not be susceptible to recovery as others were. The Congress still has not relieved the NRC from the onus of the collection requirement. Certain expenses cannot be attributed to an individual licensee or class of licensees but may be recovered from licensees who can fairly, equitably, and practicably contribute to payment.

The NRC can readily explain why these costs are spread to agency licensees as part of a fee ''surcharge.'' The NRC lacks the legal authority to assess IOAA charges against Federal agencies (other than the Tennessee Valley Authority). The IOAA states, in pertinent part, ''[E]ach service or thing of value provided by an agency . . . to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.'' A ''person on official business of the United States Government'' has long been construed to mean a Federal agency. This construction indicates that the NRC requires separate Congressional authorization in order to override this provision and lawfully impose fees on other Federal agencies. For example, in light of this language, section 161w. of the Atomic Energy Act was enacted in 1972 to allow the NRC to impose Part 170 fees on the Tennessee Valley Authority. Section 161w. was further amended in 1992 to include the United States Enrichment Corporation, prior to its privatization. Had the NRC's statutory mandate included the authority to impose fees on all Federal agencies, this legislation would have been unnecessary. The NRC believes it

should be granted the authority to charge other Federal agencies for services rendered and recently submitted to Congress, as a provision in its proposed FY 2000 authorization bill, an amendment to section 161w. which would provide the authority to impose Part 170 fees on all Federal agencies.

Similarly, the NRC lacks the authority to impose annual fees on the Agreement States and their licensees because OBRA–90 permits the assessment of annual fees only on NRC licensees. The Agreement States and their licensees are not ''NRC licensees.'' The NRC also has made policy decisions not to assess fees on nonprofit educational institutions in order to further the public good and to limit the fees assessed on small businesses in accordance with the policies underlying the Regulatory Flexibility Act. Under the circumstances, it is understandable that a substantial portion of these costs are recovered through annual fees imposed on power reactors. A large percentage of the NRC's budget is devoted to the regulation of power reactors. Accordingly, a large portion of the annual fee must be borne by these licensees.

The commenters suggested that, in the absence of such legislation, the NRC should not perform the activities encompassed within the annual fee surcharge. The Commission is not prepared to eliminate these important functions that help assure the public health and safety and the common defense and security without a clear statutory directive from the Congress. Thus, a legislative solution to the fee recovery requirement is required to eliminate the concerns raised by the commenters. Over the years, the NRC has had limited success in obtaining fee legislation that would reduce the burdens on its licensees by having some or all of NRC expenses in these areas obtained through appropriations from the General Fund.

While the Commission continues to support legislative relief, absent such relief the Commission has limited ability to remedy any inequities in its fee structure because it is required to collect approximately 100 percent of its budget in fees. The NRC has taken several actions within existing fee laws to address concerns regarding its fee structure:

1. The NRC identified fairness and equity concern categories in its February 1994 Report to Congress on NRC Fee Policy and indicated that legislation was necessary to address these concerns. The recommended legislation has not been enacted.

2. In FY 1995, the NRC acted under existing fee laws to help to mitigate the fairness and equity concerns by treating costs for activities that do not directly benefit NRC licensees similar to overhead and distributing the costs to the broadest base of NRC licensees.

3. The NRC established a policy to obtain reimbursement for services provided to other Federal agencies when such reimbursements are authorized by law.

4. The NRC obtained appropriation legislation that removed from the fee base certain costs incurred as a result of regulatory reviews and other assistance provided to the Department of Energy.

5. The NRC took actions to shift cost recovery for certain activities from Part 171 annual fees to Part 170 specific fees for services.

6. As part of its FY 2000 authorization bill, the NRC is seeking an amendment to section 161w. of the Atomic Energy Act to provide the authority to impose Part 170 fees on all other Federal agencies.

In sum, the Commission believes that the fee schedules it is promulgating in this final rule satisfy all legal requirements and do not deprive any licensee of its constitutional rights.

2. *Comment.* One commenter said that the basis for annual fees for operating reactors should be megawatt generation capability instead of the proposed fixed flat annual fee. This commenter argued that the proposed fee structure placed a disproportionate burden on the ratepayers of utilities with small reactors and resulted in a competitive disadvantage to those reactors.

Response. OBRA–90 requires that annual fees have a reasonable relationship to the expenditure of Commission resources. No available data demonstrates that the Commission expends fewer resources on reactors with lower generation capacity than it does on facilities with greater generation capability. Furthermore, Commission services are not allocated on the basis of megawatt generation capability. Because there is no relationship between generic costs and generation capacity, there is no legal basis for charging annual fees based on megawatt generation capability.

3. *Comment.* One commenter said that the NRC should designate as small entities, for reduced fee purposes, all those companies with small business certification under the U.S. Small Business Administration's (SBA) Small Disadvantaged Business Program, commonly known as the 8(a) Program. The NRC should then refund the higher fees collected for the last two years from all 8(a) firms. The commenter further requested that the NRC change its definition of small entity for environmental remediation service companies to conform to the SBA's revised size standards, which now categorize such companies with fewer than 500 employees as ''small entities.''

Response. On April 11, 1995 (60 FR 18344), the NRC promulgated a final rule, after notice and comment rulemaking, that revised its size standards. The final rule established the small entity classification applicable to small businesses as follows. Those companies providing services having no more than $5 million in average annual gross revenues over its last three completed fiscal years, or, for manufacturing concerns, having an average of 500 or fewer employees during the preceding 12-month period would qualify as small entities (10 CFR 2.810). The NRC promulgated this rule pursuant to Section 3(a)(2) of the Small Business Act, which permits Federal agencies to establish size standards via notice and comment rulemaking, subject to the approval of the SBA Administrator. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry. Unlike the NRC, the SBA's Standard Industrial Classification (SIC) System establishes size standards based on types of economic activity or industry.

The Commission will further consider the issue raised by this commenter regarding its designation of small entities for reduced fee purposes, and will separately address the commenter's request for a partial annual fee exemption.

4. *Comment.* A few commenters indicated that the NRC has not provided sufficient information on which to evaluate the fees to be assessed for FY 1999. One commenter stated that the NRC violated the Administrative Procedure Act (APA) by failing to provide an explanation of how it arrived at its proposed fee schedules.

Response. The NRC believes it has provided sufficient information concerning its proposed fee schedule to allow effective evaluation and constructive comment on the proposed rule. In Part II of the Statement of Considerations supporting the proposed rule, the NRC provided a detailed explanation of the FY 1999 budgeted costs for the various classes of licensees being assessed fees. In addition, the NRC work papers pertinent to the development of the fees to be assessed were placed in the Public Document

Room (PDR) on April 1, 1999, on the first day of the public comment period. These work papers provide additional information concerning the development and calculation of the fees, including NRC's FY 1999 budgeted resources at the subactivity level for the agency's major programs. The NRC has also made NUREG–1100, Vol. 14, ''Budget Estimates, Fiscal Year 1999'' (Feb. 1998), which discusses in detail NRC's budget for FY 1999 available in the PDR. In addition, NRC staff always makes itself available either to meet with interested parties in person, or to respond to telephone inquiries to explain its fee schedules.

B. Specific Comments—Part 170

1. Expand the Scope of Part 170

Comment. The NRC received twelve comments on the proposal to expand the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals, and full cost recovery for time expended by Project Managers (PMs), except leave time and time spent on generic activities such as rulemaking.

Many of those commenting on this issue opposed full cost recovery for PMs. Several uranium recovery licensees commented that, coupled with the proposed increase in the hourly rate to be assessed for NRC staff review time, the proposed change could double Part 170 fee assessments, an increase that would be extremely burdensome to licensees. One commenter indicated that billing for all of a PM's time would reduce necessary communication, such as phone calls, between the NRC and the licensees. This commenter also objected to licensees being required to pay for the time a PM spends to become familiar with a site. A similar comment was received from a reactor licensee who, although not specifically indicating opposition to the proposal, stated that Part 170 fees should not be assessed for PM or resident inspector time spent in training or other administrative tasks not directly associated with the licensee. One commenter indicated that the licensees paying for the PM time have little or no input over what the PM is reviewing. A power reactor commenter supported full cost recovery for PMs only if work priorities were mutually agreed upon by NRC and the licensee.

Several of the uranium recovery commenters also questioned the amount of time spent by PMs and other NRC staff in reviewing licensee submittals. They indicated that, in many cases, the amount of time spent on uranium recovery issues appears to be excessive in light of what they characterize as the low level of risk posed by uranium recovery operations. One uranium recovery commenter stated that the proposal presents the potential for an open-ended escalation of fees that do not directly benefit the licensees.

Other commenters partially or fully supported the proposed expansion of Part 170. The Nuclear Energy Institute (NEI), which primarily represents the commercial nuclear reactor industry, urged the NRC to continue to separate out fees related to a given licensee and assess those fees to the licensee under Part 170. NEI stated that it is inappropriate for one licensee to subsidize, through annual fees, additional agency oversight incurred by another licensee because it is not performing well. Another commenter who supported the proposal recommended that the NRC demonstrate how the expanded Part 170 costs are removed from the Part 171 fee schedule. One power reactor commenter agreed, in part, with shifting cost recovery from annual fees to fees for services. However, the commenter stated, that as more services are billed by the hour, the opportunity for inefficiencies in reviews and billing abuse becomes greater. This commenter suggested that hourly fees be capped to allow licensees to make budget forecasts.

Another commenter supported the assessment of Part 170 fees for all inspections, stating that the change is expected to lower the costs of inspections for good performers. However, this commenter opposed the proposal to expand Part 170 to include reviews of documents that do not require formal approval. This commenter stated that these documents are submitted in compliance with regulations without an expectation of NRC assistance in assuring compliance, and that licensees should have control over Part 170 charges.

A materials licensee questioned how the proposed additional Part 170 fees would be billed, indicating that if NRC has truly downsized, the expanded scope of Part 170 is not justified.

Response. The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for Project Manager time, except leave time and time spent on generic activities such as rulemaking. Expanding the scope of Part 170 is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of ''special benefits'' conferred by specifically identified activities of the NRC. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations. Incident investigations, performance assessments and evaluations, reviews of reports and other documents, and PM activities are services which the NRC provides to specific, identifiable recipients. Thus, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the service than through annual fees assessed to all of the licensees in the class.

Based on the requirement of OBRA–90 that the NRC recover approximately 100 percent of its budget authority through fees, the costs of these services must be paid either by applicants and licensees under Part 170 as fees for services rendered to them or by licensees under Part 171 as annual fees. To calculate the total amount to be assessed in Part 171 annual fees, the estimated amount to be recovered through Part 170 fees in a given fiscal year is subtracted from the total budget authority for that fiscal year. Therefore, if all other things remain equal, increasing the costs to be recovered under Part 170 would shift these costs away from Part 171 annual fees. Although this change may result in increased Part 170 fees assessed to the individual licensees receiving the specific services, the overall fee burden for licensees in that fee class is not increased. It should be noted that because this final rule will become effective after the last quarterly part 170 billing in FY 1999, the changes will not have an effect on the estimated part 170 collections for FY 1999 and thus do not affect the FY 1999 annual fees.

As described in the proposed rule, this change will result in the assessment of Part 170 fees to individual licensees to recover the full costs for PMs assigned to their sites, except for PM activities that are of a generic nature, such as rulemaking and preparation of generic guidance documents, and leave time. If a PM is assigned multiple sites, the PM's time that is not site-specific

will be prorated to all of the sites to which he or she is assigned. The NRC acknowledges some commenters' concerns about individual licensees being charged for the time a PM is in training or performing administrative tasks and time for a newly-appointed PM to become familiar with a particular site. However, these types of activities are necessary for the PMs to provide effective oversight for the operation of an assigned site or sites. Therefore, the cost of these activities should be borne by those licensees receiving the benefit of PM services, whether the services are specific licensing and inspection actions, or other duties associated with serving as the agency focal point for oversight of a site or sites. Examples of PM activities that will be billed to the specific site or sites include: discussions with NRC regional employees on specific plant issues; visits to the site(s); scheduling, planning and coordinating work with the technical staff; and answering technical questions.

The NRC disagrees with the suggestion that PM time should be billed only if the work priorities are mutually agreed upon by NRC and the licensee. It would be inappropriate to have entities regulated by the NRC concur in how the agency carries out its regulatory functions related to that specific entity. The agency's work priorities, including those of PMs, are carefully reviewed by NRC management to assure that the appropriate resources are spent to accomplish the agency's health and safety mission. Assessing Part 170 fees to recover the cost of a particular service provided to an individual applicant or licensee does not diminish the requirement for NRC management to carefully balance workload and assigned resources in an efficient and effective manner. This also applies to the suggestions that the NRC staff spends excessive time on reviews and that increasing the scope of Part 170, as proposed, would open the door for inefficiencies in reviews and billing abuses.

The NRC is committed to performing all of its activities as expeditiously and efficiently as possible. This commitment is evidenced by the streamlining and downsizing the agency has accomplished and the resulting budget reductions. In addition, billing for activities under Part 170 provides licensees a greater opportunity to review and challenge specific costs because the charges are individually itemized on the Part 170 bills.

Part 170 fees for these additional activities will be applicable only to those applicants and licensees subject to full cost billing under Part 170. Those materials licensees who hold licenses for which amendment and inspection fees have been eliminated from part 170 will not be subject to Part 170 fees for these additional activities as they are included in their part 171 annual fees.

2. Including Orders and Escalated Enforcement Actions in Part 170 in FY 2000

The NRC solicited public comment on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule.

Comment. Four comments were received on this issue. Two commenters opposed adding these activities to Part 170; one commenter supported their inclusion. The fourth commenter indicated that the direct allocation of these costs to those who receive the services warrants further evaluation and that it would welcome the opportunity to comment on a definitive proposal in the FY 2000 fee rule. This commenter stated that, in addition to being viewed as a penalty upon licensees who exercise their rights to challenge the NRC action, there are additional implications in situations where the licensee is successful in such a challenge. Another commenter stated that the assessment of Part 170 fees for these actions would result in a ''de facto additional civil penalty, and further challenge the economics of operation for that facility.'' NEI, on the other hand, urged the NRC to continue to assess fees under Part 170 for activities related to a given licensee, and stated that ''application of this principle dictates that the industry support assessing fees for escalated enforcement actions under Part 170.'' NEI went on to say that the perception that these enforcement actions serve as an industry-wide deterrent has not been borne out. One commenter who opposed the assessment of Part 170 fees for these activities stated that the licensees would have to pay fees for pursuing any enforcement action they disagreed with, which could result in a ''chilling effect'' on challenges to enforcement actions. The commenter also stated that licensees would be required to pay for the review of a violation and corrective actions even if the NRC concludes that full mitigation of a possible civil penalty is appropriate, and potentially would be charged fees when NRC withdraws an enforcement action.

Response. The NRC agrees that there are arguments for and against assessing Part 170 fees for the development of, and evaluation of response to, orders and NOVs accompanying escalated enforcement actions. This issue will be further evaluated prior to promulgation of the FY 2000 fee rule.

3. Eliminate Part 170 Average-cost (''Flat'') Amendment Fees

Comment. The NRC received one comment on its proposal to eliminate the Part 170 fees that are based on the average costs to review amendments (''flat'' fees). The commenter supported the proposed change, stating that it simplifies budgeting and increases efficiency for both the NRC and licensees.

Response. The NRC is amending 10 CFR 170.31 to eliminate the flat amendment fees for materials licensees. This change streamlines the NRC process and eliminates any delays in processing these amendments due to incorrect payments. The NRC believes that, as the commenter indicated, this change will also be more efficient for licensees. This change will result in an estimated $900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

4. Hourly Rates

Comment. The NRC received eight comments that specifically addressed the proposed increases in the professional hourly rates. Those commenting indicated that the increases would create a substantial financial burden for the licensees, particularly when added to the proposal to expand the scope of Part 170. Several commenters stated that the proposed hourly rates exceed the hourly charges of senior consultants or principals at major consulting firms, and exceed the generally accepted rate for similar work in private industry. Some commenters stated that the rate is unjustifiably high and does not reflect the actual cost of providing regulatory services to licensees. One commenter said that the increase does not coincide with actual cost of living increases. This commenter stated that the increases cannot be justified based on inflation indicators over the period which have increased on the order of 3 percent or less per year. Uranium recovery commenters stated that the hourly charges should be predictable to permit licensees to budget and plan accordingly. An individual uranium recovery licensee and The National Mining Association (NMA), whose members include owners and operators of uranium mills, mill tailings sites and *in situ* uranium production facilities, added that, to the extent such hourly rates are a result of the 100 percent budget recovery requirement of OBRA–90, the NRC should work with

Congress to make the fee system more equitable. One commenter suggested that support staff be reduced parallel with FTE reductions and questioned whether materials program support staff could be shared with other programs to lessen what the commenter termed the ''support imbalance and consequent licensee load.''

Response. As stated in the proposed rule, due to a budget coding error that occurred in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates plus salary and benefit increases since that time. The FY 1997 hourly rate for the reactor program was $131, and the FY 1997 hourly rate for the nuclear materials and nuclear waste program was $125. The NRC salaries and benefits increased 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999. Considering only these increases, the FY 1999 hourly rates would be $142 for the reactor program and $136 for the materials program. However, there has also been a shift in the proportion of direct resources between the reactor program and the materials program. As a result, the materials program has a larger share of the direct resources than in the past and consequently must absorb more of the overhead and management and support costs. The professional hourly rates are based on budgeted costs. Because overhead resources are budgeted separately for the materials and reactor programs, they cannot be ''shared'' for purposes of the hourly rate calculations as suggested by one commenter. Agency management and support costs, on the other hand, are not budgeted separately for the reactor and materials programs. Instead, these costs are allocated to the programs based on their share of the budgeted direct resources. Because the materials program now has a larger share of the direct resources than in the past, more of the management and support costs have been allocated to the materials program.

As indicated in previous final rules, the NRC professional hourly rates must be established at levels to meet the statutory requirement of OBRA–90 to recover through fees approximately 100 percent of the budget authority, less the appropriation from the Nuclear Waste Fund. The NRC is not able to use inflation or other indices as the basis for the development of the hourly rates charged under 10 CFR 170 and 171 because these factors may not allow the NRC to meet the 100 percent fee recovery requirement.

Given the budgeted costs that must be recovered through the hourly rates, it is necessary to increase the FY 1999 hourly rates to $141 for the reactor program and $140 for the materials program. The method and budgeted costs used in the calculation of the hourly rates are discussed in Section III of this final rule. In addition, the agency work papers supporting each proposed and final rule include details of the hourly rate calculations. These work papers also contain details of the agency's budget used in the development of the FY 1999 hourly rates and fees. The work papers supporting the fee rules are available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington DC 20555–001. The specific details regarding the NRC's FY 1999 budget are documented in the NUREG–1100, Vol. 14, ''Budget Estimates, Fiscal Year 1999'' (February 1998). Copies of NUREG–1100 may be purchased from the Reproduction and Distribution Services Section, OCIO, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and from the National Technical Information Service, Springfield, VA 22161–0002. A copy is also available for inspection, and copying for a fee, in the NRC Public Document Room.

5. Fee Adjustments

Comment. Five comments were received on the proposed fee adjustments to the fee schedules for specific classes of licensees set forth in §§ 170.21 and 170.31. NEI specifically commented on the NRC's proposal to revise §§ 170.21 and 170.31 to reflect the increased hourly rates and the results of the biennial review of Part 170 fees required by the Chief Financial Officers (CFO) Act. NEI questioned the statement in the proposed rule that the average number of professional hours required to conduct inspections and to review and approve new license applications increased for 20 of 33 fee categories. NEI stated that license applications have become more uniform and inspection frequency is expected to decline as a result of implementation of the NRC's new risk-informed, performance-based regulatory philosophy. Four other commenters expressed opposition to the increased fees for materials licensees, which include increases in Part 170 fees for certain categories. These commenters indicated that the proposed changes would have adverse affects on licensees. A manufacturer of portable density and moisture testing gauges stated that economic hardship on licensees will lead to the sale and disposal or abandonment of gauges and subsequent license termination. The commenter stated that use of a valuable tool will be diminished as a result of the fee increases and referred to the low cost of regulating this category of radioactive materials devices, the low activity of material in the devices, and the safety record of these devices. Other commenters indicated that the increases were unjustified, pointing to the safety record of devices covered by fee category 3P (all other byproduct material) and the time span between inspections for these types of licenses. One commenter stated that, in light of NRC's efforts to streamline its licensing, inspection and enforcement programs, costs should be reduced commensurate with a reduction in resources and activity.

Response. The results of the biennial review of fees were based on actual staff hours reported for the various license categories over a 5-year period. During the 5-year period, almost 700 new license applications and almost 4000 amendment requests were processed for fee category 3P, ''All other byproduct material'', and approximately 2300 inspections were conducted. Similar numbers of actions were reported for nuclear medicine licenses. Although fewer actions were reported for certain other categories, the volume of data is sufficient to support the increases in the average time spent on these categories. Based on the volume analyzed in the biennial review, the NRC has no basis to modify the average time results for processing these applications and inspections. The NRC is streamlining its licensing and inspection efforts and is working on a series of guidance documents related to about 20 categories of materials licenses. Because these initiatives are still under development, the full efficiencies have yet to be realized. Based on the requirement for NRC to recover approximately 100 percent of its budget authority through fees each fiscal year and the requirement to biennially review and revise charges to recover the costs of providing the services, the NRC is unable to establish fees based on cost reductions that may occur in future fiscal years. Part 170 fees must approximate current costs. The NRC is adopting the results of the biennial review in this final rule for those fee categories subject to flat fees based on the average professional time to complete the actions. These revised flat fees also reflect the increased hourly rates for FY 1999.

C. Specific Comments—Part 171

1. Rebaseline With a 50 Percent Cap

Comment. Nine commenters specifically addressed the two options

presented by the NRC for rebaselining the FY 1999 annual fees: Option A, rebaseline without a cap, or Option B, rebaseline with a 50 percent cap on FY 1999 annual fee increases. Five commenters, uranium recovery licensees or persons representing the uranium recovery class, preferred the 50 percent cap, ''if forced to choose.'' These commenters indicated that the cap would at least spread the annual fee increases for uranium recovery licensees over two years to lessen the drastic impact to their budgets for a given year. One uranium recovery commenter indicated that even the 50 percent increase is excessive when governmental inflation indexes indicate an inflation rate of 3 percent or less. The National Mining Association (NMA) stated that the uranium recovery licensees had no warning of how significant the increase in fees would be for FY 1999. Another commenter, a materials licensee, supported the cap, but stated that 50 percent was too high. This commenter recommended that all fee increases be capped at a level commensurate with the inflation rate. Three commenters, NEI, a reactor licensee, and a materials licensee, supported rebaselining without a cap. These commenters stated that rebaselining without a cap is more fair because it allows NRC to determine the amount of resources devoted to regulation of certain licensees and allocate the costs to those licensees. One commenter stated that the cap could result in an unfair allocation to some licensees of costs over the cap amount incurred for other licensees. NEI stated that it is inappropriate given the developing competitive environment in which nuclear licensees will operate or are already operating, to require all licensees to subsidize any licensee who received services costing more than the cap amount.

Response. The Commission is establishing rebaselined FY 1999 annual fees without a cap, after comparing the allocation of its FY 1999 budgeted costs with those of FY 1995. The Commission concluded that there have been significant changes in the allocation of agency resources among the various classes of NRC licensees. This fulfills the Commission's policy commitment made in the Statement of Considerations accompanying the FY 1995 fee rule (60 FR 32225) that base annual fees would be re-established (rebaselined) if there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with significant fee increases, establishing new baseline annual fees without a cap results in a fair and equitable allocation of costs among licensees.

The major purpose for the option to establish the FY 1999 rebaselined annual fees with a 50 percent cap was to provide greater fee stability than would be provided by rebaselining without a cap, and to provide advance notice to licensees of the full annual fees for their future budget planning purposes. There was, however, a lack of overwhelming support for the cap. Some commenters who chose the cap were in fact reluctant to support either option. Capping fee increases for a class or classes of licensees necessarily results in additional fees being assessed to other classes of licensees in order to recover approximately 100 percent of the budget as required by statute. A cap on FY 1999 fee increases has the potential to exacerbate concerns about the fairness and equity of licensees being charged for activities that do not directly benefit them. Based on these concerns, an evaluation of NRC budget allocation data, and the lack of overwhelming support from commenters, the Commission has decided against adopting a cap on fee increases for FY 1999.

2. Rebaselining Frequency

Comment. Eight comments were received in response to the NRC's solicitation of public comment on whether the NRC should, in future years, continue to use the percent change method and rebaseline fees every several years, as established in the FY 1995 fee rule statements of consideration, or return to a policy of rebaselining annual fees every year. Five commenters were in favor of rebaselining every several years, three were in favor of rebaselining annually. In support of annual rebaselining, NEI stated that the percentage change method does not promote the in-depth review, revision, and streamlining of programs it believes is necessary to ensure maximum agency efficiency. In a similar comment, Duke Energy Corporation (Duke) stated it believes that annual rebaselining would enable the NRC to better monitor its programs and ensure that costs are accurately assessed to licensees who benefit from the associated services and would ensure that licensees would not unjustly subsidize the costs of services provided to other licensees. The NMA and several uranium recovery licensees commented that the fees should only be rebaselined every several years so that the fees remain reasonably predictable from year to year. These commenters stated that a reasonable degree of predictability of the fees is needed to enable licensees to plan, forecast, and budget accurately. The United States Enrichment Corporation (USEC) also supported rebaselining every several years as appropriate, such as when there is significant downsizing, agency reorganization, or additions of new fee classes. USEC stated that although rebaselining provides for a more in-depth review of the NRC's programmatic efforts, it also has the potential to reintroduce into the fee process an instability that the percentage change method was created to address. USEC referred to the methodology for stabilizing fees described by the NRC in the FY 1996 fee rule, stating that consistent and appropriate application of that methodology should result in rebaselining when warranted, but not necessarily annually. USEC stated that the methodology will result in a fair allocation of fees while maintaining some stabilization and fee predictability.

Response. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years as warranted. The current policy of adjusting the annual fees only by the percent change in NRC's total budget unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees provides for fee stabilization, which is a continuing issue of concern for licensees as evidenced by the comments received. The commenters did not provide overwhelming support for reversing the current policy. Therefore, the Commission is continuing the policy as described in the Statement of Considerations for the FY 1995 final fee rule (60 FR 32218; June 20, 1995) to stabilize fees by adjusting the annual fees only by the percent change in NRC's total budget, with additional adjustments for the numbers of licensees paying fees, changes in Part 170 fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The Commission stated in the FY 1995 rule that the percent change method would be used for a maximum of four years. Annual fees for FYs 1996, 1997, and 1998 were established based on the percent change method. The Commission determined

that it is appropriate to establish new baseline fees for FY 1999 based on the program and fee policy changes that have taken place since FY 1995, and the addition of a new fee class for spent fuel storage/reactor decommissioning. Based on the experience gained as a result of applying the criteria for rebaselining over the past four years, the Commission has determined that in the future annual fees should be rebaselined every three years, or earlier if warranted. The decision on the appropriate method for establishing annual fees for the intervening two years will be made each year.

3. Spent Fuel Storage/Reactor Decommissioning Annual Fee

Comment. Four comments were received on NRC's proposal to establish a spent fuel/storage decommissioning annual fee to be assessed to all reactor licensees, regardless of their operating status, and to Part 72 licensees who do not hold a Part 50 license. Duke supported the proposed change, stating that the current fee regulation would impose duplicative fees on licensees for use of a part 72 general license if they already perform the same activities under a specific Part 72 license. Duke contends that imposition of such substantial and duplicative fees is inconsistent with Congress' direction in the Nuclear Waste Policy Act of 1982, as amended, that NRC eliminate the need for specific NRC authorization for onsite storage of spent fuel to the maximum extent practicable. Duke stated that the duplicate annual fees for both types of licenses would deny licensees the reasonable opportunity to use the general licenses, and supports the removal of such disincentive by revising the fee regulations as proposed. South Carolina Electric and Gas Company objected to the proposed fee because it does not maintain an Independent Spent Fuel Storage Installation (ISFSI), has adequate storage capacity in its Spent Fuel Pool (SFP), and does not plan to build an ISFSI for at least 15 years. The commenter stated that, under the proposal, it would pay fees for continuing to store spent fuel in the SFP until an ISFSI is needed, but would not realize services or benefits for those fees. The commenter stated that it is not appropriate for its customers to pay the ISFSI fees of other licensees and, had DOE honored its obligation to take possession of spent fuel by January 1998, the fee would not be an issue. Two other commenters, reactor licensees who have permanently ceased operations, opposed the imposition of the proposed fee for their licenses because they have no fuel onsite. These commenters argued that because they have no fuel onsite they derive no benefit from NRC activities related to spent fuel storage. GE Nuclear stated that its Vallecitos Boiling Water Reactor (VBWR) derives no comparable benefit from the NRC's decommissioning activities because essentially all of the facilities, structures, and systems, external to the containment vessel associated with VBWR operations have been removed, leaving a very small containment structure and internal components subject to future decommissioning. PECO Energy Company (PECO) stated that the Peach Bottom Atomic Power Station Unit 1 (PBAPS) spent fuel pool has been off-loaded, drained, and decontaminated. PECO stated that it plans to keep PBAPS Unit 1 in a SAFSTOR and the only activity being performed is required Technical Specifications Surveillance through December 2015.

Response. The NRC is establishing a spent fuel storage/reactor decommissioning annual fee in this final rule. However, this new annual fee will not be assessed to those reactors that have permanently ceased operations and have no spent fuel onsite. The NRC agrees with the commenters that NRC's generic spent fuel storage activities are not applicable to reactors that have ceased operations and have removed all fuel from the site. However, the new fee will be assessed to all reactors who have fuel onsite regardless of the storage option the licensee elects to use. The NRC recognizes that sites will be required to continue to store spent fuel onsite until another solution becomes available. The fact that DOE has not taken possession of the spent fuel does not relieve NRC of the OBRA–90 requirement to recover approximately 100 percent of its budget authority through fees, including those costs associated with generic spent fuel storage activities. The NRC believes that assessing a spent fuel storage/reactor decommissioning annual fee to all reactor licensees who have spent fuel onsite and all Part 72 licensees who do not hold a Part 50 license is a reasonable approach for recovering NRC costs for generic spent fuel storage and reactor decommissioning activities. The current policy has raised concerns that the fee structure could create a disincentive for licensees to pursue dry storage. The spent fuel storage/reactor decommissioning annual fee will give equivalent fee treatment to both storage options. The annual fee also addresses concerns about the fairness of assessing multiple annual fees if a licensee holds multiple Part 72 licenses for different designs. Further, the annual fee will result in most reactor licensees being assessed the costs of NRC's generic reactor decommissioning activities. This annual fee includes the costs of NRC's generic and other research activities directly related to reactor decommissioning and spent fuel storage (both storage options), and other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except those activities which are subject Part 170 fees. The final FY 1999 spent fuel storage/reactor decommissioning annual fee is $206,000. This reflects that an annual fee is not being imposed on those six reactors which have permanently ceased operations and have no fuel onsite. This also takes into account the prorated FY 1999 annual fee to be assessed to DOE for the Part 72 license issued on March 19, 1999, for the storage of fuel and fuel debris resulting from the Three Mile Island Unit 2 accident.

4. Revised Fuel Cycle Matrix

Comment. USEC, although supportive of the decreased FY 1999 annual fees for the Paducah, Kentucky and Portsmouth, Ohio Gaseous Diffusion Plants (GDPs), requested that the NRC revise the fee rule to recognize that the GDPs are the operational equivalent of a single plant and assess a single fee for the complex. USEC argued that a double assessment on the two certificates of compliance results in a significantly disproportionate allocation of costs to USEC. USEC also requested that NRC revise the Effort Factor rating in the fuel facility matrix used by NRC to assess relative effort for a facility. Specifically, USEC took issue with NRC's matrix evaluation of the relative weight and, hence, NRC's regulatory effort for GDP activities. USEC stated that NRC counted the risk for UF6 twice, once as solid and once as liquid. USEC argues that the risk is less, and that the Effort Factor for UF6 should be reduced from 10 to 5 for the GDPs.

Response. The NRC has rejected previous requests from USEC that a single fee be assessed for the two GDPs. For the reasons stated in response to USEC's comments on the proposed FYs 1997 and 1998 fee rules (62 FR 29197; May 29, 1997, and 63 FR 31843; June 10, 1998), and in NRC's March 23, 1998, denial of USEC's annual fee exemption request, the NRC believes that USEC must pay a full annual fee for each of its enrichment facilities. USEC has recently appealed the FY 1998 annual fee assessments for the two GDPs. Because USEC raised these same specific issues in its current exemption

request, we will address those issues in our forthcoming response to the exemption request. In the fuel facility matrix, the NRC assessed the risk based on the total relative amounts of UF6 and the number and complexity of the processes involved with UF6. These factors merit weighting the value as 10 for the GDPs when compared to other fuel cycle facilities.

D. Other Comments

1. Inconsistency in Hourly Rate and Annual Fee Calculation Tables

Comment. One commenter stated that there is an inconsistency in the proposed rule between the table showing the calculation of the professional hourly rates and the table showing the amount to be recovered through annual fees. Specifically, the commenter stated that Table I, ''Budget and Fee Recovery Amounts for FY 1999'', indicates that $103.5 million is expected to be recovered through Part 170 fees in FY 1999, while Table II, ''FY 1999 Budget Authority to be Included in Hourly Rates'' indicates that $257.4 million is to be recovered through Part 170 fees in FY 1999.

Response. The amounts shown in Tables I and II are correct. In the proposed rule, Table I, ''Budget and Fee Recovery Amounts for FY 1999,'' shows that the estimated amount for recovery under Part 170 totals $103.5 million. Table II, ''FY 1999 Budget Authority to be Included in Hourly Rates,'' shows that the total budgeted costs for the reactor program excluding direct contract support, plus the management and support costs allocated to the reactor program, totals $257.4 million. This sum, which is used to develop the reactor program hourly rate, is recovered through the imposition of fees under both Parts 170 and Parts 171.

2. Adverse Effects of Fee Increases

Comment. Many commenters opposed the fee increases in general, indicating that the increases are not justified and would have adverse economic impacts on NRC licensees. Several commenters expressed concerns that with the decline in the number of licensees, the remaining licensees are required to pay a greater share of NRC's costs with no increase in benefits. Some commenters stated that NRC's budget should be reduced in a manner that is consistent with the reduction in the number of licensees. Others specifically requested that the NRC consider options to address the effects of increased license fees and a declining number of licensees. Commenters also indicated that there should be a reduction in NRC costs as the agency moves towards a performance-based regulatory structure, translating to lower fees. Although some commenters recognized NRC's efforts to downsize and streamline its programs, they indicated that the NRC should find ways to further streamline and operate more efficiently. Some commenters requested that the increased fees be reconsidered based on the low risk and safety records associated with the licensed activities. NEI cited several reasons why the NRC should consider decreasing its future budget requests, including: NRC's revised oversight process which should result in decreased inspection hours; a declining number of industry events that should lead to fewer inspections; and the NRC's revised enforcement process which should require fewer agency resources. NEI also suggested that the NRC consider additional changes to its organizational structure, such as eliminating the regional offices and reducing the resources related to research activities.

Response. The NRC's budget, which is carefully scrutinized and reviewed by OMB and Congress prior to approval, reflects the resources necessary to carry out its health and safety mission. The NRC is continuing its streamlining efforts and constantly looks for ways to further improve its operations. However, some of the NRC's streamlining initiatives and the activities required to transition to performance-based licensing require an initial expenditure of resources before the results of those actions are realized. The rebaselined annual fees, which increased for some classes and decreased for other classes, reflect the budgeted costs for each class of licensee. The NRC recognizes that there may be adverse economic impacts on those classes of licensees with fee increases for FY 1999. However, as the NRC has stated in response to similar comments received on previous fee rules, because OBRA–90, as amended, requires the NRC to recover approximately 100 percent of its budget authority through fees, the NRC cannot mitigate the adverse economic impacts by eliminating or reducing the fee increases for one class of licensee without increasing the fees, and thus creating adverse economic impacts, for another class of licensees. Therefore the NRC has considered only the impacts it is required to consider by law. As required by the Regulatory Flexibility Act of 1980, the NRC has considered the impact of its fee regulations on small entities and evaluated alternatives to minimize those impacts. This evaluation is included in the Regulatory Flexibility Analysis which is Appendix A to this final rule. As a result of this analysis, the NRC is continuing the maximum annual fee of $1,800 established in FY 1991 for certain small entities, and the lower-tier small entity fee of $400 established in FY 1992 for small entities with relatively low gross annual receipts and for manufacturing concerns with relatively few employees.

As explained in the proposed rule, the rebaselined FY 1999 annual fees reflect program changes that have occurred since the last rebaselining in FY 1995. These changes include the NRC's successful downsizing and streamlining efforts. The NRC's budget to be recovered through fees has decreased from approximately $504.0 million in FY 1995 to approximately $449.6 million in FY 1999, a reduction of more than 10 percent. In constant 1993 dollars, the NRC's budget has decreased by $127.5 million, or approximately 24 percent, since FY 1993, as shown in the following table:

Fiscal year (FY)	1993	1994	1995	1996	1997	1998	1999
Budget ($ millions, constant 1993 dollars)	540.0	522.4	498.7	439.7	434.1	427.0	412.5
Difference from FY1993 ($ millions)	.....	17.6	41.3	100.3	105.9	113.0	127.5

The rebaselined FY 1999 annual fees reflect the budgeted costs for each class of licensee, less the estimated Part 170 collections for that class for FY 1999. The FY 1999 annual fees for materials licenses subject to ''flat'' Part 170 fees also reflect the results of the biennial review of fees as required by the CFO Act, as well as the inclusion of the budgeted costs for license amendments, renewals, and inspections. The FY 1999 annual fees increased for certain categories of these materials licensees. However, these licensees are no longer required to pay Part 170 fees for amendments, renewals, and inspections.

Although fewer resources may be needed to complete licensing reviews

and conduct inspections for a particular class of licensees as the number of licensees in the class declines, there is not necessarily a correlation between the number of licensees and the agency's regulatory oversight mission. For instance, the need for rulemaking is not diminished as the number of licensees decrease. However, a portion of the costs associated with certain rulemaking and other generic activities is allocated to the annual fee surcharge based on the ratio of Agreement States licenses to NRC licenses in the affected class of licensees. The surcharge costs are then assessed to all classes of licensees based on their share of the budget. As a result, the full economic impact of additional Agreement States and the resulting loss of NRC licensees is not borne entirely by the affected class.

The NRC's budgets are outside the scope of this rulemaking and therefore commenters' suggestions regarding future NRC budgets are not addressed in this final rule. The NRC's budget is public information and undergoes Office of Management and Budget and Congressional review annually. The NRC is establishing the rebaselined FY 1999 annual fees at the levels necessary to recover the budgeted costs for each class of licensee from that class to the extent practicable, and to recover the surcharge costs from all classes of licensees based on their share of the budget.

3. Uranium Recovery Issues

Comment. Several comments relating to specific uranium recovery issues were received from uranium recovery licensees and their representatives. The commenters claimed that the uranium recovery industry has been targeted for especially large fee increases and gave several reasons why they believe their treatment under the proposed rule is especially harsh and unfair. The commenters stated that the increases in hourly rates and license fees place an undue burden on the uranium recovery industry, which is suffering from a depressed market. The commenters expressed concern that they cannot ''pass through'' such costs, and the fee increases directly affect the profitability and viability of an operation. The commenters also indicated that the imposition of such high fees and hourly rates on the uranium recovery industry discourages current uranium production and discourages companies from maintaining facilities in a standby status until market conditions improve. This, commenters claimed, is against the national interest of preserving the domestic energy production infrastructure. Commenters stated that NRC efforts to promote performance-based licenses for uranium recovery licensees should result in lower, not higher, licenses fees for the uranium recovery class. Commenters pointed to areas where they believe NRC engages in excessive regulatory oversight of the uranium recovery licensees: conducting two inspections each year of uranium in-situ leach (ISL) operations, compared to the one inspection conducted per year before the NRC's closed the Uranium Recovery Field Office, and requiring excessively detailed studies and analysis of surface water drainage issues at sites with uranium mill tailings impoundments. The commenters also questioned the need for increased NRC efforts related to groundwater concerns for in-situ facilities when it is questionable if NRC should be regulating in-situ leach wellfields and associated groundwater concerns.

Response. The NRC does not select, or ''target,'' any class of licensees for fee increases or fee reductions. Instead, rebaselined annual fees are established to recover the budgeted costs of NRC's regulatory programs for each class of licensee, plus a percentage of the surcharge costs allocated to that class based on their share of the budget. The NRC has addressed similar comments in previous fee rules concerning the market condition of the uranium recovery industry and the national interest of preserving the energy production infrastructure. The Commission continues to conclude that it cannot set fees based on passthrough considerations. As stated in response to comments on this issue in the FY 1993 fee rule (58 FR 38667; July 20, 1993), the Commission lacks the expertise or information needed to determine whether, in a market economy, particular licensees can or cannot recapture the costs of annual fees from their customers. The Commission is not a financial regulatory agency and does not have the resources necessary to evaluate continuously purely business factors. The annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services in order to meet the requirements of OBRA–90. Therefore, the Commission is not changing its previous decisions against basing fees on licensees' economic status.

The NRC has examined ways to reduce or eliminate inspections. In establishing inspection frequencies, the NRC considers the risk to public health and safety and the environment. Sites under reclamation are to be inspected once every three years unless a specific request is received from a licensee for the NRC staff to review elements of construction. Sites on standby status are to be inspected every two to three years. Facilities that are currently in operational status are to be inspected twice a year, with the option for a reduction to once a year, depending on the inspection record. If an operating uranium recovery licensee has a good inspection record and the NRC determines that a reduced number of inspections is warranted, the NRC will eliminate one annual inspection.

The NRC agrees that performance-based licensing should result in reduced Part 170 fees for uranium recovery licensees. Under a performance-based license, a licensee is allowed flexibility to make certain changes at the site without the need for a license amendment. This streamlined form of license, when implemented properly by the licensee, should result in less hours spent on staff reviews of licensee submittals.

The NRC staff's experience in the area of erosion protection has shown that this is an area where impacts to the impoundment may be the greatest. To provide additional guidance for the licensees in this and other technical areas, the NRC developed a Standard Review Plan for Reclamation of Title II Sites and an erosion report that discusses acceptable design methods and analyses for erosion control. These two documents were released for public comment in February 1999. The NRC staff is reviewing and will be responding to the comments received. The final versions of these documents should provide more clearly the types of design methods and analyses that would serve as acceptable bases for the NRC's staff's conclusions about the stability of the site.

In late 1997, the NRC began examining its role in the regulation of ISL wellfields and the associated groundwater. To assist the NRC in this endeavor, in April 1998, the National Mining Association (NMA) provided the Commission with a White Paper in which it discussed four major concerns, including one related to in-situ facility regulation. Based on the NRC staff's and NMA's concerns, the NRC staff prepared a paper which is now before the Commission which outlines options for NRC regulation of groundwater and wastes at ISL facilities. The Commission's decision will shape NRC's future regulatory program in this area.

4. NRC's Fee Billing Systems and Practices

Comment. Two commenters requested that NRC modify its billing systems and practices. NEI requested that NRC allocate the costs of services to individual units at multi-unit sites. NEI complained that under current practice the agency ''arbitrarily'' allocates site-wide inspection fees to one unit. NEI stated that due to varying ownership percentages in each unit, it is critically important in a competitive environment for site-wide fees to be allocated to the individual units. The NMA requested that NRC continue its efforts to provide bills that contain more meaningful descriptions of the work done. The NMA stated that in the private sector, adequate explanations are provided for clients to fully understand what was done, when it was done, and how much time was spent on each discreet activity. The NMA indicated that such a system could help identify problems, such as excessive time spent on reviews of licensee submittals.

Response. Beginning with the FY 1998 fee rule, which became effective August 10, 1998, the NRC is assessing Part 170 fees to recover all of the resident inspector's time, except leave time and time spent in support of another facility. For resident inspectors, all non-inspection time is charged to the docket to which they are assigned. However, a senior resident inspector may be assigned to the site rather than to a specific unit at a multi-unit site. In these cases, the senior resident inspector's non-inspection time is currently billed to the lowest docket number for the site. Due to billing system limitations, the NRC is not able at this time to provide separate billings for each unit for the non-inspection senior resident inspector time. The NRC will pursue modification of its billing system in the future to allocate this senior resident time to each docket on a prorated basis, e.g, if there are three dockets and one senior resident inspector at the site, each docket will be billed for one-third of the senior resident inspector's time that is not related to a specific inspection.

With respect to the request from materials licensees that more detailed information be provided on their bills, the NRC converted to a new billing format in October 1998 for materials licensing actions subject to full cost recovery under Part 170. These bills now provide more detailed information on the charges to support the licensing review costs. A supporting document is included with these bills which provides information on the date of the application, the control number for the application, the name of the NRC reviewer and/or contractor, the number of regular and non-regular hours expended by the reviewer, and the NRC reviewer's title. In FY 2000 the NRC plans to convert to a new inspection fee billing system for materials licensees that will provide more detailed information for inspections.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1999 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1999, the NRC's budget authority is $469.8 million, of which $17.0 million has been appropriated from the NWF. In addition, $3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 1999 Appropriations Act states that this $3.2 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately $449.6 million in FY 1999 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 1999 is $5.2 million less than the amount estimated for recovery in the NRC's FY 1998 fee rule.

The reduced budgeted costs to be recovered through fees for FY 1999 reflect several actions taken by the NRC. These actions include strategic planning, downsizing, and a more aggressive policy on seeking reimbursement from Federal agencies for performing services that are not a required part of the agency's statutory mission. For example, for FY 1999, the NRC entered into an agreement with the U.S. Agency for International Development to fund NRC's staff costs associated with providing nuclear safety assistance to the countries of the former Soviet Union. As a result, NRC licensees are not required to pay for the costs of this activity in FY 1999. These costs were previously included in NRC's budget authority and the costs were recovered through annual fees assessed to NRC licensees.

The NRC estimates that approximately $107.7 million will be recovered in FY 1999 from fees assessed under Part 170 and other receipts, compared to $94.6 million in FY 1998. The increase from FY 1998 is primarily due to increased Part 170 collections largely attributable to changes in Commission policy included in the FY 1998 final fee rule, such as billing full cost under Part 170 for resident inspectors, and a $4.1 million carryover from additional collections in FY 1998 that were unanticipated at the time the final FY 1998 fee rule was published. In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net adjustment of approximately $2.1 million for payments received in FY 1999 for FY 1998 invoices. The remaining $339.8 million will be recovered in FY 1999 through the 10 CFR Part 171 annual fees, which is approximately $20.4 million less than in FY 1998.

Table I summarizes the budget and fee recovery amounts for FY 1999:

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 1999

[Dollars in millions]

Total Budget	$469.8
Less NWF	−17.0
Less General Fund (Reviews for DOE and other Federal agencies)	−3.2
Total Fee Base	$449.6
Less estimated Part 170 fees	−103.5
Less other receipts (estimated)	−4.2
Part 171 Fee Collections Required	341.9
Part 171 Billing Adjustment [1].	
Unpaid FY 1999 invoices (estimated)	3.4
Less estimated payments received in FY 1999 for prior year invoices	−5.5
Subtotal	−2.1

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 1999—Continued

[Dollars in millions]

Adjusted Part 171 Collections Required	$339.8

[1] These adjustments are necessary to ensure that the ''billed'' amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1999.

Because the final FY 1999 fee rule is a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the **Federal Register**.

The NRC announced in the FY 1998 proposed rule that the final rule would no longer be mailed to all licensees. However, because the NRC solicited public comments on two potential annual fee schedules for FY 1999, the FY 1999 final rule is being mailed to all licensees. As a cost-saving measure, the NRC does not plan to routinely mail future final fee rules to all licensees, but will send the final rules to any licensee or other person upon request. As a matter of courtesy, the NRC will continue to send the proposed fee rules to all licensees.

In addition to publication in the **Federal Register**, the final rule is available on the Internet at http://ruleforum.llnl.gov/. Copies of the final rule will also be mailed upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov.

The NRC is amending 10 CFR Parts 170 and 171 as discussed in Sections A. and B. below:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

Four major amendments have been made to 10 CFR Part 170 as well as several administrative amendments to update information in certain sections and to accommodate the major changes. These amendments further the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the IOAA recover the full cost to the NRC of identifiable regulatory services that each applicant or licensee receives.

The major changes to 10 CFR Part 170 are:

1. Expanded Part 170 Cost Recovery

The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by Project Managers.

Part 170 fees are based on Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of ''special benefits'' conferred by specifically identified activities of the NRC. The term ''special benefits'' includes services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations.

In the NRC's FY 1998 fee rulemaking, steps were taken to more appropriately recover costs for certain activities through Part 170 fees rather than through Part 171 fees. This further expansion of the scope of Part 170 for FY 1999 will result in cost recovery for additional activities through Part 170 fees rather than through Part 171 fees.

a. Inspections.

Part 170 fees will be assessed for all inspections, including licensee-specific performance reviews, assessments, evaluations, and incident investigations. Examples of activities that will be billable under Part 170 are performance assessments of fuel facilities, Diagnostic Evaluation Team assessments, and Incident Investigation Team investigations. Licensees who volunteer to participate in a performance review or assessment at NRC's request and which the NRC accepts will be exempted from these Part 170 fees. The inspections that are being included in Part 170 are ''special benefits'' provided to identifiable recipients, whether or not an inspection report is issued. For example, incident investigations are investigations of significant operational events involving power reactors and other facilities. Causes of the events are determined and corrective actions taken. Incident Investigation Teams investigate events of potentially major significance. Although the investigations may result in some generic lessons, the investigations are primarily a direct service provided to the specific licensee and assist the licensee in complying with NRC regulations. The costs of any generic efforts that may result from the investigations, such as the development of new regulatory requirements and guidance, will continue to be recovered through Part 171 annual fees, not through Part 170 fees assessed to the licensee. In addition, any time expended by NRC's Office of Investigations on these activities will be recovered through Part 171 fees. These Part 170 fees will not apply to materials licenses for which no inspection fee is specified in Part 170 because the inspection costs are included in the Part 171 annual fee for those fee categories.

b. Additional Document Reviews.

Part 170 is also expanded to include reviews of documents submitted to the NRC that do not require formal or legal approvals or amendments to the technical specifications or license. Examples are certain financial assurance reviews, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71(e) Final Safety Analysis Reports (FSARs). Although no specific approval is issued, reviews of these submittals are services provided by the NRC to identifiable recipients that assist them in complying with NRC regulations.

c. Project Manager Time.

All Project Manager's (PM) time, excluding leave and time spent on generic activities such as rulemaking, will be recovered through Part 170 fees assessed to the specific applicant or licensee to which the PM is assigned. This change is applicable to all licensees subject to full cost fees under Part 170 and to which PMs are assigned.

Examples of PM activities which will be subject to Part 170 cost recovery are those associated with oversight of the assigned license or plant (e.g., setting work priorities, planning and scheduling review efforts, preparation and presentations of briefings for visits to NRC by utility officials, interfacing with other NRC offices, the public, and

other Federal and state and local government agencies, and visits to the assigned site for purposes other than a specific inspection), and training. Examples of PM generic activities that will not be subject to fee recovery under Part 170 are rulemaking and the development of regulatory guides, generic licensing guides, standard review plans, and generic letters and bulletins. If a PM is assigned to more than one license or site, costs for activities other than licensee-specific licensing or inspection activities will be prorated to each of the licenses or sites to which the PM is assigned. The concept of full cost recovery for PMs is similar to the concept of full cost recovery for Resident Inspectors, which was added to Part 170 in the FY 1998 final fee rule (June 10, 1998; 63 FR 31840).

d. Other.

The NRC also solicited public comment in the proposed rule on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule. The costs of these activities are currently recovered through Part 171 annual fees. The Commission will further evaluate this issue prior to promulgating the FY 2000 fee rule.

2. Amendment Fees Based on Average Costs

The NRC is revising 10 CFR 170.31 to eliminate the amendment fees for small materials licensees that are based on the average time to complete the reviews (''flat'' fees) and include the amendment processing costs in the Part 171 annual fees assessed to the small materials licensees. This change continues the NRC's initiatives to streamline its fee program. In a similar action, the inspection and renewal fees for these licensees were eliminated in the FY 1995 and FY 1996 fee rulemakings, respectively, and the costs included in the annual fees for these categories of licensees.

Although not all materials licensees request amendments during a given fiscal year, approximately 80 percent request at least one amendment over a five-year period and approximately 40 percent of these licensees request multiple amendments during a five-year period.

In addition to streamlining the NRC process, this change eliminates the steps licensees currently take to submit the payments for their amendment requests. It also eliminates any delays in approving proposed amendments due to incorrect payments and provides an efficient means of recovering these costs. The NRC believes that the efficiencies to be gained outweigh any inequities that may result because not all materials licenses are amended each fiscal year.

This change results in an estimated $900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

3. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These revised rates are based on the number of FY 1999 direct FTEs and the FY 1999 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The hourly rate for the reactor program is $141 per hour ($250,403 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under § 170.21 of the fee regulations. The hourly rate for the nuclear materials and nuclear waste program is $140 per hour ($248,728 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under § 170.31 of the fee regulations. In the FY 1998 final fee rule, these rates were $124 and $121, respectively. The FY 1998 rates represented a decrease from FY 1997 of $7 per hour for the reactor program from FY 1997, and $4 per hour for the materials program.

This increase can be readily explained. In calculating the FY 1999 hourly rates, the NRC staff discovered that a coding error in NRC's budget, which is used in the development of fees, occurred for FY 1998. This coding error contributed to the hourly rate decreases for that year. In addition, costs for direct FTEs and overhead are calculated for the reactor and materials programs and for the surcharge. Although the FY 1999 hourly rates reflect an increase of $17–$19 per hour compared to FY 1998, the error was in the reduced FY 1998 hourly rate, not in the increased FY 1999 hourly rate. Specifically, 134 FTE and approximately $10 million in contract support for regional management and support were erroneously coded as direct resources for FY 1998 rather than as overhead. The correction of that error in FY 1999 results in substantial increases in the hourly rates compared to FY 1998, from $124 to $141 for the reactor program, and from $121 to $140 for the materials program. This is the result of the increased overhead costs to be allocated to the two programs, with fewer direct FTE to divide the costs among. In addition, the proportion of direct resources has shifted. The materials program now has a larger share. Therefore, the materials program must absorb more of the overhead and management and support costs.

Because of the error in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates of $131 and $125 for the reactors and materials programs, respectively. Applying only the salary and benefit increases of 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999, would result in FY 1998 hourly rates of $137 for the reactor program and $131 for the materials program, and 1999 hourly rates of $142 for the reactor program and $136 for the materials program. This does not consider the shift that has occurred in the proportion of direct resources from the reactor program to the materials program that results in the materials program having a larger share and therefore absorbing more of the overhead and management and support costs.

The method used to determine the two professional hourly rates is as follows:

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

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

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

TABLE II.—FY 1999 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries and Benefits	$99.2m	$26.4m
Overhead Salaries and Benefits, Program Travel and Other Support	$54.1m	$15.0m
Allocated Agency Management and Support	$104.2m	$28.1m
Subtotal	$257.5m	$69.5m
Less offsetting receipts	−.1m	
Total Budget Included in Hourly Rate	$257.4m	$69.5m
Program Direct FTEs	1,028.0	279.7.
Rate per Direct FTE	$250,403	$248,728.
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$141	$140.

As shown in Table II above, dividing the $257.4 million (rounded) budget for the reactor program by the reactor program direct FTEs (1,028) results in a rate for the reactor program of $250,403 per FTE for FY 1999. The Direct FTE Hourly Rate for the reactor program is $141 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($250,403) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' Dividing the $69.5 million (rounded) budget for the nuclear materials and nuclear waste program by the program direct FTEs (279.7) results in a rate of $248,728 per FTE for FY 1999. The Direct FTE Hourly Rate for the materials program is $140 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($248,728) by the number of productive hours in one year (1,776 hours).

Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1999 hourly rates.

4. Fee Adjustments

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

Evaluation of the historical data shows that the fees based on the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. The data for the average number of professional staff hours needed to complete licensing action were last updated in FY 1997 (62 FR 29194; May 29, 1997). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1997. The licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the professional hourly rate for FY 1999 of $140 per hour.

The licensing fees reflect an increase in average time for new license applications for 20 of the 33 materials fee categories included in the biennial review, a decrease in average time for 8 fee categories, and the same average time for the remaining 5 fee categories. The average time for export and import new license applications and amendments remained the same for 6 fee categories in §§ 170.21 and 170.31, and decreased for 4 fee categories.

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

The licensing ''flat'' fees are applicable to fee categories K.1 through K.5 of § 171.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of § 171.16. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

5. Administrative Amendments

a. The NRC is amending § 170.2, Scope, and § 170.3, Definitions, to specifically include Certificates of Compliance (Certificates) issued pursuant to Part 76. The NRC issued two Certificates pursuant to Part 76 to the United States Enrichment Corporation for operation of the two gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. Part 76 certificates are added to the definition of Materials License in § 170.3 (Uranium enrichment facilities are already defined in § 170.3). These changes are administrative changes to clarify the applicability of Part 170 fees to these Certificates.

b. The NRC is revising the definition of ''Inspection'' to specifically include performance assessments, evaluations, and incident investigations. This change is being made to incorporate the expansion of Part 170 in this final rule to include these activities.

c. The NRC is revising the definition of ''Special projects'' to include financial assurance submittals, responses to Confirmatory Action Letters, uranium recovery licensees' land-use survey reports, and 10 CFR 50.71 Final Safety Analysis Reports in the list of examples of documents submitted for review that would be subject to special project fees. This revision is needed to incorporate the change in this final rule to include the review of these documents in Part 170.

d. The NRC is revising § 170.5, Communications, to indicate that all communications concerning Part 170 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Officer has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

e. The NRC is deleting the current exemption in § 170.11(a)(11), which eliminates fees for amendments to

change the name of the Radiation Safety Officer for portable gauge licenses issued in accordance with NUREG–1556,[1] Volume 1. This final rule eliminates the requirement for amendment fees for these licenses and thus the exemption is no longer needed.

f. The NRC is adding § 170.11(a)(12) to provide an exemption from Part 170 fees for those licensee-specific performance assessments or evaluations for which the licensee volunteers at NRC's request. This change accommodates action in this final rule to include performance assessments and evaluations in Part 170, except those for which the licensee volunteers at NRC's request and which are accepted by the NRC.

g. The NRC is revising § 170.12, Payment of Fees, to reflect the revision to Part 170 to include performance assessments, evaluations, and incident investigations, reviews of reports and other documents, and full cost recovery for project managers. This section is also revised to delete references to amendment fees for materials licenses that are not based on full cost to reflect the elimination of these fees in this final rule. The costs for these activities will be included in the Part 171 annual fee for these materials licensees.

Section 170.12(h), Method of Payment, is redesignated as § 170.12(f) and revised to specify the information the NRC needs to issue refunds. This change is necessitated by new Treasury requirements that were effective January 1, 1999.

In summary, the NRC has:

1. Revised Part 170 to include full cost recovery for all plant or licensee-specific inspections, including performance reviews, assessments, evaluations, and incident investigations, reviews of reports and other documents, and all of the Project Managers' time excluding time spent on generic activities and leave time;

2. Eliminated Part 170 ''flat'' amendment fees for materials licenses. The amendment costs will be recovered through Part 171 annual fees assessed to materials licensees;

3. Revised the two 10 CFR Part 170 hourly rates; and

4. Revised the licensing fees assessed under 10 CFR Part 170 to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency, and to reflect the revised hourly rates.

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

The NRC has made three major amendments to 10 CFR Part 171 and several administrative amendments to update information in certain sections and to incorporate the major changes. These major changes result in annual fees being assessed to licensees previously exempted from annual fees, increased annual fees for some licensees, and decreased annual fees for other licensees.

The changes are consistent with our statutory mandate; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the ''conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class' and the ''conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee'' (136 Cong. Rec. at H12692–93). Costs not attributable to a class of licensees are allocated following the conferees' guidance that ''the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible.'' (136 Cong. Rec. at H12692-3). The Conference Report guidance also provides that: ''these expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment.'' As in the past, these costs are allocated to the entire population of NRC licensees that pays annual fees, based on the amount of the budget directly attributable to a class of licensees. This results in a higher percentage of these costs being allocated to operating power reactor licensees as opposed to other classes of licensees.

The major changes to Part 171 are in the following areas.

1. Reactor Decommissioning/Spent Fuel Storage

The NRC is revising 10 CFR Part 171.15 to establish a spent fuel storage/reactor decommissioning annual fee. This annual fee will be assessed to those Part 72 licensees who do not hold a Part 50 license and to all operating and non-operating Part 50 power reactor licensees, except those power reactor licensees who have permanently ceased operations and have no fuel onsite. The full amount of the FY 1999 annual fee will be billed to those Part 50 licensees who are in a decommissioning or possession only status upon publication of the FY 1999 final rule. Payment will be due on the effective date of the FY 1999 rule. For operating power reactors and those Part 72 licensees who do not hold a Part 50 license, the new fee will be reflected in the fourth quarter FY 1999 annual fee bill. Any adjustments for prior payments during FY 1999 will be made in accordance with § 171.19(b). The annual fees in 10 CFR 171.16 for Part 72 licenses for independent spent fuel storage have been eliminated. This change assures equivalent fee treatment for both wet (spent fuel pool) and dry (Independent Spent Fuel Storage Installation) storage of spent fuel. This change will also ensure that power reactor licensees who benefit from NRC's generic activities bear a fair portion of these costs relating to decommissioning of reactors.

This change does not affect the manner in which licensing and inspection costs are recovered (i.e., Part 170 fees will still be assessed to Part 72 licensees and to Part 50 licensees in decommissioning or possession only status for licensing and inspection services). The NRC will continue to include the costs for generic decommissioning/reclamation costs for nonpower reactors, fuel facilities, materials, and uranium recovery licensees in the surcharge assessed to operating licensees, including operating power reactors.

2. Annual Fees

The NRC is establishing new baseline annual fees for FY 1999. The annual fees in §§ 171.15 and 171.16 are revised for FY 1999 to recover approximately 100 percent of the FY 1999 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 1999 is $339.8 million, compared to $360.2 million for FY 1998.

In the FY 1995 final fee rule (60 FR 32218, 32225; June 20, 1995), the NRC

[1] Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

stated that it would stabilize annual fees as follows:

For FY 1996 through FY 1999, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either condition occurred, the annual fee base would be recalculated. The percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. This method of determining annual fees is the ''percent change'' method. The FY 1996, FY 1997, and FY 1998 annual fees were based on the percent change method.

New baseline fees are established for FY 1999 based on the program changes that have taken place since the baseline fees were established in FY 1995, including those resulting from the agency's strategic planning efforts, downsizing, reorganization of agency resources, and the addition of a new annual fee class (spent fuel storage/reactor decommissioning) as previously described. In addition, there have been several fee policy changes since FY 1995. Fee policy changes include the elimination of renewal fees in FY 1996 for most materials licensees, the elimination of amendment fees for these licensees in FY 1999, and the inclusion of these costs in the materials licensees' annual fees.

Table III below shows the FY 1999 rebaselined annual fees for representative categories of licensees.

TABLE III

Class of licensees	FY 1999 annual fee
Power Reactors (including spent fuel storage/reactor decommissioning annual fee)	$2,776,000
Spent fuel storage/reactor decommissioning	206,000
Nonpower Reactors	85,900
High Enriched Uranium Fuel Facility	3,281,000
Low Enriched Uranium Fuel Facility	1,100,000
UF_6 Conversion Facility	472,000
Uranium Mills	131,000
Solution Mining	109,000
Transportation:	
Users and Fabricators	66,700
Users only	2,200
Typical Materials Licenses:	
Radiographers	14,700
Well loggers	9,900
Gauge users	2,600
Broad scope medical	27,800
Broad scope manufacturers	26,000

The annual fees assessed to each class of licensees include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licensees but must be recovered from the licensees to comply with the requirements of OBRA–90. The FY 1999 budgeted costs that will be recovered in the surcharge from all licensees are shown in Table IV.

TABLE IV.—SURCHARGE

Category of costs	FY 1999 budgeted costs ($, M)
1. Activities not directly attributable to an existing NRC licensee or class of licensee:	
a. International activities	6.3
b. Agreement State oversight	6.4
c. Low-level waste disposal generic activities	4.1
d. Site decommissioning management plan activities not recovered under Part 170	4.6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on legal constraints or Commission policy:	
a. Fee exemption for nonprofit educational institutions	6.9
b. Licensing and inspection activities associated with other Federal agencies	2.8
c. Costs not recovered from small entities under 10 CFR 171.16(c)	5.3
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	14.6
b. Generic decommissioning/reclamation, except those related to power reactors	4.2
Total Budgeted Costs	55.2

The NRC has continued to allocate the surcharge costs, except LLW surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume disposed by the certain classes of licensees. The surcharge costs allocated to each class are included in the annual fee to be assessed to each licensee. The FY 1999 surcharge costs that are allocated to each class of licensee are shown in Table V.

TABLE V.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	$,M	Percent	$,M	$,M
Operating power reactors	74	3.0	80.3	41.0	44.0
Spent fuel storage/reactor decommissioning			6.3	3.2	3.2
Nonpower reactors			0.1	0.0	0.0
Fuel facilities	8	0.4	5.0	2.6	2.9
Materials users	18	0.7	5.9	3.1	3.8
Transportation			1.0	0.5	0.5
Rare earth facilities			0.1	0.0	0.0
Uranium recovery			1.3	0.7	0.7
Total Surcharge		4.1		51.1	55.2

The budgeted costs allocated to each class of licensees and the calculation of the rebaselined fees are described in 3. and 4. below. The work papers which support this final rule show in detail the allocation of NRC budgeted resources for each class of licensee and how the fees are calculated. The work papers may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

Because this final FY 1999 fee rule is a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1999 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1999 rule. Those materials licensees whose license anniversary date during FY 1999 falls before the effective date of the FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of the license and payment will be due on the date of the invoice.

3. Revised Fuel Cycle and Uranium Recovery Matrixes

The NRC is adopting revised matrixes in the determination of annual fees for fuel facility and uranium recovery licensees. As part of the rebaselining efforts, the NRC is using a revised matrix depicting the categorization of fuel facility and uranium recovery licenses by authorized material and use/activity and the relative programmatic effort associated with each category.

a. *Fuel Facility Matrix.*

The NRC is using a revised fuel facility matrix based on the commensurate level of regulatory effort related to the various fuel facility categories from both safety and safeguards perspectives. The revised matrix results in a more accurate reflection of the NRC's current costs of providing generic and other regulatory services to each type of fuel facility.

The FY 1999 budgeted costs of approximately $16.3 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the revised matrix. The revisions to the matrix take into account changes in process operations at certain fuel facilities. The revised matrix also explicitly recognizes the addition of the uranium enrichment plants to the fee base and a reduction of three licensees (B&W Parks Township, B&W Research and General Atomic) as the result of the termination of licensed activities. In the revised matrix (which is included in the publicly available work papers), licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from safety and safeguards perspectives. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is amenable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in them not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among those remaining licensees/certificate holders. This would result in a higher fee for those remaining in the fee category.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor).

The effort factors for the various subclasses of fuel facility licensees are as follows:

	Number of licenses	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (33.1%)	76 (54.7%).
Enrichment	2	70 (25.5%)	34 (24.5%).
Low Enriched Uranium Fuel	4	88 (32.0%)	24 (17.3%).
UF6 Conversion	1	12 (4.4%)	0 (0%).
Limited Operations Facility	1	8 (2.9%)	3 (2.2%).
Others	1	6 (2.2%)	2 (1.4%).
Total	11	275 (100%)	139 (100%).

These effort factors are applied to the $16.3 million total annual fee amount. This amount includes the low level waste (LLW) surcharge and other surcharges allocated to the fuel facility class.

b. *Uranium Recovery Matrix.*

Of the $2.1 million total budgeted costs allocated to the uranium recovery class to be recovered through annual fees, approximately $870,000 will be assessed to DOE to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining $1.3 million will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. Because the final FY 1999 annual fees will result in certain uranium recovery licensees going from an annual billing process based on the anniversary date of their license to quarterly billing, those licensees will be billed upon publication of the final FY 1999 rule for the balance of the full FY 1999 annual fee. Payment of the balance of the FY 1999 annual fee will be due on the effective date of the FY 1999 rule.

The NRC has revised the matrix established in FY 1995 to determine the annual fees for the conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The revised matrix reflects NRC's significantly increased efforts related to groundwater concerns for in-situ licenses and its somewhat increased efforts related to groundwater concerns for conventional mills. The revised matrix also reflects an increase in regulatory efforts related to waste operations for in-situ licenses. The matrix has also been updated to reflect the changes in the number of licensees within each fee category. The number of conventional mills has decreased from 4 in FY 1995 to 3 in FY 1999 and the number of licensees in the solution mining fee category has increased by 1.

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed:

(1) The methodology identifies three categories of licenses: conventional uranium mills, solution mining uranium mills, and mill tailings disposal facilities. Each of these categories benefits from the generic uranium recovery program;

(2) The matrix relates the category and the level of benefit, by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements has been further divided into three subelements;

(5) The three major subelements of generic activities related to uranium facility operations are activities related to the operation of the mill, activities related to the handling and disposal of waste, and activities related to prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to decommissioning of facilities and cleanup of land, reclamation and closure of the tailings impoundment, and cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factors and the percentage of the total generic uranium recovery program benefitting the various subclasses are as follows:

	Number of licenses	Level of benefit		
		Weighted factor	Total for subclass	Percent
Class I facilities	3	770	2310	31
Class II facilities	7	645	4515	61
11e(2) disposal	1	475	475	6
11e(2) disposal incidental to existing tailings sites	2	75	150	2
Total	13	1965	7450	100

4. Annual Fee Determination for Other Classes

a. Power Reactor Licensees.

The approximately $267.3 million in budgeted costs to be recovered through annual fees assessed to operating power reactors is divided equally among the 104 operating reactors. This results in a FY 1999 annual fee of $2,570,000 per reactor. In addition, each operating reactor will be assessed the spent fuel storage/reactor decommissioning annual fee (see paragraph 4.b.), which for FY 1999 is $206,000 for each power reactor. This results in a total FY 1999 annual fee of $2,776,000 for each operating power reactor.

b. Spent Fuel Storage/Reactor Decommissioning.

For FY 1999, budgeted costs of approximately $24.8 million are to be recovered through annual fees assessed to Part 50 power reactors, except those Part 50 licensees who have permanently ceased operations and have no spent fuel onsite, and to Part 72 licensees who

do not hold a Part 50 license. The costs are divided equally among the licensees, resulting in a FY 1999 annual fee of $206,000 for each licensee.

c. Nonpower Reactors.

Budgeted costs for FY 1999 of approximately $343,400 are to be recovered from four nonpower reactors subject to annual fees. This results in a FY 1999 annual fee of $85,900.

d. *Rare Earth Facilities.*

The FY 1999 budgeted costs of approximately $91,200 for rare earth facilities to be recovered through annual fees are allocated uniformly to the three licensees who have a specific license for receipt and processing of source material. This results in a FY 1999 annual fee of $30,400.

e. *Materials Users.*

To equitably and fairly allocate the $30.5 million in FY 1999 budgeted costs to be recovered in annual fees assessed to the approximately 5700 diverse material users and registrants, the NRC has continued the methodology used in FY 1995 to establish baseline annual fees for this class. The annual fee is based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows:

Annual Fee = (Application Fee + (Average Inspection Cost divided by Inspection Priority)) multiplied by the constant + (Unique Category Costs).

The constant is the multiple necessary to recover $30.5 million and is 1.3 for FY 1999. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1999, unique costs of approximately $955,400 were identified for the medical development program which is attributable to medical licensees. The annual fees for each fee category are shown in § 171.16(d).

f. *Transportation.*

Of the approximately $3.6 million in FY 1999 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately $870,000 will be recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance DOE holds. Of the remaining $2.7 million, approximately 10 percent is allocated to holders of approved quality assurance plans authorizing use, and approximately 90 percent will be allocated to holders of approved quality assurance plans authorizing design, fabrication, and use. This results in FY 1999 annual fees of $2,200 for holders of approved quality assurance plans for use only. The FY 1999 annual fees for holders of approved quality assurance plans for design, fabrication, and use is $66,700.

5. Administrative Amendments

a. The NRC is revising § 171.9, Communications, to indicate that all communications concerning Part 171 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Officer has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

b. The NRC is revising § 171.13 to reflect the establishment of an annual fee for power reactors in a decommissioning or possession only status, except those that have no spent fuel onsite.

c. The NRC is revising § 171.15 as follows:

(1) The heading for § 171.15 is revised to read: Section 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses

(2) Paragraph (b) of § 171.15 is revised in its entirety to establish the FY 1999 annual fees for operating power reactors, power reactors in decommissioning or possession only status that have no spent fuel onsite, and Part 72 licensees who do not hold Part 50 licenses. Fiscal year references are changed from FY 1998 to FY 1999. The activities comprising the base annual fees and the additional charge (surcharge) are listed in § 171.15(b), (c), and (d) for convenience purposes.

Each operating power reactor will pay an FY 1999 annual fee of $2,776,000, which includes the annual fee of $206,000 for spent fuel storage/reactor decommissioning. Each power reactor in decommissioning or possession only status, except those who have permanently ceased operations and have no spent fuel on-site, and each Part 72 licensee who does not hold a Part 50 license will pay the spent fuel storage/reactor decommissioning annual fee of $206,000.

(3) Paragraph (e) of § 171.15 is revised to show the amount of the FY 1999 annual fee for nonpower (test and research) reactors. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

d. The NRC is revising § 171.16 as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. This section is revised to clarify that failure to file a small entity certification in a timely manner could form the basis for the denial of any refund that would otherwise be due. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $350,000 to $5 million will pay a maximum annual fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being made because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the final rule for convenience.

(2) Section 171.16(d) is revised to establish the FY 1999 annual fees for materials licensees, including Federal agencies, licensed by the NRC. The FY 1999 annual fees for materials licenses range from $600 for a license authorizing the use of source material for shielding, to $27,800 for a license of broad scope for human use of byproduct, source, or special nuclear material. The annual fee for the ''master'' materials licenses of broad scope issued to Federal agencies is $358,000.

(3) Footnote 1 of § 171.16(d) is being amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. All other licensees and approval holders who held a license or approval

on October 1, 1998, will be subject to the FY 1999 annual fees.

Holders of new licenses issued during FY 1999 are subject to a prorated annual fee in accordance with the proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1999, will not be assessed an annual fee for FY 1999. Thereafter, the full annual fee will become due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

e. The NRC is revising § 171.17 as follows:

(1) Section 171.17(a) is being revised to add an annual fee proration provision for those reactor licensees in a decommissioning or possession only status that have no spent fuel onsite and those Part 72 licensees that do not hold Part 50 licenses. The spent fuel storage/reactor decommissioning annual fee for these licensees will be prorated based on the number of days during the fiscal year the license subject to the annual fee was in effect. This provision is the same as the proration provision provided for operating reactors in this section.

(2) Section 171.17(b) is being revised to exclude Part 72 licenses from the proration provision for materials licenses. The annual fees for Part 72 licenses will be prorated as provided in revised § 171.17(a).

f. The NRC is revising Section 171.19 as follows:

(1) Section 171.19(b) is being revised to update the fiscal year references, to include a billing process for those licensees whose annual fee for the previous fiscal year was based on the anniversary date of the license and whose revised annual fee for the current fiscal year is based on quarterly billing, and to give credit for partial payments made by certain licensees in FY 1999 toward their FY 1999 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1999 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

(2) Section 171.19(c) is being revised to update fiscal year references.

As in FY 1998, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than $100,000 and the revised annual fee for the current fiscal year is $100,000 or more. In this case, the revised amount will be billed to the licensees upon publication of the final rule in the **Federal Register**, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 1999, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1999 before the effective date of the FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of their license. Payment will be due on the date of the invoice.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material.

In summary, the NRC has:

1. Established a new spent fuel storage/reactor decommissioning annual fee in 10 CFR 171.15, and eliminated the current annual fee in 10 CFR 171.16 for independent spent fuel storage licenses. The annual fee will be assessed to those Part 72 licensees who do not hold a Part 50 license and to all Part 50 power reactor licensees, except those that have permanently ceased operations and have no spent fuel onsite;

2. Established new baseline annual fees for FY 1999.

3. Used revised matrixes for allocating the fuel facility and uranium recovery budgeted costs to licensees in those fee classes.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is establishing the licensing, inspection, and annual fees necessary to recover approximately 100 percent of its budget authority less amounts appropriated from the Nuclear Waste Fund and the General Fund as required by the Omnibus Budget Reconciliation Act of 1990. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

V. Environmental Impact: Categorical Exclusion

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

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television*

Ass'n, Inc. v. *United States,* 415 U.S. 352 (1974), and *Federal Power Commission* v. *New England Power Co.,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia Circuit: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Ass'n* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

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

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

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

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

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

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

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

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub.L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998, and was amended in FY 1998 to extend the 100 percent fee recovery requirement through FY 1999. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the amount of the FY 1999 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed sources and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1999 budget of $469.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

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

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

In addition, the NRC's FY 1999 appropriations language provides that $3.2 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies be excluded from fee recovery.

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

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

VIII. Regulatory Flexibility Analysis

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

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1999. The final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 1999.

IX. Backfit Analysis

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

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170

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

10 CFR Part 171

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

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

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

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

2. In § 170.2, paragraph (r) is added to read as follows:

§ 170.2 Scope.

* * * * *

(r) An applicant for or a holder of a certificate of compliance issued under 10 CFR Part 76.

3. In § 170.3, the definition of the terms *Inspections, Materials license,* and *Special projects* are revised to read as follows:

§ 170.3 Definitions.

* * * * *

Inspections means:

(1) Routine inspections designed to evaluate the licensee's activities within the context of the licensee having primary responsibility for protection of the public and environment;

(2) Non-routine inspections in response or reaction to an incident, allegation, follow up to inspection deficiencies or inspections to determine implementation of safety issues. A non-routine or reactive inspection has the same purpose as the routine inspection;

(3) Reviews and assessments of licensee performance;

(4) Evaluations, such as those performed by Diagnostic Evaluation Teams; or

(5) Incident investigations.

* * * * *

Materials license means a license, certificate, approval, registration, or other form of permission issued by the NRC under the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71, 72 and 76.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical reports reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC:

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

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

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

* * * * *

4. Section 170.5 is revised to read as follows:

§ 170.5 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

5. In § 170.11, paragraph (a)(11) is removed and reserved and paragraph (a)(12) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(12) A performance assessment or evaluation for which the licensee volunteers at the NRC's request and which is selected by the NRC.

* * * * *

6. Section 170.12 is revised to read as follows:

§ 170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category or adding a new fee category prior to receiving the prescribed application fee. The application fee(s) is charged whether the Commission approves the application or not. The application fee(s) is also charged if the applicant withdraws the application.

(b) *Licensing fees.* (1) Licensing fees will be assessed to recover full costs for—

(i) The review of applications for new licenses and approvals;

(ii) The review of applications for amendments to and renewal of existing licenses or approvals;

(iii) Preapplication consultations and reviews; and

(iv) The full cost for project managers assigned to a specific plant or facility, excluding leave time and time spent on generic activities (such as rulemaking).

(2) Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. The full cost fees for professional staff time will be determined at the professional hourly rates in effect the time the service was provided. The full cost fees are payable upon notification by the Commission.

(3) The NRC intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for NRC review, until the review is completed, except for costs that were deferred before August 9, 1991. The deferred costs will be billed as described in paragraphs (b)(5), (b)(6) and (b)(7) of this section. Each bill will identify the applications and documents submitted for review and the costs related to each.

(4) The NRC intends to bill each applicant or licensee for costs related to project manager time on a quarterly basis. Each bill will identify the costs related to project manager time.

(5) Costs for review of an application for renewal of a standard design certification which have been deferred prior to the effective date of this rule must be paid as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the entity shall pay the installment. If the design is not referenced, or if all of the costs are not recovered, within

fifteen years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the renewal, or remainder of those costs, at that time.

(6) Costs for the review of an application for renewal of an early site permit which have been deferred prior to the effective date of this rule will continue to be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(7)(i) The full cost of review for a standardized design approval or certification that has been deferred prior to the effective date of the rule must be paid by the holder of the design approval, the applicant for certification, or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the approved/certified design is referenced in an application for a construction permit, combined license issued under 10 CFR Part 52, or operating license. In the case of a standard design certification, the applicant for certification shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

(ii) In the case of a design which has been approved and for which an application for certification is pending, no fees are due until after the certification is granted. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of certification, the applicant shall pay the costs, or remainder of those, at the time.

(iii) In the case of a design for which a certification has been granted, if the design is not referenced, or if all costs are not recovered, within fifteen years after the date of the certification, the applicant shall pay the costs for the review of the application, or remainder of those costs, at that time.

(c) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector (including the senior resident inspector), assigned to a specific plant or facility. The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an official duty status (i.e., all time in a non-leave status will be billed), and the hours will be billed at the appropriate hourly rate established in 10 CFR 170.20. Resident inspectors' time related to a specific inspection will be included in the fee assessed for the specific inspection in accordance with paragraph (c)(2) of this section.

(2) Inspection fees will be assessed to recover the full cost for each specific inspection, including plant- or licensee-specific performance reviews and assessments, evaluations, and incident investigations. For inspections that result in the issuance of an inspection report, fees will be assessed for costs incurred up to approximately 30 days after the inspection report is issued. The costs for these inspections include preparation time, time on site, documentation time, and follow-up activities and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

(3) The NRC intends to bill for resident inspectors' time and for specific inspections subject to full cost recovery on a quarterly basis. The fees are payable upon notification by the Commission.

(d) *Special Project Fees.* (1) Fees for special projects are based on the full cost of the review. Special projects includes activities such as—

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports; and (v) 10 CFR 50.71 final safety analysis reports.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review is completed. Each bill will identify the documents submitted for review and the costs related to each. The fees are payable upon notification by the Commission.

(e) *Part 55 review fees.* Fees for Part 55 review services are based on NRC time spent in administering the examinations and tests and any related contractual costs. The fees assessed will also include related activities such as preparing, reviewing, and grading of the examinations and tests. The NRC intends to bill the costs at quarterly intervals to the licensee employing the operators.

(f) *Method of payment.* All license fee payments are to be made payable to the U.S. Nuclear Regulatory Commission. The payments are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using E.D.I. (Electronic Data Interchange), check, draft, money order, or credit card. Payment of invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank at the address indicated on the invoice. Specific written instructions for making electronic payments and credit card payments may be obtained by contacting the License Fee and Accounts Receivable Branch at 301–415–7554. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

7. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	$141 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	$140 per hour.

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

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

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

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application—new license	$9,100
Amendment	9,100
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license	5,600
Amendment	5,600
3. Application for export of components requiring foreign government assurances only.	
Application—new license	1,700
Amendment	1,700
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application—new license	1,100
Amendment	$1,100
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	
Amendment	210

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

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

* * * * *

9. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application	$640.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Application	$1,300.
E. Licenses or certificates for construction and operation of a uranium enrichment facility.	
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$150.
C. All other source material licenses:	
Application	$5,500.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$6,600.
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,400.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$10,200.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4).	
Application	$2,400.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,700.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,400.
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$2,000.
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$3,200.
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$1,000.
K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$600.
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Application	$5,500.
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$2,300.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$2,300.
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations:	
Application	$5,800.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,300.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,700.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,500.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$6,000.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$11,200.
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,100.
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,400.
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$2,400.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$320.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,200.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$3,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,580.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$530.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$390.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
15. Import and Export licenses:	
Licenses issued under 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	$9,100.
Amendment	$9,100.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	$5,600.
Amendment	$5,600.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,700.
Amendment	$1,700.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,100.
Amendment	$1,100.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$210.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application (initial filing of Form 241)	$1,200.
Revisions	$200.

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

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

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

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment/revision fees.*

Applications for amendments to export and import licenses and revisions to reciprocity initial applications must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

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

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

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

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

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

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

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

10. The heading of Part 171 is revised to read as follows:

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

11. The authority citation for Part 171 continues to read as follows:

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

12. Section 171.9 is revised to read as follows:

§ 171.9 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

13. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to any NRC licensee subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** as soon as possible but no later than the third quarter of the fiscal year. The annual fees will become due and payable to the NRC as indicated in § 171.19. Quarterly payments of the annual fee of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, fees would be assessed based on the rates in effect for the previous fiscal year.

14. Section 171.15 is revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and spent fuel storage/reactor decommissioning.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a Part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a Part 72 license who does not hold a Part 50 license shall pay the annual fee for each unit for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

(b)(1) The FY 1999 annual fee for each operating power reactor is $2,776,000.

(2) The FY 1999 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 1999 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is $206,000.

(2) This fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (this fee is also included in the operating power

reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 1999 surcharge are as follows:

(i) Low level waste disposal generic activities;

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

(iii) Activities not currently subject to 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The total FY 1999 surcharge allocated to operating power reactor class of licensees is $44 million, not including the amount allocated to the new fee class, spent fuel storage/reactor decommissioning. The FY 1999 operating power reactor surcharge to be assessed to each operating power reactor is $423,000. This amount is calculated by dividing the total operating power reactor surcharge ($44 million) by the number of operating power reactors (104).

(3) The FY 1999 surcharge allocated to spent fuel storage/reactor decommissioning class of licensees is $3.2 million. The FY 1999 spent fuel storage/reactor decommissioning surcharge to be added to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is $26,500. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licensees, except those that permanently ceased operations and have no fuel onsite, and Part 72 licensees who do not hold a Part 50 license.

(e) The FY 1999 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	$85,900
Test reactor	$85,900

15. Section 171.16 is revised to read as follows:

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

(a)(1) The provisions of this section apply to person(s) who are authorized to conduct activities under—

(i) 10 CFR part 30 for byproduct material;

(ii) 10 CFR part 40 for source material;

(iii) 10 CFR part 70 for special nuclear material;

(iv) 10 CFR part 71 for packaging and transportation of radioactive material; and

(v) 10 CFR part 76 for uranium enrichment.

(2) Each person identified in paragraph (a)(1) of this section shall pay an annual fee for each license the person holds at any time during the first six months of the Federal fiscal year (October 1 through March 31). Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the period October 1 through March 31 of the fiscal year as provided in § 171.17 of this section. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If you hold more than one license, the total annual fee you will be assessed will be the cumulative total of the annual fees applicable to the licenses you hold.

(b) The annual fee is comprised of a base annual fee and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (e) of this section. The activities comprising the base annual fee is the sum of the NRC budgeted costs for:

(1) Generic and other research activities directly related to the regulation of materials licenses as defined in this part; and

(2) Other safety, environmental, and safeguards activities for materials licenses, except costs for licensing and inspection activities that are recovered under Part 170 of this chapter.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification with the annual fee payment, the licensee may pay reduced annual fees for as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

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

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

(2) A licensee who seeks to establish status as a small entity for purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. The NRC will include a copy of NRC Form 526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

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

(d) The FY 1999 annual fees, including the surcharge shown in paragraph (e) of this section, for materials licensees subject to fees under this section are shown below:

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	3,281,000
Nuclear Fuel Services SNM–124	3,281,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,100,000
General Electric Company SNM–1097	1,100,000
Siemens Nuclear Power SNM–1227	1,100,000
Westinghouse Electric Company SNM–1107	1,100,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities:	
(a) Facilities with limited operations:	
Framatome Cogema SNM–1168	432,000
(b) All Others:	
General Electric SNM–960	314,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI) See 10 CFR part 171.15(c).	
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,300
E. Licenses or certificates for the operation of a uranium enrichment facility	2,043,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	472,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	131,000
Class II facilities [4]	109,000
Other facilities [4]	30,400
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	81,000
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	13,000
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	600
C. All other source material licenses	11,700
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	26,000
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,300
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	15,300

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license	3,800
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,400
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	5,700
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	14,800
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	3,200
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	4,600
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	2,100
K. Licenses issued under Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	1,700
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,200
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution	5,000
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	5,200
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when authorized on the same license	14,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,600
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	11,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,400
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	9,900
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	18,900
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	15,300
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	27,800

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	5,800
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,000
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,300
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,800
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	600
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N
B. Quality assurance program approvals issued under 10 CFR Part 71:	
Users and Fabricators	66,700
Users	2,200
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210 N/A (See 10 CFR Part 171.15(c).	
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR Parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	358,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 872,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	869,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

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

[5] There are no existing NRC licenses in these fee categories. Once NRC issues a license for these categories, the Commission will consider establishing an annual fee for that type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

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

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

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

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

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

(1) LLW disposal generic activities;

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

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or

Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

16. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors and Part 72 licensees who do not hold Part 50 licenses. The annual fees for power and nonpower reactors and those Part 72 licensees who do not hold a Part 50 license that are subject to fees under this part and are granted a license to operate on or after October 1 of a Fiscal Year is prorated on the basis of the number of days remaining in the fiscal year. Thereafter, the full annual fee is due and payable each subsequent fiscal year. The base operating power reactor annual fee for operating reactor licensees who have requested amendment to withdraw operating authority permanently during the fiscal year will be prorated based on the number of days during the fiscal year the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently cease operations and have permanently removed fuel from the site during the fiscal year will be prorated on the basis of the number of days remaining in the fiscal year after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those Part 72 licensees who do not hold a Part 50 license who request termination of the Part 72 license and permanently cease activities authorized by the license during the fiscal year based on the number of days the license was in effect prior to receipt of the termination request.

(b) Materials licenses (excluding Part 72 licenses included in § 171.17(a)). (1) *New licenses and terminations.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

(2) *Downgraded licenses.* (i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not afftected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications to downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

17. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

(b) Annual fees in the amount of $100,000 or more and described in the **Federal Register** notice issued under § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 1998 was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 1999 is $100,000 or more (subject to quarterly billing), will be issued a bill upon publication of the final rule for the full amount of the FY 1999 annual fee, less any payments received for FY 1999 based on the anniversary date billing process.

(c) Annual fees that are less than $100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the

license is considered to be the first day of the month in which the original license was issued by the NRC. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1.D, 2(A)(2) other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

(e) Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

Dated at Rockville, Maryland, this 3rd day of June, 1999.

For the Nuclear Regulatory Commission.

Jesse Funches,

Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

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

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards

The Omnibus Budget Reconciliation Act (OBRA–90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 1999 is approximately $449.6 million.

Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

Because the NRC is establishing a new annual fee class for FY 1999 and based on program changes that have occurred, the NRC is establishing new baseline annual fees this fiscal year. This rebaselining results in an increase in the annual fees charged to some categories of materials licensees.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a ''major'' rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 1999 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies (''Mom and Pop'' operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an competitive extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee and for a large firm with thousands of employees.

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

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

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

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives, in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

The NRC established, and is continuing for FY 1999, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1999, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 application fees, or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, will pay for most of the FY 1999 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is continuing for FY 1999, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in each year since 1992, the NRC is continuing the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. Therefore, even though the rebaselined annual fees will result in increased annual fees charged to several categories of materials licensees, licensees who qualify as small entities will not be adversely affected.

III. Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in previous fee rules remain valid for FY 1999.

Attachment 1 to Appendix A—U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1999

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Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, is considered a ''major'' rule under this law. This compliance guide has been prepared to assist NRC material licensees in complying with the FY 1999 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 1999 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, the appropriate small entity fee, and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

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

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

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

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

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

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small-entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

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

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

	Maximum annual fee per licensed category
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less	
35 to 500 employees	1,800
Less than 35 employees	400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the annual fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

Instructions for Completing NRC Form 526

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

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

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

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

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

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

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

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

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

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

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

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. Licensees will not be issued a new invoice for the reduced amount. The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy '' of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions about the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et. seq. NRC's implementing regulations are found at 10 CFR Part 13.

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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.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1121/P.L. 106–33

To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the "Lewis R. Morgan Federal Building and United States Courthouse". (June 7, 1999; 113 Stat. 117)

H.R. 1183/P.L. 106–34

Fastener Quality Act Amendments Act of 1999 (June 8, 1999; 113 Stat. 118)

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