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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–30 of September 19, 2000

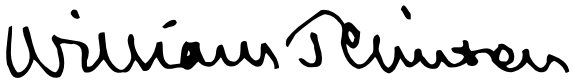
Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, (the subject of litigation in *Kasza v. Browner* (D. Nev. CV–S–94–795–PMP) and *Frost v. Perry* (D. Nev. CV–S–94–714–PMP)), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 19, 2000.

[FR Doc. 00–25742
Filed 10–4–00; 8:45 am]
Billing code 5001–05–M

Rules and Regulations

Federal Register

Vol. 65, No. 194

Thursday, October 5, 2000

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–13]

Amendment to Class E Airspace; Fairfield, 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 Fairfield, IA.

DATES: The direct final rule published at 65 FR 40991 is effective on 0901 UTC, November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 3, 2000 (65 FR 40991). 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 November 30, 2000. 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 September 6, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–25642 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–ANM–10]

RIN 2120–AA66

Subdivision of Restricted Areas R–6412A and R–6412B, and Establishment of R–6412C and R–6412D, Camp Williams, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Restricted Area R–6412A and R–6412B, Camp Williams, Utah, by subdividing the two areas into four separate areas designated as R–6412A, R–6412B, R–6412C, and R–6412D. The dimensions of R–6412 will remain the same, however, the internal modification of the present R–6412A and R–6412B and subsequent establishment of R–6412C and R–6412D will enable the military to activate only that portion of the airspace that is actually needed to contain their operations.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

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

SUPPLEMENTARY INFORMATION:

Background

As a result of a recent review of R–6412 airspace, the U.S. Army has requested that the FAA take action to internally subdivide the two subareas in R–6412 into four subareas. Dividing the airspace into four subareas will enhance traffic management, allow for more efficient real-time use of the airspace, and allow more public access. The subdivision will allow for smaller parts of the airspace to be used for military training while allowing public use of the non-active parts. This action does not require any change in the existing external boundaries.

The Rule

This action amends 14 CFR part 73 by subdividing R–6412A, and R–6412B, and by establishing R–6412C and R–6412D. There are no changes to the external boundaries, altitudes, time of designation or activities conducted within the restricted area. This action further subdivides an existing restricted area. As the solicitation of comments would not offer any meaningful right or benefit to any segment of the public, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.64 of part 73 was republished in FAA Order 7400.8H, dated September 1, 2000.

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

Environmental Review

This action is a minor administrative change to further internally subdivide an existing Restricted Area. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.64 [Amended]

2. § 73.64 is amended as follows:

* * * * *

R–6412A Camp Williams, UT [Amended]

Boundaries: Beginning at lat. 40°27′30″ N., long. 112°00′00″ W.; thence to lat. 40°23′30″ N., long. 112°00′00″ W.; to lat. 40°23′30″ N., long. 112°06′03″ W.; to lat. 40°27′30″ N., long. 112°06′03″ W.; to the point of beginning.

Designated altitudes: Surface to 9,000 feet MSL.

Time of designation: By Notice to Airman (NOTAM).

Controlling agency: FAA, Salt Lake City TRACON.

Using agency: The Adjutant General, UT.

R–6412B Camp Williams, UT [Amended]

Boundaries: Beginning at lat. 40°27′30″ N., long. 112°00′00″ W.; thence to lat. 40°23′30″ N., long. 112°00′00″ W.; to lat. 40°23′30″ N., long. 112°06′03″ W.; to lat. 40°27′30″ N., long. 112°06′03″ W.; to the point of beginning.

Designated altitudes: 9,000 feet to 10,000 feet MSL.

Time of designation: By Notice to Airman (NOTAM).

Controlling agency: FAA, Salt Lake City TRACON.

Using agency: The Adjutant General, UT.

R–6412C Camp Williams, UT [New]

Boundaries: Beginning at lat. 40°27′30″ N., long. 111°56′27″ W.; thence southerly along Redwood Road (Utah Highway 68) to lat. 40°23′30″ N., long. 111°55′01″ W.; to lat. 40°23′30″ N., long. 112°00′00″ W.; to lat. 40°27′30″ N., long. 112°00′00″ W.; to the point of beginning.

Designated altitudes: Surface to 9,000 feet MSL.

Time of designation: By Notice to Airman (NOTAM).

Controlling agency: FAA, Salt Lake City TRACON.

Using agency: The Adjutant General, UT.

R–6412D Camp Williams, UT [New]

Boundaries: Beginning at lat. 40°27′30″ N., long. 111°56′27″ W.; thence southerly along Redwood Road (Utah Highway 68) to lat. 40°23′30″ N., long. 111°55′01″ W.; to lat. 40°23′30″ N., long. 112°00′00″ W.; to lat. 40°27′30″ N., long. 112°00′00″ W.; to the point of beginning.

Designated altitudes: 9,000 feet to 10,000 feet MSL.

Time of designation: By Notice to Airman (NOTAM).

Controlling agency: FAA, Salt Lake City TRACON.

Using agency: The Adjutant General, UT.

* * * * *

Issued in Washington, DC, on September 27, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–25644 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30205; Amdt. No. 2013]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591.
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125); telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and

publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMS is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 29, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
08/30/00	PA	HAZELTON	HAZELTON MUNI	0/0580	LOC RWY 28 AMDT 5C... THIS CORRECTS FDC 0/0580 IN TL 00–21.
09/07/00	KS	WICHITA	WICHITA MID-CONTINENT	0/0964	GPS RWY 19L, ORIG...
09/8/00	AZ	SHOW LOW	SHOW LOW MUNI	0/1046	NDB OR GPS–A ORIG–A... THIS CORRECTS FDC 0/1046 IN TL 00–21.
09/08/00	CO	EAGLE	EAGLE COUNTY REGIONAL	0/1043	LOC–B, AMDT 1...
09/08/00	CO	EAGLE	EAGLE COUNTY REGIONAL	0/1044	LOC/DME–C, AMDT 2...
09/08/00	MO	ST LOUIS	SPIRIT OF ST LOUIS	0/1054	ILS RWY 8R AMDT 13A... THIS CORRECTS FDC 0/1054 IN TL00–21.
09/08/00	SC	ANDERSON	ANDERSON REGIONAL	0/1025	ILS RWY 5 ORIG...
09/08/00	SC	ANDERSON	ANDERSON REGIONAL	0/1026	VOR OR GPS RWY 5 AMDT 9A...
09/08/00	SC	ANDERSON	ANDERSON REGIONAL	0/1037	GPS RWY 23, ORIG...
09/12/00	KY	LOUISVILLE	BOWMAN FIELD	0/1547	NDB OR GPS RWY 32 AMDT 15A...
09/13/00	TN	KNOXVILLE	MCGHEE-TYSON	0/1283	HI–ILS RWY 5L AMDT 3...
09/14/00	GA	STATESBORO	STATESBORO MUNI	0/1352	LOC RWY 32, AMDT 4B...
09/14/00	KS	INDEPENDENCE	INDEPENDENCE MUNI	0/1336	VOR OR GPS–A, AMDT 1A...
09/14/00	KS	INDEPENDENCE	INDEPENDENCE MUNI	0/1337	NDB RWY 35, ORIG–A...
09/14/00	ND	OAKES	OAKES MUNI	0/1307	GPS RWY 30.
09/14/00	OH	SEBRING	TRI-CITY	0/1312	VOR OR GPS RWY 17, AMDT 3A...
09/14/00	TN	KNOXVILLE	MCGHEE-TYSON	0/1305	HI-VOR/DME OR TACAN RWY 5L, AMDT 2...

FDC date	State	City	Airport	FDC No.	SIAP
09/14/00	TX	BIG SPRING	BIG SPRING MCMAHON-WRINKLE	0/1333	VOR/DME OR GPS RWY 35, AMDT 7...
09/14/00	TX	PALACIOS	PALACIOS MUNI	0/1327	VOR RWY 13, AMDT 10...
09/14/00	WI	FRIENDSHIP	ADAMS COUNTY LEGION FIELD	0/1318	GPS RWY 33, ORIG...
09/14/00	WI	OSHKOSH	WITTMAN REGIONAL	0/1317	LOC/DME BC RWY 18, AMDT 6...
09/15/00	GA	STATESBORO	STATESBORO MUNI	0/1382	NDB OR GPS RWY 32, AMDT 4A...
09/15/00	KS	INDEPENDENCE	INDEPENDENCE MUNI	0/1365	GPS RWY 35, ORIG–A...
09/15/00	PA	BEDFORD	BEDFORD COUNTY	0/1375	GPS RWY 14, ORIG–A...
09/15/00	PA	BEDFORD	BEDFORD COUNTY	0/1376	GPS RWY 32, ORIG–A...
09/15/00	PA	CLARION	CLARION COUNTY	0/1403	VOR/DME RNAV OR GPS RWY 24, ORIG...
09/15/00	PA	CLARION	CLARION COUNTY	0/1404	VOR/DME RNAV OR GPS RWY 6, ORIG–A...
09/15/00	PA	CLARION	CLARION COUNTY	0/1405	VOR OR GPS–A, AMDT 1A...
09/15/00	SC	HILTON HEAD ISLAND	HILTON HEAD	0/1391	VOR/DME RNAV OR GPS RWY 3, AMDT 4A...
09/15/00	SC	HILTON HEAD ISLAND	HILTON HEAD	0/1392	LOC/DME RWY 21, AMDT 2...
09/15/00	SC	HILTON HEAD ISLAND	HILTON HEAD	0/1393	VOR/DME RNAV RWY 21, AMDT 4B...
09/15/00	SC	HILTON HEAD ISLAND	HILTON HEAD	0/1394	VOR/DME OR GPS–A, AMDT 9B...
09/15/00	TX	CHILDRESS	CHILDRESS MUNI	0/1369	VOR RWY 35, AMDT 9...
09/18/00	KS	INDEPENDENCE	INDEPENDENCE MUNI	0/1455	GPS RWY 17, ORIG...
09/18/00	TX	CHILDRESS	CHILDRESS MUNI	0/1490	GPS RWY 35, ORIG...
09/18/00	TX	DALHART	DALHART MUNI	0/1512	VOR/DME OR GPS RWY 35, AMDT 2A...
09/19/00	FL	CROSS CITY	CROSS CITY	0/1543	VOR OR GPS RWY 31, AMDT 17...
09/19/00	FL	FORT LAUDERDALE	FORT LAUDERDALE-EXECUTIVE	0/1554	LS RWY 8, AMDT 4A...
09/19/00	KY	LOUISVILLE	BOWMAN FIELD	0/1546	VOR RWY 24, AMDT 7A...
09/19/00	KY	LOUISVILLE	LOUISVILLE INTL-STANDFORD FIELD.	0/1544	NDB RWY 29, AMDT 19A...
09/19/00	NC	WILMINGTON	WILMINGTON INTL	0/1526	LOC BC RWY 17, AMDT 7...
09/19/00	NC	WILMINGTON	WILMINGTON INTL	0/1527	GPS RWY 6, AMDT 1...
09/19/00	NC	WILMINGTON	WILMINGTON INTL	0/1528	GPS RWY 24, AMDT 1...
09/20/00	TX	KERRVILLE	KERRVILLE MUNI/LOUIS SCHREINER FIELD.	0/1591	NDB OR GPS RWY 30, AMDT 3...
09/20/00	TX	KERRVILLE	KERRVILLE MUNI/LOUIS SCHREINER FIELD.	0/1592	LOC RWY 30, AMDT 3...
09/20/00	TX	KERRVILLE	KERRVILLE MUNI/LOUIS SCHREINER FIELD.	0/1593	VOR/DME RNAV OR GPS RWY 12, AMDT 2...
09/20/00	TX	KERRVILE	KERRVILLE MUNI/LOUIS SCHREINER FIELD.	0/1595	VOR OR GPS–A, AMDT 2...
09/21/00	AR	EL DORADO	SOUTH ARKANSAS REGIONAL AT GOODWIN FIELD.	0/1660	VOR RWY 22, AMDT 13C...
09/21/00	AR	EL DORADO	SOUTH ARKANSAS REGIONAL AT GOODWIN FIELD.	0/1660	VOR/DME OR GPS RWY 4, AMDT 9A...
09/21/00	AR	EL DORADO	SOUTH ARKANSAS REGIONAL AT GOODWIN FIELD.	0/1662	GPS RWY 22, ORIG–A...
09/21/00	AR	HELENA/WEST HELENA	THOMPSON-ROBBINS	0/1709	GPS RWY 35, AMDT 1...
09/21/00	AR	MORRILTON	PETIT JEAN PARK	0/1664	GPS RWY 3, ORIG–A...
09/21/00	AR	MOUNTAIN HOME	BAXTER COUNTY REGIONAL	0/1656	GPS RWY 23, ORIG–A...
09/21/00	AR	MOUNTAIN HOME	BAXTER COUNTY REGIONAL	0/1658	VOR/DME RNAV RWY 5, AMDT 9B...
09/21/00	AR	MOUNTAIN HOME	BAXTER COUNTY REGIONAL	0/1659	VOR–A, AMDT 9B...
09/21/00	AR	MOUNTAIN HOME	BAXTER COUNTY REGIONAL	0/1708	GPS RWY 5, ORIG–B...
09/21/00	AZ	KINGMAN	KINGMAN	0/1580	VOR/DME RWY 21 AMDT 6A... THIS REPLACES FDC 0/1048 IN TL 00–21.
09/21/00	CO	DURANGO	DURANGO-LA PLATA COUNTY	0/1614	ILS/DME RWY 2, AMDT 2...
09/21/00	CO	DURANGO	DURANGO-LA PLATA COUNTY	0/1623	VOR/DME RWY 2, AMDT 4...
09/21/00	KS	WICHITA	WICHITA MID-CONTINENT	0/1666	VOR/DME RNAV OR GPS RWY 1L, AMDT 1A...
09/21/00	KS	WICHITA	WICHITA MID-CONTINENT	0/1667	GPS RWY 32 ORIG...
09/21/00	KS	WICHITA	WICHITA MID-CONTINENT	0/1690	VOR/DME RNAV OR GPS RWY 19R, AMDT 1... THIS REPLACES FDC 0/0961.
09/21/00	MO	CAPE GIRARDEAU	CAPE GIRARDEAU REGIONAL	0/1670	ILS RWY 10, AMDT 10...
09/21/00	MS	GREENWOOD	GREENWOOD-LEFLORE	0/1583	ILS RWY 18, AMDT 5A...
09/21/00	OR	PORTLAND	PORTLAND INTL	0/1678	ILS RWY 10L, AMDT 1B...
09/21/00	OR	PORTLAND	PORTLAND INTL	0/1679	ILS RWY 28R, AMDT 12A...
09/21/00	OR	PORTLAND	PORTLAND INTL	0/1680	ILS RWY 28L, ORIG–A...

FDC date	State	City	Airport	FDC No.	SIAP
09/21/00	OR	PORTLAND	PORTLAND INTL	0/1682	ILS RWY 10R (CAT I, II AND III), AMDT 31...
09/21/00	PA	CLEARFIELD	CLEARFIELD-LAWRENCE	0/1581	GPS RWY 30 ORIG...
09/21/00	PA	CLEARFIELD	CLEARFIELD-LAWRENCE	0/1582	VOR RWY 30 AMDT 5...
09/21/00	PA	MYERSTOWN	DECK	0/1604	VOR/DME OR GPS–A AMDT 1A...
09/21/00	TX	PAMPA	PERRY LEFORS FIELD	0/1694	VOR/DME OR GPS–A, AMDT 2...
09/21/00	TX	PAMPA	PERRY LEFORS FIELD	0/1695	NDB RWY 17, AMDT 4...
09/21/00	TX	PAMPA	PERRY LEFORS FIELD	0/1700	GPS RWY 17, ORIG...
09/21/00	VA	PETERSBURG	PETERSBURG MUNI	0/1673	NDB OR GPS RWY 5 AMDT 4B...
09/21/00	VA	PETERSBURG	PETERSBURG MUNI	0/1674	LOC RWY 5 ORIG–C...
09/22/00	DC	WASHINGTON	WASHINGTON DULLES INTL	0/1746	ILS RWY 12 AMDT 6C...
09/25/00	TX	PLAINVIEW	HALE COUNTY	0/1827	VOR RWY 4, AMDT 9...
09/25/00	TX	PLAINVIEW	HALE COUNTY	0/1844	GPS RWY 22, ORIG...
09/26/00	TX	SPEARMAN	SPEARMAN MUNI	0/1911	VOR/DME OR GPW RWY 2, ORIG...
09/27/00	MO	KANSAS CITY	KANSAS CITY INTL	0/1947	ILS RWY 9, AMDT 11A...
09/27/00	ND	MOHALL	MOHALL MUNI	0/1981	VOR/DME OR GPS RWY 31, AMDT 2B...
09/27/00	TX	WICHITA FALLS	SHEPPARD AFB/WICHITA FALLS MUNI.	0/1923	NDB OR GPS RWY 33L, AMDT 10A...
09/27/00	TX	WICHITA FALLS	SHEPPARD AFB/WICHITA FALLS MUNI.	0/1924	ILS RWY 33L, AMDT 12B...
09/28/00	TX	DALHART	DALHART MUNI	0/2001	VOR RWY 17, AMDT 12A...
09/28/00	TX	DALHART	DALHART MUNI	0/2002	GPS RWY 17, ORIG...

[FR Doc. 00–25634 Filed 10–4–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30204; Amdt. No. 2012]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125); telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The

provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on September 29, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective November 2, 2000*

Huntsville, AL, Huntsville Intl-Carl T. Jones Field, ILS RWY 36R, Orig
Fayetteville, AR, Drake Field, MLS RWY 34, Amdt 2, CANCELLED
Prineville, OR, Prineville, NDB RWY 10, Orig
Fredericksburg, VA, Shannon, VOR RWY 24, Amdt 7A, CANCELLED
Martinsburg, WV, Eastern West Virginia Regional/Shepherd Field, ILS RWY 26, Amdt 6

** * * Effective November 30, 2000*

Bethel, AK, Bethel, MLS RWY 36, Orig, CANCELLED
Cold Bay, AK, Cold Bay, MLS RWY 32, Amdt 1, CANCELLED
Cold Bay, AK, Cold Bay, GPS RWY 32, Orig-A
Fairbanks, AK, Fairbanks Intl, RADAR–1, Amdt 2, CANCELLED
King Salmon, AK, King Salmon, VOR OR TACAN RWY 11, Amdt 11A
King Salmon, AK, King Salmon, NDB RWY 11, Amdt 2A
Kodiak, AK, Kodiak, GPS RWY 25, Orig-A
Port Heiden, AK, Port Heiden, MLS RWY 5, Orig, CANCELLED
St. Paul Island, AK, St. Paul Island, MLS RWY 18, Orig-A, CANCELLED
Lafayette, IN, Purdue University, NDB RWY 10, Amdt 13
Lafayette, IN, Purdue University, ILS RWY 10, Amdt 11
Lafayette, IN, Purdue University, VOR/DME RNAV RWY 28, Amdt 6
Lafayette, IN, Purdue University, RNAV RWY 10, Orig
Lafayette, IN, Purdue University, RNAV RWY 28, Orig
Burlington, IA, Burlington Regional, RNAV RWY 36, Orig
Picayune, MS, Picayune Muni, VOR–A, Orig
McCook, NE, McCook Muni, RNAV RWY 21, Orig
O'Neill, NE, The O'Neill Muni-John L. Baker Field, RNAV RWY 13, Orig
O'Neill, NE, The O'Neill Muni-John L. Baker Field, RNAV RWY 13, Orig
Islip, NY, Long Island MacArthur, NDB OR GPS RWY 6, Amdt 19
Islip, NY, Long Island MacArthur, ILS RWY 6, Amdt 22
Islip, NY, Long Island MacArthur, ILS RWY 24, Amdt 2
New York, NY, La Guardia, Copter RNAV 250, Orig
Saranac Lake, NY, Adirondack Regional, ILS RWY 23, Amdt 8
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 28, Amdt 22
Anderson, SC, Anderson Regional, RNAV RWY 5, Orig
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 17, Amdt 11
Wendover, UT, Wendover, VOR/DME OR TACAN–B, Orig
Wendover, UT, Wendover, VOR/DME OR TACAN RWY 26, Orig
Wendover, UT, Wendover, VOR/DME OR TACAN–A Amdt 2, CANCELLED
Wendover, UT, Wendover, RNAV–A, Orig
Wendover, UT, Wendover, RNAV RWY 26, Orig
Black River Falls, WI, Black River Falls Area, NDB RWY 8, Amdt 6

[FR Doc. 00–25635 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301030; FRL–6599–1]

RIN 2070–AB

Phosphorous Acid; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a

tolerance for residues of phosphorous acid and its ammonium, sodium and potassium salts in or on all food commodities when used as an agricultural fungicide on food crops. Agtrol International submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of phosphorous acid and its ammonium, sodium and potassium salts.

DATES: This regulation is effective October 5, 2000. Objections and requests for hearings, identified by docket control number [OPP–301030], must be received by EPA, on or before December 4, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number [OPP–301030] in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Driss Benmhend, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9525; and e-mail address: benmhend.driss @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301030. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of December 16, 1999 (64 FR 70255) (FRL–6393–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Agtrol International, 7322 Southwest Freeway, Suite 1400, Houston, TX 77074. This notice included a summary of the petition prepared by the petitioner Agtrol International.

EPA received a comment from Aventis CropScience that requested EPA deny the waiver for residue chemistry data requirements for phosphorous acid. Aventis claims that phosphorous acid does not degrade rapidly in the environment, and that significant residues of phosphorous acid are expected to be found in or on raw agricultural commodities treated with products containing the active ingredient phosphorous acid. These residues of phosphorous acid according to Aventis, in or on food crops, cannot be considered to be negligible. EPA reviewed the data submitted by Aventis and concluded the following:

1. Phosphorous acid and its salts are important fertilizer compounds and used in significant quantities in this country. Tests performed using the Agtrol product showed an LD_{50} of greater than 5,000 milligrams per kilogram of bodyweight. Human toxicity from consumption of crops treated with phosphorus acid fertilizers would be well known, if it occurred. The lack of reported dietary toxicity from consumption of crops treated with phosphorous acid fertilizers is further supporting evidence that use of phosphorous acid applications as a fungicide should not result in dietary toxicity. EPA does not require residue chemistry data in cases where the toxicity is so low and the use pattern will result in exposures much lower than the highest dose tested without an effect.

2. The Agency does note that the information provided by Aventis on the dissociation of phosphorous acid actually supports the tolerance exemption request. Further details on the dissociation of phosphorous acid at a pH of 7 indicates that the equilibrium ratio of acid phosphite ion to undissolved phosphorous acid is 500,000 to 1, and that the ratio of phosphite ion to acid phosphite ion is 2 to 1. This indicates the presence of almost no undissociated phosphorous acid.

3. Phosphorous is a required substance in the human body in the form of phosphates. This and the above are among the reasons why EPA does not regulate residues of phosphorous acid arising from the application of another pesticide which dissociates to phosphorous acid and is produced by Aventis. Also included were toxicological information provided by Aventis which proved to EPA there was no need to monitor the phosphorous acid residue.

As a result, EPA does not believe phosphorous acid and its salts should be denied the exemption from the requirement of a tolerance because of the reasons given by Aventis CropScience.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of phosphorous acid.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for 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(c)(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....'' Additionally, section 408(b)(2)(D) requires that 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 performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information 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.

1. *Acute toxicity*. Phosphorous acid is of high acute toxicity through the oral, dermal, and inhalation routes of exposure. Phosphorous acid is corrosive to eyes and skin. However, results of studies conducted on Agri-Phostrol Agricultural Fungicide, the end-use product for which Agtrol International has applied for registration, demonstrate that this product has a low order of toxicity. The acute oral LD_{50} in the rat was greater than 5,000 milligrams per kilograms of bodyweight. The acute dermal LD_{50} in the rat was greater than 5,000 milligrams per kilogram of bodyweight. The acute inhalation LC_{50} in the rat was greater than 2.06 milligrams per liter. The product was found slightly irritating to the skin of guinea pigs and produced irritation to the eyes of rabbits that cleared within 48 hours. The product was not positive in guinea pigs for skin sensitization.

2. *Developmental/reproductive effects, chronic effects and carcinogenicity*. There is adequate information available from literature sources to characterize the toxicity of phosphorous acid. Phosphorous acid can affect human health through inhalation of mist, ingestion, and contact with the skin and eyes. It will cause corrosive effects (burns or irreversible damage) to the eyes, skin, throat, digestive tract, upper respiratory tract and nose. Signs of overexposure to this chemical are severe burning of eyes and skin, possible nausea and vomiting, coughing, burning and tightness of the chest and shortness of breath. Based on corrosiveness and the current use patterns for the mineral acids, EPA did not require these studies as part of the Reregistration Eligibility Decision (RED) on the Mineral Acids (EPA 738–R–029; December 1993).

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*. No dietary exposure is expected. When phosphorous acid is applied to growing crops in the environment, it rapidly dissociates to form hydrogen and phosphite ions.

2. *Drinking water exposure*. No significant exposure is expected to result from phosphorous acid because it is likely to be degraded in the terrestrial and aquatic environments to hydrogen and phosphite ions. The effects on humans resulting from anticipated concentrations to these ions due to agricultural uses will be moderated by natural means. Moreover, there is no potential for either ion to be significantly accumulated by the biota. Phosphorous acid is not regulated under the Safe Drinking Water Act; therefore, no maximum contaminant level (MCL) has been established for it.

3. *Other non-occupational exposure*. The primary non-pesticidal uses of phosphorous acid are industrial in closed production systems. There are no residential, indoor, school or day care uses proposed for this product. The proposed use pattern is for agricultural food crops. Therefore, there is no potential for non-occupational exposure to the general population.

Dermal inhalation exposures are expected to be minimal to applicators because of the label mitigating language.

VI. Cumulative Effects

Agri-Phostrol Agricultural Fungicide may share a common metabolic mechanism with other salts of phosphorous acid (such as calcium); however, due to the lack of toxicity of Agri-Phostrol Agricultural Fungicide and lack of reported dietary toxicity associated with the use of phosphorous fertilizers on crops, no cumulative effect from the use of Agri-Phostrol Agricultural Fungicide is expected.

VII. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. general population*. Aggregate exposure to phosphorous acid is expected to be minimal. There is very little potential for exposure to phosphorous acid in drinking water and from non-dietary, non-occupational exposures. This chemical will be applied to agricultural food crops by commercial applicators. Once released into the environment, the chemical rapidly dissociates to form hydrogen and phosphite ions. The hydrogen ions affect pH, but this is moderated by natural means. Many phosphite salts are generally recognized as safe (GRAS). Therefore, the health risk to humans is negligible based on the low toxicity of these ions and a low application rate for the active ingredient, and one can conclude that there is a reasonable certainty that no harm will result from aggregate exposure to phosphorous acid.

2. *Infants and children*. Aggregate exposure to phosphorous acid is expected to be minimal. There is very little potential for exposure to phosphorous acid in drinking water and from non-dietary, non-occupational

exposures. This chemical will be applied to agricultural food crops. Once released into the environment, the chemical rapidly dissociates to form hydrogen and phosphite ions. The hydrogen ions affect pH, but this is moderated by natural means. Many phosphite salts are ''GRAS.'' Therefore, the health risk to humans is negligible based on the low toxicity of Phostrol™ Agricultural Fungicide and these ions and a low application rate for the active ingredient. One can conclude that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to phosphorous acid residues.

VIII. Other Considerations

Phosphorous acid and its salts are rapidly dissociated in the environment to yield hydrogen and phosphite ions. Release of hydrogen ions will increase the pH of the plant's surface, which will be moderated by the amount of neutralizing ions present, the buffering capacity, and the amount of dilution possible. Phosphite ions are available for uptake by plants usually in the form of ammonium, calcium, and potassium and sodium phosphites (phosphite salts).

A. Endocrine Disruption

Phosphorous acid does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Further, Agtrol International is not aware of any evidence that phosphorous acid has any effect on endocrine function. Last, there is no evidence that phosphorous acid bioaccumulates in the environment.

B. Analytical Method

Agtrol International has not submitted a practical analytical method for the detection and measurement of pesticide chemical residues. Phosphorous acid *per se* is not expected to be found in or on raw agricultural commodities, because once this chemical is released into the environment it dissociates rapidly to form the less toxic compounds, hydrogen and phosphite ions.

C. Codex Maximum Residue Level

No maximum residue levels (MRLs) have been established for phosphorous acid by the Codex Alimentarius Commission (CODEX).

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301030 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 4, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

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 the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301030, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the

material submitted shows the following: There is a 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(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) 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 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); 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 or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption 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. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final 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: September 27, 2000.

Susan B. Hazen,

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), 346(a) and 371.

2. Section 180.1210 is added to subpart D to read as follows:

§ 180.1210 Phosphorous acid, exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of phosphorous acid and its ammonium, sodium and potassium salts in or on all food commodities when used as an agricultural fungicide on food crops.

[FR Doc. 00–25598 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 87 and 101

[FCC 00–272; WT Docket No. 99–327]

24 GHz Service; Licensing and Operation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adds and amends regulations governing the licensing and operation of the 24.25–24.45 GHz and 25.05–25.25 GHz bands. In addition, the Commission adopts competitive bidding rules to select among mutually exclusive applicants for licenses in these bands. We expect such amendments to promote the effective use of the 24 GHz band and to accommodate deployment of point-to-point, point-to-multipoint, and multipoint-to-multipoint fixed wireless technology at 24 GHz.

DATES: Effective December 4, 2000, except for §§ 101.527 and 101.529, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Public comments on the information collections contained in the *Report and Order* are due November 6, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room 4–C207, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Pollak, Shellie Blakeney or Paul Moon of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, or Nese Guendelsberger of the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (*R&O*) in WT Docket No. 99–327, FCC 00–272, adopted July 25, 2000, and released August 1, 2000. The full text of the *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The full text of the *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. The full text of the *R&O* may also be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00272>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

Synopsis of the *Report and Order*

The *R&O* gives maximum regulatory flexibility to 24 GHz Service providers. Both incumbent 24 GHz band licensees and new licensees will be governed by part 101 of the Commissions Rules, 47 CFR part 101. The Commission will assign the 24 GHz band for licensing throughout the United States by 172 Economic Areas. The Commission also authorized additional economic areas for licensing covering the following United States territories and possessions: Guam, Northern Mariana Islands, Puerto Rico, the United States Virgin Islands, America Samoa and the Gulf of Mexico. The Commission will license the 24 GHz band in 40 MHz flexible channel pairs, five per economic area. The *R&O* also permitted 24 GHz licensee more flexibility in system design, by designating that either the upper or lower side of the 40 MHz channel pairs can be used for the nodal station or the subscriber station.

The *R&O* allowed 24 GHz band licensees to offer a variety of fixed services. 24 GHz providers may elect their regulatory status as either common carrier or private, under the conditions set forth in Title II and III of the Communications Act of 1934, as amended. Regarding service and construction requirements, the *R&O* adopted a ten-year license term and required a ''substantial service'' showing at the ten year license renewal date. Substantial service is defined as a ''service'' that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. In addition, the following ''safe harbor'' examples achieve compliance: (a) A demonstration of four links per million population within a service area; (b) a demonstration of service to an area that has limited wireless or wireline telecommunication services.

Partitioning and disaggregation are permitted, and any partitionee/disaggregatee is authorized to hold its license for the remainder of the original licensee's term. The *R&O* also clarified that licensees may aggregate 24 GHz band spectrum.

The *R&O* adopted flexible technical standards as well that are both consistent with the Commission's part 101 Rules, 47 CFR part 101. These rules include, but are not limited to the revision of the emission mask for the 24 GHz band; allowing the use of non-directional antennas and one foot parabolic antennas; eliminating individual licensing for nodal stations; and allowing a maximum contiguous bandwidth of up to 200 MHz through aggregation.

The *R&O* provides that the competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules will apply to the auction of licenses in the 24 GHz band unless otherwise provided therein. The application of the part 1 rules to the 24 GHz band will include any amendments that may be adopted in the ongoing part 1 proceeding. Consistent with current practice, the Wireless Telecommunications Bureau (Bureau) will seek comment on matters such as auction design in a public notice prior to the auction. The *R&O* adopts a ten-day period for filing petitions to deny against long-form applications and delegates to the Bureau the discretion to implement a five-day period in exigent circumstances.

The *R&O* also adopts a three-tiered approach to bidding credits. Entrepreneurs, which are defined as entities having average annual gross revenues not exceeding $40 million for the preceding three years, are eligible to receive a 15 percent bidding credit. Small businesses, which are defined as entities having average annual gross revenues not exceeding $15 million for the preceding three years, are eligible to receive a 25 percent bidding credit. Very small businesses, which are defined as entities having average annual gross revenues not exceeding $3 million for the preceding three years, are eligible to receive a 35 percent bidding credit.

Finally, the *R&O* adopts attribution rules for the 24 GHz band. Under these rules, the Commission will attribute to the applicant the gross revenues of its controlling interests and their affiliates in assessing whether the applicant is qualified to take advantage of the Commission's small business provisions.

Regulatory Flexibility Act Final Analysis

As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Amendment to parts 1, 2, and 101 of the Commission's Rules To License Fixed Services at 24 GHz, WT Docket 99–327, Notice of Proposed Rulemaking (*NPRM*), 64 FR 71088 (rel. Dec. 20, 1999), issued in this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. No comments were filed in direct response to the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the Regulatory Flexibility Act.

I. Need for, and Objectives of, the Report and Order in the Report and Order

We adopt rules for licensing and operation of the 24.25–24.45 GHz and 25.05–25.25 GHz bands. In addition, the Commission adopts competitive bidding rules to select among new licensees for this band. We amend parts 1, 2, 87 and 101 of the Commission's Rules and expect such amendments to promote the effective use of the 24 GHz band and to accommodate deployment of point-to-point, point-to-multipoint, and multipoint-to-multipoint fixed wireless technology at 24 GHz. The rule changes we adopt today establish a flexible regulatory and licensing framework, which will enhance opportunities to provide a broadband wireless service, foster effective competition, and further our efforts for consistent rule application regarding broadband wireless services.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were filed in direct response to the IRFA. However, as described in Section V, we have taken into account all comments submitted generally by small entities.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The Regulatory Flexibility Act directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,''

and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. The rules we are adopting today will affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry that provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. However, TRW is not a small entity. Therefore, only one incumbent licensee in the 24 GHz band is a small business entity. The proposals also affect potential new licensees on the 24 GHz band. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small business'' for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small business'' in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, we shall use this definition of ''small business'' and apply it to the 24 GHz band under the name ''entrepreneur.'' With regard to ''small business,'' we shall adopt the definition of ''very small business'' used for 39 GHz licenses and PCS C and F block licenses: Businesses with average annual gross revenues for the three preceding years not in excess of $15 million. Finally, ''very small business'' in the 24 GHz band shall be defined as an entity with average gross revenues not to exceed $3 million for the preceding three years. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *R&O* adopts rules that will entail reporting, recordkeeping, and/or third-party consultation. However, the Commission believes that these requirements are the minimum needed. By this *R&O,* we require licensees to notify the Commission within 30 days of a change in regulatory status between common carrier and/or non-common carrier. We also require licensees to substantiate their renewal expectancies with information demonstrating substantial service. In addition, because we consider partitioning and disaggregation to be a form of license assignment, we require such action to receive Commission approval via application for assignment on FCC Form 603. With regard to alien ownership, we require licensees to amend their FCC Form 602 to reflect any changes in foreign ownership information, together with the initial information required by FCC Form 601.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The Regulatory Flexibility Act requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In the *NPRM,* we noted that the Commission originally used Standard Metropolitan Statistical Areas (SMSA) to license the DEMS service, which failed to include rural communities because SMSAs are too large. We then proposed to reduce the licensing service area in order to: (1) Include rural communities; (2) maximize the opportunities for the dissemination of 24 GHz licenses among a wide array of entities; and (3) facilitate efficient use of this spectrum. While adopting Economic Areas (EAs) in this *R&O,* we cite to our experience with the 39 GHz auction in which the majority of small, very small and rural qualified bidders won licenses. We also note that our decision to offer flexible partitioning and disaggregation/aggregation will speed service to rural areas and encourage the participation of smaller entities at auction. In addition, we adopt flexible bidding credits for smaller entities, while noting that small entities may further form bidding consortiums to prevail at auction. In sum, we believe that adopting EAs for licensing this service will serve the public interest best, in light of the overall changes we are making here to specifically benefit small entities.

In this *R&O,* we authorize 24 GHz licensees to provide common carrier service, non-common carrier service, or both under a single license. We also adopt our proposal in the *NPRM* to require licensees to notify us within 30 days of such a change in regulatory status. However, we minimize the reporting burden by declining to require licensees to obtain Commission authorization prior to a change in regulatory status. In addition, we decline to require that the licensees detail the specific services they seek to provide. This is consistent with our streamlined application process, and it serves to simplify the reporting requirements for small entities.

In this *R&O,* we adopt a ten-year license term in conjunction with a renewal expectancy based on substantial service. In order to demonstrate substantial service,

licensees must provide the Commission with a description of geographic coverage and population served or links installed, and a description of how the service complies with the substantial service requirement. In addition, licensees must submit copies of any violations or proceedings that relate to their renewal expectancy. While taking into account this burden on small entities, we note that such recordkeeping ensures that the 24 GHz band is not ''warehoused'' or abused to the preclusion of small business opportunities. In this context, we also note that we declined here to adopt a license term in excess of ten years, in order to afford more opportunities for entities, including small businesses, to capture licenses that fail to meet substantial service.

In order to overcome entry barriers for smaller entities, we adopt here flexible partitioning and disaggregation rules. Parties to partitioning and disaggregation agreements may negotiate whether one party or both will be responsible for demonstrating fulfillment of pertaining construction requirements. Parties may also combine partitioning and disaggregation agreements. Any such agreements are treated, however, as a form of license assignment and therefore require Commission approval via filing FCC Form 603. Licensees who received bidding credits at auction and who subsequently partition or disaggregate are also subject to the unjust enrichment provision contained in our Rules. We believe that these recordkeeping and unjust enrichment restrictions are the minimum needed, when weighed against the significant benefits to small entities that result from the flexible approach we are adopting here.

In order to supervise effectively the compliance of 24 GHz licensees with regard to our alien ownership restrictions, we require both common carrier and non-common carrier licensees in the 24 GHz band to provide the alien ownership information requested in FCC Form 601, as well as amendments in FCC Form 602 to reflect any changes in foreign ownership information. This enforcement is a mutual benefit to all licensees and a minimal reporting burden.

In the *R&O,* we adopt a ten-day period for filing petitions to deny long-form applications. We decline to adopt a five-day period in order to give small businesses more flexibility in challenging license awards. We also adopt a third level of small business bidding credits in addition to those proposed in the *NPRM,* in respect of the fact that the capital costs of operating facilities in the 24 GHz band will vary widely. Finally, we adopt attribution rules based on a ''controlling interest'' standard to determine eligibility for our small business provisions. We believe these rules, along with our affiliation rules, will prevent larger firms from illegitimately seeking status as a small business. All of these decisions regarding competitive bidding procedures will work to the benefit of small entities.

Report to Congress

The Commission will send a copy of this *R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and this FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Paperwork Reduction Analysis

This *R&O* contains either a new or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on revision to the information collections contained in the *R&O.* As required by the Paperwork Reduction Act of 1995, Public Law 104–13, public comments on the information collections contained in the *R&O* are due November 6, 2000.

Comments on the modified and proposed information collections contained in the *R&O* should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. These comments should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to <jboley@fcc.gov>. Furthermore, a copy of any such comments should be submitted to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to <edward__c.__springer@omb.eop.gov>.

OMB Approval Number: 3060–XXXX.

Title: Section 101.527 Construction requirements of 24 GHz operations & 101.529 Renewal Expendancy criteria for 24 GHz licenses.

Form No: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 952.

Estimated Time Per Response: 20 hours.

Total Annual Burden: 14,399 hours.

Total Annual Cost: $952,000.

Needs and Uses: The information required in Sections 101.527 and 101.529 is used to determine whether a renewal applicant of a 24 GHz Service system has complied with the requirements to provide substantial service by the end of the ten-year initial license term. The FCC uses the information to determine whether an applicant's license will be renewed at the end of the license period.

Ordering Clauses

The actions of the Commission herein are taken pursuant to Sections 4(i), 257, 303, 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303, 309(j).

The rules in this Report and Order are effective December 4, 2000, except for §§ 101.527 and 101.529, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Public comments on the information collections contained in the *Report and Order* are due November 6, 2000.

Pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Radio.

47 CFR Parts 2, 87, and 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 87 and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

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

2. In Table 1 in § 1.1307(b)(1), the entry for Local Multipoint Distribution Service is removed and a new entry is added in its place, to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) * * *

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if
* * * *	* * *
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101).	*Non-building-mounted antennas:* height above ground level to lowest point of antenna <10 m *and* power>1640 W EIRP *Building-mounted antennas:* power >1640 W EIRP LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radio-frequency exposure specified in § 1.1310.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303 and 336 unless otherwise noted.

§ 2.106 [Amended]

4. Section 2.106 is amended by revising pages 71 and 72 of the Table to read as follows:

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22.5-27.5 GHz (SHF) Page 71

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
22.5-22.55 FIXED MOBILE			22.5-22.55 FIXED MOBILE US211		Fixed Microwave (101)
22.55-23.55 FIXED INTER-SATELLITE MOBILE S5.149			22.55-23.55 FIXED INTER-SATELLITE MOBILE S5.149 US278		Satellite Communications (25) Fixed Microwave (101)
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE		Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340			23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
24-24.05 AMATEUR AMATEUR-SATELLITE S5.150			24-24.05 S5.150 US211	24-24.05 AMATEUR AMATEUR-SATELLITE S5.150 US211	ISM Equipment (18) Amateur (97)
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active) S5.150			24.05-24.25 RADIOLOCATION US110 G59 Earth exploration-satellite (active) S5.150	24.05-24.25 Radiolocation US110 Amateur Earth exploration-satellite (active) S5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
24.25-24.45 FIXED	24.25-24.45 RADIONAVIGATION	24.25-24.45 RADIONAVIGATION FIXED MOBILE	24.25-24.45	24.25-24.45 FIXED	Fixed Microwave (101)

24.45-24.75 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIONAVIGATION S5.533	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIONAVIGATION S5.533	24.45-24.65 INTER-SATELLITE RADIONAVIGATION S5.533		Satellite Communications (25)
	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	24.65-24.75 FIXED INTER-SATELLITE MOBILE S5.533 S5.534	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)		
24.75-25.25 FIXED	24.75-25.25 FIXED-SATELLITE (Earth-to-space) S5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) S5.535 MOBILE S5.534	24.75-25.05 RADIONAVIGATION	24.75-25.05 FIXED-SATELLITE (Earth-to-space) NG167 RADIONAVIGATION	Satellite Communications (25) Aviation (87)
			25.05-25.25	25.05-25.25 FIXED-SATELLITE (Earth-to-space) NG167 FIXED	Satellite Communications (25) Fixed Microwave (101)
25.25-25.5 FIXED INTER-SATELLITE S5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-27 Standard frequency and time signal-satellite (Earth-to-space) Earth exploration-satellite (space-to-space)	Note: In its *Manual*, NTIA has added a primary inter-satellite service allocation to the band 25.25-27.5 GHz, limited the use of this allocation by adopting footnote S5.536, and has changed the directional indicator for the Earth exploration-satellite service allocation in the band 25.5-27 GHz from space-to-space to space-to-Earth.
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) S5.536A S5.536B FIXED INTER-SATELLITE S5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.5-27 FIXED MOBILE Standard frequency and time signal-satellite (Earth-to-space) Earth exploration-satellite (space-to-space)		
27-27.5 FIXED INTER-SATELLITE S5.536 MOBILE	27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE S5.536 S5.537 MOBILE		27-27.5 FIXED MOBILE	27-27.5 Earth exploration-satellite (space-to-space)	

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* * * * *

PART 87—AVIATION SERVICES

5. The authority citation for part 87 is revised to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

§ 87.173 [Amended]

6. Section 87.173(b), the Frequency Table, is amended in the first column by revising ''24250–25250 MHz'' to read ''24750–25050 MHz''.

PART 101—FIXED MICROWAVE SERVICES

7. The authority citation for part 101 continues to read as follows:

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

8. Section 101.1 is amended by revising paragraph (b) to read as follows:

§ 101.1 Scope and authority.

* * * * *

(b) The purpose of the rules in this part is to prescribe the manner in which portions of the radio spectrum may be made available for private operational, common carrier, 24 GHz Service and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

* * * * *

9. Section 101.3 is amended by adding a definition for ''24 GHz Service'' immediately preceding the alphabetical definitions and adding a definition for ''User or Subscriber Station,'' in alphabetical order, and by revising the definitions of ''Digital Electronic Message Service'' and ''Nodal Station,'' to read as follows:

§ 101.3 Definitions.

* * * * *

24 GHz Service. A fixed point-to-point, point-to-multipoint, and multipoint-to-multipoint radio system in the 24.25–24.45 GHz band and in the 25.05–25.25 GHz band consisting of a fixed main (nodal) station and a number of fixed user terminals. This service may encompass any digital fixed service.

* * * * *

Digital Electronic Message Service. A two-way end-to-end fixed radio service utilizing digital termination systems for the exchange of digital information in the frequency bands 10,550–10,680 MHz, 18,820–18,920 MHz, and 19,160–19,260 MHz. This service may also make use of point-to-point microwave facilities, satellite facilities or other communications media to interconnect digital termination systems to comprise a network.

* * * * *

Nodal station. The central or controlling stations in a microwave radio system operating on point-to-multipoint or multipoint-to-multipoint frequencies with one or more user stations or internodal links.

* * * * *

User or subscriber station. The station(s) in a microwave radio system operating at the users' premises on point-to-multipoint or multipoint-to-multipoint frequencies and communicating with one or more nodal stations.

* * * * *

10. Section 101.21 is amended by revising paragraph (g) to read as follows:

§ 101.21 Technical content of applications.

* * * * *

(g) Each application in the Local Multipoint Distribution Service and 24 GHz Service must contain all technical information required by FCC Form 601 and any other applicable form or associated Public Notices and by any applicable rules in this part.

11. Section 101.45 is amended by revising paragraph (b) introductory text to read as follows:

§ 101.45 Mutually exclusive applications.

* * * * *

(b) A common carrier application, except in the Local Multipoint Distribution Service and in the 24 GHz Service, will be entitled to comparative consideration with one or more conflicting applications only if:

* * * * *

12. Section 101.61 is revised to read as follows:

§ 101.61 Certain modifications not requiring prior authorization in the Local Multipoint Distribution Service and 24 GHz Service

In the Local Multipoint Distribution Service (LMDS) licensees may add, remove, or relocate facilities within the area authorized by the license without prior authorization. Upon request by an incumbent licensee or the Commission, an LMDS licensee shall furnish the technical parameters, location and coordinates of the completion of the addition, removal, relocation or modification of any of its facilities within the BTA. The LMDS licensee must provide such information within ten (10) days of receiving a written request. This section also applies to 24 GHz licensees that are licensed according to Economic Areas.

13. Section 101.63 is amended by revising paragraph (a) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

(a) Each Station, except in Local Multipoint Distribution Services, 24 GHz Service and the 38.6–40.0 GHz band, authorized under this part must be in operation within 18 months from the initial date of grant.

* * * * *

14. Section 101.101 is amended by revising the entry for 24,250–25,250 MHz in the table to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service				
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 22, 24, 25, 74, 78 & 100)	Notes
*	*	*	*	*	*
24,250–25,250	CC	OFS.			
*	*	*	*	*	*

* * * * *

15. Section 101.105 is amended by revising the text of paragraph (c)(6) preceding the table to read as follows:

§ 101.105 Interference protection criteria.

* * * * *

(c) * * *

(6) Each application for new or modified nodal station on channels numbered 4A, 4B, 7, 9, and 19/20 in the 10.6 GHz band must demonstrate that all existing co-channel stations are at least 56 kilometers from the proposed nodal station site. Applicants for these channels must certify that all licensees and applicants for stations on the adjacent channels within 56 kilometers of the proposed nodal station have been notified of the proposed station and do not object. Alternatively, or if one of the affected adjacent channel interests does object, the applicant may show that all affected adjacent channel parties are provided a C/I protection ratio of 0 dB. An applicant proposing to operate at an AAT greater than 91 meters must reduce its EIRP in accordance with the following table; however, in no case may EIRP exceed 70 dBm on the 10.6 GHz channels:

* * * * *

16. Section 101.109(c) is amended in the table by revising the entry for 24, 250 to 25,250 MHz and by revising footnote 7 and the note to footnote 7 to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency band (MHz)	Maximum authorized bandwidth
* * * * *	
24,250 to 25,250	40 MHz [7]
* * * * *	

[7] For channel block assignments in the 24,250–25,250 MHz and 38,600–40,000 MHz bands, the authorized bandwidth is equivalent to an unpaired channel block assignment or to either half of a symmetrical paired channel block assignment. When adjacent channels are aggregated, equipment is permitted to operate over the full channel block aggregation without restriction.

Note to Footnote 7: Unwanted emissions shall be suppressed at the aggregate channel block edges based on the same roll-off rate as is specified for a single channel block in § 101.111(a)(1) or in § 101.111(a)(2)(ii) and (iii) as appropriate.

17. Section 101.111 is amended by adding paragraph (a)(2)(iv) and by revising paragraph (a)(4) introductory text to read as follows:

§ 101.111 Emission limitations.

(a) * * *

(2) * * *

(iv) The emission mask for 24 GHz Service used the equation in paragraph (a)(2)(ii) of this section applies only to the edge of each channel, but not to subchannels established by licensees. The value of P in the equation is for the percentage removed from the carrier frequency and assumes that the carrier frequency is the center of the actual bandwidth used. The emission mask can be satisfied by locating a carrier of the subchannel sufficiently far from the channel edges so that the emission levels of the mask are satisfied. The 24 GHz emission mask shall use a value B (bandwidth) of 40 MHz, for all cases even in the case where a narrower subchannel is used (for instance the actual bandwidth is 10 MHz) and the mean output power used in the calculation is the sum of the output power of a fully populated channel.

* * * * *

(4) For DEMS channels in the 17,700–19,700 MHz band:

* * * * *

18. In § 101.115(c), the table is amended by revising the entry for ''24,250 to 25,250'' and footnote 10 to read as follows:

§ 101.115 Directional antennas.

* * * * *

(c) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beam-width to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
*	*		*	*		*		*		*
24,250 to 25,250 [10]	A	2.8	38	25	29	33	36	42	55	60
	B	2.8	38	20	24	28	32	35	36	45
*	*		*	*		*		*		*

[1] If a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.

* * * * * * *

[10] DEMS User Station antennas in this band must meet performance Standard B and have a minimum antenna gain of 34 dBi. The maximum beamwidth requirement does not apply to DEMS User Stations. DEMS Nodal Stations need not comply with these standards. Stations authorized to operate in the 24,250–25,250 MHz band do not have to meet these standards, however, the Commission may require the use of higher performance antennas where interference problems can be resolved by the use of such antennas.

* * * * *

19. Section 101.139 is amended by adding paragraph (g) to read as follows:

§ 101.139 Authorization of transmitters.

* * * * *

(g) After January 1, 2001, a transmitter operating on the 24,250–24,450 MHz and 25,050–25,250 MHz bands must meet the emission limitation set forth in § 101.111(a)(2)(ii).

20. Section 101.141 is amended by revising paragraph (a) introductory text to read as follows:

§ 101.141 Microwave modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 19.7 GHz band must, with appropriate multiplex equipment, comply with the following additional requirements:

* * * * *

21. Section 101.147 is amended by:

A. Revising the fifth sentence of paragraph (r) introductory text.

B. Revising the introductory text of paragraph (r)(9) preceding the table and paragraphs (r)(9)(i) and (r)(9)(ii).

C. Adding paragraph (r)(9)(iii).

The additions and revisions read as follows:

§ 101.147 Frequency assignments.

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz.* * * * Licensees, except 24 GHz band licensees, may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. * * *

* * * * *

(9) The following frequencies are available for point-to-multipoint DEMS Systems, except that channels 35–39 were available only to existing 18 GHz DEMS licensee as of March 14, 1997 and are now available by geographic area licensing in the 24 GHz Service to be used as the licensee desires. The 24 GHz spectrum can be aggregated or disaggregated and does not have to be used in the transmit/receive manner shown except to comply with international agreements along the US borders. Systems operating on Channels 25–34 must cease operations as of January 1, 2001, except that those stations on these channels within 150 km of the coordinates 38°48′ N/76°52′ W (Washington, DC, area) and 39°43′ N/101°46′ W (Denver, Colorado area) must cease operations of June 5, 1997:

* * * * *

(i) Each station on channels 25 through 34 will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair on channels 25 through 34 may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 101.105 are met.

(iii) Channels 35 through 39 are licensed in the 24 GHz Service by Economic Areas for any digital fixed service. Channels may be used at either nodal or subscriber station locations for transmit or receive but must be coordinated with adjacent channel and adjacent area users in accordance with the provisions of § 101.509. Stations must also comply with international coordination agreements.

* * * * *

22. Section 101.305 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 101.305 Discontinuance, reduction or impairment of service.

(a) If the public communication service provided by a station in the Common Carrier Radio Services, the Local Multipoint Distribution Service or 24 GHz Service is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee must promptly notify the Commission. In every such case, the licensee must furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof must be given Commission.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station license is terminated; except that station licenses in the Local Multipoint Distribution Service and 24 GHz Service are not terminated if the discontinuance is a result of a change of status by the licensee from common carrier to non-common carrier pursuant to § 1.929 of this chapter.

(c) Any licensee not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community must notify the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station license is automatically terminated; except that station licenses in the Local Multipoint Distribution Service and 24 GHz Service are not terminated if the discontinuance is a result of a change of status by the licensee from non-common carrier to common carrier pursuant to § 1.929 of this chapter.

* * * * *

23. Section 101.311 is revised to read as follows:

§ 101.311 Equal employment opportunities.

Equal opportunities in employment must be afforded by all common carrier licensees and all Local Multipoint Distribution Service and 24 GHz Service licensees in accordance with the provisions of § 21.307 of this chapter.

24. Subpart G is amended by:

A. Revising the table of contents for subpart G.

B. Revising the heading of subpart G.

C. Revising §§ 101.501, 101.503, 101.505, 101.509, and 101.511.

The revisions read as follows:

Subpart G—24 GHz Service and Digital Electronic Message Service

Sec.
101.501 Eligibility.
101.503 Digital Electronic Message Service Nodal Stations.
101.505 Frequencies.
101.509 Interference protection criteria.
101.511 Permissible services.
101.513 Transmitter power.
101.515 Emissions and bandwidth.
101.519 Interconnection.
101.521 Spectrum utilization.
101.523 Service areas.
101.525 24 GHz system operations.
101.526 License term.
101.527 Construction requirements for 24 GHz operations.
101.529 Renewal expectancy criteria for 24 GHz licenses.
101.531 Application form and contents.
101.533 Regulatory status.
101.535 Geographic partitioning and spectrum aggregation/disaggregation.
101.537 24 GHz band subject to competitive bidding.
101.538 Designated entities.

Subpart G—24 GHz Service and Digital Electronic Message Service

§ 101.501 Eligibility.

See § 101.147(n) for licensing of DEMS facilities in the 10.6 GHz band. Applications for new facilities using the 18 GHz band are no longer being accepted. Any entity, other than one precluded by § 101.7, is eligible for authorization to provide 24 GHz Service under this subpart.

§ 101.503 Digital Electronic Message Service Nodal Stations.

10.6 GHz DEMS Nodal Stations may be authorized only as a part of an integrated communication system wherein 10.6 GHz DEMS User Stations associated therewith also are licensed to the 10.6 GHz DEMS Nodal Station licensee. Applications for 10.6 GHz DEMS Nodal Station licenses should specify the maximum number of 10.6 GHz DEMS User Stations to be served by that nodal station. Any increase in that number must be applied for pursuant to § 1.913 of this chapter.

§ 101.505 Frequencies.

Frequencies, and the conditions on which they are available, for DEMS operations are contained in this subpart as well as in § 101.147(m), (n), and (r)(9).

§ 101.509 Interference protection criteria.

(a) As a condition for use of frequencies in this service each licensee is required to:

(1) Engineer the system to be reasonably compatible with adjacent and co-channel operations in the same or adjacent areas on all frequencies; and

(2) Cooperate fully and in good faith to resolve whatever potential interference and transmission security problems may be present in adjacent and co-channel operations.

(b) All harmful interference to other users of co-channel and adjacent channel use in the same or adjacent geographical area are prohibited. In areas where Economic Areas are in close proximity, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting and receiving antennas. Licensees are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(c) Licensee shall coordinate their facilities whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area. Licensees are encouraged to develop operational agreements with relevant licensees in the same or adjacent areas. Incumbent SMSA licensee(s) shall retain exclusive rights to its channel(s) within its SMSA and must be protected.

(d) Licensees shall comply with the appropriate coordination agreements between the United States and Canada and the United States and Mexico concerning cross-border sharing and use of the 24 GHz bands which may require using channels pairs in accordance with the table in § 101.147(r)(9).

(e) The Commission recommends that coordination is not necessary if the power flux density (pfd) at the boundary of the relevant adjacent area is lower than –14 dBW/m^2 in any 1 MHz. This value can be changed and agreed upon by both coordinating parties. Licensees should be able to deploy with a pfd up to –94 dBW/m^2 in any 1 MHz at the boundary of the relevant adjacent area without negatively affecting the successful operations of the adjacent area licensee.

§ 101.511 Permissible services.

(a) Authorizations for stations in the 24 GHz Service will be granted to provide services on a common carrier basis or a non-common carrier basis or on both a common carrier and non-common carrier basis in a single authorization.

(b) Stations may render any kind of digital communications service consistent with the Commission's rules and the regulatory status of the station to provide services on a common carrier or non-common carrier basis.

(c) An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status required to provide a specific communications service.

25. Section 101.521 is revised to read as follows:

§ 101.521 Spectrum utilization.

All applicants for DEMS frequencies in the 10.6 GHz band must submit as part of the original application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughput capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

26. Sections 101.523, 101.525, 101.526, 101.527, 101.529, 101.531, 101.533, 101.535, 101.537 and 101.538 are added to subpart G to read as follows:

§ 101.523 Service areas.

(a) The service areas for 24 GHz are Economic Areas (EAs) as defined in this paragraph (a). EAs are delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce. The Commerce department organizes the 50 States and the District of Columbia into 172 EAs. Additionally, there are three EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; and American Samoa and the Gulf of Mexico. A total of 176 authorizations will be issued for the 24 GHz Service by the FCC.

(b) Where an incumbent SMSA license area in the 24 GHz band occupies only a portion of an EA available for application under the competitive bidding rules, the SMSA portion will be excluded from auction and the incumbent licensee will retain the exclusive right to those channels within the SMSA.

§ 101.525 24 GHz system operations.

(a) A licensee using the 24 GHz band may construct and operate any number of fixed stations anywhere within the area authorized to serve without prior authorization, except as follows:

(1) A station would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter;

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(b) Whenever a licensee constructs or makes system changes as described in paragraph (a)(1) of this section, the licensee is required to notify the Commission within 30 days of the change under § 1.947 of this chapter and include a statement of the technical parameters of the changed station.

§ 101.526 License term.

The license term for stations licensed under this subpart is ten years from the date of license grant or license renewal for incumbent licensees.

§ 1A101.527 Construction requirements for 24 GHz operations.

(a) Each licensee must make a showing of ''substantial service'' within ten years of its license grant. A ''substantial service'' assessment will be made at renewal pursuant to the provisions and procedures set forth in § 1.949 of this chapter. ''Substantial service'' is a service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal during its past license term.

(b) Each licensee must, at a minimum file:

(1) A report, maps and other supporting documents describing its current service in terms of geographic coverage and population served to the Commission. The report must also contain a description of the licensees' investments in its operations. The report must be labeled as an attachment to the renewal application; and

(2) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph (b)(2).

(c) Failure to demonstrate that substantial service is being provided in the service area will result in forfeiture of the license, and the licensee will be unable to regain it.

(d) The frequencies associated with incumbent authorizations, licensed on a SMSA basis, that have cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable EA licensee.

§ 101.529 Renewal expectancy criteria for 24 GHz licenses.

(a) A renewal applicant involved in a renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, that is the most important factor to be considered in the proceeding as long as the applicant's past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided ''substantial service'' pursuant to § 101.527; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(b) In order to establish its right to a renewal expectancy, a licensee in the 24 GHz service involved in a renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of how the licensee has complied with the ''substantial service'' requirement; and

(2) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph (b)(2).

(c) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

§ 101.531 Application form and contents.

(a) Applications for initial authorization of 24 GHz facilities are filed on FCC Form 175 in accordance with subpart M and subpart Q of part 1 of this chapter. FCC Form 601 is submitted subsequently either by the winning bidder, if an auction is held to decide among two or more mutually exclusive applications, or, in cases of no mutual exclusivity, by the sole applicant. Applications to amend pending applications and to modify licenses are filed on FCC Form 601.

(b) *Foreign ownership information.* All applicants for 24 GHz licenses must provide the information requested on FCC Form 601 to address all of the eligibility requirements in § 101.7 of this part. All licensees will keep the information updated.

§ 101.533 Regulatory status.

(a) *Initial applications.* An applicant for a 24 GHz license must specify on FCC Form 601 if it is requesting authorization to provide services on a common carrier basis, a non-common carrier basis, or on both a common carrier and non-common carrier basis.

(b) *Amendment of pending applications.* Any pending application may be amended to:

(1) Change the carrier status requested; or

(2) Add to the pending request in order to obtain both common carrier and non-common carrier status in a single license.

(c) *Modification of license.* A licensee may modify a license to:

(1) Change the carrier status authorized; or

(2) Add to the status authorized in order to obtain both common carrier and non-common carrier status in a single license.

§ 101.535 Geographic partitioning and spectrum aggregation/disaggregation.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

(2) 24 GHz licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. 24 GHz licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(3) Any existing frequency coordination agreements shall convey with the assignment of the geographic area or spectrum, and shall remain in effect unless new agreements are reached.

(b) *Technical standards.*—(1) *Aggregation.* There is no limitation on the amount of spectrum that a 24 GHz licensee may aggregate.

(2) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(3) *Disaggregation.* Spectrum may be disaggregated in any amount. A licensee need not retain a minimum amount of spectrum.

(4) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust enrichment.* 24 GHz licensees that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111 of this chapter.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 101.526.

(e) *Construction requirements.* Applications requesting approval for partitioning or disaggregation must include a certification by each party stating that one or both parties will satisfy the construction requirement set forth in § 101.529. Failure by a party to meet its respective construction requirement will result in the automatic cancellation of its license without further Commission action.

§ 101.537 24 GHz band subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 24 GHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 101.538 Designated entities.

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(4) For purposes of determining whether an entity meets one of the definitions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered on a cumulative basis and aggregated. An applicant seeking status

as a very small business, small business, or entrepreneur under this section must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(5) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(6) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(7) A consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) and (a)(3) of this section. Where an applicant or licensee is a consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs, the gross revenues of each very small business, small business, or entrepreneur shall not be aggregated.

(8) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.* (1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests.

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have a controlling interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(c) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[FMCSA Docket No. 98–3542 (formerly FHWA Docket No. 98–3542)]

RIN 2126–AA06 (formerly 2125–AC63)

Physical Qualification of Drivers; Medical Examination; Certificate

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This document updates and simplifies the medical examination form that is currently used to determine the physical qualification of commercial motor vehicle (CMV) drivers operating in interstate commerce. The FMCSA takes this action in response to numerous requests from medical examiners to update and simplify the medical examination form that is currently used. This action is intended to reduce the incidence of errors on such forms and to provide more uniform medical examinations of CMV drivers engaged in interstate commerce. The current Federal physical qualification standards tested by medical examiners and recorded on the form will not be revised in this rulemaking.

DATES: November 6, 2000.

FOR FURTHER INFORMATION CONTACT: For information about the rulemaking, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–2519, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register's** home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

Background

The authority to require medical certification of CMV driver qualification was originally granted to the Interstate Commerce Commission (ICC) in the Motor Carrier Act of 1935. The authority was transferred to the DOT in 1966 and is currently codified at 49 U.S.C. 31502(b). On October 9, 1999, the Secretary of Transportation transferred the motor carrier safety functions performed by the Federal Highway Administration (FHWA) to the Office of Motor Carrier Safety, a new office created in the DOT. This transfer was performed pursuant to section 338 of the DOT and Related Agencies Appropriations Act, 2000, Public Law 106–69, 113 Stat. 986, as amended by Public Law 106–73, 113 Stat. 1046. The Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 113 Stat. 1748, transferred the functions to the Federal Motor Carrier Safety Administration (FMCSA). As a result of the transfer of functions, the FMCSA now administers the driver physical qualification standards and examinations in 49 CFR Part 391.

The first physical qualification standard for CMV drivers was published by the ICC in 1939. It required a driver to have the following minimum qualifications:

> Good physical and mental health; good eyesight; adequate hearing; no addiction to narcotic drugs; and no excessive use of alcoholic beverages or liquors.

Over the next three decades, other physical qualification regulations were promulgated by the ICC, but most were not clearly defined until 1970, after the creation of the DOT. On April 22, 1970 (35 FR 6458), the existing physical qualification requirements were substantially tightened, based upon discussions with our agency's medical advisors. This rule required a driver to have a physical examination every 2 years, included guidelines for evaluation of persons in high-risk medical categories, and provided that the examining physician be given full information about the responsibilities of and the exacting demands made on CMV drivers. There have been no major changes since then.

Current Medical Examination Form

The current form, at 49 CFR 391.43(f), has remained unchanged since it was adopted by the DOT in 1970. As a result, our agency has received numerous requests to make changes to the current medical examination form. Physicians and other medical providers have indicated that the format, layout and content of the current form are outdated, difficult to use, or irrelevant.

Additionally, substantial changes in medical technology and the technology, operating practices, and economics of the motor carrier industry have affected the lifestyles of and, therefore, the physical and mental demands placed on CMV drivers. Having agreed that the current medical form is outdated and its continued use problematic, we decided to initiate rulemaking to revise the form.

Medical Examination Form Revision Process

We contracted with the Association for the Advancement of Automotive Medicine (AAAM) to review and evaluate the current form and develop a revised form. The process was defined and limited by several norms. The underlying physical qualification standards tested by medical providers and recorded on the form would not be revised in this rulemaking. In addition, the instructions for performing and recording physical examinations found in 49 CFR 391.43 would be revised only to the extent necessary to ensure that instructions to medical examiners are understandable and consistent with the information provided on the proposed medical examination form and guidance materials established by us for medical examiners.

To ensure that the revised form reflected the most current medical concepts and was responsive to the needs of the groups using the forms, the AAAM convened a working group to serve as reviewers of the draft form. The review panel members included two occupational health physicians, a motor carrier, two State motor vehicle administration officials and our agency representatives. A second draft of the form was then submitted to a correspondence advisory group, providing a more comprehensive review process. This larger group of reviewers was made up of medical providers, motor carriers, State motor vehicle agency representatives, Canadian motor transport officials, our agency field staff, and other interested groups.

Revised Medical Examination Form

The revised form, modeled after physical examination forms in use today, has been organized to (1) gain simplicity and efficiency, (2) reflect current medical terminology and examination components and (3) be a self-contained document (i.e., the form will, to the extent possible, include all relevant information necessary to conduct the physical examination and certification).

Consistent with accepted practices regarding the order of the examination, the first section of the examination form is completed by the driver. This section requests information on the driver's

health history, seeking ''yes'' or ''no'' answers to a variety of medical condition questions. Any ''yes'' response requires further clarification by the driver. Once this section is completed, the driver is required to sign the form, affirming that all the information contained in this section is accurate and complete. An additional statement indicates that inaccurate, false, or missing information may invalidate both the examination and any Medical Examiner's Certificate issued based on it.

The second section of the examination form covers the physical examination and tests that are performed by the medical examiner. The medical examiner is provided information on both the relevant Federal physical qualification standards and the tests required to measure compliance with those standards. The Federal standards and guidelines for evaluation of a driver's vision, hearing, and blood pressure are included in this section of the form, thereby reducing the potential for errors by the medical examiner.

Unlike the current physical examination form, the revised form clearly indicates when numerical readings must be recorded. Space is also provided on the form for recording any optional tests which the medical examiner considers necessary to evaluate a driver's physical qualification.

A full page of the revised form is devoted to instruction and recordation of the medical examiner's findings. The medical certificate is also provided, and must be completed by the medical examiner if he or she finds that the driver meets all the Federal physical qualification requirements.

The third section of the revised form not only sets forth the Federal physical qualification standards found at 49 CFR 391.41, but also contains more detailed information for the medical examiner regarding the driver's role and the types of duties he or she may face as a result of his or her employment. This section also contains the agency's guidelines to help medical examiners assess a driver's physical qualification. These guidelines are strictly advisory and were established after consultation with physicians, States, and industry representatives.

In addition to the revisions to 49 CFR 391.43 in the final rule, we are making technical corrections to paragraphs (d) and (g) of that section, to paragraphs (b)(1) and (b)(2)(ii) under § 391.41 and paragraph (d)(2) under § 391.49.

The FMCSA's primary concern is to enhance highway safety, rather than to unnecessarily limit employment opportunities for individuals with physical impairments. The intent of the final rule is to facilitate medical providers' efforts to establish and document the physical qualification of a driver to operate a CMV by promoting reliable and understandable determinations of medical qualification.

Comments

On August 5, 1998, we published an NPRM rulemaking (63 FR 41769) seeking comments on our proposed medical examination form. We invited individuals, medical providers, motor carriers, and other interested parties to provide comments on how to improve our proposed examination form and instructions for performing and recording physical examinations. Forty-six public comments addressing the notice were received and have been considered in our final decision to amend Federal regulations governing the examination to determine the physical qualification of CMV drivers engaged in interstate commerce.

We received comments from 23 physicians, 8 employers of truck drivers, 4 State motor vehicle administrations, 1 State enforcement agency, 1 Canadian motor vehicle agency, 3 trucking associations, 1 motor coach association, 1 trade association, 1 nursing association, 1 medical association and 2 advocacy groups. The majority of the comments supported the proposed medical examination form with suggestions for additions and deletions to the form. One comment completely opposed the proposal. Some comments offered suggestions for additions or deletions without indicating support for the form. Others suggested changes to the Federal physical qualification standards tested by medical examiners and recorded on the form.

Although most comments were generally supportive, a number of comments strongly opposed providing space on the proposed form for recording the results of such optional tests as an electrocardiogram (ECG) and exercise stress test (EST). Still others expressed concerns that the form has too many pages. These comments and others will be discussed in detail below by section, and in accordance with the order of the examination.

Discussion of Comments

Driver's Information

Comments directed to this section of the examination form suggested format changes for recording and denoting certain information on the form. The FMCSA has considered these comments and modified the form as follows: The format for recording the date of birth on the form will show month, day and year and the area code will be denoted by parentheses. The agency has also added another category, *other*, to the area on the form denoting the class of license held by the driver. This change is provided to accommodate non-CDL licensed drivers.

Health History

This section of the form received a number of comments suggesting additions or deletions of information and changes to the format. The Alabama Power Company, J.B. Hunt Transport, Inc., the Maryland Motor Vehicle Administration, the Wisconsin Department of Transportation and the Ministry of Transportation and Highways in British Columbia expressed support for the inclusion of a driver certification statement affirming that the information provided by the driver is accurate and complete. The American Association of Occupational Health Nurses (AAOHN) and the Maryland Motor Vehicle Administration indicated that the agency's statement that encourages the medical examiner to discuss health history information with the driver is not strong enough and the discussion should be required. Dr. Ellison Wittels commented that ''the medical examiner needs to comment on any ''yes'' answer and address the severity of the problem.'' Comments from Dr. Wittles and the AAOHN indicated that more space should be allotted for the medical examiner's review of the health history. Dr. John A. Hansen agreed that there is inadequate space on the proposed form for the medical examiner's ''impression and opinion,'' and indicated that too much space is allocated to driver's comments and the listing of their medications. In fact, Dr. Hansen suggests that, in general, the format of the proposed form is ''excessive.''

The American College of Occupational and Environmental Medicine (ACOEM) believes that the ''expanded medical history section assists the [medical] examiner in making a thorough evaluation,'' but questions whether any of the conditions listed in the health history are likely to interfere with the driver's ability to safely operate a CMV. The ACOEM also expressed concerns over the potential for breaching confidential medical information.

The Owner Operator Independent Drivers Association, Inc., (OOIDA) an international trade association representing the interests of independent owner-operators and

professional truck drivers, supports the overall goals of the proposal. However, the OOIDA raised concerns regarding the amount and relevancy of information solicited under the health history section and the confidentiality of medical information of drivers. The OOIDA believes that vague terminology and a lack of understanding of medical terms and conditions on the part of drivers will unjustly result in a driver being determined medically unqualified. Therefore, the OOIDA suggests that the medical examiner complete the health history section. The OOIDA also expressed concern that information in this section which it views as ''unnecessary and irrelevant'' would be used by employers for purposes other than the intended medical certification. Finally, the OOIDA opposes the requirement for a driver certification statement suggesting that such a requirement will not prevent drivers from falsifying or omitting information if a ''yes'' response would result in the driver being found medically unqualified.

The AHAS commented that the ''FHWA could significantly improve highway safety by promoting increased definitive diagnoses and treatment of apnea'' and noted that ''many preliminary diagnoses of apnea are made on the basis of selfreport.'' The FMCSA believes the information on sleep disorders in this section will help elicit information from the driver regarding any history of sleep disorders and thereby, facilitate the identification and treatment of such disorders.

The FMCSA has considered the comments to this section and modified the form as follows: The two questions regarding hospitalization and serious illness in the last 5 years have been combined into one question that reads: ''any illness or injury in the last 5 years.'' A box has been added to indicate when medications are taken for nervous or psychiatric disorders. The section on sleep disorders was modified to include ''pauses in breathing while asleep'' and to substitute ''loud snoring'' for severe snoring. The term ''severe'' has been dropped from the health history because it is too subjective. Under the section on diabetes, the term ''pills'' was substituted for ''medication.'' The condition ''pleurisy'' has been deleted from the form because it is non-specific and non-discriminating.

The format for this section has been modified to increase the space allotted for the medical examiner's comments. As a result, the space allocated for the driver's comments has been reduced. The statement encouraging the medical examiner to discuss the health history with the driver has been modified and expanded to address the use of prescription and over-the-counter medications. The statement now reads: the medical examiner must review and discuss with the driver any ''yes'' answers and potential hazards of medications, including over-the-counter medications, while driving.

The FMCSA's modification of the information in the health history is limited because this information has previously been subject to several levels of review and subsequent changes by the medical community and other interested groups.

Although the health history section has been expanded, the FMCSA believes that this information is necessary and relevant. Having this information will assist the medical examiner in conducting a thorough evaluation and facilitate the determination as to the likelihood that an individual has a condition that would interfere with the safe operation of a CMV.

The FMCSA agrees with the comments that the confidentiality of medical information is an important issue and takes the position that medical information is best maintained by the medical examiner. In fact, the Medical Examiner's Certificate at 49 CFR 391.43(h) carries a statement indicating that the completed medical examination is on file in the office of the medical examiner. Although the FMCSRs do not require that the completed medical examination form be provided to the employer, the FMCSA does not prohibit employers from obtaining copies of the form. The FMCSA does not believe this is a problem since employers must comply with applicable State and Federal laws regarding the privacy and maintenance of employee medical information.

The agency maintains that the driver certification statement requirement would discourage an individual from omitting or falsifying information as someone is likely to pause and consider his/her action before signing such a statement. This is especially so since the deliberate omission or falsification of information may invalidate the examination and any Medical Examiner's Certificate issued based on it.

The agency did not adopt the suggestion of one comment to allow medical examiners to complete the health history since this is not the usual process for completion of a health history. However, to ensure involvement by the medical examiner, the FMCSA has made the review and discussion of any ''yes'' responses with the driver mandatory.

Testing: Vision and Hearing

The majority of comments to this section were suggestions for amending the actual vision and hearing standards which is beyond the scope of this rulemaking. The FMCSA will consider these comments in its ongoing review of physical qualification requirements and in any future rulemakings to amend the standards under § 391.41. The agency is considering, under a separate notice, a rule change regarding field of vision, an area of concern raised in several of the comments. This proposed change is based on a recent review and the recommendations from an expert panel of ophthalmologists. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket.)

The FMCSA has considered the comments to these sections and modified the form as follows: A single box designating ''corrective lens'' has been added to the form. The four boxes designating ''glasses'', ''contact lenses'', ''right lens'' and ''left lens'' on the proposed form have been deleted. Several comments indicated confusion over which box to check if an individual wore both glasses and contact lenses. The word ''individual'' has been substituted for the word ''patient'' under the section for recording numerical readings for hearing testing.

Testing: Blood Pressure/Pulse Rate

There were relatively few comments on this section and the majority of them focused on the need for additional space on the form. Several comments suggested the need for additional space on the form to record both the pulse rate and the quality of the pulse. Other comments suggested space for recording the second reading of the blood pressure since the instructions indicate that the medical examiner should take at least two readings to confirm an individual's blood pressure. Finally, two comments suggested changes to the recommended thresholds for acceptable blood pressures.

The FMCSA has considered the comments to this section and modified the form as follows: The space allocated for the pulse rate has been enlarged to accommodate the recording of both the pulse rate and the quality of the pulse. The recommendation for space for recording a second blood pressure reading was not adopted because the medical examiner is not limited to just two readings and the possibility exists

that several readings may be necessary to establish a fixed blood pressure. Only the fixed blood pressure should be recorded on the form. Any change to the threshold value for an acceptable blood pressure is outside the scope of this rulemaking. The FMCSA is considering a review and update of its recommendations regarding blood pressure.

Testing: Laboratory and Other Test Findings

This was clearly one of the most commented on sections in the proposal. The majority of the comments were opposed to including space on the form for recording the optional tests, ECG and EST. Those opposing or having serious concerns over this issue include: the ATA, the OOIDA, the National Automobile Dealers Association, the Georgia Motor Trucking Association, DSI Transport, Inc., Houston Industries, Inc., the Illinois State Police, Dr. Russell J. Green, Medical Director for Hillcrest Health Works, and Dr. Ellison H. Wittels. The OOIDA, Houston Industries, Inc., and Dr. Wittels also recommended that the Echocardiogram and chest x-ray be deleted from the form. Their opposition was based on the following concerns: (1) The efficacy of these tests to detect coronary artery disease (CAD) and predict future coronary events in asymptomatic individuals is unsupported, (2) optional tests would increase the costs for all parties, and (3) the appearance of the optional tests on the form will be misinterpreted as mandatory requirements.

The FMCSA believes that the concerns of the ATA, the OOIDA and others regarding the recommendations for and recordation of the optional tests, ECG and EST, on the examination form have merit. According to the information (See part A.l. on ''Screening for Asymptomatic Coronary Artery Disease,'' by the U.S. Preventive Services Task Force's ''Guide to Clinical Preventive Services,'' 2nd ed., Baltimore: Williams & Wilkins, December 1995, in the docket as appendix 1 to the ATA's comment) submitted by Dr. Donald Whorton (on behalf of the ATA) and Dr. Richard Moore, it seems that the benefits of screening to identify asymptomatic CAD are unproven. The evidence summarized in the Guide indicated that the use of a resting ECG for screening for asymptomatic CAD showed limited sensitivity and specificity. Relative to the first quality, it was reported that 29 percent of patients with clinically proven CAD had a normal resting ECG (a sensitivity of 71 percent). The evidence presented also indicated that one-third to one-half of patients with normal coronary arteries had positive findings (poor specificity in the 50 to 67 percent range). Moreover, the Guide gave evidence that the predictive value of the resting ECG was low. Prospective studies found that symptomatic CAD develops in 3 to 15 percent of persons with abnormal ECG findings and that most coronary events occur in persons without resting ECG abnormalities. Based on these findings, routine ECG testing is not an efficient approach for detecting CAD or predicting future events.

While exercise ECG is more accurate than resting ECG in detecting CAD and predicting future coronary events, the Guide reported that its sensitivity and predictive values do not promote comprehensive endorsement as a screening test. For example, most patients with asymptomatic CAD do not have positive exercise results (poor sensitivity). Relative to prediction, although asymptomatic persons with a positive result on an exercise ECG are more likely to experience an event than those with a negative result, long-term studies have shown that only one to eleven percent will suffer an acute myocardial infarction or sudden death. The majority of events will occur with a negative test result. Thus, the less than desirable qualities of exercise ECG do not allow it to enjoy a broad endorsement as a screening tool and, in addition, it is more expensive than the resting ECG.

Notwithstanding this lack of evidence to support screening for asymptomatic CAD, the FMCSA believes that screening individuals in certain occupations, such as truck and bus drivers, may be justified because of possible benefits to public safety. However, since the FMCSA is not aware of any studies which have addressed the efficacy of screening these individuals to detect asymptomatic CAD, it proposes to establish a panel of medical experts to review and make recommendations for amending the agency's standards and guidelines for qualifying commercial drivers with cardiac conditions, and for screening drivers for cardiac risk factors.

The FMCSA has considered the comments to this section and modified the form as follows: Space will be provided for describing and recording any optional tests which the medical examiner considers necessary to assess a driver's physical qualification. However, references to specific tests (ECG, EST, echocardiogram, and chest x-ray) in this section have been removed. This will eliminate the potential for such optional tests to be misinterpreted as mandatory requirements and allow more space for the medical examiner to describe, record and comment on any optional test conducted as part of the examination.

Although the FMCSA has not adopted the recommendations of the Parents Against Tired Truckers (P.A.T.T.) to require the eight question Epworth Sleep Disorder Test as part of the physical examination, the agency recognizes and shares P.A.T.T.'s concerns that excessive day-time sleepiness as a result of untreated sleep apnea can affect a driver's ability to perform safely. The FMCSA has ongoing research to evaluate the prevalence and performance of a population of CMV drivers with sleep apnea. An extension of this research involves the development and evaluation of a screening tool for identifying drivers with sleep apnea. Moreover, the FMCSA's 1991 report, ''Pulmonary/Respiratory Conditions and Commercial Drivers,'' provides specific recommendations for qualifying CMV drivers with sleep apnea. This report may be obtained from the National Technical Information Service, by calling 1–800–553–6847 and identifying the report by title and ''PB'' number (PB91–236455), or by going to: *http://www.fmcsa.dot.gov/rulesregs/medreports.htm.*

Physical Examination

This section of the form received a number of comments suggesting additions or deletions of information and changes to the format. There was unanimous agreement among those commenting that the recording of height and weight in centimeters and kilograms may be problematic and a source of errors and, therefore, should be recorded in inches and pounds. Other comments indicated that the ''yes'' and ''no'' columns which answer the question, ''Is driver's ability to safely operate a commercial motor vehicle affected?'' may be confusing as the usual procedure is to check ''yes'' if there are underlying abnormalities and then comment on whether they present a safety risk. A number of comments indicated that routine rectal and pelvic examinations are not appropriate or relevant to driver safety and should be eliminated. The AAOHN indicated that more space should be allotted for the medical examiners comments to ''yes'' answers under this section and recommended expanding the section on certification status to include the status of individuals who meet the standard and qualify for a 2-year medical

certificate. The proposed form indicated that this section should be completed only if the driver does not qualify for a 2-year certificate.

The FMCSA has considered the comments to this section and modified the form as follows: The directions for completing this section appear in one location on the form and now read: Check ''yes'' if there are any abnormalities. Check ''no'' if the body system is normal. Discuss any ''yes'' answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for. Height and weight will be recorded on the form in inches and pounds as the medical community has indicated that it is more comfortable with these units of measurement. References to both the pelvic or rectal examination have been dropped from the form, and as a result, the reference to hemorrhoids was dropped too. The term ''abnormal'' has been dropped because it is too subjective and the term ''weakness'' has been substituted for semi-paralysis. Several comments were not adopted as they addressed areas extensively discussed by medical providers and other interested parties during the development of this rule.

The instructions for completing the section on the certification status has been modified and reads: Note Certification Status Here. Additional boxes have been added to indicate (1) when a driver meets the standards in 49 CFR 391.41 and qualifies for a 2-year medical certificate, and (2) when the certification is conditionally met under the FMCSRs (*e.g.,* when wearing corrective lenses, a hearing aid or when accompanied by a waiver/exemption/skill performance evaluation (SPE) certificate). The handicapped driver waiver form has been replaced by a skill performance evaluation certificate. See 65 FR 25285 (May 1, 2000) for more detailed information.

Medical Examiner's Certificate

The replica of the Medical Examiner's Certificate that appeared on the proposed form under item number 7 ''Physical Examination'' has been removed to allow more space on the form. This will accommodate the information added to the section on Certification Status and provide significantly more space for the medical examiner's comments under this section.

The box on the Medical Examiner's Certificate titled, ''Name (Print)'' has been changed and reads: Medical Examiner's Name (Print). This was done to clarify whose name is to be entered in the box. Another box on the Certificate which indicates that a driver is qualified only when accompanied by a waiver has been modified and reads: accompanied by a _____ waiver/exemption. The term ''exemption'' has been added to be consistent with the terminology in 49 U.S.C. 31315 and 31136(e) regarding the granting of waivers and exemptions. A box has been added to indicate that a driver is qualified only when carrying an SPE certificate.

Instructions to the Medical Examiner

The majority of the comments directed to this section of the form were favorable and support the concept of a self-contained form which ensures the medical examiner access to the applicable medical standards, guidelines and other useful information including the role and duties of both the medical examiner and driver. For example, not all medical examiners, as suggested in one comment, are aware of existing guidance which allows medical examiners to issue medical certificates for periods less than 2 years in cases where drivers are qualified, but may have conditions which require more frequent monitoring.

A number of comments opposed the inclusion in this section of the recommendations to conduct optional ECG and EST tests. They cited the lack of evidence to support such screening, costs versus benefits, and the potential for the optional tests to be misinterpreted as mandatory.

The FMCSA has considered the comments to this section of the form and made the following modifications. The recommendations for evaluating cardiac risk factors and conducting the optional baseline ECG and EST tests have been removed from the Instructions to the Medical Examiner (Advisory Criteria) on the form and from the Instructions for Performing and Recording Physical Examinations, *Heart*, at 49 CFR 391.43 (f). However, these recommendations have been and are currently available to assist medical examiners in making physical qualification determinations, and are found in the FMCSA's conference report, ''Cardiac Conditions and Commercial Drivers.'' This report may be obtained from the National Technical Information Service, by calling 1–800–553–6847, and identifying the report by title and ''PB'' number (PB88–233960), or by going to: *http://www.fmcsa.dot.gov/rulesregs/medreports.htm.* Moreover, as previously indicated, the FMCSA plans to establish a medical panel to review its cardiac standards and guidelines for qualifying commercial drivers. As part of the review, the panel will be asked to address the issue of screening CMV drivers for CAD. Other modifications to this section were either editorial in nature or changes to update information to be consistent with current FMCSA guidelines.

Several comments recommended designating or certifying medical examiners to ensure more uniform evaluations for fitness to operate CMVs. This issue is being addressed under a separate rulemaking which proposes to link the driver physical qualification determinations with the CDL process.

Format of the Examination Form

In general, comments on the format were favorable. J.B. Hunt Transport, Inc. stated, ''placing applicable FHWA guidance directly on the proposed form * * * is an effective way to insure the medical examiner is aware of the specific regulation.'' The ATA stated, ''FHWA's revised medical examination form, coupled with the above discussed ATA recommendations, will help serve as an adequate means to provide consistency and completeness.'' The ATA recommended that the FHWA permit motor carriers the flexibility to reformat the form to fewer pages, provided that the content of the form remains the same, and allow the form to be maintained electronically. The AHAS commented, ''Advocates believes that, taken as a whole, both the form itself and the supplementary guidance that the agency wants to provide in order to guide health care providers will be substantial improvements over the present form. We agree with FHWA that the use of this form with its added guidance to practitioners could have a positive economic impact by resulting in more careful screening of commercial drivers to detect health conditions that could prove to be a safety risk both for drivers and for the occupants of other vehicles sharing the road with large trucks and buses.''

Other comments indicated that the form has too many pages and questioned whether medical examiners would read them. The ACOEM commented, ''It is unlikely that expanding explanations from one side of a page to four sides will drastically increase the quality.'' The Federal Express Corporation believes ''the proposed three page form unnecessarily adds to the paperwork burden of medical examiners and motor carriers.'' Schneider National did not comment specifically on the proposed form, but

included a copy of its physical exam form which Schneider considers both ''comprehensive'' and ''helpful'' in determining driver fitness. The Schneider form includes a 3-page physical exam form, 1-page driver's job description and 2 pages of instructional/informational materials, for a total of 6 pages.

The FMCSA believes the format of its examination form achieves the agency's overall objectives of accuracy and efficiency, and to be a self-contained document. Although the FMCSA has concluded that the new form would not increase cost and time burdens, it has adopted the ATA's recommendation to allow motor carriers and others to reformat the form, including an electronic version, so long as it remains a self-contained form and incorporates all of the information in 49 CFR 391.43(f), as amended in this rulemaking.

In addition to the revisions to 49 CFR 391.43 in this final rule, the FMCSA has made technical corrections to paragraphs (c)(1), (d) and (g) of that section. We are also making technical corrections to 49 CFR 391.41, paragraphs (b)(1) and (b)(2)(ii) and finally, to 49 CFR 391.49, paragraph (d)(2).

The FMCSA's primary concern is to enhance highway safety, not to unnecessarily limit employment opportunities for individuals with physical impairments. Consistent with its safety mandate and regulations, the FMCSA is interested in promoting individual determinations of medical qualification to operate a CMV. The revised medical examination form is intended to facilitate medical examiners' efforts to establish and document the physical qualifications of a driver to operate a CMV by promoting reliable and understandable determinations of physical qualification.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action under Executive Order 12866 or significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this final rule will be minimal because the use of existing printed supplies of the forms addressed in this action will be allowed until the forms are depleted, or until 12 months after the effective date of this rulemaking, whichever occurs first. Allowing the use of existing forms will avert substantial monetary loss by motor carriers, medical providers, and vendors of forms that might otherwise result from this rulemaking. Moreover, users of the examination form have the flexibility to reformat the form to fewer pages, including an electronic version so long as it remains a self-contained form and incorporates all of the information in 49 CFR 391.43(f), as amended in this rulemaking. According such flexibility will have the potential to reduce costs. This action will facilitate regulatory uniformity and result in easier compliance with and enforcement of the driver qualification requirements of the FMCSRs. This form will, to the extent possible, include all relevant information necessary to establish and record the physical qualification of a driver to operate a CMV. As a result, the FMCSA believes that this rulemaking will have a positive economic impact. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, the FMCSA has evaluated the effects of this final rule on small entities. The FMCSA believes that this action will not have a significant economic impact on a substantial number of small entities or the nation's economy because it would allow individual small carriers, medical examiners and vendors of the form to use the forms they now have on hand until those supplies have been depleted, or until 12 months after the effective date of this rulemaking. Additionally, users of the forms will have the flexibility to reformat the forms to less pages, including an electronic version, so long as it remains a self-contained form and incorporates all of the information in 49 CFR 391.43(f), as amended in this rulemaking. To the extent that this final rule will facilitate compliance with driver qualification requirements, the projected positive economic impact is not expected to be sufficiently significant to warrant a full regulatory evaluation. Accordingly, the FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FMCSA has determined that this rulemaking will not result in the expenditure by State, local and tribal governments, or by the private sector, in the aggregate of $100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 15e32).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly prempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action will not have any effect on the quality of the environment.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this final rule will affect collection of information requirements for the purposes of the PRA because it revises a form associated with a currently-approved information collection covered by OMB Approval No. 2126–0006, entitled Medical Qualification Requirements. Interested parties were invited to provide comments regarding the form revision in an NPRM which was issued on August 5, 1998. Comments which were received are discussed above in Discussion of Comments. Because the current information collection is due to expire on September 30, 2000, it has been submitted to OMB for a three-year renewal. The renewal request, which includes a revised estimate of 20 minutes to complete and document the medical examination, is more accurate. The FMCSA is not making any additional revisions to the information collection as a result of this final rule.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of

Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Driver qualifications-physical examinations, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: September 19, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

In consideration of the foregoing, the FMCSA amends title 49, CFR, chapter III, part 391 as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 322, 504, 31133, 31136, and 31502; and 49 CFR 1.73.

2. Section 391.41 is amended by revising paragraphs (b)(1) and (b)(2)(ii) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a skill performance evaluation certificate pursuant to § 391.49;

(2) * * *

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a skill performance evaluation certificate pursuant to § 391.49.

* * * * *

3. Section 391.43 is amended by revising paragraphs (c)(1), (d), (f), (g) and (h) to read as follows:

§ 391.43 Medical examination; certificate of physical qualification.

* * * * *

(c) * * *

(1) Be knowledgeable of the specific physical and mental demands associated with operating a commercial motor vehicle and the requirements of this subpart, including the medical advisory criteria prepared by the FHWA as guidelines to aid the medical examiner in making the qualification determination; and

* * * * *

(d) Any driver authorized to operate a commercial motor vehicle within an exempt intracity zone pursuant to § 391.62 of this part shall furnish the examining medical examiner with a copy of the medical findings that led to the issuance of the first certificate of medical examination which allowed the driver to operate a commercial motor vehicle wholly within an exempt intracity zone.

* * * * *

(f) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form. Existing forms may be used until current printed supplies are depleted or until November 6, 2001, whichever occurs first.

Instructions for Performing and Recording Physical Examinations

The medical examiner must be familiar with 49 CFR 391.41, Physical qualifications for drivers, and should review these instructions before performing the physical examination. Answer each question ''yes'' or ''no'' and record numerical readings where indicated on the physical examination form.

The medical examiner must be aware of the rigorous physical, mental, and emotional demands placed on the driver of a commercial motor vehicle. In the interest of public safety, the medical examiner is required to certify that the driver does not have any physical, mental, or organic condition that might affect the driver's ability to operate a commercial motor vehicle safely.

General information. The purpose of this history and physical examination is to detect the presence of physical, mental, or organic conditions of such a character and extent as to affect the driver's ability to operate a commercial motor vehicle safely. The examination should be conducted carefully and should at least include all of the information requested in the following form. History of certain conditions may be cause for rejection. Indicate the need for further testing and/or require evaluation by a specialist. Conditions may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these conditions should be discussed with the driver and he/she should be advised to take the necessary steps to insure correction, particularly of those conditions which, if neglected, might affect the driver's ability to drive safely.

General appearance and development. Note marked overweight. Note any postural defect, perceptible limp, tremor, or other conditions that might be caused by alcoholism, thyroid intoxication or other illnesses.

Head-eyes. When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the driver wears corrective lenses for driving, these should be worn while driver's visual acuity is being tested. If contact lenses are worn, there should be sufficient evidence of good tolerance of and adaptation to their use. Indicate the driver's need to wear corrective lenses to meet the vision standard on the Medical Examiner's Certificate by checking the box, ''Qualified only when wearing corrective lenses.'' In recording distance vision use 20 feet as normal. Report all vision as a fraction with 20 as the numerator and the smallest type read at 20 feet as the denominator. Monocular drivers are not qualified to operate commercial motor vehicles in interstate commerce.

Ears. Note evidence of any ear disease, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18, 23, etc. The examiner should not use only sibilants (s-sounding test materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered. For the audiometric test, record decibel loss at 500 Hz, 1,000 Hz, and 2,000 Hz. Average the decibel loss at 500 Hz, 1,000 Hz and 2,000 Hz and record as described on the form. If the individual fails the audiometric test and the whispered voice test has not been administered, the whispered voice test should be performed to determine if the standard applicable to that test can be met.

Throat. Note any irremediable deformities likely to interfere with breathing or swallowing.

Heart. Note murmurs and arrhythmias, and any history of an enlarged heart, congestive heart failure, or cardiovascular disease that is accompanied by syncope, dyspnea, or collapse. Indicate onset date, diagnosis, medication, and any current limitation. An electrocardiogram is required when findings so indicate.

Blood pressure (BP). If a driver has hypertension and/or is being medicated for hypertension, he or she should be recertified more frequently. An individual diagnosed with mild hypertension (initial BP is greater than 160/90 but below 181/105) should be certified for one 3-month period and should be recertified on an annual basis thereafter if his or her BP is reduced. An individual diagnosed with moderate to severe hypertension (initial BP is greater than 180/104) should not be certified until the BP has been reduced to the mild range (below 181/105). At that time, a 3-month certification can be issued. Once the driver has reduced his or her BP to below 161/91, he or she should be recertified every 6 months thereafter.

Lungs. Note abnormal chest wall expansion, respiratory rate, breath sounds including wheezes or alveolar rales, impaired respiratory function, dyspnea, or cyanosis. Abnormal finds on physical exam may require further testing such as pulmonary tests and/or x-ray of chest.

Abdomen and Viscera. Note enlarged liver, enlarged spleen, abnormal masses, bruits, hernia, and significant abdominal wall muscle weakness and tenderness. If the diagnosis suggests that the condition might interfere with the control and safe operation of a commercial motor vehicle, further testing and evaluation is required.

Genital-urinary and rectal examination. A urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problems. Note hernias. A condition causing discomfort should be evaluated to determine the extent to which the condition might interfere with the control and safe operation of a commercial motor vehicle.

Neurological. Note impaired equilibrium, coordination, or speech pattern; paresthesia; asymmetric deep tendon reflexes; sensory or positional abnormalities; abnormal patellar and Babinski's reflexes; ataxia. Abnormal neurological responses may be an indication for further testing to rule out an underlying medical condition. Any neurological condition should be evaluated for the nature and severity of the condition, the degree of limitation present, the likelihood of progressive limitation, and the potential for sudden incapacitation. In instances where the medical examiner has determined that more frequent monitoring of a condition is appropriate, a certificate for a shorter period should be issued.

Spine, musculoskeletal. Previous surgery, deformities, limitation of motion, and tenderness should be noted. Findings may indicate additional testing and evaluation should be conducted.

Extremities. Carefully examine upper and lower extremities and note any loss or impairment of leg, foot, toe, arm, hand, or finger. Note any deformities, atrophy, paralysis, partial paralysis, clubbing, edema, or hypotonia. If a hand or finger deformity exists, determine whether prehension and power grasp are sufficient to enable the driver to maintain steering wheel grip and to control other vehicle equipment during routine and emergency driving operations. If a foot or leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. In the case of any loss or impairment to an extremity which may interfere with the driver's ability to operate a commercial motor vehicle safely, the medical examiner should state on the medical certificate ''medically unqualified unless accompanied by a Skill Performance Evaluation Certificate.'' The driver must then apply to the Field Service Center of the FMCSA, for the State in which the driver has legal residence, for a Skill Performance Evaluation Certificate under § 391.49.

Laboratory and Other Testing. Other test(s) may be indicated based upon the medical history or findings of the physical examination.

Diabetes. If insulin is necessary to control a diabetic driver's condition, the driver is not qualified to operate a commercial motor vehicle in interstate commerce. If mild diabetes is present and it is controlled by use of an oral hypoglycemic drug and/or diet and exercise, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

Upon completion of the examination, the medical examiner must date and sign the form, provide his/her full name, office address and telephone number. The completed medical examination form shall be retained on file at the office of the medical examiner.

BILLING CODE 4910–22–P

Medical Examination Report

FOR COMMERCIAL DRIVER FITNESS DETERMINATION

1. DRIVER'S INFORMATION Driver completes this section.

Driver's Name (Last, First, Middle)	Social Security No.	Birthdate M / D / Y	Age	Sex ☐ M ☐ F	☐ New certification ☐ Recertification ☐ Follow Up	Date of Exam

Address	City, State, Zip Code	Work Tel: ( ) Home Tel: ( )	Driver License No.	License Class ☐ A ☐ C ☐ B ☐ D ☐ Other	State of Issue

2. HEALTH HISTORY Driver completes this section, but medical examiner is encouraged to discuss with driver.

Yes No

- ☐ ☐ Any illness or injury in last 5 years?
- ☐ ☐ Head/Brain injuries, disorders or illnesses
- ☐ ☐ Seizures, epilepsy
  - ☐ medication
- ☐ ☐ Eye disorders or impaired vision (except corrective lenses)
- ☐ ☐ Ear disorders, loss of hearing or balance
- ☐ ☐ Heart disease or heart attack; other cardiovascular condition
  - ☐ medication
- ☐ ☐ Heart surgery (valve replacement/bypass, angioplasty, pacemaker)
- ☐ ☐ High blood pressure ☐ medication
- ☐ ☐ Muscular disease
- ☐ ☐ Shortness of breath

Yes No

- ☐ ☐ Lung disease, emphysema, asthma, chronic bronchitis
- ☐ ☐ Kidney disease, dialysis
- ☐ ☐ Liver disease
- ☐ ☐ Digestive problems
- ☐ ☐ Diabetes or elevated blood sugar controlled by:
  - ☐ diet
  - ☐ pills
  - ☐ insulin
- ☐ ☐ Nervous or psychiatric disorders, e.g., severe depression
  - ☐ Medication
- ☐ ☐ Loss of, or altered consciousness

Yes No

- ☐ ☐ Fainting, dizziness
- ☐ ☐ Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring
- ☐ ☐ Stroke or paralysis
- ☐ ☐ Missing or impaired hand, arm, foot, leg, finger, toe
- ☐ ☐ Spinal injury or disease
- ☐ ☐ Chronic low back pain
- ☐ ☐ Regular, frequent alcohol use
- ☐ ☐ Narcotic or habit forming drug use

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

Driver's Signature _____ Date _____

Medical Examiners Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving.)

TESTING (Medical Examiner completes Section 3 through 7)

3. VISION

Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

INSTRUCTIONS: *When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio with 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Monocular drivers are not qualified.*

Numerical readings must be provided.

ACUITY	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION	
Right Eye	20/	20/	Right Eye	o
Left Eye	20/	20/	Left Eye	o
Both Eyes	20/	20/		o

Complete next line only if vision testing is done by an ophthalmologist or optometrist

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? ☐ Yes ☐ No

Applicant meets visual acuity requirement only when wearing:

☐ Corrective Lenses

Monocular Vision: ☐ Yes ☐ No

Date of Examination | Name of Ophthalmologist or Optometrist (print) | Tel No. | License No./State of Issue | Signature

4. HEARING

Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB

☐ Check if hearing aid used for tests. ☐ Check if hearing aid **required** to meet standard.

INSTRUCTIONS: *To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500 Hz, -10 dB for 1,000 Hz, -8.5 dB for 2,000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.*

Numerical readings must be recorded.

a) Record distance from individual at which forced whispered voice can first be heard.	Right Ear	Left Ear
	Feet	Feet

b) If audiometer is used, record hearing loss in decibels. (acc. to ANSI Z24.5-1951)	Right Ear			Left Ear		
	500 Hz	1000 Hz	2000 Hz	500 Hz	1000 Hz	2000 Hz
	Average:			Average:		

5. BLOOD PRESSURE / PULSE RATE

Numerical readings must be recorded.

Blood Pressure	Systolic	Diastolic

Driver qualified if ≤ 160/90 on initial exam.

Pulse Rate	☐ Regular ☐ Irregular

GUIDELINES FOR BLOOD PRESSURE EVALUATION

On initial exam		Within 3 months		Certify
If 161-180 and/or 91-104, Qualify 3 mos. only	___	If ≤ 160 and/or 90, Qualify for 1 yr. Document Rx & control the 3rd month	___	Annually if acceptable BP is maintained
If > 180 and/or 104, not qualified until reduced to < 181/105. Then qualify for 3 mos. only.	___	If ≤ 160 and/or 90, qualify for 6 mos. Document Rx & control the 3rd month	___	Biannually

Medical examiner should take at least 2 readings to confirm blood pressure.

6. LABORATORY AND OTHER TEST FINDINGS

Numerical readings must be recorded.

Urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

URINE SPECIMEN	SP. GR.	PROTEIN	BLOOD	SUGAR

Other Testing (*Describe and record*)

_____

_____

_____

_____

7. PHYSICAL EXAMINATION

Height: _____ (in.) Weight: _____ (lbs)

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for.
See Instructions To The Medical Examiner for guidance.

BODY SYSTEM	CHECK FOR:	YES*	NO
1. General Appearance	Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse.		
2. Eyes	Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos, strabismus uncorrected by corrective lenses, retinopathy, cataracts, aphakia, glaucoma, macular degeneration.		
3. Ears	Middle ear disease, occlusion of external canal, perforated eardrums.		
4. Mouth and Throat	Irremediable deformities likely to interfere with breathing or swallowing.		
5. Heart	Murmurs, extra sounds, enlarged heart, pacemaker.		
6. Lungs and chest, not including breast examination.	Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, dyspnea, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/or xray of chest.		
7. Abdomen and Viscera	Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness.		
8. Vascular system	Abnormal pulse and amplitude, carotid or arterial bruits, varicose veins.		
9. Genito-urinary system,	Hernias.		
10. Extremities - Limb impaired. Driver may be subject to SPE certificate if otherwise qualified.	Loss or impairment of leg, foot, toe, arm, hand, finger. Perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia. Insufficient grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly.		
11. Spine, other musculoskeletal	Previous surgery, deformities, limitation of motion, tenderness.		
12. Neurological	Impaired equilibrium, coordination or speech pattern; paresthesia, asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinski's reflexes, ataxia.		

* COMMENTS: _____

Note certification status here. See Instructions to the Medical Examiner for guidance.

- ☐ Meets standards in 49 CFR 391.41; qualifies for 2 year certificate
- ☐ Does not meet standards
- ☐ Meets standards, but periodic evaluation required.
  Due to _____ driver qualified only for:
  - ☐ 3 months ☐ 1 year
  - ☐ 6 months ☐ Other
- ☐ Temporarily disqualified due to (condition or medication): _____
  Return to medical examiner's office for follow up on _____
- ☐ Wearing corrective lenses
- ☐ Wearing hearing aid
- ☐ Accompanied by a _____ waiver/exemption
- ☐ Skill Performance Evaluation (SPE) Certificate
- ☐ Driving within an exempt intracity zone.
- ☐ Qualified by operation of 49 CFR 391.64

Medical Examiner's Signature _____
Medical Examiner's Name (print) _____
Address _____
Telephone Number _____

If meets standards, complete a Medical Examiner's Certificate according to 49 CFR 391.43(h). (Driver must carry certificate when operating a commercial vehicle.)

49 CFR 391.41 Physical Qualifications for Drivers

THE DRIVER'S ROLE

Responsibilities, work schedules, physical and emotional demands, and lifestyles among commercial drivers vary by the type of driving that they do. Some of the main types of drivers include the following: turn around or short relay (drivers return to their home base each evening); long relay (drivers drive 8-10 hours and then have an 8-hour off-duty period), straight through haul (cross country drivers); and team drivers (drivers share the driving by alternating their 4-hour driving periods and 4-hour rest periods).

The following factors may be involved in a driver's performance of duties: abrupt schedule changes and rotating work schedules, which may result in irregular sleep patterns and a driver beginning a trip in a fatigued condition; long hours; extended time away from family and friends, which may result in lack of social support; tight pickup and delivery schedules, with irregularity in work, rest, and eating patterns, adverse road, weather and traffic conditions, which may cause delays and lead to hurriedly loading or unloading cargo in order to compensate for the lost time; and environmental conditions such as excessive vibration, noise, and extremes in temperature. Transporting passengers or hazardous materials may add to the demands on the commercial driver.

There may be duties in addition to the driving task for which a driver is responsible and needs to be fit. Some of these responsibilities are: coupling and uncoupling trailer(s) from the tractor, loading and unloading trailer(s) (sometimes a driver may lift a heavy load or unload as much as 50,000 lbs. of freight after sitting for a long period of time without any stretching period); inspecting the operating condition of tractor and trailer(s) before, during, and after delivery of cargo; lifting, installing, and removing heavy tire chains; and, lifting heavy tarpaulins to cover open top trailers. The above tasks demand agility, the ability to bend and stoop, the ability to maintain a crouching position to inspect the underside of the vehicle, frequent entering and exiting of the cab, and the ability to climb ladders on the tractor and/or trailer(s).

In addition, a driver must have the perceptual skills to monitor a sometimes complex driving situation, the judgment skills to make quick decisions, when necessary, and the manipulative skills to control an oversize steering wheel, shift gears using a manual transmission, and maneuver a vehicle in crowded areas.

§ 391.41 PHYSICAL QUALIFICATIONS FOR DRIVERS

(a) A person shall not drive a commercial motor vehicle unless he is physically qualified to do so and, except as provided in §391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a commercial motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person:

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate (formerly Limb Waiver Program) pursuant to §391.49.

(2) Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a SPE Certificate pursuant to §391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a commercial motor vehicle safely.

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a commercial motor vehicle safely.

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a commercial motor vehicle safely.

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green and amber;

(11) First perceives a forced whispered voice in the better ear not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951;

(12) (i) Does not use a controlled substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. (ii) Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who: (A) Is familiar with the driver's medical history and assigned duties; and (B) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

(13) Has no current clinical diagnosis of alcoholism.

INSTRUCTIONS TO THE MEDICAL EXAMINER

General Information

The purpose of this examination is to determine a driver's physical qualification to operate a commercial motor vehicle (CMV) in interstate commerce according to the requirements in 49 CFR 391.41-49. Therefore, the medical examiner must be knowledgeable of these requirements and guidelines developed by the FMCSA to assist the medical examiner in making the qualification determination. The medical examiner should be familiar with the driver's responsibilities and work environment and is referred to the section on the form, The Driver's Role.

In addition to reviewing the Health History section with the driver and conducting the physical examination, the medical examiner should discuss common prescriptions and over-the-counter medications relative to the side effects ad hazards of these medications while driving. Educate driver to read warning labels on all medications. History of certain conditions may be cause for rejection, particularly if required by regulation, or may indicate the need for additional laboratory tests or more stringent examination perhaps by a medical specialist. These decisions are usually made by the medical examiner in light of the driver's job responsibilities, work schedule and potential for the condition to render the driver unsafe.

Medical conditions should be recorded even if they are not cause for denial, and they should be discussed with the driver to encourage appropriate remedial care. This advice is especially needed when a condition, if neglected, could develop into a serious illness that could affect driving.

If the medical examiner determines that the driver is fit to drive and is also able to perform non-driving responsibilities as may be required, the medical examiner signs the medical certificate which the driver must carry with his/her license. The certificate must be dated. Under current regulations, the certificate is valid for two years, unless the driver has a medical condition that does not prohibit driving but does require more frequent monitoring. In such situations, the medical certificate should be issued for a shorter length of time. The physical examination should be done carefully and at least as complete as is indicated by the attached form. Contact the FMCSA at (202) 366-1790 for further information (a vision exemption, qualifying drivers under 49 CFR 391.64, etc.).

Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial drivers, the Federal Motor Carrier Safety Administration (FMCSA) has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that (I) is directly relevant to the physical examination and (2) is not already included in the medical examination form. The specific regulation is printed in italics and its reference by section is highlighted.

Federal Motor Carrier Safety Regulations - Advisory Criteria -

Loss of Limb:
§ 391.41(b)(1)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no loss of a foot, leg, hand or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

Limb Impairment:
§ 391.41(b)(2)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iv) Has been granted a Skill Performance Evaluation Certificate pursuant to Section 391.49.

A person who suffers loss of a foot, leg, hand or arm or whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skill Performance Evaluation (SPE) Certification Program pursuant to section 391.49, assuming the person is otherwise qualified.

With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The SPE Certification Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations (FMCSRs) by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are still present, and thus restrictions may be included on individual SPE certificates when a State Director for the FMCSA determines they are necessary to be consistent with safety and public interest.

If the driver is found otherwise medically qualified (391.41(b)(3) through (13)), the medical examiner must check on the medical certificate that the driver is qualified only if accompanied by a SPE certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a current SPE certificate for his/her physical disability.

Diabetes
§ 391.41(b)(3)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semiconsciousness, diabetic coma or insulin shock).

The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the diabetic problem. Thus, because of these inherent dangers, the FMCSA has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the FMCSRs.

Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule.

(See Conference Report on Diabetic Disorders and Commercial Drivers and Insulin-Using Commercial Motor Vehicle Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Cardiovascular Condition
§ 391.41(b)(4)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive cardiac failure.

The term "has no current clinical diagnosis of" is specifically designed to encompass: *"a clinical diagnosis of"* (l) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term *"known to be accompanied by"* is defined to include: a *clinical diagnosis of* a cardiovascular disease (1) which is

accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a driver is certified that he or she have a normal resting and stress electrocardiogram (ECG), no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not unqualifying. Coumadin is a medical treatment which can improve the health and safety of the driver and should not, by its use, medically disqualify the commercial driver. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver. The FMCSA should be contacted at (202) 366-1790 for additional recommendations regarding the physical qualification of drivers on coumadin.

(See Conference on Cardiac Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Respiratory Dysfunction

§ 391.41(b)(5)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.

Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner detects a respiratory dysfunction, that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not unqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.

(See Conference on Pulmonary/Respiratory Disorders and Commercial Drivers at: http.//www.fmcsa.dot.gov/rulesregs/medreports.htm)

Hypertension

§ 391.41(b)(6)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no current clinical diagnosis of high blood pressure likely to interfere with ability to operate a commercial motor vehicle safely.

Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criteria is based on FMCSA's Cardiac Conference recommendations, which used the report of the 1984 Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure.

A blood pressure of 161-180 and/or 91-104 diastolic is considered mild hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a 3-month period to reduce his or her blood pressure to less than or equal to 160/90; the certifying physician should state on the medical certificate that it is only valid for that 3-month period. If the driver is subsequently found qualified with a blood pressure less than or equal to 160/90, the certifying physician may issue a medical certificate for a 1-year period, but should confirm blood pressure control in the third month of this 1-year period. The individual should be certified annually thereafter. The expiration date must be stated on the medical certificate.

A blood pressure of greater than 180 systolic and/or greater than 104 diastolic is considered moderate to severe. The driver may not be qualified, even temporarily, until his or her blood pressure has been reduced to less than 181/105. The examining physician may temporarily certify the individual once the individual's blood pressure is below 181 and/or 105. For blood pressure greater than 180 and/or 104, documentation of continued control should be made every 6 months. The individual should be certified biannually thereafter. The expiration date must be stated on the medical certificate. Commercial drivers who present for certification with normal blood pressures but are taking medication(s) for hypertension should be certified on the same basis as individuals who present with blood pressures in the mild or moderate to severe range. Annual recertification is recommended if the medical examiner is unable to establish the blood pressure at the time of diagnosis.

An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days. Inquiry should be made regarding smoking, cardiovascular disease in relatives, and immoderate use of alcohol. An electrocardiogram (ECG) and blood profile, including glucose, cholesterol, HDL cholesterol, creatinine and potassium, should be made. An echocardiogram and chest x-ray are desirable in subjects with moderate or severe hypertension.

Since the presence of target damage increases the risk of sudden collapse, group 3 or 4 hypertensive retinopathy, left ventricular hypertrophy not otherwise explained (echocardiography or ECG by Estes criteria), evidence of severely reduced left ventricular function, or serum creatinine of greater than 2.5 warrants the driver being found unqualified to operate a commercial motor vehicle in interstate commerce.

Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of somnolence or syncope are particularly undesirable in commercial drivers.

A commercial driver who has normal blood pressure 3 or more months after a successful operation for pheochromocytoma, primary aldosteronism (unless bilateral adrenalectomy has been performed), renovascular disease, or unilateral renal parenchymal disease, and who shows no evidence of target organ may be qualified. Hypertension that persists despite surgical intervention with no target organ disease should be evaluated and treated following the guidelines set forth above. (See Conference on Cardiac Disorders and Commercial Drivers at: http.//www.fmcsa.dot.gov/rulesregs/medreports.htm)

Rheumatic, Arthritic, Orthopedic, Muscular, Neuromuscular or Vascular Disease

§ 391.41(b)(7)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with ability to control and operate a commercial motor vehicle safely.

Certain diseases are known to have acute episodes of transient muscle weakness, poor muscular coordination (ataxia), abnormal sensations (paresthesia), decreased muscular tone (hypotonia), visual disturbances and pain which may be suddenly incapacitating. With each recurring episode, these symptoms may become more pronounced and remain for longer periods of time. Other diseases have more insidious onsets and display symptoms of muscle wasting (atrophy), swelling and paresthesia which may not suddenly incapacitate a person but may restrict his/her movements and eventually interfere with the ability to safely operate a motor vehicle. In many instances these diseases are degenerative in nature or may result in deterioration of the involved area.

Once the individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular or

vascular disease, then he/she has an established history of that disease. The physician, when examining an individual, should consider the following: (1) the nature and severity of the individual's condition (such as sensory loss or loss of strength); (2) the degree of limitation present (such as range of motion); (3) the likelihood of progressive limitation (not always present initially but may manifest itself over time); and (4) the likelihood of sudden incapacitation. If severe functional impairment exists, the driver does not qualify. In cases where more frequent monitoring is required, a certificate for a shorter time period may be issued.
(See Conference on Neurological Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Epilepsy
§ 391.41(b)(8)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.
Epilepsy is a chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified: (1) a driver who has a medical history of epilepsy; (2) a driver who has a current clinical diagnosis of epilepsy; or (3) a driver who is taking antiseizure medication.

If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that person's condition will likely cause loss of consciousness or loss of ability to control a motor vehicle is made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.
(See Conference on Neurological Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Mental Disorders
§ 391.41(b)(9)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely.
Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic "nagging" pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined when determining an individual's overall fitness to drive. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.

Many bus and truck drivers have documented that "nervous trouble" related to neurotic, personality, emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant disqualification. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination. See Psychiatric Conference Report for specific recommendations on the use of these medications and potential hazards for driving.
(See Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Vision
§ 391.41(b)(10)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

The term "ability to recognize the colors of" is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Ishihara, Pseudoisochromatic, Yarn) and doubtful findings are discovered, a controlled test using signal red, green and amber may be employed to determine the driver's ability to recognize these colors.

Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.

If an individual meets the criteria by the use of glasses or contact lenses, the following statement shall appear on the Medical Examiner's Certificate: "Qualified only if wearing corrective lenses".
(See Visual Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Hearing
§ 391.41(b)(11)
A person is physically qualified to drive a commercial motor vehicle if that person:
First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951.
Since the prescribed standard under the FMCSRs is the American Standards Association (ANSI), it may be necessary to convert the audiometric results from the ISO standard to the ANSI standard. Instructions are included on the Medical Examination report form.

If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.

For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18, 23, etc. The examiner should not use only sibilants (s-sounding test materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered.

If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate "Qualified only when wearing a hearing aid".

(See Hearing Disorders and Commercial Motor Vehicle Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Drug Use
§ 391.41(b)(12)

A person is physically qualified to drive a commercial motor vehicle if that person:

Does not use a controlled substance identified in 21 CFR 1308.ll. Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties; and has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving tasks on a public road. If a driver uses a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

A test for controlled substances is not required as part of this biennial certification process. The FMCSA or the driver's employer should be contacted directly for information on controlled substances and alcohol testing under Part 382 of the FMCSRs.

The term "uses" is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results should be confirmed by a second test of greater specificity. The term "habit- forming" is intended to include any drug or medication generally recognized as capable of becoming habitual, and which may impair the user's ability to operate a commercial motor vehicle safely.

The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the successful completion of a drug rehabilitation program, and a negative drug test result. Additionally, given that the certification period is normally two years, the examiner has the option to certify for a period of less than 2 years if this examiner determines more frequent monitoring is required.

(See Conference on Neurological Disorders and Commercial Drivers and Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Alcoholism
§ 391.41(b)(13)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no current clinical diagnosis of alcoholism.

The term "current clinical diagnosis of" is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.

(g) If the medical examiner finds that the person he/she examined is physically qualified to drive a commercial motor vehicle in accordance with § 391.41(b), the medical examiner shall complete a certificate in the form prescribed in paragraph (h) of this section and furnish one copy to the person who was examined and one copy to the motor carrier that employs him/her.

(h) The medical examiner's certificate shall be substantially in accordance with the following form. Existing forms may be used until current printed supplies are depleted or until November 6, 2001, whichever occurs first.

BILLING CODE 4910–22–P

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined _____ in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties, I find this person is qualified; and, if applicable, only when:

☐ wearing corrective lenses ☐ driving within an exempt intracity zone (49 CFR 391.62)

☐ wearing hearing aid ☐ accompanied by a Skill Performance Evaluation Certificate (SPE)

☐ accompanied by a _____ waiver/exemption ☐ Qualified by operation of 49 CFR 391.64

The information I have provided regarding this physical examination is true and complete. A complete examination form with any attachment embodies my findings completely and correctly, and is on file in my office.

SIGNATURE OF MEDICAL EXAMINER	TELEPHONE	DATE
MEDICAL EXAMINER'S NAME (PRINT)	☐ MD ☐ DO ☐ Physician Assistant	☐ Chiropractor ☐ Advanced Practice Nurse
MEDICAL EXAMINER'S LICENSE OR CERTIFICATE NO. / ISSUING STATE		
SIGNATURE OF DRIVER	DRIVER'S LICENSE NO.	STATE
ADDRESS OF DRIVER		
MEDICAL CERTIFICATE EXPIRATION DATE		

§ 391.49 [Amended]

4. Section 391.49 is amended in paragraph (d)(2) by revising the erroneous reference ''§ 391.43(e)'' to read ''§ 391.43(h)''.

[FR Doc. 00–25337 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039-0039-01; I.D. 092900A]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker and rougheye rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker and rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 2000 total allowable catch (TAC) of shortraker and rougheye rockfish in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Nick Hindman 907-586-7006 or nick.hindman@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 amount of the 2000 TAC of shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA was established as 590 metric tons by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2000 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. NMFS finds that implementing this action immediately to prevent overharvesting the amount of the 2000 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B) as such procedure would be impracticable and contrary to the public interest. Moreover, the fleet has taken the amount of the 2000 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA. As further delay would only result in overharvest, NMFS finds that this constitutes good cause under 5 U.S.C. 553(d), to waive the delay in the effective date.

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: October 2, 2000.

Clarence Pautzke,

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

[FR Doc. 00–25621 Filed 10–2–00; 4:30 pm]

BILLING CODE: 3510–22 –S

Proposed Rules

Federal Register
Vol. 65, No. 194
Thursday, October 5, 2000

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, −200C, −300, and −400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200, −200C, −300, and −400 series airplanes, that currently requires repetitive visual and high frequency eddy current (HFEC) inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. That amendment also mandates accomplishment of a modification to the aft cargo door, which would terminate the repetitive inspection requirements. This action would revise the compliance time of the terminating action. The actions specified by this proposal are intended to prevent fatigue cracking of the corners of the doorframe and the crossbeams of the aft cargo door, which could result in rapid depressurization of the airplane.

DATES: Comments must be received by November 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2000–NM–205–AD'' in the subject line and need not be submitted in triplicate.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–2028; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–205–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 24, 2000, the FAA issued AD 2000–06–13, amendment 39–11654 (65 FR 17583, April 4, 2000), applicable to certain Boeing Model 737–200, −200C, −300, and −400 series airplanes, to require repetitive visual inspections and repetitive high frequency eddy current (HFEC) inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. That amendment also mandates accomplishment of a modification to the aft cargo door that terminates the repetitive inspection requirements. The actions specified by that AD are intended to prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed AD 2000–06–13 and determined that the compliance times specified for the terminating action in paragraph (e) of that AD can be relaxed somewhat. Paragraph (e) of that AD states the compliance times as, ''prior to the accumulation of 12,000 total flight cycles, or within 4 years after the effective date of this AD, whichever occurs later.'' However, the FAA now has determined that the terminating action (modification of the aft cargo door) could be accomplished within ''12,000 flight cycles or 4 years after the effective date of this AD, whichever occurs later.'' The revision to the compliance time will permit a reasonable and adequate amount of time for operators to accomplish the

terminating action, and will not adversely affect safety.

Editorial Explanation

The FAA also has noted that in paragraphs (a)(2), (a)(3), (a)(4), and Note 2 of AD 2000–06–13, reference is made to performing certain actions in accordance with certain paragraphs (*i.e.*, paragraph III.C., paragraph III.E., or paragraph III.F) of part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. While those specific paragraph references are correct for references to Revision 5 of the Boeing Alert Service Bulletin, they are not the correct paragraph references of Revision 6 of the alert service bulletin. However, the correct reference section for both Revision 5 and Revision 6 is still in part 1 of the Accomplishment Instructions. Therefore, the FAA has deleted the references to specific paragraphs of part 1 of the Accomplishment Instructions of the alert service bulletin and retained reference only to part 1. Specifying that the actions must be accomplished in accordance with ''Part 1 of the Accomplishment Instructions'' of either revision will clarify and correct the appropriate references.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 2000–06–13 to continue to require repetitive visual and HFEC inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. This proposal also would relieve the existing compliance time for the terminating action required by AD 2000–06–13 to modify the aft cargo door.

Cost Impact

There are approximately 1,636 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 707 airplanes of U.S. registry would be affected by this AD.

The detailed visual inspections that currently are required by AD 2000–06–13, and retained in this AD, would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $84,840, or $120 per airplane, per inspection cycle.

The high frequency eddy current inspections that would be required by this proposal would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $169,680, or $240 per airplane, per inspection cycle.

The modification proposed in this action would take approximately 144 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,530 per airplane. Based on these figures, the estimated cost impact of the proposed modification on U.S. operators is estimated to be $9,311,190, or $13,170 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11654 (65 FR 17583, April 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–205–AD. Revises AD 2000–06–13, Amendment 39–11654.

Applicability: The following airplane models, certificated in any category.

- Model 737–200 and −200C series airplanes, line numbers 6 through 873 inclusive;
- Model 737–200, −200C, −300, and −400 series airplanes; line numbers 874 through 1642 inclusive; equipped with an aft cargo door having Boeing part number (P/N) 65–47952–1 or P/N 65–47952–524; excluding:

1. Those airplanes on which that door has been modified in accordance with Boeing Service Bulletin 737–52–1079; or
2. Those airplanes on which the door assembly having P/N 65–47952–524 includes four straps (P/N's 65–47952–139, 65–47952–140, 65–47952–141, and 65–47952–142) and a thicker lower cross beam web (P/N 65–47952–157).

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the corners of the doorframe and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

Restatement of the Requirements of AD 98–25–06

Inspections and Corrective Actions

(a) Within 90 days or 700 flight cycles after December 24, 1998 (the effective date of AD

98–25–06, amendment 39–10931), whichever occurs later, perform an internal detailed visual inspection to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999.

(1) If no cracking is detected, accomplish the requirements of either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the internal visual inspection thereafter at intervals not to exceed 4,500 flight cycles. Or

(ii) Prior to further flight, modify the corners of the doorframe and the crossbeams of the aft cargo door in accordance with the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD.

(2) If any cracking is detected in the upper or lower cross beams, prior to further flight, modify the cracked beam in accordance with Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the repaired beam.

(3) If any cracking is detected in the forward or aft upper door frame, prior to further flight, repair the frame and modify the corners of the door frame of the aft cargo door, in accordance with Part I of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the upper doorframe.

Note 2: Cracks of the forward or aft upper door frame, regardless of length, must be repaired prior to further flight in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(4) If any cracking is detected in the forward or aft lower door frame, prior to further flight, replace the damaged frame with a new frame, and modify the corners of the door frame of the aft cargo door, in accordance with Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the lower doorframe.

(b) Where Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999, specifies that certain repairs are to be accomplished in accordance with instructions received from Boeing, this AD requires that, prior to further flight, such repairs be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

New Requirements of This AD

Inspections and Corrective Actions

(c) If any cracking of the outer chord of the upper or lower cross beams of the aft cargo door is detected as a result of any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO; Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

(d) Within 4,500 flight cycles or one year after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection (HFEC) to detect cracking of the four corners of the door frame of the aft cargo door, in accordance with the procedures specified in Boeing 737 Nondestructive Test Manual, Part 6, Chapter 51–00–00 (Figure 4 or Figure 23), or Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999;

(1) If no cracking of the corners of the doorframe of the aft cargo door is detected, repeat the HFEC inspections thereafter at intervals not to exceed 4,500 flight cycles until accomplishment of the modification specified in paragraph (e) of this AD.

(2) If any cracking of the corners of the door frame of the aft cargo door is detected, prior to further flight, replace the damaged frame with a new frame, and modify the four corners of the door frame, in accordance with Parts II and III of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that doorframe.

Terminating Action

(e) Within 4 years or 12,000 flight cycles after the effective date of this AD, whichever occurs later: Modify the four corners of the door frame and the cross beams of the aft cargo door, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. Accomplishment of that modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Accomplishment of the modification required by paragraph (a) of AD 90–06–02, amendment 39–6489, is considered acceptable for compliance with paragraph (e) of this AD.

Note 4: Modification of the corners of the door frame and the cross beams of the aft cargo door accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–52–1079, dated December 16, 1983; Revision 1, dated December 15, 1988; Revision 2, dated July 20, 1989; Revision 3, dated May 17, 1990; Revision 4, dated February 21, 1991; is considered acceptable for compliance with paragraph (e) of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–06, amendment 39–10931, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on September 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25534 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–80–AD]

RIN 2120–AA64

Airworthiness Directives; CL–604 Variant of Bombardier Model Canadair CL–600–2B16 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA8060NM–D, SA8072NM–D, or SA8086NM–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Model CL–604 variant of Bombardier Model Canadair CL–600–2B16 series airplanes modified in accordance with certain Supplemental Type Certificates that currently requires that the fuel service panel maintenance light on the fuel service panel be disconnected. This action would require modification of the wiring of the fuel port flood light (which is the name given to the fuel service

panel maintenance light in the service bulletin that describes the wiring modification). This proposal is prompted by a report indicating that an electrical spark was noted when the fuel cap chain contacted the fuel port flood light housing of the fuel service panel. The actions specified by the proposed AD are intended to prevent electrical sparks from a grounded object from coming into contact with the fuel port flood light housing of the fuel service panel, which could result in a fuel fire due to the proximity of the fuel service panel to the fuel port.

DATES: Comments must be received by November 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment @faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–80–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5351; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–NM–80–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 13, 2000, the FAA issued AD 2000–01–51, amendment 39–11519, (65 FR 3379, January 21, 2000) applicable to CL–604 variant of Bombardier Model Canadair CL–600–2B16 series airplanes modified in accordance with Supplemental Type Certificate SA8060NM–D, SA8072NM–D, or SA8086NM–D. That AD required that the fuel service panel maintenance light on the fuel service panel be disconnected. That action was prompted by a report indicating that an electrical spark was noted when the fuel cap chain contacted the maintenance light housing of the fuel service panel. The requirements of that AD were intended to prevent electrical sparks from a grounded object from coming into contact with the maintenance light housing of the fuel service panel, which could result in a fuel fire due to the close proximity of the fuel service panel to the fuel port.

Actions Since Issuance of Previous Rule

In the preamble of AD 2000–01–51, the FAA indicated that the action required by that AD was considered ''interim action'' and that further rulemaking was being considered. Since the issuance of that AD, the manufacturer has advised that it has developed a modification that will positively address the unsafe condition. The FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletins TUC–33–30–01–1, dated February 1, 2000, and TUC–33–30–01–1, Revision A, dated March 10, 2000, which describe procedures for modification of the wiring of the fuel port flood lights. The modification involves re-routing the wires in the flood light assembly, verifying the proper termination, adding an additional ground wire to the flood light assembly, and verifying the bonding of the fuel port flood light to the airplane structure. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–01–51 to require modification of the wiring of the fuel port flood lights. The actions would be required to be accomplished in accordance with the service bulletins described previously. The FAA has determined that long term operational safety will be better assured by this modification than by leaving the fuel port flood lights disconnected. This

determination was based in part on the possibility of human error associated with possible future reconnection of the lights.

Cost Impact

There are approximately 22 airplanes of U.S. registry that would be affected by this proposed AD.

The modification that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of the parts required for each airplane are minimal. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $2,640, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11519 (65 FR 3379, January 21, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 2000–NM–80–AD. Supersedes AD 2000–01–51, Amendment 39–11519.

Applicability: CL–604 Variant of Bombardier Model Canadair CL–600–2B16 Series Airplanes Modified in Accordance with Supplemental Type Certificate SA8060NM–D, SA8072NM–D, or SA8086NM–D

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical sparks from a grounded object from coming into contact with the fuel port flood light housing of the fuel service panel, which could result in a fuel fire due to the close proximity of the fuel service panel to the fuel port, accomplish the following:

Modification

(a) Within 90 days after the effective date of this AD, modify the wiring of the fuel port flood light in accordance with the Accomplishment Instructions of Bombardier Service Bulletin TUC–33–30–01–1, dated February 1, 2000, or Revision A, dated March 10, 2000.

Alternative Methods of Compliance

(b)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–01–51, amendment 39–11519, are approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Issued in Renton, Washington, on September 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25535 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL–6874–1]

Water Pollution Control; Program Modification Application by South Dakota To Administer the Sludge Management (Biosolids) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of application and public comment period.

SUMMARY: The State of South Dakota has submitted an application to EPA to revise the existing South Dakota Pollutant Discharge Elimination System (SDPDES) program to include administration and enforcement of the sludge management (biosolids) program. According to the State's proposal dated March 23, 1998, this program would be administered by the South Dakota Department of Environment and Natural Resources (SDDENR).

The application from South Dakota is complete and is available for inspection and copying. EPA has reviewed the State's request for delegation for completeness and adequacy and has found that the proposal meets Federal equivalency regulations.

DATES: Comments on this proposed rule received on or before November 20, 2000 will be considered before issuing a final rule. Comments postmarked after this date may not be considered.

ADDRESSES: You can view and copy South Dakota's application for modification from 8:00 a.m. until 5:00 p.m. Monday through Friday, excluding holidays, at the South Dakota Department of Environment and Natural Resources; Joe Foss Building, Pierre, South Dakota or at the EPA Regional

Office at 999 18th Street, Denver, Colorado. Requests for copies should be addressed to Kelli Buscher, South Dakota Department of Environment and Natural Resources at the above address or at telephone number 605–773–3351. (There will be a $15 charge for copies.) Electronic comments are encouraged and should be submitted to brobst.bob@epa.gov or send written comments to Robert Brobst, U.S. EPA/8P–WP, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Robert Brobst at the above address by phone at (303) 312–6129, or by e-mail at brobst.bob@epa.gov.

SUPPLEMENTARY INFORMATION: Section 405 of the Clean Water Act (CWA), 33 U.S.C. 1345, created the sludge management program, allowing EPA to issue permits for the disposal of sewage sludge under conditions required by the CWA. Section 405(c) of the CWA provides that a state may submit an application to EPA for administering its own program for issuing sewage sludge permits within its jurisdiction. EPA is required to approve each such submitted state program unless EPA determines that the program does not meet the requirements of sections 304(i) and/or 402(b) of the CWA or the EPA regulations implementing those sections.

South Dakota's application for sludge management program approval contains a letter from the Governor requesting program approval, an Attorney General's Statement, copies of pertinent State statutes and regulations, amendments to the SDPDES Program Description, and amendments to the SDDENR/EPA Memorandum of Agreement (MOA) executed by the Regional Administrator, Region 8, EPA, and the Secretary, Department of Environment and Natural Resources.

The State of South Dakota has existing environmental self-evaluation laws and rules. These provide evidentiary privilege and limited immunity for certain disclosures made in an environmental self-evaluation. SDCL section 1–40–35 provides that no privilege or immunity exists for information required to be collected, developed, maintained, or reported to the department according to State law, rule, regulation, or permit.

South Dakota has incorporated Federal sludge management regulations by reference into its State rules. These rules require recordkeeping and reporting for certain technical monitoring and assessment, management practices, and certain certifications of compliance. Because these requirements and any requirement in sludge permits would be excluded from the self-evaluation privilege, EPA believes that South Dakota has the authority necessary to administer the sludge management program to assure protection of public health and the environment, and invites comment on this issue.

EPA discussed the SDDENR program application with the South Dakota Office of the U.S. Fish and Wildlife Service and received their concurrence dated June 29, 2000 stating that the proposed program authorization was unlikely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species.

By Letter dated October 20, 1999, EPA discussed the program application with the South Dakota State Historic Preservation Officer and received concurrence by letter dated November 5, 1999. The State Historic Preservation Officer determined that no historic properties would be affected by the addition of the biosolids program.

What are biosolids? Biosolids are, in effect, a slow release nitrogen fertilizer with low concentrations of other plant nutrients. In addition to significant amounts of nitrogen, biosolids also contain phosphorus, potassium, and essential micronutrients such as zinc and iron. Many western soils are deficient in micronutrients. Biosolids are rich in organic matter that can improve soil quality by improving water holding capacity, soil structure and air and water transport. Proper use of biosolids can ultimately decrease topsoil erosion. When applied at agronomic rates (the rates at which plants require nitrogen during a defined growth period), biosolids provide an economic benefit in addition to their environmental benefits.

How do biosolids differ from sewage sludge? Most simply, biosolids is the new name for what had previously been referred to as sewage sludge. Biosolids are primarily organic treated solids at wastewater treatment plants—with the emphasis on the word treated—that are suitable for recycling as a soil amendment. Sewage sludge now refers to untreated primary and secondary organic solids. This differentiates biosolids that have received stabilization treatment at a municipal wastewater treatment plant from other types of existing sludge (such as oil and gas field wastes) that cannot be beneficially recycled as soil amendments.

What are the traditional practices in this region? Until 25 years ago, the traditional practice in this Region was to landfill or incinerate what was then called sewage sludge. During the past quarter century the practice changed to recycling biosolids as soil amendments. States in Region 8 recycle 85% of the biosolids generated in the six state Region.

What are the Federal requirements? The EPA in 1993 set forth requirements for management of all biosolids generated during the process of treating municipal wastewater, commonly called the 503 rule. The 503 rule encourages the beneficial reuse of biosolids, and establishes strict standards under which wastewater residuals can be beneficially recycled as soil amendments. The EPA believes that biosolids are an important resource that can and should be safely recycled. The 503 rule is designed to protect public health and the environment. Most of the requirements were based on the results of extensive multimedia risk assessment and on more that 25 years of independent research. The 503 rule establishes standards for pathogen destruction and for levels of metals that can be present in biosolids. It also governs the agricultural practices, site restrictions, and crop harvesting restrictions and the stability of the materials by reducing the attraction of disease vectors (such as flies).

Indian Country

South Dakota is not authorized to carry out its Biosolids program in Indian Country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian reservations located within the State of South Dakota:

A. Cheyenne River Indian Reservation,
B. Crow Creek Indian Reservation,
C. Flandreau Indian Reservation,
D. Lower Brule Indian Reservation,
E. Pine Ridge Indian Reservation,
F. Rosebud Indian Reservation,
G. Standing Rock Indian Reservation, and
H. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and the extent of Indian Country within the State of South Dakota. In a forthcoming **Federal Register** document, EPA will respond to the comments that have been received and more specifically identify Indian Country areas in the State of South Dakota.

Public Notice Procedures

Copies of all submitted statements and documents shall become a part of the record submitted to EPA. All comments or objections presented in writing to EPA Region 8 and postmarked within 45 days of this document will be considered by EPA before it takes final action on South Dakota's request for program modification approval. All written comments and questions regarding the sludge management program should be addressed to Robert Brobst at the above address. The public is also encouraged to notify anyone who may be interested in this matter.

EPA's Decision

After the close of the public comment period, EPA will decide whether to approve or disapprove South Dakota's sludge management program. EPA will consider and respond to all significant comments received before taking final action South Dakota's request for Sludge program approval. The decision will be based on the requirements of sections 405, 402 and 304(i) of the CWA and EPA regulations promulgated thereunder.

If the South Dakota program modifications are approved, EPA will so notify the State and anyone who has submitted significant comments. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of federal NPDES sludge management permits in South Dakota (except, as discussed above, for those dischargers in ''Indian Country''). The State's program will operate in lieu of the EPA-administered program. However, EPA will retain the right, among other things, to object to SDNPDES permits proposed by South Dakota and to take enforcement actions for violations, as allowed by the CWA.

If EPA disapproves South Dakota's sludge management program, EPA will notify the State and anyone who submitted significant comments of the reasons for disapproval and of any revisions or modifications to the State program that are necessary to obtain approval.

Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an ''approval,'' within the meaning of the Administrative Procedure Act (APA), constitutes a ''licence,'' which, in turn, is the project of an ''adjudication.'' For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the APA, after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe an assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program approval were a rule subject to the FRA, the Agency would certify that approval of the State proposed SDPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligation upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires WPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or lease burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's decision includes no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''Federal intergovernmental mandate'' affects an annual Federal entitlement program of $500 million or more which are not applicable here. South Dakota's request for approval of its budget management program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its sludge management program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of EPA, thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a sludge management program, regulation is left to EPA.

EPA's approval of state programs generally may reduce compliance costs for the private sector, since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement. Hence, owners and operators of sludge management facilities or businesses generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's decision is not subject to the requirements of sections 202 and 205 of the UMRA.

The Agency recognizes that small governments may own and/or operate sludge management facilities that will become subject to the requirements of an approved State sludge management program. However, small governments that own and/or operate sludge management facilities are already subject to the requirements in 40 CFR

parts 123 and 503 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own sludge management program and any revisions to that program, these same small governments will be able to own and operate their sludge management facilities or businesses under the approved State program, in lieu of the Federal program. Therefore, EPA has determined that this document contains no regulatory requirements that might significantly or uniquely affect small governments.

Dated: September 26, 2000.

William P. Yellowtail,

Regional Administrator, Region 8.

[FR Doc. 00–25600 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2208, MM Docket No. 00–177, RM–9954]

Digital Television Broadcast Service; Rapid City, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Duhamel Broadcasting Enterprises, licensee of Station KOTA–TV, NTSC Channel 3, Rapid City, South Dakota. Duhamel requests the substitution of DTV Channel 2 for Station KOTA–TV's assigned DTV Channel. DTV Channel 2 can be allotted to Rapid City, South Dakota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (44–04–08 N. and 103–15–03 W.). As requested, we propose to allot DTV Channel 2 to Rapid City with a power of 8 and a height above average terrain (HAAT) of 174 meters.

DATES: Comments must be filed on or before November 24, 2000, and reply comments on or before December 11, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Colette M. Capretz, Shaw Pittman, 2300 N Street, NW, Washington, DC 20037–1128 (counsel for Duhamel Broadcasting Enterprises).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–177, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., 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.

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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25529 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2209, MM Docket No. 00–178, RM–9914]

Digital Television Broadcast Service; Charlotte, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Charlotte-Mecklenburg Public Broadcasting Authority, licensee of noncommercial educational station WTVI–TV, NTSC Channel *42, Charlotte, North Carolina, requesting the substitution of DTV Channel *11 for its assigned DTV Channel *24. DTV Channel *11 can be allotted to Charlotte, North Carolina, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (35–17–14 N. and 80–41–45 W.). As requested, we propose to allot DTV Channel *11 to Charlotte, North Carolina, with a power of 2.0 and a height above average terrain (HAAT) of 387 meters.

DATES: Comments must be filed on or before November 24, 2000, and reply comments on or before December 11, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence M. Miller, Schwartz, Woods & Miller, 1350 Connecticut Avenue, NW, Suite 300, Washington, DC 20036–1717 (counsel for Charlotte-Mecklenburg Public Broadcasting Authority).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–178, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., 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.

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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25528 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2210, MM Docket No. 00–179, RM–9947]

Digital Television Broadcast Service; Arkadelphia, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Arkansas Educational Television Commission (''AETC''), licensee of noncommercial educational Station KETG(TV), NTSC Channel *9, Arkadelphia, Arkansas. AETC requests the substitution of DTV Channel *13 for Station KETG(TV)'s assigned DTV Channel *46 at Arkadelphia. DTV Channel *13 can be allotted to Arkadelphia, Arkansas, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (33–54–26 N. and 93–06–46 W.). As requested, we propose to allot DTV Channel *13 to Arkadelphia with a power of 7.3 and a height above average terrain (HAAT) of 320.9 meters.

DATES: Comments must be filed on or before November 24, 2000, and reply comments on or before December 11, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036 (counsel for Arkansas Educational Television Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–179, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., 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.

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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25527 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2211, MM Docket No. 00–180, RM–9956]

Digital Television Broadcast Service; Fort Myers, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Fort Myers Broadcasting, licensee of Station WINK–TV, NTSC Channel 11, Fort Myers, Florida, proposing the substitution of DTV Channel 9 for Station WINK–TV's assigned DTV Channel 53. DTV Channel 9 can be allotted to Fort Myers, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (26–48–01 N. and 81–45–47 W.). As requested, we propose to allot DTV Channel 9 to Fort Myers with a power of 20 and a height above average terrain (HAAT) of 451 meters.

DATES: Comments must be filed on or before November 24, 2000, and reply comments on or before December 11, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph A. Belisle, Leibowitz & Associates, P.A., One SE 3rd Avenue, Suite 1450, Miami, Florida 33131 (counsel for Fort Myers Broadcasting Company).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–180, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., 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.

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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25526 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–P

Notices

Federal Register

Vol. 65, No. 194

Thursday, October 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Renewal of Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Renewal of Advisory Committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries announces the renewal of the Advisory Committee on Actuarial Examinations.

FOR FURTHER INFORMATION CONTACT: Gloria Walker, 202–694–1854.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Joint Board on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Committee's advisory functions will include, but will not necessarily be limited to: (1) Considering areas of actuarial knowledge that should be treated on the examinations; (2) developing examination questions; (3) recommending proposed examinations and pass marks; and (4), as requested by the Joint Board, making recommendations relative to the examination program.

Dated: September 29, 2000.

Paulette Tino,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 00–25653 Filed 10–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815]

Certain Cold-Rolled Carbon Steel Flat Products From Korea: Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping administrative review.

SUMMARY: The Department of Commerce (''the Department'') has received a request to conduct a new shipper administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products (''cold-rolled'') from Korea, which has an August anniversary date. In accordance with 19 CFR 351.214 (d), we are initiating this new shipper administrative review.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (1999).

Background

On August 31, 2000, the Department received a timely request from Hyundai Pipe Co., Ltd. (''HDP'') in accordance with 19 CFR 351.214(d), for a new shipper review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea, which has an August anniversary date. *See* Antidumping Duty Order: Certain Cold-Rolled Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993).

Initiation of Review

In its request of August 31, 2000, HDP, as required by 19 CFR 351.214(b)(2)(i) and (b)(2)(iii)(A), certified that it did not export the subject merchandise to the United States during the period of investigation (''POI'') January 1, 1992 through June 30, 1992, and that since the investigation was initiated on July 20, 1992, (57 FR 33488, July 29, 1992), it has not been affiliated with any company which exported the subject merchandise to the United States during the POI. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), HDP submitted documentation establishing the date on which it first entered the subject merchandise to the United States, the volume of that first shipment, and the date of its first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping order on cold-rolled steel from Korea. In accordance with 19 CFR 351.214(h)(1), we intend to issue preliminary results of this review no later than 180 days after the date of initiation.

In accordance with section 351.214(g)(1)(i)(A) of the Department's regulations, the period of review (''POR'') for a new shipper review initiated in the month immediately following the annual anniversary month is the twelve-month period preceding the anniversary month. Therefore, the POR for this new shipper is August 1, 1999 through July 31, 2000.

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed company, until the completion of this review.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: September 28, 2000.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 00–25619 Filed 10–4–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors (''DRAMs'') of One Megabit and Above From the Republic of Korea; Final Results of Full Sunset Review and Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Revocation of antidumping duty order on DRAMs of one megabit and above from the Republic of Korea.

SUMMARY: On May 30, 2000, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on DRAMs of one megabit and above from the Republic of Korea (65 FR 34439) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. Subsequently, on September 27, 2000, we received a letter from the petitioner, Micron Technology, Inc. (''Micron''), withdrawing its notice of intent to participate in this sunset review, originally filed on November 16, 1999. Further, Micron withdrew its responses from this review and stated its support for revocation of the antidumping order on DRAMs of One Megabit and Above from the Republic of Korea (''DRAMs from Korea''). Because no domestic interested party is now participating in this sunset review, the Department is revoking the order.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: John P. Maloney, Jr. or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1503 or (202) 482–3330, respectively.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''), and in 19 CFR Part 351 (1999) in general.

Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Background

On May 30, 2000, the Department published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on DRAMs of one megabit and above from the Republic of Korea pursuant to the Act. In our preliminary results, we determined that revocation of the order would be likely to lead to continuation or recurrence of dumping. In addition, we preliminarily determined that the following margins are likely to prevail for respective manufactures/exporters if the order were revoked: Hyundai—20.88 percent and All Others—4.55 percent.

On July 11, 2000, and on July 12, 2000, we received final versions of case briefs from Hyundai and Micron Technology, Inc. (''Micron''), respectively, within the deadline provided for in 19 CFR 351.309(c)(1)(i). Also, on July 17, 2000, and on July 18, 2000, Micron and Hyundai, respectively, submitted final versions of rebuttal briefs within the deadline provided for in 19 CFR 351.309(d). The Department held a public hearing on August 9, 2000. Subsequently, on September 27, 2000, Micron withdrew its interest in this sunset review and withdrew its responses from the record.

Scope of Review

The products covered by this review include DRAMs of one megabit and above from Korea. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (''SIPs''), single in-line memory modules (''SIMMs''), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (''VGA'') boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (''VRAMS''), as well as any future packaging and assembling of DRAMs, and removable memory modules placed on motherboards, with or without a central processing unit (''CPU''), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are re-imported for repair or replacement.

The DRAMs and modules subject to this review are classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Final Results of Review

Determination To Revoke

Because it withdrew both its notice of intent to participate in this sunset review and its responses from the record, the Department now determines that Micron has not responded to the Notice of Initiation as set out in section 751(c) of the Act. Without responses from Micron or any other domestic interested party on the record of this sunset review, the Department no longer finds that revocation of the order would

be likely to lead to the continuation of dumping.

In addition, the Department notes that Micron affirmatively supports revocation of the order in this sunset review. Given that the Department no longer finds that revocation of the order would be likely to lead to the continuation of dumping, pursuant to section 751(d)(2) of the Act and section 351.222(i)(1) of the *Sunset Regulations,* the Department hereby revokes the order on DRAMs from Korea.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed request for review.

Dated: September 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–25618 Filed 10–4–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges From India; Extension of Time Limit for Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of a new shipper review of certain stainless steel flanges from India. This review covers one Indian exporter, Snowdrop Trading PVT LTD (Snowdrop), and the period February 1, 1999 through February 29, 2000.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5222, or (202) 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (1999).

Background

Based on a request from Snowdrop, and pursuant to section 351.214, on March 28, 2000 the Department initiated a new shipper review of the antidumping duty order on certain stainless steel flanges from India, covering the period February 1, 1999 through February 29, 2000 (65 FR 17485, April 3, 2000). The preliminary results are currently due no later than September 24, 2000.

Postponement of Preliminary Results

The Department has determined that the issues of this case are extraordinarily complicated and consequently, it is not practicable to issue the preliminary results of review within the original time limit. *See* Memorandum from Richard A. Weible to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III, September 22, 2000. Accordingly, the Department is extending the time limit for completion of the preliminary results until January 22, 2001, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations. The deadline for the final results of this review will continue to be 90 days after date on which the preliminary results are issued, in accordance with section 351.214(i)(1).

Dated: September 22, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–25620 Filed 10–4–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Industry Sector Advisory Committee on Lumber & Wood (ISAC 10) for Trade Policy Matters; Continuation of Federal Register Notice Dated December 30, 1999, Volume 64, Number 250, Pages 73518–73519; Request for Nominations

AGENCY: International Trade Administration, Trade Development, U.S. Department of Commerce.

ACTION: Continuation of request for nominations.

SUMMARY: The Secretary of Commerce (Commerce) and the United States Trade Representative (USTR) continue to seek nominations for appointment of an environmental representatives to the Industry Sector Advisory Committee on Lumber and Wood Products for Trade Policy Matters (ISAC 10; see **Federal Register** Notice 73518–73519, Vol. 64, Number 250, dated December 30, 1999). Appointments will be effective for the charter term of this Committee, which expires March 17, 2002. In order to be considered for appointment to the Committee, a nominee must be a U.S. citizen, must represent a U.S. organization with an interest in environmental issues relevant to the work of the Committee, and may not be a registered foreign agent under the Foreign Agents Registration Act. Nominees' special interest in and knowledge of environmental, trade, and sectoral issues will be considered.

This notice will remain in effect for the duration of the current charter period; however, priority will be given to nominations received by November 3, 2000. Nominations will be considered as they are received. Recruitment information is available on the

International Trade Administration Website at *www.ita.doc.gov/icp.*

FOR FURTHER INFORMATION CONTACT: Further inquiries may be directed to Dominic Bianchi, Acting Assisting USTR for Intergovernmental Affairs and Public Liaison, Winder Building, Room 100, 600 17th Street NW, Washington, DC 20230 or Ingrid V. Mitchem, Acting Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) of the 1974 Trade Act directs the President to ''seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to:

(A) Negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];

(B) The operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) Other matters arising in connection with the development, implementation, and administration of the trade policy of the United States. * * *''

Section 135(c)(2) of the 1974 Trade Act provides:

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall:

(A) Consult with interested private organizations; and

(B) Take into account such factors as—

(i) Patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) The character of the nontariff barriers and other distortions affecting such competition,

(iii) The necessity for reasonable limits on the number of such advisory committees,

(iv) The necessity that each committee be reasonably limited in size, and

(v) In the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-chair seventeen Industry Sector Advisory Committees (ISACs) and four Industry Functional Advisory Committees (IFACs). The Committees' efforts have resulted in strengthening U.S. negotiating positions by enabling the United States to display a united front when it negotiates trade agreements with other nations. Committees meet an average of four times a year in Washington, D.C. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings. For additional information regarding the functions and membership of these committees, and general qualifications for membership, *see* 64 FR 10448–10449, March 4, 1999 (Volume 64, Number 42).

Eligibility

Eligibility to serve as an environmental representative on ISAC 10 is limited to U.S. citizens who are not full-time employees of a governmental entity, who represent a ''U.S. entity'', and who are not registered with the Department of Justice under the Foreign Agents Registration Act. For purposes of the preceding sentence, a ''U.S. entity'' is an organization incorporated in the United States (or, if unincorporated, having its headquarters in the United States):

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) at least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

Selection Criteria

USTR and Commerce will select environmental representatives eligible for appointment to ISAC 10 based upon the following:

(1) The organization to be represented will be considered based on environmental interest in trade policies in the sector relevant to the work of the Committee; and

(2) The nominee should demonstrate special interest in and knowledge of the formulation of environmental policies in the sector relevant to the work of the Committee, and the ability to work with governmental officials and industry representatives to reach consensus on complex environmental and trade issues affecting the relevant industry sectors.

(3) Preference will be accorded nominees who also demonstrate knowledge of and familiarity with the relevant industry sectors, as well as with international trade matters, including trade policy development relevant to those sectors.

Environmental representatives, as members of the Committee, will be required to have a security clearance. Members serve without compensation and are responsible for all expenses incurred in attending committee meetings.

Application Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, D.C. 20230. This notice is issued under the Federal Advisory Committee Act (5 U.S.C., app. 2) and 21 CFR part 14 relating to advisory committees.

Michael J. Copps,

Assistant Secretary for Trade Development.

[FR Doc. 00–25566 Filed 10–4–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100200A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is

scheduling public meetings of its Groundfish Committee, Monkfish Advisory Panel and Research Steering Committee in October 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meetings will be held between Tuesday, October 24, 2000, and Thursday, October 26, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Danvers, MA; Wakefield, MA; and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950: (978) 465-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978)465-0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Locations, and Agendas

Tuesday, October 24, 2000, 9:30 a.m. and Wednesday, October 25, 2000, 8:30 a.m.—Groundfish Oversight Committee Meeting

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777-2500.

The Groundfish Oversight Committee will continue its development of management alternatives for Amendment 13 to the Northeast Multispecies Fishery Management Plan. The Committee will consider comments from it's Advisory Panel on the area management and sector allocation proposals and may make changes to those proposals based on the comments received. They will finalize recommendations for rebuilding plans for overfished stocks, measures to address capacity in the groundfish fishery, and recommendations for closed areas. In addition, the Committee will refine its proposals for a revised status quo, area management, and sector allocation alternatives. They will review access by other fisheries or gears to closed areas and may develop recommendations for changes to those vessels and gears that are currently allowed access to closed areas. They will also develop priorities for cooperative research proposals that will be forwarded to the Research Steering Committee. The Committee will meet in a closed session to review advisory panel applications.

Thursday, October 26, 2000, 9:30 a.m.—Monkfish Advisory Panel Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401)739-3000.

The Panel will discuss monkfish trip limit options to address perceived inequities across fleet sectors and develop recommendations to the Monkfish Committee. It will also develop a statement of purpose and a range of alternatives for monkfish spawning area/time management, and will discuss possible options for bycatch control and minimizing discards of monkfish in small mesh fisheries.

Thursday, October 26, 2000, 9:30 a.m.—Research Steering Committee Meeting

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245-9300.

The Research Committee will discuss priorities for funding regional research projects in 2001.

Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate. Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least five days prior to the meeting dates.

Dated: October 2, 2000.

Richard W. Surdi,

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

[FR Doc. 00–25648 Filed 10–4–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.092800D]

Endangered Species; Permits

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

ACTION: Issuance of scientific research permit (1253) and a modification to a scientific research permit (1190).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has issued permits to: Carlos Diez and Robert Van Dam, Puerto Rico DNR (PR-DNR) (1253); and NMFS has issued modifications to scientific research permits to: NMFS-Southwest Region (1190).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on November 6, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 1253, 1190: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301-713-1401, fax: 301-713-0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and

policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas)*, Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (Dermochelys coriacea), Loggerhead turtle (*Caretta caretta*).

Fish

Shortnose sturgeon (*Acipenser brevirostrum*).

Permits and Modifications Issued

Notice was published on May 23, 2000 (65 FR 34445) that Mr. Carlos E. Diez, of Department of Natural and Environmental Resources applied for a scientific research permit (1253). The purpose of the research is to provide information on the ecology and population dynamics of the hawksbill and green turtles that inhabit the waters surrounding Puerto Rico and its adjacent islands (Mona, Monito, Desecheo, Caja-de-Muertos, Viques and Culebra). This research will improve the effectiveness of management efforts by addressing priorities set forth in the recovery plans for both species: (1) identification of important marine habitats; (2) determination of adult and juvenile distribution and abundance; (3) determination of sex ratios in the juvenile population; (4) evaluation of the extent of ingestion of persistent marine debris; (5) determination of growth rates and age at sexual maturity, and (6) quantification of threats to adults and juveniles on foraging grounds. Permit 1253 was issued on September 22, 2000, authorizing take of listed species. Permit 1253 expires July 31, 2005.

Notice was published on April 14, 2000 (65 FR 20138) that the Southwest Region, NMFS applied for a modification to 1190. Modification #1 authorizes and increase in the annual take of olive ridley turtles from 10 to 25. The purpose of the research is to document and evaluate the incidental take of pelagic turtles by the longline fishery, to help estimate the impact of the fishery on listed turtles as individuals and as populations, and to determine methods to reduce that impact. Research will evaluate how incidental captures affect sea turtle anatomy and physiology as a function of season, location of take, water temperature, species, size, time of day, and gear configuration. The results of the research will help NMFS to better meet the goals and objectives of the Pacific Sea Turtle Recovery Plans, the Hooking Mortality Workshop, and the requirements of Section 7 Biological Opinions developed for this fishery, and ultimately, to fulfill ESA responsibilities to protect, conserve, and recover listed species.

Incidentally-captured turtles will be examined, tagged, weighed, measured, resuscitated using approved techniques, have tissue samples taken, and be released. Some of these turtles will have transmitters attached. Dead turtles will be removed from the marine environment for research purposes, including necropsy and collection of life history data. Tissue samples may be used lab studies including the following: toxicology, histopathology, and genetic studies to identify nesting origins of incidentally taken turtles. Modification #1 to Permit 1190 was issued on September 21, 2000, authorizing take of listed species. Permit 1190 expires March 31, 2004.

Dated: September 29, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–25622 Filed 10–4–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement Subparts 227.71, Rights in Technical Data: 227.72, Rights in Computer Software and Computer Software Documentation; and related clauses and provisions at 252.227; OMB Number 0704–0369.

Type of Request: Extension.

Number of Respondents: 56,044.

Responses Per Respondent: 21 (average).

Annual Responses: 1,185,005.

Average Burden Per Response: 3.6 hours (average).

Annual Burden Hours: 4,320,447.

Needs and Uses: The Defense Federal Acquisition Regulation Supplement (DFARS) Subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in Technical Data, and 10 U.S.C. 23321, Validation of Proprietary Data Restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract is complete and accurate and satisfies contract requirements.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Lewis W. Oleinick. Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 29, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–25502 Filed 10–4–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–73]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 12 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–73 with attached transmittal and policy justification.

Dated: October 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 SEP 2000

In reply refer to:
I-00/006978

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-73 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $125 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-73

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Israel**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$ 125 million
TOTAL	$ 125 million

(iii) **Description of Articles or Services Offered: Fourteen non-MDE Beech King Air B200CT/T Fixed Wing aircraft with engines, spare engines, spares and repair parts, engineering support, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Army (YWB)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(vii) **Date Report Delivered to Congress:** 22 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - Beech King Air B200CT/T Fixed Wing Aircraft

The Government of Israel has requested a possible sale of 14 non-MDE Beech King Air B200CT/T Fixed Wing aircraft with engines, spare engines, spares and repair parts, engineering support, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $125 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Middle East.

The aircraft will be deployed in a combat service support role, which will consist of troop transport movement and cargo transport. Accordingly, the aircraft will be equipped with communications relay stations and other associated communications and navigation support devices. Israel will have no difficulty absorbing these additional aircraft into their armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Aircraft Company of Wichita, Kansas. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–25576 Filed 10–4–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–74]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–74 with attached transmittal and policy justification.

Dated: October 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 SEP 2000

In reply refer to:
I-00/007431

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-74, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $111 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-74

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Israel

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$ 111 million
TOTAL	$ 111 million

(iii) **Description of Articles or Services Offered:** JP-8 aviation jet fuel

(iv) **Military Department:** Army (YWJ)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(vii) **Date Report Delivered to Congress:** 22 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - JP-8 Aviation Jet Fuel

The Government of Israel has requested a possible purchase of JP-8 aviation jet fuel. The estimated cost is $111 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Middle East.

The proposed sale of the JP-8 aviation fuel will enable Israel to maintain the operational capability of its aircraft inventory. Israel will have no difficulty absorbing this additional fuel into their armed forces.

The proposed sale of this JP-aviation fuel will not affect the basic military balance in the region.

Procurement of the aviation jet fuel will be from the same contractors providing aviation fuel to the U.S. armed forces. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–25577 Filed 10–4–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on High Energy Laser Weapon Systems Applications will meet in closed session on October 19–20, 2000, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA 22201.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review on-going or proposed programs in high energy laser (HEL) applications; examine recent supporting technology advancements and their applications with respect to supporting military HEL weapon system developments; develop potential military and strategic HEL system applications and identify processes required to implement these potentials; determine what needs to be done to ''weaponize'' these systems; and assess HEL operational concepts, impacts and limitations, considering legal, treaty and policy issues concerning HEL employment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public. Law. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: October 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–25573 Filed 10–4–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice.

SUMMARY: The Strategic Advisory Group (SAG) will meet in closed session on November 2 and 3, 2000. The mission of the SAG is to provide timely advice on scientific, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic war plans.

At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12958, April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could

have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, (5 U.S.C. App 2), it has been determined that this SAG meeting concerns matters listed in 5 USC 552b(c) and that, accordingly, this meeting will be closed to the public.

Dated: September 29, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–25503 Filed 10–4–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Army is amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 6, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390; or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new a or altered system report.

A0145–2 TRADOC

SYSTEM NAME:

Junior ROTC/NDCC Instructor Files (February 2, 1996, 61 FR 3914).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete from entry 'and guest speakers at above locations'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 10 U.S.C. 2031, Junior Reserve Officers' Training Corps; 10 U.S.C. 3013, Secretary of the Army, and E.O. 9397 (SSN).

STORAGE:

Delete entry and replace with 'Paper records in file folders'.

RETRIEVABILITY:

Delete entry and replace with 'By name, Social Security number or service number'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are maintained then destroyed 2 years after instructor's separation.'

* * * * *

A0145–2 TRADOC

SYSTEM NAME:

Junior ROTC/NDCC Instructor Files.

SYSTEM LOCATION:

U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Assigned and potential instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Instructor evaluation forms, qualification data, biographical sketches and similar or related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2031, Junior Reserve Officers' Training Corps; 10 U.S.C. 3013, Secretary of the Army, and E.O. 9397 (SSN).

PURPOSE(S):

To provide record of qualifications, experience, effectiveness, and similar related information on potential and/or assigned instructors and guest speakers.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name, Social Security number and/or service number.

SAFEGUARDS:

Records are stored in locked cabinets or rooms, depending on location.

RETENTION AND DISPOSAL:

Records are maintained then destroyed 2 years after instructor's separation.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Fort Monroe, Privacy Act Officer, Fort Monroe, VA 23651–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000.

Individual should provide full name, Social Security Number/military service number, duty position, academic department, and dates of service at the training activity to aid in the information search.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officer Training Corps Cadet Command, Fort Monroe, VA 23651–5000.

Individual should provide the full name, Social Security Number/military service number, duty position, academic department, and dates of service at the training activity.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents; and

appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Staff and faculty of appropriate school, college, training center, or ROTC Region responsible for conduct of instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–25575 Filed 10–4–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Delete a records system.

SUMMARY: The Department of the Navy proposes to delete two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on November 6, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

N07220–7

SYSTEM NAME:

Travel Pay System (February 22, 1993, 58 Fr 10690).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service. See DFAS system of records notice T7333, Travel Payment System.

N07431–1

SYSTEM NAME:

Savings Deposit (February 22, 1993, 58 FR 10690).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service. See DFAS system of records notice T7280, Uniformed Services Savings Deposit Program (USSDP).

Dated: October 2, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–25574 Filed 10–4–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 4, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 29, 2000.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Client Assistance Program (CAP) Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 56; burden hours: 350.

Abstract: Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to clients and client applicants of programs, projects, and community rehabilitation programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO IMG Issues@ed.gov or

faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25514 Filed 10–4–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 4, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 29, 2000.

Joseph Schubart,

Acting Leader, Regulatory Information Managment, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: America's Career Resource Network State Grant Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 56; burden hours: 9,408.

Abstract: Section 118(e) of the Carl D. Perkins Vocational and Technical Education Act requires the Department of Education to report annually to Congress concerning activities carried out by States with grant funds awarded under section 118. This collection solicits information from grantees necessary to fulfill this requirement, as well as to support the Department's monitoring and technical assistance activities.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila_Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25515 Filed 10–4–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 4, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 29, 2000.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Education Longitudinal Study of 2002 (ELS 2002).

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 51,597; burden hours: 59,497.

Abstract: Year 2001 field test will include 50 schools in five states, students, parents, teachers, and librarians. The main study in Spring 2002 in all 50 states and District of Columbia will constitute the baseline of a longitudinal study of school effectiveness and impact on postsecondary and labor market outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25516 Filed 10–4–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

NAME: Secretary of Energy Advisory Board.

DATES AND TIMES: Tuesday, October 10, 2000, 1 pm–4:30 pm.

ADDRESSES: Hyatt Regency Denver, Mount Elbert Conference Room, 1750 Welton Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

The agenda for the October 10th meeting has not been finalized. However, the meeting will include a series of briefings and discussions on Department of Energy, Board and subcommittee activities including the Laboratory Operations Board, Openness Advisory Panel, Panel on Emerging Technological Alternatives to Incineration, NIF Laser System Task Force, and the Task Force on DOE Nonproliferation Programs with Russia. Members of the Public wishing to comment on issues before the Secretary of Energy Advisory Board will have an opportunity to address the Board during the afternoon period for public comment. The final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Denver, Colorado, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on October 3, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–25709 Filed 10–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–34–000]

Algonquin Gas Transmission Company; Notice of Site Meeting

September 29, 2000.

On October 11, 2000, the Office of Energy Projects staff will attend a meeting with Algonquin Gas Transmission Company and Braintree Electric Light Department (Braintree) concerning the I–9 Lateral of the Fore River Project in Norfolk County, Massachusetts. The meeting will be held at the Braintree property (150 Potter Road, Braintree, Massachusetts) to discuss the proposed route on its property. Anyone interested in participating in the site meeting is welcome to attend. Interested parties must provide their own transportation.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004.

David P. Boergers,

Secretary.

[FR Doc. 00–25513 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3562–000]

Calpine Energy Services, L.P.; Notice of Issuance of Order

September 29, 2000.

Calpine Energy Services, L.P. (Calpine) submitted for filing a rate schedule under which Calpine will engage in wholesale electric power and energy transactions at market-based rates. Calpine also requested waiver of various Commission regulations. In particular, Calpine requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Calpine.

On September 21, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Calpine should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Calpine is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonable necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Calpine's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 23, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at*http:/ /www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–25614 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–572–000]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

September 29, 2000.

Take notice that on September 26, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume 1, First Revised Sheet No. 111. The proposed effective date for the revised tariff sheet is November 1, 2000.

Cove Point states that the purpose of the instant filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000, *et al.* (collectively, Order 637). Among other things, the Commission in Order 637 revised its regulations regarding the availability of the Right-of-First Refusal (ROFR). Specifically, 18 CFR 284.221(d)(2)(ii) provides that the ROFR will be applicable to contracts at the maximum applicable rate with either (1) a term of service of at least twelve consecutive months or (2) for a service which is not available for 12 consecutive months, a contract term of more than one year. A Buyer is eligible for a right of first refusal if the Buyer is receiving firm service at less than the maximum applicable rate pursuant to a service agreement that meets the foregoing term criteria and was executed prior to March 26, 2000; however, the right of first refusal will not apply to any re-executed service agreement not at the maximum applicable rate.

Cove Point states that copies of the instant filing are being mailed to customers, State Commissions, and other interested parties.

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, 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).

David P. Boergers,

Secretary.

[FR Doc. 00–25509 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. EG–00–251–000]

Coyote Springs 2, LLC; Notice of Amended Application for Commission Determination of Exempt Wholesale Generator Status

September 29, 2000.

Take notice that on September 28, 2000, Coyote Springs 2, LLC, P.O. Box 10, 200 Ullman Boulevard, Boardman, Oregon 97818, filed with the Federal Energy Regulatory Commission an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant proposes to develop and own a natural gas-fired combined-cycle electric generation plant with a maximum capacity of 280 megawatts. The facility will be located in Morrow County, Oregon. The facility is scheduled to be completed in June 2002. All of the electric output of the facility will be sold at wholesale.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before October 12, 2000, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–25616 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–114–000]

Dynegy Power Marketing, Inc., Complainant v. Ameren Services Company, Respondent; Notice of Complaint

September 29, 2000.

Take notice that on September 28, 2000, Dynegy Power Marketing, Inc. (Dynegy) tendered for filing a Complaint against Ameren Services Company, (Ameren).

In its Complaint, Dynegy alleges that Ameren has violated its Open Access Transmission Tariff (OATT) by refusing to recognize rollover rights for existing Point-to-Point Transmission Services.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 10, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before October 10, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–25617 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010—New York]

New York Power Authority; Notice Extending Deadline for Filing Requests for Additional Studies and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions

September 29, 2000.

On August 18, 2000, the U.S. Department of the Interior requested an extension of time for filing Additional Study Requests and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions for the St. Lawrence-FDR Power Project, located on the St. Lawrence River, in St. Lawrence County, New York.

In response, the Commission, by notice of September 1, 2000, granted an extension of time, to September 29, 2000, for the filing of Additional Study Requests and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions.

A Cooperative Consultation Process (CCP) Team was established for relicensing of the St. Lawrence-FDR Power Project, which was identified in the Notice of Memorandum of Understanding, Formation of the Cooperative Consultation Process Team, and Initiation of Scoping Process Associated with Relicensing the St. Lawrence-FDR Power Project, issued May 2, 1996 and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

By letter dated September 28, 2000, the New York Power Authority renewed the request for an extension of time in which to comment based on continued settlement negotiations. The goal of the CCP Team is to resolve issues during pre-filing consultation in a collaborative manner so that the Commission may accelerate the environmental review process and the Licensee may receive expedited review of the filed license application.

In this instance, we recognize the benefit to the CCP Team resolving as many issues as possible before they file their Additional Study Requests and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions. We will, therefore, pursuant to Rule 2008 of the Commission's Rules of Practice and Procedure,[1] extend the deadline for filing Additional Study Requests and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions to October 6, 2000.

All comments should be sent to: Mr. John Suloway, New York Power Authority, 123 Main Street, White Plains, NY 10601, with one copy filed with the Commission at: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426. The copy filed with the Commission must: (1) Bear in all capital letters the title ''Additional Study Requests,'' ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions;'' (2) set forth in the heading the name of the applicant and the project name and number; and (3) furnish the name, address, and telephone number of the person submitting the filing.

The Commission's contact for the St. Lawrence-FDR Power Project is Dr. Jennifer Hill at (202) 219–2797 or E-mail: *Jennifer.Hill@FERC.FED.US*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–25507 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2008.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–571–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 29, 2000

Take notice that on September 26, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the pro forma tariff sheets listed in Appendix A to the filing, to be effective November 1, 2000.

REGT states that the purpose of this filing is to implement a flexible nomination process under REGT's tariff that will give all Shippers the option to submit receipt and delivery nominations to be effective at the top of any hour with at least sixty (60) minutes notice.

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).

David P. Boergers,

Secretary.

[FR Doc. 00–25510 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–570–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 29, 2000.

Take notice that on September 26, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 2000:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6
Fifth Revised Sheet No. 7

REGT states that the purpose of this filing is to adjust REGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to Sections 27 and 28 of its General Terms and Conditions.

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).

David P. Boergers,

Secretary.

[FR Doc. 00–25511 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3400–000]

Solar Turbines Incorporated; Notice of Issuance of Order

September 29, 2000.

Solar Turbines Incorporated (STI) submitted for filing a rate schedule under which STI will engage in wholesale electric power and energy transactions at market-based rates. STI also requested waiver of various Commission regulations. In particular, STI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by STI.

On September 26, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by STI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, STI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of STI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 26, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–25615 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–469–000]

Tennessee Gas Pipeline Company; Notice of Request For Blanket Authorization

September 29, 2000.

Take notice that on September 21, 2000, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, P.O. Box 2511, Houston, Texas 77252, filed in CP00–469–000 a request pursuant to Sections 157.205 and 157.208(f)(2) of the Commission's (Commission) Regulations under the Natural Gas Act, as amended, (18 CFR 157.205 and 157.208(f)(2)) and Tennessee's blanket certificate authorization granted in Docket No. CP82–413–000, 20 FERC ¶ 62,409 (1982), for authorization to increase the maximum allowable operating pressure (MAOP) through an uprate of Tennessee's Mariposa-Humble and Gyp-Hill laterals located in Brooks County, Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Tennessee states that it proposes to increase the MAOPs on Line No. 404A–100 (Mariposa-Humble Line) from 794 to 908 psig and from 795 to 947 psig on Line No. 404B–100 (Gyp-Hill Line) in order to facilitate reliable receipt of natural gas from producers on these laterals. Tennessee indicates that both pipelines are receipt side laterals that connect to Tennessee's parallel mainlines known as Line Nos. 400–1 and 400–2. Tennessee then indicates that the operating pressure of Tennessee's mainline facilities often exceeds the existing MAOP of the

Mariposa-Humble and Gyp-hill lines and for this reason producers can deliver gas in the Tennessee's system only when the operating pressure of the mainlines are lower than the pressure within the supply laterals. Tennessee states that the operating pressure on Tennessee's Line No. 400–1 can range as high as 903 psig and 860 psig on Line No. 400–2. Thus, Tennessee states that it has proposed these uprates so it can consistently and reliably receive natural gas from the affected producers on these lateral lines. Tennessee indicates that the total cost of the uprates is estimated to be from $5,000 to $15,000.

Tennessee states that Thomas G. Joyce, Certificates Manager, P.O. Box 2511, Houston, Texas 77252 at (713) 420–2459 can be contacted for any further questions on this application.

Any person or the Commission's Staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–25508 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–013]

TransColorado Gas Transmission Company; Notice of Compliance Filing

September 29, 2000.

Take notice that on September 27, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Thirteenth Revised Sheet No. 21 and Ninth Revised Sheet No. 22. to be effective September 16, 2000.

TransColorado states that the filing has been filed in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000. The tendered tariff sheets revised TransColorado's Tariff to amend its negotiated-rate firm transportation service agreement with Dominion Exploration & Production. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective September 16, 2000.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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).

David P. Boergers,

Secretary.

[FR Doc. 00–25512 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–106–000, et al.]

Entergy Power Marketing Corp., et al.; Electric Rate and Corporate Regulation Filings

September 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Marketing Corp. and Koch Energy Trading, Inc.

[Docket No. EC00–106–000]

Take notice that on September 26, 2000, Entergy power Marketing Corp. (EPMC) and Koch Energy Trading, Inc. (KET) (Collectively, Applicants) filed a response to a letter dated September 14, 2000 from Commission staff (Staff) requesting additional information and an amended competitive analysis for Applicants' pending application under Section 203 of the Federal Power Act, 16 U.S.C. 824d (1994).

Comment date: October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Yankee Atomic Power Company

[Docket No. ER97–913–003]

Take notice that on September 25, 2000 , Connecticut Yankee Atomic Power Company filed an Informational Filing regarding the consolidation of its pre-1983 Spent Fuel Trust and its Decommissioning Trust . The Informational Filing was made in compliance with the Offer of Settlement dated April 7, 2000, as supplemented April 27, 2000, which was approved by the Commission's Letter Order dated July 26, 2000.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Baconton Power LLC

[Docket Nos. EC00–143–000 and ER00–2398–001 (not consolidated)]

Take notice that on September 22, 2000, as supplemented on September 26, 2000, Baconton Power LLC (Baconton or the Applicant) submitted for filing an application under section 203 of the Federal Power Act for approval of the indirect transfer of control over Baconton's jurisdictional transmission facilities and paper facilities. At present, SOWEGA Energy Resources, LLC owns an 85 percent interest in Baconton and Tejas Power Generation, LLC (Tejas) owns a 15 percent interest. The Applicant states that the transfer of control will occur as a result of a change in the upstream ownership of Tejas, currently a wholly-owned indirect subsidiary of Shell Oil Company, to InterGen N.V., a to-be-formed company to be indirectly owned 68 percent by the Royal Dutch Petroleum Company and The ''Shell'' Transport and Trading Company, p.l.c., and 32 percent by Bechtel Enterprises Holdings, Inc. Baconton also submitted in the September 22 filing a notice of change of status with respect to its market-based rate tariff authority granted in Docket No. ER00–2398–000. On September 26, 2000, Baconton supplemented its filing in EC00–143–000 to provide materials in fulfillment of the Exhibit H filing requirements found in the Commission's regulations at 18 CFR 33.3. Baconton requests privileged treatment for the Exhibit H materials filed in the September 26 supplement, as provided for under 18 CFR 388.112 of the Commission's regulations.

Comment date: October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER97–2353–005]

Take notice that on September 18, 2000, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report.

Comment date: October 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Union Electric Company, d/b/a/ Ameren UE, and Ameren Energy, Inc. on behalf of AmerenUE

[Docket No. ER00–2687–001]

Take notice that on September 25, 2000, Ameren Energy, Inc., on behalf of AmerenUE, tendered for filing an updated market analysis in connection with its market-based rate authority.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. EnergyUSA–TPC Corporation

[Docket No. ER00–3219–001]

Take notice that on September 25, 2000, EnergyUSA–TPC Corporation (EnergyUSA), an indirect wholly owned subsidiary of NiSource, Inc., tendered for filing its FERC Electric Rate Schedule 1 and a Statement of Policy and Code of Conduct.

EnergyUSA seeks an effective date of September 18, 2000 for the tariff sheets submitted with this filing.

EnergyUSA states that this filing is being made to comply with the Commission's August 24, 2000, order in this docket. In particular, the filing contains appropriate tariff sheet designations.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER00–3283–001]

Take notice that on September 25, 2000, Arizona Public Service Company (APS) tendered for filing a revised rate schedule, APS–FERC Rate Schedule No. 225 in compliance with FERC Order in this docket issued September 20, 2000.

A copy of this filing has been served on the Arizona Corporation Commission and Citizens Utilities Company.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–3743–000]

Take notice that on September 25, 2000, Virginia Electric and Power Company (Virginia Power or the Company) tendered for filing a Network Integration Transmission Service and Network Operating Agreement (Service Agreement) by Virginia Electric and Power Company to Dominion Energy Direct Sales, Inc. designated as Service Agreement No. 302 under the Company's Retail Access Pilot Program, pursuant to Attachment L of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Virginia Power requests an effective date of September 25, 2000, the date of filing of the Service Agreement.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER00–3744–000]

Take notice that on September 25, 2000, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated September 22, 2000, The New Power Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds The New Power Company as a customer under the Tariff.

DLC requests an September 22, 2000 of September 22, 2000 for the Service Agreement.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Sierra Pacific Power Company

[Docket No. ER00–3745–000]

Take notice that on September 25, 2000, Sierra Pacific Power Company (Sierra) tendered for filing executed Service Agreements (Agreements) with Pacificorp Power Marketing for Non-Firm and Short-Term Firm Transmission Service under Sierra Pacific Resources Operating Companies, FERC Electric Tariff, Original Volume No. 1, Open Access Transmission Tariff (Tariff).

Sierra filed the executed Agreements with the Commission in compliance with Section 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted Original Sheet Nos. 173 and 173A (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of September 26, 2000 for Attachment E, and to allow the Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Dominion Nuclear Marketing III, L.L.C.

[Docket No. ER00–3746–000]

Take notice that on September 25, 2000, Dominion Nuclear Marketing III, L.L.C. tendered for filing its proposed FERC Electric Market-Based Sales Tariff and requested certain waivers of the Commission's regulations.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Mid-Continent Area Power Pool

[Docket No. ER00–3747–000]

Take notice that on September 25, 2000, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, filed an amendment to Schedule R of the Restated Agreement that would extend provision of the redispatch service from October 31, 2000 to October 31, 2001.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. South Carolina Electric & Gas Company

[Docket No. ER00–3748–000]

Take notice that on September 25, 2000, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Sempra Energy Trading Corp. as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

Copies of this filing were served upon Sempra Energy Trading Corp. and the South Carolina Public Service Commission.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Boston Edison Company

[Docket No. ER00–3749–000]

Take notice that on September 25, 2000, Boston Edison Company (Boston

Edison) tendered for filing a Standstill Agreement between itself and New England Power Company (NEP) as successor-in-interest to Montaup Electric Company (Montaup). The Standstill Agreement extends through December 4, 2000 the time in which NEP may institute a legal challenge to the 1998 true-up bill under Boston Edison's FERC Rate Schedule No. 69, governing sales to Montaup from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective September 26, 2000.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER00–3750–000]

Take notice that on September 25, 2000, the California Independent System Operator Corporation tendered for filing a Scheduling Coordinator Agreement between the ISO and Enron Energy Services, Inc. for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of September 15, 2000.

The ISO states that this filing has been served on Enron Energy Services, Inc. and the California Public Utilities Commission.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. ANP Funding I, L.L.C.

[Docket No. ER00–3751–000]

Take notice that on September 25, 2000 ANP Funding I, L.L.C. tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) a petition seeking waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Rate Schedule No. 1 for filing, to be effective on the date of the Commission's order on such petition.

FERC Electric Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company

[Docket No. ER00–3752–000]

Take notice that on September 25, 2000, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company tendered for filing a Funding Agreement for the Development of a Satellite Switchyard to the ANPP High Voltage Switchyard Between Participating Interconnectors and Salt River Project Agricultural Improvement and Power District.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Chicago Housing Authority

[Docket No. TX98–1–000]

Take notice that on September 5, 2000, Chicago Housing Authority filed a Notice of Withdrawal of its application filed in the above-mentioned proceeding on November 14, 1997.

Comment date: October 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–25506 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–138–000, et al.]

Sithe Energies, Inc., et al. Electric Rate and Corporate Regulation Filings

September 29, 2000.

Take notice that the following filings have been made with the Commission:

1. Sithe Energies, Inc. and the Sithe Stockholders, Exelon (Fossil) Holdings, Inc., PECO Energy Company, and Exelon Generation Company, L.L.C.

[Docket No. EC00–138–000]

Take notice that on September 22, 2000, and September 26, 2000, Sithe Energies, Inc. and the Sithe Stockholders, Exelon (Fossil) Holdings, Inc., PECO Energy Company and Exelon Generation Company, L.L.C. (collectively, Applicants) filed supplements to their September 13, 2000, application (initial application) in this proceeding. The September 22, 2000, supplement is an errata correcting corporate structure charts that were included in Attachment B of the initial application. The September 26, 2000, supplement is the Sithe Energies, Inc. and Exelon (Fossil) Holdings, Inc. Joint Petition for Approval to Transfer Stock, which was filed with the New York Public Service Commission on September 14, 2000, and that relates to the transaction for which authorization is sought in the Docket No. EC00–138–000 proceeding.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. ISO New England Inc.

[Docket No. EL00–62–011]

Take notice that on September 26, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted the Sixty-Fifth Agreement Amending the Restated NEPOOL Agreement and the Sixty-Sixth Agreement Amending the Restated NEPOOL Agreement in response to the 90-day compliance requirements of the Commission's June 28, 2000 order in Docket Nos. EL00–62–000 *et al., ISO New England Inc.,* 91 FERC ¶ 61,311 (2000) concerning the implementation of a congestion management system and multi-settlement system. In accordance with the requirements of the Commission's June 28, 2000 order, NEPOOL has noted an effective date of September 26, 2000, or such other date as the Commission deems appropriate.

The NEPOOL Participants Committee states that copies of these materials were

sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants, non-Participant Transmission Customers and the six New England state governors and regulatory commissions.

Comment date: October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. ISO New England Inc.

[Docket No. EL00–62–012]

Take notice that on September 26, 2000, ISO New England Inc. submitted a Report of Compliance in response to the Commission's June 28, 2000 Order in this proceeding.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment date: October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Unitil Power Corporation, Unitil Resources, Inc., and Fitchburg Gas and Electric Light Company

[Docket Nos. ER97–2460–006, ER97–2462–011, and ER97–2463–001]

Take notice that on September 25, 2000, Unitil Power Corp., Unitil Resources, Inc., and Fitchburg Gas and Electric Light Company (Unitil Companies) tendered for filing pursuant to Ordering Paragraph (J), Unitil Power Corporation *et al.*, 80 FERC ¶ 61,358 (1997) (Unitil) an updated generation market analysis.

The Unitil Companies indicate that a copy of this filing was served on the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. San Diego Gas & Electric Company

[Docket Nos. ER98–496–013 and ER98–2160–011]

Take notice that on September 25, 2000, Cabrillo Power I LLC and Cabrillo Power II LLC tendered for filing their refund compliance reports in the above-captioned dockets.

The compliance reports have been served on the California ISO, SDG&E, the EOB, the CPUC and all parties on the restricted service list.

Comment date: October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–3588–001]

Take notice that on September 26, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed First Revised Service Agreement No. 324, which makes several technical corrections to Service Agreement No. 324, an Interconnection Agreement (Agreement) with Allegheny Energy Supply Company, LLC under Allegheny Power's Open Access Transmission Tariff.

The proposed effective date under the Agreement is September 1, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER00–3753–000]

Take notice that on September 26, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Conectiv Energy Supply, Inc. (CESI).

Cinergy and CESI are requesting an effective date of June 1, 2000.

Comment date: October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER00–3754–000]

Take notice that on September 26, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Public Service Company of Colorado and Westcoast Gas Services Delaware (America) Inc. (together, the Applicants).

The Participants Committee requests an effective date of October 1, 2000 for commencement of participation in NEPOOL by the Applicants.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–3755–000]

Take notice that on September 26, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 95 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of August 28, 2000 for TransAlta Energy Marketing (U.S.) Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER00–3756–000]

Take notice that on September 26, 2000, Public Service Company of New Mexico (PNM) submitted for filing executed service agreements for point to point transmission service under the terms of PNM's Open Access Transmission Tariff (OATT). Two agreements are with OGE Energy Resources Inc, (one for non-firm service and one for short-term firm service), dated September 22, 2000. The other agreement, dated August 22, 2000, is for short-term firm service with Western Resources Generation Services. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM requests an effective date of September 22, 2000, for each of the service agreements.

Copies of the filing have been sent to OGE Energy Resources, Inc., to Western Resources Generation Services, and to the New Mexico Public Regulation Commission.

Comment date: October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER00–3757–000]

Take notice that on September 26, 2000, the American Electric Power Service Corporation (AEPSC) tendered for filing executed Interconnection and Operation Agreement between Ohio Power Company and Duke Energy Washington, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of August 7, 2000.

A copy of the filing was served upon the Public Utilities Commission of Ohio.

Comment date: October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Energy Marketing L.P., Southern Energy Chalk Point, LLC, Southern Energy Mid-Atlantic, LLC, Southern Energy Peaker, LLC, Southern Energy Potomac River, LLC

[Docket No. ER00–3760–000]

Take notice that on September 25, 2000, Southern Company Energy Marketing L.P., Southern Energy Chalk Point, LLC, Southern Energy Mid-Atlantic, LLC, Southern Energy Peaker, LLC, and Southern Energy Potomac River, LLC (collectively, the Southern Parties) jointly filed under Section 205 of the Federal Power Act an application requesting approval of their respective proposed Market Rate Tariffs, waiver of certain regulations, and blanket approvals. The proposed Market Rate Tariffs would authorize each of the Southern Parties to engage in wholesale sales of capacity and energy and ancillary services to eligible customers at market rates.

Comment date: October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–25613 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6881–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA Information Collection Request; The 2001 Hazardous Waste Report (Biennial Report)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The 2001 Hazardous Waste Report (Biennial Report), EPA ICR Number 0976.10; OMB Control Number 2050–0024. This ICR replaces The 1999 Hazardous Waste Report (Biennial Report), EPA ICR Number 0976.09, which expires on November 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

EPA is also submitting to OMB for review modifications to the Notification of Regulated Waste Activity ICR, 262.12, OMB Control Number 2050–0028, expiration date 12/31/02; and the RCRA Part A Permit Application ICR, 262.09, OMB Control Number 2050–0034, expiration date 10/31/02. The actual changes to these two ICRs will be implemented later. These modifications show how the Agency plans to harmonize the site profile information currently collected on these forms and the Biennial Report Information and Certification form.

DATES: Comments must be submitted on or before November 6, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 0976.10 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.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.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0976.10.

SUPPLEMENTARY INFORMATION:

Title: The 2001 Hazardous Waste Report (Biennial Report), EPA ICR Number 0976.10; OMB Control Number 2050–0024. This is a request for an extension of a currently approved collection.

Abstract: Large quantity generators of hazardous waste and owners/operators of hazardous waste facilities must complete, under the authority of RCRA sections 3002 and 3004, a report every other year on the amount of waste they generate and how it was managed. EPA uses the information to understand waste management practices, to expand its database of information for rulemakings, and to monitor compliance with regulatory requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published June 23, 2000 (65 FR 39142). We are implementing all of the recommendations described in the June 23, 2000 notice. Nine comments were received on the June Notice, including a comment from the Tribal Association on Solid Waste and Emergency Response (TASWER). TASWER asked that a data element be added to the Biennial Report that would identify RCRA facilities on or adjacent to Indian Country and Alaska Native Villages. We have begun discussions with TASWER to see how their information needs might be met by the Biennial Report or other means. However, this process

cannot be completed in time to make changes to the 2001 Biennial Report.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19.49 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Large Quantity Generators and Treatment, Storage, and Disposal Facilities.

Estimated Number of Respondents: 10,157.

Frequency of Response: Biennially.

Estimated Total Annual Hour Burden: 195,214 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $26,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses listed above.

Please refer to EPA ICR No. 0976.10 and OMB Control No. 2050–0024 in any correspondence.

Dated: September 28, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–25605 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6881–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types, OMB Control Number 2050–0050, expiration date December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 6, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 1572.05 and OMB Control No. 2050–0050, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.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.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1572.05. For technical questions about the ICR contact David Eberly on 703–308–8645.

SUPPLEMENTARY INFORMATION:

Title: Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types (OMB Control No. 2050–0050; EPA ICR No. 1572.05) expiring December 31, 2000. This is a request for extension of a currently approved collection.

Abstract: This ICR provides a discussion of all of the information collection requirements associated with specific unit standards applicable to owners and operators of facilities that treat, store, or dispose of hazardous wastes as defined by 40 CFR part 261. It includes a detailed description of the data items and respondent activities associated with each requirement and with each hazardous waste management unit at a facility. The specific units and processes included in this ICR are: Tank Systems, Surface Impoundments, Waste Piles, Land Treatment, Landfills, Incinerators, Thermal Treatment, Chemical/Physical, and Biological Treatment, Miscellaneous (subpart X), Drip Pads, Process Vents, Equipment Leaks, Containment Buildings, Recovery/Recycling.

With each information collection covered in this ICR, EPA is aiding the goal of complying with its statutory mandate under RCRA to develop standards for hazardous waste treatment, storage, and disposal facilities, to protect human health and the environment. Without the information collection, the agency cannot assure that the facilities are designed and operated properly.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 5, 2000 (65 FR 26196); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average the following burden hours per response:

Subpart I: Containers	73
Subpart J: Tank Systems	77–80
Subpart K: Surface Impoundments	74–80
Subpart L: Waste Piles	19
Subpart M: Land Treatment	0
Subpart N: Landfills	39–43
Subpart O: Incinerators	3–5
Subpart P: Thermal Treatment Units	2
Subpart Q: Chemical, Physical, and Biological Treatment Units	6
Subpart W: Drip Pads	0
Subpart X: Miscellaneous Units	0
Subpart AA: Process Vents	422–660
Subpart BB: Equipment Leaks	47–48
Subpart DD: Containment Buildings	28–32
Part 266: Specific Hazardous Waste Recovery/Recycling Facilities	4

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business.

Estimated Number of Respondents: 6,341.

Frequency of Response: Occasional.

Estimated Total Annual Hour Burden: 287,069 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $874,517.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1572.05 and OMB Control No. 2050–0050 in any correspondence.

Dated: September 28, 2000

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–25606 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6881–3]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chair. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. On December 15 of each year, five members complete their appointment. Therefore, this notice solicits names to fill five vacancies, with appointed terms ending on December 15, 2003.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face to face meetings each year, generally in the Spring and Fall. Additionally, members may be asked to serve on one of the Council's working groups that are formed each year to assist the EPA in major program issue development. These meetings are held approximately four times a year, with two meetings by conference call.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20460, no later than October 30, 2000. The Agency will not formally acknowledge or respond to nominations. E-Mail your questions to *shaw.charlene@epa.gov* or call 202/260–2285.

Dated: September 28, 2000.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 00–25603 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6881–4]

National Drinking Water Advisory Council; Notice of Open Meeting

AGENCY: Environmental Protection Agency.

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 National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S3300f *et seq.*), will be held on November 8, 2000, from 9:30 a.m. until 6:30 p.m. and November 9, 2000, from 8:30 a.m. until 12:30 p.m., at the Marriott Residence Inn at Pentagon City, 550 Army Navy Drive, Arlington, VA. Agenda items will include reports from the Six Year Review and Research Working Groups and an update on regulations including MTBE, arsenic, radon, the Ground Water and Long Term 1/Filter Backwash Rules. Other agenda items include a discussion on the Safe Drinking Water Act gap analysis, the Source Water Protection Strategy and the status of drinking water research initiatives.

The meeting is open to the public. The Council encourages the hearing of outside statements and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285 before November 3, 2000.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, DC 20460. The telephone number is Area Code (202) 260–2285 or E–Mail *shaw.charlene@epa.gov.*

Dated: September 29, 2000.

Ephraim King,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–25602 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6881–5]

Rouse Steel Drum Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with the Rouse Group and the Rouse

Work Group for response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Rouse Steel Drum Superfund Site located in Jacksonville, Duval County, Florida. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), 61 Forsyth Street SW, Atlanta, GA 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: September 25, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–25604 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6881–2]

Clean Water Act Class II: Proposed Consent Agreement and Opportunity To Comment Regarding Jaxon Enterprises, Inc. and Creative Living Partnership Proceeding Under Clean Water Act Section 309(g)(1), (2)(B) and 40 CFR Part 22.13(b)

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed Consent Agreement for alleged violations of the Clean Water Act (''Act''). EPA is also providing notice of opportunity to comment on the proposed Consent Agreement.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a ''Class II'' administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,'' 40 CFR part 22 (''Consolidated Rules''), published at 64 FR 40138, 40177 (July 23, 1999). The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after publication of this notice.

On September 26, 2000, EPA filed with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391, the following Consent Agreement:

In the Matter of Jaxon Enterprises and Creative Living, Buena Ventura Boulevard Extension, City of Redding, Shasta County, California, Docket No. CWA–09–99–0005.

For the alleged violations set forth in the Consent Agreement, Respondents agree to pay to the United States a civil penalty of $60,000 (sixty thousand dollars) for violations of NPDES Permit No. CAS000002 (issued by the California State Water Resources Control Board (Order No. 92–08–DWQ)) and section 301(a) of the Act, 33 U.S.C. 1311(a), at the Buena Ventura Boulevard Extension, City of Redding, Shasta County, California.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by Jaxon Enterprises and Creative Living is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: September 26, 2000.

Alexis Strauss,

Director, Water Division.

[FR Doc. 00–25601 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 28, 2000

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(s), 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 November 6, 2000. 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 Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418-0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0105.

Title: Licensee Qualification Report for Multipoint Distribution Service.

Form No.: FCC Form 430.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 1,500.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion and annual reporting requirement.

Total Annual Burden: 3,000 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 430 is filed by new applicants or annually by licensees if substantial changes occur in the organizational structure to provide information concerning corporate structure, alien ownership, and character of applicant or licensee. Applicants soliciting authority for assignment or transfer of control also file FCC Form 430. The form has been revised to remove all other services from the form except for services authorized under Part 21.

The information will be used by the Commission to determine whether the applicant is legally qualified to become or remain a licensee, as required by the Communications Act. Without such information the Commission would not be able to fulfill its responsibility under the Communications Act to make a finding as to the legal qualifications of an applicant or licensee.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–25525 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 29, 2000.

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 December 4, 2000. 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, SW., 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 No.: 3060–0914.

Title: Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling.

Form No.: None.

Type of Review: Extension.

Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 30.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion.

Total Annual Burden: 240 hours.

Total Annual Cost: 0.

Needs and Uses: The Commission resets a waiver of section 22.925 of the Commission's rules in order to permit AirCell and a number of cellular licensees who, jointly entered into resale agreements with AirCell, to furnish system capacity for the provision of cellular service on a secondary, conditional basis to airborne terminal units using AirCell-developed technology for a period of two years. The waiver allows airborne use of cellular telephones.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–25558 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 29, 2000.

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(s), 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 December 4, 2000. 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, Room 1 A–804, 445 Twelfth Street, SW., 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 Approval Number: 3060–0021.

Title: Civil Air Patrol Radio Station License.

Form No.: FCC 480.

Type of Review: Extension of a currently approved collection.

Respondents: Non-profit institutions.

Number of Respondents: 12.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 1 hour.

Total Costs to Respondents: 0.

Needs and Uses: FCC Rules require that applicants file the FCC Form 480 to apply for a new, renewed, or modified Civil Air Patrol Radio Station License. This form is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR Parts 1.922, 87.21 and 87.31.

The data will be used by Commission personnel to evaluate the application to issue licenses, to provide information for enforcement and rulemaking proceedings and to maintain a current inventory of licensees.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–25559 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–33–H (Auction No. 33); DA 00–2154]

700 MHz Guard Bands Auction Closes

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides detailed information concerning winning bidders, down payments, bid withdrawal payments and/or deposits, FCC Forms 601 and 602 filing requirements, requests for rule waivers, and licensing matters.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Attorney, Auctions and Industry Analysis Division, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released September 25, 2000. The complete text of the public notice, including the attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

List of Attachments available at the FCC:

Attachment A: ''Round Results, High Bids'' lists winning bidders and both the gross and net high winning bid amounts.

Attachment B: ''Bidder Payment/Refund Report'' lists down payments and any withdrawn bid payments owed by winning bidders.

Attachment C: ''Withdrawal/Payment Report'' lists withdrawn bid payments owed by all bidders.

Attachment D: ''Instructions for Completing FCC Form 601'' provides detailed information about how a winning bidder should complete the required FCC Form 601 for 700 MHz Guard Bands license applications.

Attachment E: ''Instructions for Using ULS to Register TIN and Call Signs With FCC and File FCC Form 601 Electronically.''

Attachment F: ''Accessing the FCC Network using Windows 95/98 for Universal Licensing System Filing.''

1. On September 21, 2000, the Federal Communications Commission completed the auction of 104 licenses in the 700 MHz Guard Bands (''Auction No. 33''), raising (in net high bids) a total of $519,892,575.00 for the U.S. Treasury. Nine winning bidders won a total of 96 licenses in this auction.

A. Down Payments

2. The Commission's rules require that within ten business days after the release of the Public Notice, in this case 6:00 p.m. ET on October 10, 2000, winning bidders in Auction No. 33 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover all required: (i) down payments on winning bids, and (ii) payments for withdrawn bids, if applicable. If a winning bidder's upfront payment is not sufficient to meet both of these requirements, the winning bidder must deposit additional funds. *See* 47 CFR 1.2107(b), 1.2104(g).

3. The amount now due from each winning bidder, if any, is set out in the last column of Attachment B of the Public Notice. Note that a payment and FCC Form 159 are necessary only if a winning bidder's upfront payment does not cover the required total of down payments and withdrawn bid payments (as reflected in Attachment B) of the Public Notice. Each winning bidder's down payment must be a total of twenty (20) percent of its net winning bid(s) plus any withdrawal payments.

B. Final Payments

4. After the termination of the licensing pleading cycle (*see* 47 CFR 1.2108), the Commission will issue a public notice announcing that it is prepared to grant the licenses. Within ten business days after the date of that public notice, winning bidders will be required to make full payment of the balance of their winning bids. *See* 47 CFR 1.2109 and 1.2107(b). Licenses will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with § 1.2109(a). *See* 47 CFR 1.2109(a).

C. Method of Payment

5. All payments must be in U.S. dollars and made in the form of a wire transfer. No personal checks, credit card payments, or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). If applicable, a partially completed copy of the FCC Form 159 will be sent along with the Public Notice to facilitate submission of the correct down payment. Questions regarding FCC Form 159 should be addressed to Tim Dates or Gail Glasser at 202–418–1995. Please note, however, that winning bidders are ultimately responsible for insuring the verification and submission of the correct down payment from their bank to Mellon bank.

6. Wire transfer payments must be received by Mellon Bank by 6 p.m. ET, on October 10, 2000. Winning bidders should coordinate with their bankers ahead of time regarding their wire transfers, and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. To submit funds by wire transfer, winning bidders will need the following information:

ABA Routing Number: 043000261.

Receiving Bank: Mellon Pittsburgh.

BNF: 911–6106.

OBI Field: (Skip one space between each information item) ''AUCTIONPAY''.

Taxpayer Identification No. (same as FCC Form 159, Block 25).

Payment Type Code (enter ''A33D'').

FCC Code 1 (same as FCC Form 159, Block 23A: ''33'').

Payor Name (same as FCC Form 159, Block 2).

Lockbox No.: 358850.

Winning bidders must fax a completed FCC Form 159 to Mellon Bank at 412–209–6045 or 412–236–5702 at least one hour before placing the order for the wire transfer (but on the same business day).

7. Proper completion of the FCC Form 159 is critical to ensuring correct credit of bidder deposits. Winning bidders must use the same Taxpayer Identification Number used on their FCC Form 175. Questions concerning the calculation and submission of down payments should be directed to Gail Glasser at 202–418–1995.

D. Withdrawal, Default and Disqualification Payments

8. The Commission imposes payments on bidders that withdraw high bids during the course of an auction, default on payments due after an auction closes, or those that are disqualified. *See* 47 CFR 1.2104(g), 1.2109.

9. *Bid Withdrawal Payments.* A bidder (Bidder X) that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the winning bid amount for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less. The three (3) percent interim payment will be applied toward the withdrawal payment.

Attachment C of the Public Notice identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction No. 33.

10. *Bid Default/Disqualification Payments.* If a high bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to the same bid withdrawal payment obligations as described above, plus an additional payment equal to three (3) percent of the subsequent winning bid or three (3) percent of the defaulted bid, whichever is less. Where a bidding credit applies to the winning bid in either the original or the subsequent auction, the calculation of the three percent payment is based on the smaller of the two gross bids or smaller of the two net bids, whichever basis (gross or net) was used to figure the first component. Thus, if the difference between the gross bids is less than the difference between the net bids, the 3 percent payment will be computed on the lower of the gross bids. If the difference between the net bids is less than or equal to the difference between the gross bids, the 3 percent payment will be computed on the lower of the net bids. However, if the differences between both the gross bids and the net bids are less than or equal to zero, the three percent payment will be computed on the lower of the net bids.

11. If a winning bidder fails to remit the required down payment within ten (10) business days after the Commission has released the *Public Notice*, in this case by October 10, 2000, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for a default payment as described above. In such event, the Commission, at its discretion, may either auction the spectrum to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(b).

12. If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid plus late fee by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees. *See* 47 CFR 1.2109(a). A winning bidder that is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in § 1.2104(g)(2). In such event, the Commission may either auction the spectrum to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(c).

13. Finally, bidders that are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions. *See* 47 CFR 1.2109(d).

E. Refund of Excess Upfront Payments (for winning bidders)

14. Upfront monies on deposit that are in excess of the required down payment, withdrawal and/or default payment amounts will be refunded to the payer of record promptly upon receipt of the necessary wire transfer instructions. Winning bidders must fax the necessary wire transfer instructions to Gail Glasser at 202–418–2843. Any questions concerning refunds should be referred to Gail Glasser or Tim Dates at 202–418–1995.

F. Refund of Upfront Payments (for non-winning bidders)

15. Non-winning bidders must fax the necessary wire transfer instructions to Gail Glasser or Tim Dates at 202–418–2843. Any questions concerning refunds for non-winning bidders should be referred to Gail Glasser or Tim Dates at 202–418–1995.

G. FCC Form 601

16. By 6 p.m. ET on October 10, 2000, winning bidders must submit a completed long-form license application(s) covering each license for which they were the winning high bidder. Attachment D of the Public Notice sets out instructions for completing the FCC Form 601. Applications must be filed electronically. Detailed instructions for filing the Form 601 electronically are set out in Attachment E of the Public Notice. Failure to timely file FCC Form 601 will result in default. Late-filed applications will not be accepted without a showing of good cause.

H. FCC Form 602

17. Pursuant to § 1.919 of the Commission's rules, an applicant for a license in an auctionable service must have on file with the Commission a current FCC Form 602 regarding

ownership information of the applicant. *See* 47 CFR 1.919. Therefore, unless the applicant already has a current FCC Form 602 on file with the Commission, the applicant must submit one at the time the FCC Form 601 is filed. Any late-filed FCC Form 602 must contain a request for waiver of the filing requirement in 47 CFR 1.919.

18. FCC Form 602 must be filed manually (not electronically), and may be obtained from the Internet at http://www.fcc.gov/formpage.html or by calling the FCC's Form Distribution Center at 1–800–418–FORM (3676). For more detailed information on FCC Form 602, *see* ''Wireless Telecommunications Bureau Answers Frequently Asked Questions Concerning Reporting of Ownership Information on FCC Form 602,'' *Public Notice*, DA 99–1001 (14 FCC Rcd. 8261) 1999.

Applicants that do not have a current FCC Form 602 on file should send the form to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

19. Filing FCC Form 602 is a *separate* requirement from, and in addition to, the ownership reporting requirements associated with filing FCC Form 601, Exhibit A, as set forth in Attachment D of the Public Notice. However, to avoid duplication, applicants may provide certain information required in Exhibit A by attaching a copy of their FCC Form 602 (in Adobe PDF Format) to their FCC Form 601 submission. Applicants are reminded, however, that an original FCC Form 602 still must be filed manually in Gettysburg, PA. For further information, see Instructions in Attachment D of the Public Notice.

I. Applications for Multiple Licenses

20. Applicants may submit one FCC Form 601 Main Form, Schedule B, and Form 602 for multiple licenses if all filing information (name and address information, all ownership and eligibility attachments, and waiver requests) associated with the application is identical. Licensing information such as market designator, channel block, and/or market name may be different (*i.e.* WXMEA001A and WXMEA001B- Boston, MA; WXMEA022A—Knoxville, TN).

21. Filers whose name and address, ownership, eligibility, and waiver requests are identical for some licenses but different for other licenses must submit a separate Form 601 and 602 for those licenses for which filing information is unique. The streamlined filing procedure described in paragraph 20 may only be used for licenses that have identical filing information.

J. Maintaining Accuracy of Information

22. Applicants are no longer required to maintain accuracy and completeness of information furnished on their FCC Form 175 and exhibits. After the auction closes, applicants are required to make all changes in the ULS system (Forms 601/602).

K. Application Processing and License Grant

23. Pursuant to 47 CFR 1.2108(b) and the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997), interested parties will have ten (10) days to file petitions to deny after the Commission releases a public notice announcing the FCC Forms 601 and 602 are acceptable for filing. An applicant may file an opposition to any petition to deny within five (5) days after the time for filing petitions to deny has expired. *See* 47 CFR1.2108(c). The petitioner may file a reply to such opposition within five (5) days after the time for filing oppositions has expired. *See* 47 CFR 1.2108(c). If the Commission determines that an applicant is qualified and there is no substantial and material issue of fact concerning that determination, the Commission will issue a public notice announcing that it is prepared to grant the application conditioned upon the full and timely payment of the remaining balance of the applicant's winning bid. Once the Commission has received full payment of the applicant's winning bid, it will issue a public notice announcing grant of the license (or licenses) to the applicant.

L. Clarifications

24. Applicants should be aware that the Policy Division of the Wireless Telecommunications Bureau has issued two Errata. The first Errata, *inter alia,* makes conforming amendments to § 27.308 of the Commission's Rules, concerning technical content of applications. The second Errata, *inter alia,* makes conforming amendments to § 27.6 of the Commission's Rules, referencing the definitional criterion for the Gulf of Mexico EA.

M. Anti-collusion Rules

25. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. As explained more fully in the *Auction No. 33 Procedures Public Notice,* 65 FR 21182 (April 20, 2000), this prohibition began with the filing of short-form applications and ends on the down payment due date. The prohibition ends on the down payment due date whether or not a high bidder must supplement its upfront payment to cover its down payment. Applicants certified their compliance with § 1.2105(c) when their FCC Form 175 short-form applications were signed.

26. The following is a list of important numbers relating to Auction No. 33:

News Media: Meribeth McCarrick at 202–418–0654.

Technical Support Hotline: Technical Support Personnel at 202–414–1250 (V) or 202–414–1255 (text telephone (TTY)).

Office of the Managing Director Auctions Accounting Group (Payment, FCC Form 159 and refund questions) Gail Glasser or Tim Dates at 202–418–1995.

Wireless Telecommunications Bureau, Commercial Wireless Division (FCC Form 601 and 602 questions) JoAnn Epps at 202–418–1342, Gary Oshinsky at 202–418–7167 or Erin McGrath at 202–418–2042.

Wireless Telecommunications Bureau, Auctions and Industry Analysis Division Auctions (Auction-related questions) Lisa Stover, Project Manager at 717–338–2888, or Howard Davenport, Attorney, at 202–418–0660.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–25530 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–2013]

Wireless Telecommunications Bureau Opens Filing Window for Requests To Be a Frequency Coordinator in the Wireless Medical Telemetry Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The *Public Notice* announces a filing window for requests to be a designated frequency coordinator in the Wireless Medical Telemetry Service, (WMTS). WTB will accept requests for certification beginning September 29, 2000, and ending October 10, 2000. Requests received before or after these dates will not be considered. Entities interested in serving as a WMTS frequency coordinator should familiarize themselves with the Commission's Rules pertaining to the WMTS.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeff Tobias, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418–1617.

SUPPLEMENTARY INFORMATION: The Public Notice was released on September 28, 2000. The document is available, in entirety, for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A–257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. For background information, a copy of the R&O in ET Docket No. 99–255 can be found on the Commission's web page. The Commission's website is *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf.*

Summary of the Public Notice

The Commission adopted a Report and Order (R&O) establishing a new WMTS. The WMTS is intended to enhance the ability of health care providers to offer high quality and cost-effective care to patients with acute and chronic health care needs. While WMTS equipment will be licensed by rule, the Commission concluded that it was necessary to designate a frequency coordinator(s) to maintain a database of all WMTS equipment identified by location, operating frequency, emission type and output power. The Commission believed that the database will provide a record of the frequencies used by each facility or device to assist parties in selecting frequencies to avoid interference. The Commission envisioned that the database would be used by users eligible for the WMTS and manufacturers to plan for specific frequency use within a geographic area.

1. *WMTS Frequency Coordinator Duties and Responsibilities.* The designated WMTS frequency coordinator(s) must be familiar with the medical telemetry user community, and must make its services available to all parties on a first-come, first-served and non-discriminatory basis. The WMTS frequency coordinator(s) must be willing to serve a five-year term, which could be renewed by the Commission. The WMTS frequency coordinator(s) will be permitted to set the fee structure associated with such frequency coordination as necessary to recoup costs. Pursuant to § 95.1113 of the Commission's Rules, a WMTS frequency coordinator will be required to: (i) Review and process coordination requests submitted by authorized health care providers as required in 47 CFR 95.1111; (ii) maintain a database of WMTS use; (iii) notify users of potential conflicts; and (iv) coordinate WMTS operation with radio astronomy observatories and Federal Government radar systems as specified in 47 CFR 95.1119 and 95.1121.

2. Each request for designation as a WMTS frequency coordinator must be signed and indicate the name and telephone number of a contact person familiar with the request. Each request must include:

(i) a description of the entity requesting to be a WMTS frequency coordinator and its qualifications;

(ii) how it will prevent any conflicts of interest;

(iii) its proposed fee structure;

(iv) length of time before applicant will be able to begin its duties as a WMTS frequency coordinator;

(v) a statement that the applicant will be able and willing to work with other WMTS frequency coordinators should WTB decide to designate more than one frequency coordinator, and

(vi) the geographic area(s) for which the applicant is willing to coordinate.

3. WTB will base its decision on the information provided. Preference will be given to applicants who can provide nationwide coordination. Once a decision has been made, the name(s) and address(es) of the designated WMTS coordinator(s) will be announced by *Public Notice.*

4. Requests for designation as a WMTS frequency coordinator must reference this *Public Notice,* including the DA number, and be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington DC 20554. A copy of each filing should be sent to International Transcription Service, Inc. at 1231 20th Street, NW., Washington, DC 20036, and Jeffrey Tobias, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 12th Street, SW., 2–C828, Washington, DC 20554.

Federal Communications Commission.

D'Wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 00–25557 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 00–2247]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 3, 2000, the Commission released a public notice announcing the October 17 and 18, 2000, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda. This notice of the October 17–18, 2000 NANC meeting is being published in the **Federal Register** less than 15 days prior to the meeting due to a delay in finalizing the October NANC agenda.

FOR FURTHER INFORMATION CONTACT: Cheryl Callahan or Aaron Goldberger at (202) 418–2320. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW, Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: October 3, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, October 17, 2000, from 8:30 a.m. until 5 p.m., and on Wednesday, October 18, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Cheryl Callahan or Aaron Goldberger at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

Tuesday, September 19, 2000

1. Approval of June 20–21 and July 18–19, 2000, meeting minutes.
2. North American Numbering Plan Administration (NANPA) Report. Presentation of Enterprise Services and associated prices. Discussion of September 27 notice regarding INC issue 220.
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Status of NANPA technical requirements document.
4. Report of Numbering Resource Optimization (NRO). Status of NRUF Requirements Document and ITN Recommendations.
5. JFAX presentation on UMS Issues.
6. Industry Numbering Committee Report. Status of UNP.
7. Report of Toll Free Access Codes IMG.
8. Local Number Portability Administration (LNPA) Working Group Report. Wireless Number Portability Subcommittee report, Third Wireline Wireless Integration Report, and Review of Report on LNP & Pooling.
9. Report of Cost Recovery Working Group.
10. Report from NBANC.
11. Ad Hoc Voluntary UNP Study Group Report. Presentation of Business Rule Model.
12. Steering Group Meeting. Update Table of NANC Projects.

Wednesday, September 20, 2000

13. Steering Group Report.
14. Reseller CIC IMG Status Report.
15. NANC Discussion Group on Charging for Telephone Numbers.
16. UMS IMG Report.
17. Oversight of LLCs NPAC.
18. Public participation (5 minutes each, if any).
19. Other Business.
20. Action Items.

Federal Communications Commission.

L. Charles Keller,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–25708 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE & TIME: Wednesday, October 11, 2000 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, October 12, 2000 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Dole for President—Statement of Reasons (LRA#467).

Dole/Kemp '96, Inc.—Statement of Reasons (LRA#506).

Advisory Opinion 2000–25: Minnesota House of Representatives Democratic Farmer Labor Caucus by counsel, Allan W. Weinblatt.

Advisory Opinion 2000–26: Joel Deckard, Reform Party candidate, U.S. Senate, Florida.

Administrative Matters:

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–25707 Filed 10–3–00; 1:29 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Paul A. Jones, Glenview, Illinois, William J. Jones, Barrington, Illinois, and Anne Jones White, Mundelein, Illinois; to retain voting shares of Cummins-American Corp., Glenview, Illinois, and thereby indirectly retain voting shares of Glenview State Bank, Glenview, Illinois.

Board of Governors of the Federal Reserve System, September 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–25505 Filed 10–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Notice Announcing Dates and Location of Public Forum

AGENCY: Federal Trade Commission.

SUMMARY: The Federal Trade Commission has: (1) set October 26, 2000 from 8:30 a.m. to 5:30 p.m. and October 27, 2000 from 9:00 a.m. to 5:30 p.m. as the dates and times for its public forum on ''Warranty Protection for High-Tech Products and Services,'' announced in 65 FR 30411 (May 11, 2000); and (2) announced the location of the public forum to be the Federal Trade Commission headquarters at 600 Pennsylvania Avenue, NW., Washington, DC 20580.

DATES: The public forum will be held at the Federal Trade Commission headquarters, 600 Pennsylvania Avenue, NW., Washington, DC 20580 on October 26, 2000 from 8:30 a.m. to 5:30 p.m. and October 27, 2000 from 9:00 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION: A forum agenda, a list of participants, and all public comments submitted in connection with the public forum will be posted closer to the date of the forum on the Federal Trade Commission Web site, *ftc.gov.* For further information about the public forum, contact any of the following persons by mail at Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 238, Washington, DC 20580, or by telephone or email as follows: April Major, Attorney, Division of Marketing Practices, telephone 202–326–2972, email *amajor@ftc.gov;* Daniel Salsburg, Attorney, Division of Marketing Practices, telephone 202–326–3402, email *dsalsburg@ftc.gov;* or Carole Danielson, Investigator, Division

of Marketing Practices, telephone 202–326–3115, email *cdanielson@ftc.gov.*

SUPPLEMENTARY INFORMATION: On May 11, 2000, the Federal Trade Commission published a **Federal Register** Notice announcing a public forum in the fall of 2000 to discuss warranty protection for software and other computer information products and services that are marketed to consumers, and soliciting academic papers and written comment relating to those issues. The Commission has not set October 26 and 27, 2000, as the dates for the forum. The forum will be held at the offices of the Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, from 8:30 a.m. to 5:30 p.m. on October 26 and from 9:00 a.m. to 5:30 p.m. on October 27, 2000. The forum is open to the public, and there is no formal registration process for those wishing to attend. Seating is limited, but overflow rooms will be available.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–25567 Filed 10–4–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 001 0100]

Agrium, Inc., and Union Oil Company of California and Unocal Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 30, 2000.

ADDRESSES: Comments should be directed: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John B. Kirkwood, FTC Northwest Region, 915 Second Avenue, Suite 2896, Seattle, Washington 98174, (206) 220–4484.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desists, having been filed with and accepted subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for September 29, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/2000/09/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted for public comment an Agreement Containing Consent Order with Agrium, Inc. (''Agrium'') and Union Oil Company of California and Unocal Corp. (''Unocal''). The purpose of the agreement is to remedy the anticompetitive effects of Agrium's proposed acquisition of Unocal's nitrogen fertilizer business. The proposed order would require that Agrium divest assets that are integral to the sale of nitrogen fertilizers in the Northwest (Washington, Oregon, and Idaho).

Nitrogen fertilizers are used by farmers around the world to improve crop yields by supplying the nitrogen essential to plant growth. Agrium, with production facilities in Texas and near its headquarters in Alberta, Canada, is one of the world's largest producers of nitrogen fertilizers. In 1998, Agrium's wholesale sales of nitrogen fertilizers were $501 million. Unocal produces and sells nitrogen fertilizers through its subsidiaries Alaska Nitrogen Products LLC and Prodica LLC, which have production and distribution facilities in Alaska, Washington, Oregon and California. Unocal's 1998 wholesale sales of nitrogen fertilizers were approximately $377 million.

Agrium and Unocal are the leading sellers of anhydrous ammonia, urea, and UAN 32% solution, which are the most popular nitrogen fertilizers in the Northwest. Substitution among these fertilizers, and between them and other nitrogen fertilizers, is limited because of agricultural considerations (they differ in their suitability for particular crops, soils, weather conditions, etc.) and commercial factors (*e.g.,* each of these fertilizers requires different storage and application equipment). In the manufacture of an important resin, there is no substitute for urea.

The complaint alleges that Agrium's proposed acquisition of Unocal, if consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The complaint identifies three relevant lines of commerce (product markets) in which to analyze the effects of this acquisition: urea, ammonia, and UAN 32%. The Relevant Section of the country (geographic market) alleged in the complaint is the Northwest, which consists of the states of Washington, Oregon, and Idaho. In urea, Agrium's acquisition of Unocal would result in an increase in the Herfindahl-Hirschman Index (commonly referred to as ''HHI'') from 2200 to over 4800; in ammonia, the HHI rises from 1922 to over 4200; and in UAN 32% it rises from 1560 to over 3800. By eliminating competition between Agrium and Unocal, who are the top two suppliers of each of these products in the Northwest, the acquisition would enable Agrium to unilaterally increase the prices of ammonia, urea, and UAN 32% in that geographic market.

It is unlikely that the competition eliminated by the proposed acquisition would be replaced by new entry into the Northwest. The construction of a new nitrogen fertilizer plant to supply the Northwest appears to be uneconomic. One recent attempt at building a plant in the region was abandoned four years after it was first announced. Design, site selection, permitting and construction of a new plant to supply the Northwest would require considerably more than two years. Producers with plants in the Northwest cannot expand output because these plants are operating at capacity. Importers of offshore fertilizers are unlikely to ship significantly more

to the Northwest because the transfer and storage terminals they need are either unavailable or more expensive to use than Unocal's Rivergate terminal. Midwest producers face obstacles to increasing shipments to the Northwest, including high transportation costs, commitments to local customers, the attractiveness of netbacks closer to their plants, and differences in seasonal demand that often make California a better market for their product.

The proposed consent order would require that Agrium divest Unocal's deepwater terminal at Rivergate, part of its upriver terminal at Hedges (containing urea storage and land for expansion and road access), and leases on three UAN terminals (including one with deepwater access) to J.R. Simplot Company. The order would also require Agrium to provide Simplot with a long-term lease on the ammonia storage at Hedges and perpetual access to the Hedges dock, roadway, rail spur and weight scales.

The Commission is preliminarily satisfied that Simplot is well qualified to reproduce Unocal's competitive role in the Northwest. Simplot is a $2.8 billion agribusiness that, among other things, produces, wholesales and retails nitrogen and other fertilizers around North America. It operates a large nitrogen fertilizer production facility in Manitoba, numerous phosphate plants, and a chain of retail outlets. In the Northwest, Simplot is a substantial source of phosphate fertilizers, but its wholesaling of nitrogen fertilizers is very limited. The proposed divestiture would enable Simplot to become a major wholesaler of nitrogen fertilizers in the Northwest.

The proposed order requires that respondents divest the specified assets to Simplot, in accordance with the agreement between Agrium and Simplot, immediately after Agrium acquires Unocal. If, at the time the Commission decides to make the proposed consent order final, the Commission notifies the respondents that Simplot is not an acceptable acquirer, or that the agreement with Simplot is not an acceptable manner of divestiture, the respondents must immediately rescind the transaction and divest those assets to an acceptable acquirer, and in an acceptable manner, within four months of the date the proposed consent order becomes final.

For a period of ten (10) years from the date the proposed order becomes final, respondents are required to provide written notice to the Commission prior to acquiring any interest in (1) any asset to be divested or (2) any terminal with deepwater access used in the transfer and storage of UAN 32 in the Northwest. These appear to be the only assets in the Northwest whose acquisition might substantially affect competition in the sale of the relevant products but not trigger a reporting obligation under the Hart-Scott-Rodino Act. Respondents are required to provide to the Commission a report of compliance with the proposed order within thirty (30) days of the date the order becomes final every sixty (60) days thereafter until respondents have complied with the divestiture obligations. Respondents are also required to provide annual reports during the term of the order. For Agrium the term of the order would be ten years; for Unocal it would be until the assets to be divested are transferred to Agrium.

The Agreement Containing Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the order or make it final. By accepting the proposed order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed order, including the specified divestitures, to aid the Commission in its determination of whether it should make the order final. This analysis is not intended to constitute an official interpretation of the proposed order, nor is it intended to modify the terms of the order in any way.

By direction of the Commission, Commissioner Swindle not participating.

Donald S. Clark,

Secretary.

[FR Doc. 00–25570 Filed 10–4–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 991 0103]

Alaska Healthcare Network, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 20, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Feinstein, FTC/S–3114, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3688; or Paul J. Nolan, FTC/S–3118, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2770.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 20, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/2000/09/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii))

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement with the Alaska Healthcare Network, Inc. (''AHN'') containing a proposed consent order. The agreement settles charges that AHN violated

Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating or implementing agreements among its members to fix prices and other terms of dealing with payors, and to refuse to deal with payors except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by AHN that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations in the Commission' proposed complaint are summarized below.

Respondent AHN is a non-profit corporation composed of more than 60 percent of the physicians with active medical staff privileges at Fairbanks Memorial Hospital (the only private general acute care hospital in the Fairbanks area). AHN's members include almost half of the family and general practitioners, and from 70 to 100 percent of the internists, pediatricians, obstetrician-gynecologists, and general surgeons in full-time, year-round private practice in Fairbanks.

AHN has served as a vehicle for its physician members to negotiate collectively with health plans. When AHN was formed, a wide range of health plans, including PPOs, HMOs, and government health care purchasing cooperatives, were seeking to contract with Fairbanks physicians. AHN members authorized AHN's Executive Director to bargain on their behalf over the terms and conditions under which individual physicians would deal with third-party payors. AHN emphasized to its members that—as a result of its size and its members' agreement to allow AHN to bargain on their behalf—AHN would be able to bargain from a position of strength and thus avert the competition among physicians that might otherwise be introduced into the Fairbanks area by managed care plans.

From early 1997 through 1998, AHN negotiated price and other contract terms on behalf of its physician members with at least seven third-party payors. It used fee information collected from its member physicians to develop a fee schedule to use in contract negotiations. AHN told its members that its fee schedule represented members' usual fees, and that the fee schedule would be used to obtain a favorable level of reimbursement for area physicians. AHN's Board of Directors and Contracting Committee also adopted a model contract that required payors to use AHN's fee schedule and to delegate their credentialing, utilization review, and formulary management to AHN rather than operating their own programs.

AHN purported to operate as a ''messenger model,'' under which an agent conveys payors' contract offers to individual physicians, who each make an independent decision whether to accept or reject each contract. In practice, however, AHN's Executive Director and Contracting Committee bargained with payors over payment and other terms, and refused to transmit contract offers to AHN members unless the payors agreed to AHN's terms.

AHN functioned de facto as the exclusive representative of its members. Through statements in its newsletters, documents, and other media, AHN repeatedly advised members to deal with payors only through AHN in order to obtain better prices and other terms. Some payors who were seeking to enter the Fairbanks area attempted unsuccessfully to contract with individual physicians instead of dealing with AHN: physicians told the payors that AHN handled contracting for them and for other Fairbanks physicians. Payors believes that they could not go around AHN to contract individually with physicians in Fairbanks, and thus that they had no alternative but to reach agreement with AHN or give up their planned entry into Fairbanks. In several instances, payors approached individual physicians in mass mailings, requests for proposals, or phone calls, and received no responses. This was complete unprecedented and contradicted by payors' favorable responses to RFPs in other markets, including Anchorage, Alaska, and demonstrated the unwillingness of AHN and its members to deal with an entire category of payors.

AHN reached agreement with one payor—NYLCare—in 1998, and transmitted a contract to individual AHN members for their approval. AHN's Executive Director told the members that the Contracting Committee had revised the NYLCare contract proposal in a way that was responsive to the common economic interest of all AHN members. AHN engaged six other third-party payors in protracted negotiations over price and non-price terms that often extended for more than a year with no resolution. AHN demanded that the payors use AHN's fee schedule and its model contract that required payors to delegate credentialing, quality assurance, and utilization review to AHN physicians. However, AHN had not implemented any utilization review, quality assurance, or credentialing systems, and it lacked the capacity to implement some or all of those services. AHN did not refer contract offers from any of these payors to its members. As a result of AHN's conduct, a wide range of third-party payors of physician services, including PPOs, HMOs, and employer health care purchasing cooperatives, were unable to secure physician contracts and thus were unable to do business in the Fairbanks area.

AHN did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. Its actions have restrained price and other competition among physicians in the Fairbanks area and thereby harmed consumers (including third-party payors, subscribers, and their employers) by increasing the prices for physician services, delaying the development of alternative health care financing and delivery systems, and limiting competition among health plans.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint, while allowing AHN and its members to engage in legitimate joint conduct. The core prohibitions of the proposed order are contained in Paragraph II. Paragraph II.A prohibits AHN from entering into or facilitating any agreement: (1) To negotiate on behalf of any physicians with any payor or provider; (2) to deal or refuse to deal with any payor or provider; (3) regarding any term on which any physicians deal, or are willing to deal, with any payor or provider; or (4) to restrict the ability of any physician to deal with any payor or provider on an individual basis or through any other arrangement.

Paragraph II.B prohibits AHN from exchanging or facilitating the exchange of information among Fairbanks area physicians concerning: (1) Negotiation

with any payor or provider regarding reimbursement terms; or (2) any physician's intentions or decisions with respect to any dealings with any payor or provider. Paragraph II.C prohibits AHN from encouraging, advising, or pressuring any person, other than the government, to engage in any action that would be prohibited if the person were subject to the order.

Paragraph II contains two provisos. The first proviso permits respondent to engage in conduct that is approved and supervised by the State of Alaska, so long as that conduct is exempt from liability under the federal antitrust laws under the state action doctrine. That doctrine protects private conduct that is both: (1) In accordance with a clearly articulated and affirmatively expressed state policy to supplant competition; and (2) actively supervised by the state itself. *See, e.g., FTC* v. *Ticor Title Insurance Co.*, 504 U.S. 621 (1992); *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980).

The second proviso in Paragraph II allows AHN to engage in conduct (including collectively determining reimbursement and other terms of contracts) that is reasonably necessary to operate any ''qualified risk-sharing joint arrangement'' or ''qualified clinically-integrated joint arrangement,'' provided respondent complies with the prior notification requirements set forth in Paragraph VI of the order. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact.

As defined in the order, a ''qualified risk-sharing joint arrangement'' must satisfy three conditions. First, all physician participants must share substantial financial risk through the arrangement. The definition of financial risk-sharing tracks the discussion of that term contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. Second, any agreement on prices or terms of reimbursement must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Third, the arrangement must be non-exclusive—that is, it must not restrict the ability, or facilitate the refusal, of participating physicians to deal with payors individually or through any other network or venture.

A ''qualified clinically-integrated joint arrangement'' is one in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. This definition also reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. Participating physicians must establish a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided. In addition, the arrangement must be non-exclusive, and any agreement on prices or terms of reimbursement must be reasonably necessary to obtaining significant efficiencies through the arrangement.

The proposed order also imposes a structural remedy for a period of five years. Although the Commission has not routinely imposed structural relief on physician groups in previous cases, such relief is not unprecedented. *See e.g., Home Oxygen and Medical Equipment Co.*, 118 F.T.C. 661 (1994) (pulmonologists prohibited for ten years from acquiring ownership interest in any entity that provides home oxygen delivery services if more than 25 percent of the pulmonologists in the area would be affiliated with the entity), and *Physicians Group, Inc.*, 120 F.T.C. 567 (1995) (physician organization ordered to dissolve). The Commission will continue to consider the option of structural remedies in these cases when necessary to achieve effective relief.

Paragraph III.A requires that if AHN operates a qualified risk-sharing or clinically-integrated joint arrangement, its participating physicians must constitute no more than 30 percent of Fairbanks physicians in any of the key medical specialties of family practice and general internal medicine, obstetrics and/or gynecology, pediatrics, general surgery, and orthopedic surgery. Paragraph III.B of the proposed order further requires that, when offering the services of its physicians through any other arrangement, AHN's participating physicians constitute no more than 50 percent of Fairbanks physicians in any of those specialties. Paragraph III.B permits participation by a greater percentage of physicians because it is intended to apply to arrangements in which there is no agreement among AHN participating physicians on price or other competitively significant terms, including messenger model arrangements.

Paragraph III contains two provisos. The first proviso permits AHN to include as a participating physician any single physician or any one pre-existing physician practice group, without regard to the percentage limitations. The single physician exception allows AHN to exceed the percentage limitations in instances where there may be only a few physicians in a designated medical speciality; and the one pre-existing practice group exception allows AHN to exceed the percentage limitations where the alternative would be to require an integrated practice group to downsize. The second proviso permits AHN to exceed the percentage limitations to the extent that the excess arises from certain changes in the marketplace. As a result of these provisos, once AHN is operating in conformity with percentage limitations contained in the order, it will not be required to reduce its physician membership because of (1) the addition of a physician (who was not already in practice in Fairbanks) to a member practice group, or (2) a reduction in the total number of physicians in a particular specialty (and thus in the denominator used in calculating the percentage of physicians in a specialty who can be AHN members) as a result of physician exit from the market.

The structural relief in this case is necessary to prevent continuing tacit collusion among AHN members. Fairbanks is an isolated community with a relatively small number of physicians, a high proportion of whom are AHN members. According to the allegations of the complaint, these doctors have demonstrated an unwillingness to participate in health plans independently of AHN. In these circumstances, there is a significant risk of continuing tacit collusion among AHN members that cannot adequately be addressed by an order limited to prohibiting certain specified conduct (*i.e.*, AHN members might be able to coordinate their refusals to deal with payors without engaging in overt acts of collusion). Moreover, since AHN purported to operate as a messenger model, but in fact actively negotiated price and nonprice terms on behalf of its physician members, an order limited to conduct remedies would have required detailed provisions governing AHN's future operation as a messenger. The structural relief, by contrast, will permit AHN, subject to the five-year size limits, to carry on its activities as it finds most effective without detailed oversight by the Commission, so long as the core prohibitions of Paragraph II are respected.

The structural relief contained in the order responds to the particular facts of this case, and is intended to interrupt the chain of effects flowing from the conduct alleged in the complaint and to permit time for new market structures and relationships to develop among Fairbanks physicians and between the physicians and health plans. The presence of this provision in the

proposed order does not suggest that other physician networks whose membership exceeds the percentage limitations are likely to have anticompetitive effects. The provision is limited to five years in order to give AHN the greatest possible freedom to respond to changing market conditions thereafter, once the effects of the challenged conduct have dissipated.

The remaining provisions of the proposed order impose obligations on AHN with respect to distributing the order and complaint to its members and other specified persons and reporting information to the Commission. The order terminates twenty years after the date it issues.

By direction of the Commission.

Donald S. Clark,

Secretary.

Separate Statement of Commissioners Orson Swindle and Thomas B. Leary in *Alaska Healthcare Network, Inc.*, File No. 991 0103

Although we have voted to accept the consent agreement in this matter because we believe the conduct remedy is justified, we also believe that one component of the relief prescribed by the proposed order—namely, the inclusion of a form of ''structural'' remedy to help cure the effects of respondent AHN's allegedly unlawful conduct—is inappropriate in this particular case.

If AHN elects to function as a negotiator or merely as a ''messenger,'' then Paragraph III of the proposed order will for five years impose, respectively, either a 30 percent or a 50 percent ''cap'' on the number of Fairbanks physicians in each of five ''relevant physician markets'' who may participate in AHN. Although we believe that limits on a physician group's ''market shares'' in particular specialties can be appropriate fencing-in relief for the type of conduct involved in this case, we are not persuaded that this provision will operate in a rational and predictable way in a market as small as Fairbanks. This concern is exacerbated by the first proviso to Paragraph III, which allows respondent to ''grandfather'' in ''any one pre-existing practice group''—no matter how large—and thus to perpetuate a structure inconsistent with the goals of that paragraph.

The imposition of such structural relief in a setting like Fairbanks results in anomalies that would not arise in a larger urban area. For example, one of the five ''relevant physician markets'' affected by the order (pediatrics) has only seven practitioners, and five are in a grandfathered group; another ''market'' (ob/gyn) has only ten practitioners, six of whom are in a grandfathered group. We can certainly understand the desire to refrain from forcing the breakup of a presumably efficient practice group, but this proviso makes the percentage caps ineffective for those specialties. On the other hand, the order itself potentially inhibits the formation of similarly efficient practice groups in the specialties where the caps are effective.

Some form of structural relief might well be warranted in future cases in which the efficacy of a purely ''conduct'' (*i.e.,* ''cease-and-desist'') order is in doubt. A formerly collusive group's compliance with the dictates of a conduct order (through the cessation of overtly conspiratorial behavior) does not necessarily spell the end of tacit coordination in the future. In a market with different characteristics from those involved in this case, some type of percentage cap on network membership could go a long way to bolster competition through the creation of one or more competing networks. In this market, however, we question whether the remedy makes sense.

We hope that the public comment period on this consent agreement will yield some illuminating advice from the bar, the medical community, and the public at large, both with respect to the general appropriations of structural measures in ''conduct'' cases and with regard to whether such measures make sense in a thinly populated market such as Fairbanks.

[FR Doc. 00–25572 Filed 10–4–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 001–0092]

The Boeing Company; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 27, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Norman A. Armstrong, Jr., FTC/S–2311, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2072.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/2000/09/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from The Boeing Company (''Boeing'') designed to remedy the anticompetitive effects resulting from Boeing's acquisition of certain assets of General Motors Corporation. The proposed Consent Agreement prohibits Boeing from providing systems engineering and technical assistance (''SETA'') services to the United States Department of Defense (''DoD'') for a certain classified program. The

proposed Consent Agreement also prohibits Boeing's launch vehicle division from gaining access to any non-public information that Boeing's satellite division receives from competing launch vehicle suppliers when those competing suppliers launch Boeing's satellites. Similarly, the proposed Consent Agreement prohibits Boeing's satellite division from gaining access to any non-public information that Boeing's launch vehicle business receives from competing satellite suppliers. In addition, the proposed Consent Agreement requires Boeing to make available all necessary satellite interface information, which is used to make a satellite compatible with a launch vehicle, to all launch vehicle suppliers.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and any comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the proposed Decision & Order.

Pursuant to a Stock Purchase Agreement entered into on January 13, 2000, Boeing agreed to acquire certain assets of General Motors Corporation, including Hughes Space and Communications Company, Hughes Space and Communications International, Hughes Space and Communications International Service Company, Spectrolab, Inc., Hughes Electron Dynamics, Hughes Telecommunications and Space Company's 2.69% interest in ICO Global Communications Ltd., and Hughes Telecommunications and Space Company's 2% interest in Thuraya Satellite Telecommunications Private Joint Stock Company, for approximately $3.75 billion. The Commission's Complaint alleges that the transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 45, and Section 5 of the FTC Act, as amended, 15 U.S.C. 18, in the following markets:

(1) A certain classified program for which Boeing is providing SETA services; [1]

(2) The research, development, manufacture, and sale of commercial geosynchronous earth orbit satellites;

(3) The research, development, manufacture, and sale of commercial medium earth orbit satellites;

(4) The research, development, manufacture, and sale of commercial low earth orbit satellites;

(5) The research, development, manufacture, and sale of government satellites; and

(6) The research, development, manufacture, and sale of launch vehicles.

The proposed Consent Agreement remedies the alleged violations in each market. First, Boeing is the sole supplier of SETA services to DoD for a certain classified program. Boeing provides these services to DoD under a classified contract identified for purposes of the Complaint as Contract 4208. Hughes is one of two competing contractors for the classified program for which Boeing is providing SETA services. Thus, as result of the proposed acquisition, Boeing would be both the provider of SETA services and a competing contractor for this classified program.

As a SETA contractor, Boeing must receive a great deal of competitively sensitive information, including detailed cost and bidding data, from contractors competing for the classified program. With access to such information, Boeing may be able to raise prices for the classified program by bidding less aggressively than it otherwise would. In addition, Boeing's position as SETA contractor could enable it anticompetitively to favor itself and/or disfavor its competitors in a number of ways, such as submitting unfair evaluations of its competitors' proposals.

The proposed Consent Agreement remedies the proposed acquisition's potential anticompetitive effects in this classified program by prohibiting Boeing from performing certain SETA services for this classified program in the future. To prevent the anticompetitive exchange of information, the Consent Agreement requires Boeing to: (1) Use non-public SETA services information only its capacity as provider of technical assistance to DoD, or for the provision of SETA services not prohibited by the Order; and (2) erect a ''firewall'' between its SETA services division and Boeing's satellite division. In addition, to assist DoD in the transition of these SETA services responsibilities to one of its own research and development centers, the Consent Agreement further requires Boeing to: (1) Provide technical assistance, at the request of DoD, for a period not to exceed one year; and (2) provide to DoD all documents relating to certain SETA services that Boeing has received in its role as SETA contractor.

Second, Hughes is a significant supplier of satellites and Boeing is a significant supplier of launch vehicles, which are used to launch satellites from the Earth's surface into space. In order for a launch vehicle to launch a satellite, launch vehicle suppliers and satellite suppliers must work closely together and share a substantial amount of proprietary and competitively sensitive information to integrate the two products. Thus, as a significant supplier of launch vehicles, Boeing/Hughes would have access to competitively sensitive information of competing satellite manufacturers which it could share with its satellite divisions. If Boeing's satellite divisions gained access to this information, Boeing would be able to determine the cost and technology involved in its competitors' satellite proposals. This could have immediate anticompetitive consequences on upcoming satellite procurements by allowing Boeing to bid less aggressively than it otherwise would. In addition, the incentives of other satellite suppliers to invest in future technological advancements could be reduced due to concerns that Boeing would be able to ''free-ride'' off its competitors' technological innovations. As a significant supplier of satellites, Boeing/Hughes likewise would have access to sensitive information of competing launch vehicle providers. If Boeing's launch vehicle division were to gain access to this information, it could allow Boeing to bid less aggressively in upcoming launch vehicle procurements and reduce incentives of competitors to invest in technological innovation.

The proposed Consent Agreement is designed to protect the proprietary and competitively sensitive information of launch vehicle and satellite suppliers. Specifically, the Consent Agreement prohibits Boeing's satellite business from making any non-public launch vehicle information obtained from any launch vehicle provider available to Boeing's launch vehicle business. Under the proposed Consent Agreement, Boeing may only use such information as a provider of satellites. Similarly, the proposed Consent Agreement prohibits Boeing's launch vehicle business from

[1] The complaint includes an additional line of commerce, the provision of SETA Services, in which to analyze the effects of the transaction. This line of commerce is included in the complaint because the proposed merger results in the integration of Boeing into two non-horizontal markets: (1) the provision of SETA Services; and (2) a competitor for a certain classified program for which Boeing is providing SETA services. It is necessary to analyze the competitive conditions in the market for provision of SETA Services in order to determine whether there would be anticompetitive effects in the related market for a certain classified program for which Boeing is providing SETA services.

making any non-public satellite information obtained from any satellite supplier available to Boeing's satellite business. Under the terms of the Consent Agreement, Boeing may only use such information in its capacity as a launch vehicle provider. The Commission has issued similar orders limiting potentially anticompetitive information transfers following mergers or acquisitions, including: *Lockheed Martin*, (C–3685) (September 20, 1996); *Raytheon Company*, (C–3681) (September 10, 1996); *Lockheed Corporation/Martin Marietta Corporation*, (C–3576) (May 9, 1995); *Alliant Techsystems Inc.*, (C–3567) (April 7, 1995); *Martin Marietta*, (C–3500) (June 28, 1994).

Third, the proposed acquisition raises concern that Boeing could withhold satellite interface information, which is necessary to integrate a satellite with a launch vehicle, from its launch vehicle competitors. If Boeing were to withhold such satellite interface information, it could potentially disadvantage or raise the costs of other launch vehicle suppliers that are competing to launch Boeing's satellites, and ultimately to customers. The proposed Consent Agreement remedies this concern by requiring that for any satellite manufactured by Boeing/Hughes prior to the date the Consent Agreement becomes final, Boeing must provide satellite interface information, as that term is defined in the Consent Agreement, to any launch vehicle supplier within thirty (30) days from the date Boeing receives a request for such information. The Order also requires Boeing to notify all launch vehicle suppliers, in writing, that satellite interface information relating to any Boeing/Hughes satellite bus, model, or product line is available upon request. Boeing/Hughes is also required to provide each launch vehicle supplier with instructions on how to request such information. The Consent Agreement further requires Boeing to provide satellite interface information relating to any of its satellite buses, models, or product lines manufactured after the date this Consent Agreement becomes final, to any launch vehicle supplier that requests such information or to whom Boeing previously supplied satellite interface information. However, for each satellite manufactured for the United States Government, Boeing shall only be required to provide satellite interface information to any launch vehicle supplier specified by the United States Government. In addition, the Consent Agreement requires Boeing/Hughes to provide satellite interface information to any launch vehicle supplier specified by any satellite customer no later than Boeing provides such information to its own launch vehicle businesses.

Fourth, the Commission has appointed Sheila Widnall as a monitor trustee pursuant to the proposed Consent Agreement to ensure that Boeing complies with the provisions of the Order. The monitor trustee will, among other things, assist the Commission in monitoring Boeing's compliance with the firewall requirements of the Order and Boeing's efforts to provide satellite interface information to other launch vehicle competitors. Because satellite interface information often involves technical information, the monitor trustee will aid in evaluating the contents of the satellite interface information that is to be distributed. Under the provisions of the Consent Agreement, the monitor trustee will serve for a period of ten (10) years and provide, among other things, written reports sixty (60) days after she is appointed detailing Boeing's compliance with the proposed Consent Agreement and annually thereafter for the next ten (10) on the anniversary of the date the Decision and Order becomes final.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and Decision & Order, and it is not intended to constitute an official interpretation of the Consent Agreement and Decision & Order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–25571 Filed 10–4–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of the seventh meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5:30 p.m. on November 2, 2000 and 8 a.m. to 5 p.m. on November 3, 2000 at the National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892. The meeting will be open to the public with attendance limited to space available.

The Committee will hear progress reports from the working groups established at its August 4 meeting and discuss plans for future projects. The Committee will also hear presentations on current regulations governing the labeling and advertising of genetic tests and public and private sector policies regarding reimbursement for genetic testing services. There will be a limited period of time provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. The SACGT is directed to (1) recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm* Individuals who wish to provide public comments or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov.* The SACGT office is located at 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892.

Dated: September 29, 2000.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 00–25537 Filed 10–04–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC)

announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–6:30 p.m., October, 18, 2000; 8 a.m.–3:30 p.m., October 19, 2000.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include a discussion on the recommended childhood immunization schedule; immunization of foreign adoptees and progress towards recommending immunization of foreign adoptees; influenza vaccine supply for 2000–2001 season; 1999–2000 season vaccine effectiveness; update on the live attenuated influenza vaccine and vaccine recommendations for young children; persistent poliovirus excretion in patients with B cell immune deficiency disorders; meningococcal conjugate vaccination in the United Kingdom; update on measles vaccination and outbreaks in the United Kingdom; anaphylaxis after Measles, Mumps, and Rubella vaccine due to gelatin; pertussis among adolescents and adults in the U.S.; review of recommendations for pneumococcal polysaccharide vaccination among HIV-positive adults; Adult Immunization Action Plan; smallpox vaccine recommendations in bioterrorism event involving smallpox, revised recommendations for smallpox vaccination in laboratory workers using attenuated vaccinia virus strains, alternatives to VIG for treatment of adverse vaccine reactions; Subcommittee on Oversight of the Vaccine Health Care Network; update on the National Immunization Program vaccine safety initiatives; update from the National Center for Infectious Diseases; update from the National Immunization Program; update from the Food and Drug Administration; update from the Vaccine Injury Compensation Program; and an update from the National Vaccine Program.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC,1600 Clifton Road, NE., m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–25687 Filed 10–4–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF–PA–HS–2001–02A]

Fiscal Year 2001 Discretionary Announcement for Select Service Areas of Early Head Start; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Wednesday September 13, 2000.

On page 55256, in the State of Arkansas, in the County column add the following Counties: ''Arkansas'', ''Lonoke'' and ''Polk''. In the Funding column delete ''$1,295,089'' and replace with ''$1,333,689''. In the Current service area column add ''Entire County'' beside each of these counties: Arkansas, Lonoke and Polk.

On page 55257, in the State of Iowa, Polk County, in the Current service area column, delete ''City of Des Moines metropolitan area'' and replace with ''in the City of Des Moines an area bounded on the West by the County line from Raccoon River to 9400 N; on the North by 9400 N to NW 58th to NW 110th Place to NE 22nd Street to NE 118th Street; on the East by NE 29th to I–80 to NE 120th Street to East University to NE 64th Street to SE 6th to SE 60th to the Des Moines River to I–65 to 80th SW; and on the South by 80th SW/County line from Des Moines River to 9800 W.''

On page 55257, in the State of Maine, in the County Column delete ''Southern Oxford County'' and replace with ''Oxford County''; and in the Current service area column delete ''Grafton, Andover, North Surplus and Byron'' and replace with ''Southern part of the County including all towns South of Grafton, Andover North Surplus and Byron''.

On page 55257, in the State of Maryland, in Montgomery County, in the Funding for the following counties column, delete ''$782,515'' and replace with ''$1,090,711''; and in the current service area column delete ''Rockville South of Route 28, Silver Spring and Tacoma Park'' and replace with ''Rockville, Silver Spring and Takoma Park''. On page 55258, in the State of Maryland, in Prince George's County, in the Current service area column, delete ''Hyattsville, Riverdale and Langley Park'' and replace with ''Hyattsville, Riverdale, Adelphi/Langley Park, College Park, Greenbelt, Glen Arden, Landover and Capitol Heights''.

On page 55258, in the State of Minnesota, in Hennepin County, in the Current service area column delete ''American Indian children and families from the communities of North Minneapolis, Phillips, and Northeast Minneapolis'' and replace with ''North Minneapolis, Phillips, and Northeast Minneapolis''.

On page 55259, in the State of New York, in Kings County, add ''$769,189'' in the Funding for the following counties column.

On page 55259, in the State of Rhode Island, Providence County, in the Funding for the following counties column delete ''$97,720'' and replace with ''$297,720''.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center at 1–800–351–2293 or send an email to *ebs@lcgnet.com.* You can also contact Judith Jerald, Early Head Start, Head Start Bureau at (202) 205–8074.

Dated: September 28, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–25497 Filed 10–4–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–52]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this

burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100–.2171;

Form No.: HCFA–R–52 (OMB# 0938–0386);

Use: This information is needed to encourage proper distribution and effective utilization of ESRD treatment sources while maintaining and improving the efficient delivery of care by physicians and dialysis facilities;

Frequency: Annually;

Affected Public: Business or other for-profit, and Federal Government;

Number of Respondents: 3,940;

Total Annual Responses: 3,940;

Total Annual Hours: 143,721.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, HCFA R–52, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–25580 Filed 10–4–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–3427]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment.

Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: End Stage Renal Disease Application and Survey and Certification Report and Supporting Regulations in 42 CFR 405.2100–405.2184.

Form No.: HCFA–3427 (OMB# 0938–0360).

Use: Part I of this form is a facility identification and screening measurement used to initiate the certification and recertification of ESRD facilities. Part II is completed by the Medicare/Medicaid State survey agency to determine facility compliance with ESRD conditions for coverage.

Frequency: Annually.

Affected Public: State, local or tribal government.

Number of Respondents: 3740.

Total Annual Responses: 675.

Total Annual Hours: 1626.75.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–25504 Filed 10–4–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–264A–H, HCFA–684A–I, and HCFA–685]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Medicare DMEPOS Competitive Bidding Demonstration;

Form No.: HCFA–R–264 A–H (OMB# 0938–0748);

Use: Section 1847 of the Social Security Act, as added by Section 4319 of the Balanced Budget Act (BBA), mandates HCFA to implement

demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The demonstration currently operating in Polk County, Florida and the demonstration planned for San Antonio, Texas involve competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). The new set of products to be offered for competitive bidding in San Antonio are: Oxygen equipment and supplies, hospital beds, non-customized orthotic devices, manual wheelchairs and accessories, and nebulizer inhalation drugs. Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002.

There are eight forms that are required for this demonstration. Form A will be used by the bidding supplier to provide information about the characteristics of the company. Form B will be used by the bidding supplier to provide specific information about the prices it bids for specific product categories, and to provide information about the attributes of the supplier in relation to the specific product category. Form C will be used by HCFA or its agents to obtain information on site regarding the bidding supplier. Form D will be used by HCFA or its agents to obtain financial references on the bidding supplier from banks and other financial sources. Form E will be used by HCFA or its agents to obtain information about the bidding suppliers from referral sources such as home health agencies and hospital discharge planners. Form F will be used to obtain information about the suppliers' financial status and to assure that they have sufficient fiscal resources to operate in a competitive environment where the prices being paid for some products are less than what have been customarily paid. It is required only from suppliers whose bids are in the competitive range. Form G will be used for nursing homes to identify their suppliers of products and services who have not been awarded Demonstration Supplier status for services to beneficiaries in their home. This is to permit payment to those suppliers for products and services furnished to nursing homes. Form H will be used to monitor the performance of Demonstration Suppliers to assure their adherence to the quality standards established for the project.

The competitive bidding demonstration for DMEPOS has the following objectives:

- Test the policies and implementation methods of competitive bidding to determine whether or not it should be expanded as a Medicare Program.
- Reduce the price that Medicare pays for medical equipment and supplies.
- Limit beneficiary out-of-pocket expenditures for copayments.
- Assure beneficiary access to high quality medical equipment and supplies.
- Prevent business transactions with suppliers who engage in fraudulent practices.

Frequency: On occasion;
Affected Public: Business or other for-profit, and not-for-profit institutions;
Number of Respondents: 5,100;
Total Annual Responses: 1,700;
Total Annual Hours: 12,420.

(2) *Type of Information Collection Request:* Revision of a currently approved collection;
Title of Information Collection: End-Stage Renal Disease (ESRD) Network Business Proposal Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112;
Form No.: HCFA–684A–I (OMB# 0938–0658);
Use: The submission of business proposal information by current ESRD networks and other bidders, according to the business proposal instructions, meets HCFA's need for meaningful, consistent, and verifiable data when evaluating contract proposals;
Frequency: Other: Every 3 years;
Affected Public: Not-for-profit institutions;
Number of Respondents: 18;
Total Annual Responses: 36;
Total Annual Hours: 1,080.

(3) *Type of Information Collection Request:* Extension of a currently approved collection;
Title of Information Collection: End-Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112;
Form No.: HCFA–685 (OMB# 0938–0657);
Use: Submission of semi-annual cost reports allow HCFA to review, compare, and project ESRD network costs. The reports are used as an early warning system to determine whether the networks are in danger of exceeding the total cost of the contract. Additionally, HCFA can analyze line item costs to identify any significant aberrations;
Frequency: Semi-annually;
Affected Public: Not-for-profit institutions;
Number of Respondents: 18;
Total Annual Responses: 36;
Total Annual Hours: 108.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 20, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–25578 Filed 10–4–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier:HCFA–730/182 & HCFA–R–77]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New Collection;

Title of Information Collection: Employee Building Pass Application and File;

Form No.: HCFA–730 & 182 (OMB# 0938–NEW);

Use: The purpose of this system and the forms are to control United States Government Building Passes issued to all HCFA employees and non-HCFA employees who require continuous access to HCFA buildings in Baltimore and other HCFA and HHS buildings.;

Frequency: Other; as needed;

Affected Public: Federal Government, and business or other for-profit;

Number of Respondents: 150;

Total Annual Responses: 150;

Total Annual Hours: 37.50.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Limitation on Liability and Information Collection Requirements Referenced in 42 CFR 411.404, 411.406, and 411.408;

Form No.: HCFA–R–77 (OMB# 0938–0465);

Use: The Medicare program requires to provide written notification of noncovered services to beneficiaries by the providers, practitioners, and suppliers. The notification gives the beneficiary, provider, practitioner, or supplier knowledge that Medicare will not pay for items or services mentioned in the notification. After this notification, any future claim for the same or similar services will not be paid by the program and the affected parties will be liable for the noncovered services.;

Frequency: Other; as needed;

Affected Public: Individuals or households;

Number of Respondents: 890,826;

Total Annual Responses: 3,563,304;

Total Annual Hours: 296,942.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 11, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–25581 Filed 10–4–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

OIG Compliance Program for Individual and Small Group Physician Practices

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued Compliance Program Guidance for Individual and Small Group Physician Practices developed by the Office of Inspector General (OIG). The OIG has previously developed and published voluntary compliance program guidance focused on several other areas and aspects of the health care industry. We believe that the development and issuance of this voluntary compliance program guidance for individual and small group physician practices will serve as a positive step towards assisting providers in preventing the submission of erroneous claims or engaging in unlawful conduct involving the Federal health care programs.

FOR FURTHER INFORMATION CONTACT: Kimberly Brandt, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidances is a major initiative of the OIG in its effort to engage the private health care community in preventing the submission of erroneous claims and in combating fraudulent conduct. In the past several years, the OIG has developed and issued compliance program guidances directed at a variety of segments in the health care industry. The development of these types of compliance program guidances is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations and program requirements.

Copies of these compliance program guidances can be found on the OIG web site at http://www.hhs.gov/oig.

Developing the Compliance Program Guidance for Individual and Small Group Physician Practices

On September 8, 1999, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for individual and small group physician practices (64 FR 48846). In response to that solicitation notice, the OIG received 83 comments from various outside sources. We carefully considered those comments, as well as previous OIG publications, such as other compliance program guidance and Special Fraud Alerts, in developing a guidance for individual and small group physician practices. In addition, we have consulted with the Health Care Financing Administration and the Department of Justice. In an effort to ensure that all parties had a reasonable opportunity to provide input into a final product, draft guidance for individual and small group physician practices was published in the **Federal Register** on June 12, 2000 (65 FR 36818) for further comments and recommendations.

Components of an Effective Compliance Program

This compliance program guidance for individual and small group physician practices contains seven components that provide a solid basis upon which a physician practice can create a voluntary compliance program:

- Conducting internal monitoring and auditing;
- Implementing compliance and practice standards;
- Designating a compliance officer or contact;
- Conducting appropriate training and education;
- Responding appropriately to detected offenses and developing corrective action;
- Developing open lines of communication; and
- Enforcing disciplinary standards through well-publicized guidelines.

Similar components have been contained in previous guidances issued by the OIG. However, unlike other guidances issued by OIG, this guidance for physicians does not suggest that physician practices implement all seven components of a full scale compliance program. Instead, the guidance emphasizes a step by step approach to follow in developing and implementing a voluntary compliance program. This change is in recognition of the financial and staffing resource constraints faced

by physician practices. The guidance should not be viewed as mandatory or as an all-inclusive discussion of the advisable components of a compliance program. Rather, the document is intended to present guidance to assist physician practices that voluntarily choose to develop a compliance program.

Office of Inspector General's Compliance Program Guidance for Individual and Small Group Physician Practices

I. Introduction

This compliance program guidance is intended to assist individual and small group physician practices (''physician practices'') [1] in developing a voluntary compliance program that promotes adherence to statutes and regulations applicable to the Federal health care programs (''Federal health care program requirements''). The goal of voluntary compliance programs is to provide a tool to strengthen the efforts of health care providers to prevent and reduce improper conduct. These programs can also benefit physician practices[2] by helping to streamline business operations.

Many physicians have expressed an interest in better protecting their practices from the potential for erroneous or fraudulent conduct through the implementation of voluntary compliance programs. The Office of Inspector General (OIG) believes that the great majority of physicians are honest and share our goal of protecting the integrity of Medicare and other Federal health care programs. To that end, all health care providers have a duty to ensure that the claims submitted to Federal health care programs are true and accurate. The development of voluntary compliance programs and the active application of compliance principles in physician practices will go a long way toward achieving this goal.

Through this document, the OIG provides its views on the fundamental components of physician practice compliance programs, as well as the principles that a physician practice might consider when developing and implementing a voluntary compliance program. While this document presents basic procedural and structural guidance for designing a voluntary compliance program, it is not in and of itself a compliance program. Indeed, as recognized by the OIG and the health care industry, there is no ''one size fits all'' compliance program, especially for physician practices. Rather, it is a set of guidelines that physician practices can consider if they choose to develop and implement a compliance program.

As with the OIG's previous guidance, [3] these guidelines are not mandatory. Nor do they represent an all-inclusive document containing all components of a compliance program. Other OIG outreach efforts, as well as other Federal agency efforts to promote compliance,[4] can also be used in developing a compliance program. However, as explained later, if a physician practice adopts a voluntary and active compliance program, it may well lead to benefits for the physician practice.

A. Scope of the Voluntary Compliance Program Guidance

This guidance focuses on voluntary compliance measures related to claims submitted to the Federal health care programs. Issues related to private payor claims may also be covered by a compliance plan if the physician practice so desires.

The guidance is also limited in scope by focusing on the development of voluntary compliance programs for individual and small group physician practices. The difference between a small practice and a large practice cannot be determined by stating a particular number of physicians. Instead, our intent in narrowing the guidance to the small practices subset was to provide guidance to those physician practices whose financial or staffing resources would not allow them to implement a full scale, institutionally structured compliance program as set forth in the Third Party Medical Billing Guidance or other previously released OIG guidance. A compliance program can be an important tool for physician practices of all sizes and does not have to be costly, resource-intensive or time-intensive.

B. Benefits of a Voluntary Compliance Program

The OIG acknowledges that patient care is, and should be, the first priority of a physician practice. However, a practice's focus on patient care can be enhanced by the adoption of a voluntary compliance program. For example, the increased accuracy of documentation that may result from a compliance program will actually assist in enhancing patient care. The OIG believes that physician practices can realize numerous other benefits by implementing a compliance program. A well-designed compliance program can:

- Speed and optimize proper payment of claims;
- Minimize billing mistakes;
- Reduce the chances that an audit will be conducted by HCFA or the OIG; and
- Avoid conflicts with the self-referral and anti-kickback statutes.

The incorporation of compliance measures into a physician practice should not be at the expense of patient care, but instead should augment the ability of the physician practice to provide quality patient care.

Voluntary compliance programs also provide benefits by not only helping to prevent erroneous or fraudulent claims, but also by showing that the physician practice is making additional good faith efforts to submit claims appropriately. Physicians should view compliance programs as analogous to practicing preventive medicine for their practice. Practices that embrace the active application of compliance principles in their practice culture and put efforts towards compliance on a continued basis can help to prevent problems from occurring in the future.

A compliance program also sends an important message to a physician practice's employees that while the practice recognizes that mistakes will occur, employees have an affirmative, ethical duty to come forward and report erroneous or fraudulent conduct, so that it may be corrected.

[1] For the purpose of this guidance, the term ''physician'' is defined as: (1) a doctor of medicine or osteopathy; (2) a doctor of dental surgery or of dental medicine; (3) a podiatrist; (4) an optometrist; or (5) a chiropractor, all of whom must be appropriately licensed by the State. 42 U.S.C. 1395x(r).

[2] Much of this guidance can also apply to other independent practitioners, such as psychologists, physical therapists, speech language pathologists, and occupational therapists.

[3] Currently, the OIG has issued compliance program guidance for the following eight industry sectors: hospitals, clinical laboratories, home health agencies, durable medical equipment suppliers, third-party medical billing companies, hospices, Medicare+Choice organizations offering coordinated care plans, and nursing facilities. The guidance listed here and referenced in this document is available on the OIG web site at http://www.hhs.gov/oig in the Electronic Reading Room or by calling the OIG Public Affairs office at (202) 619–1343.

[4] The OIG has issued Advisory Opinions responding to specific inquiries concerning the application of the OIG's authorities, in particular, the anti-kickback statute, and Special Fraud Alerts setting forth activities that raise legal and enforcement issues. These documents, as well as reports from the OIG's Office of Audit Services and Office of Evaluation and Inspections can be obtained via the Internet address or phone number provided in Footnote 3. Physician practices can also review the Health Care Financing Administration (HCFA) web site on the Internet at http://www.hcfa.gov, for up-to-date regulations, manuals, and program memoranda related to the Medicare and Medicaid programs.

C. Application of Voluntary Compliance Program Guidance

The applicability of these recommendations will depend on the circumstances and resources of the particular physician practice.

Each physician practice can undertake reasonable steps to implement compliance measures, depending on the size and resources of that practice. Physician practices can rely, at least in part, upon standard protocols and current practice procedures to develop an appropriate compliance program for that practice. In fact, many physician practices already have established the framework of a compliance program without referring to it as such.

D. The Difference Between ''Erroneous'' and ''Fraudulent'' Claims To Federal Health Programs

There appear to be significant misunderstandings within the physician community regarding the critical differences between what the Government views as innocent ''erroneous'' claims on the one hand and ''fraudulent'' (intentionally or recklessly false) health care claims on the other. Some physicians feel that Federal law enforcement agencies have maligned medical professionals, in part, by a perceived focus on innocent billing errors. These physicians are under the impression that innocent billing errors can subject them to civil penalties, or even jail. These impressions are mistaken.

To address these concerns, the OIG would like to emphasize the following points. First, the OIG does not disparage physicians, other medical professionals or medical enterprises. In our view, the great majority of physicians are working ethically to render high quality medical care and to submit proper claims.

Second, under the law, physicians are not subject to criminal, civil or administrative penalties for innocent errors, or even negligence. The Government's primary enforcement tool, the civil False Claims Act, covers only offenses that are committed with actual knowledge of the falsity of the claim, reckless disregard, or deliberate ignorance of the falsity of the claim.[5] The False Claims Act does not encompass mistakes, errors, or negligence. The Civil Monetary Penalties Law, an administrative remedy, similar in scope and effect to the False Claims Act, has exactly the same standard of proof.[6] The OIG is very mindful of the difference between innocent errors (''erroneous claims'') on one hand, and reckless or intentional conduct (''fraudulent claims'') on the other. For criminal penalties, the standard is even higher—criminal intent to defraud must be proved beyond a reasonable doubt.

Third, even ethical physicians (and their staffs) make billing mistakes and errors through inadvertence or negligence. When physicians discover that their billing errors, honest mistakes, or negligence result in erroneous claims, the physician practice should return the funds erroneously claimed, but without penalties. In other words, absent a violation of a civil, criminal or administrative law, erroneous claims result only in the return of funds claimed in error.

Fourth, innocent billing errors are a significant drain on the Federal health care programs. All parties (physicians, providers, carriers, fiscal intermediaries, Government agencies, and beneficiaries) need to work cooperatively to reduce the overall error rate.

Finally, it is reasonable for physicians (and other providers) to ask: what duty do they owe the Federal health care programs? The answer is that all health care providers have a duty to reasonably ensure that the claims submitted to Medicare and other Federal health care programs are true and accurate. The OIG continues to engage the provider community in an extensive, good faith effort to work cooperatively on voluntary compliance to minimize errors and to prevent potential penalties for improper billings before they occur. We encourage all physicians and other providers to join in this effort.

II. Developing a Voluntary Compliance Program

A. The Seven Basic Components of a Voluntary Compliance Program

The OIG believes that a basic framework for any voluntary compliance program begins with a review of the seven basic components of an effective compliance program. A review of these components provides physician practices with an overview of the scope of a fully developed and implemented compliance program. The following list of components, as set forth in previous OIG compliance program guidances, can form the basis of a voluntary compliance program for a physician practice:

- Conducting internal monitoring and auditing through the performance of periodic audits;
- Implementing compliance and practice standards through the development of written standards and procedures;
- Designating a compliance officer or contact(s) to monitor compliance efforts and enforce practice standards;
- Conducting appropriate training and education on practice standards and procedures;
- Responding appropriately to detected violations through the investigation of allegations and the disclosure of incidents to appropriate Government entities;
- Developing open lines of communication, such as (1) discussions at staff meetings regarding how to avoid erroneous or fraudulent conduct and (2) community bulletin boards, to keep practice employees updated regarding compliance activities; and
- Enforcing disciplinary standards through well-publicized guidelines.

These seven components provide a solid basis upon which a physician practice can create a compliance program. The OIG acknowledges that full implementation of all components may not be feasible for all physician practices. Some physician practices may never fully implement all of the components. However, as a first step, physician practices can begin by adopting only those components which, based on a practice's specific history with billing problems and other compliance issues, are most likely to provide an identifiable benefit.

The extent of implementation will depend on the size and resources of the practice. Smaller physician practices may incorporate each of the components in a manner that best suits the practice. By contrast, larger physician practices often have the means to incorporate the components in a more systematic manner. For example, larger physician practices can use both this guidance and the Third-Party Medical Billing Compliance Program Guidance, which provides a more detailed compliance program structure, to create a compliance program unique to the practice.

The OIG recognizes that physician practices need to find the best way to achieve compliance for their given circumstances. Specifically, the OIG encourages physician practices to participate in other provider's compliance programs, such as the compliance programs of the hospitals or other settings in which the physicians practice. Physician Practice Management companies also may serve as a source of compliance program guidance. A physician practice's participation in such compliance programs could be a way, at least partly,

[5] 31 U.S.C. 3729.

[6] 42 U.S.C. 1320a–7a.

to augment the practice's own compliance efforts.

The opportunities for collaborative compliance efforts could include participating in training and education programs or using another entity's policies and procedures as a template from which the physician practice creates its own version. The OIG encourages this type of collaborative effort, where the content is appropriate to the setting involved (i.e., the training is relevant to physician practices as well as the sponsoring provider), because it provides a means to promote the desired objective without imposing excessive burdens on the practice or requiring physicians to undertake duplicative action. However, to prevent possible anti-kickback or self-referral issues, the OIG recommends that physicians consider limiting their participation in a sponsoring provider's compliance program to the areas of training and education or policies and procedures.

The key to avoiding possible conflicts is to ensure that the entity providing compliance services to a physician practice (its referral source) is not perceived as nor is it operating the practice compliance program at no charge. For example, if the sponsoring entity conducted claims review for the physician practice as part of a compliance program or provided compliance oversight without charging the practice fair market value for those services, the anti-kickback and Stark self-referral laws would be implicated. The payment of fair market value by referral sources for compliance services will generally address these concerns.

B. Steps for Implementing a Voluntary Compliance Program

As previously discussed, implementing a voluntary compliance program can be a multi-tiered process. Initial development of the compliance program can be focused on practice risk areas that have been problematic for the practice such as coding and billing. Within this area, the practice should examine its claims denial history or claims that have resulted in repeated overpayments, and identify and correct the most frequent sources of those denials or overpayments. A review of claim denials will help the practice scrutinize a significant risk area and improve its cash flow by submitting correct claims that will be paid the first time they are submitted. As this example illustrates, a compliance program for a physician practice often makes sound business sense.

The following is a suggested order of the steps a practice could take to begin the development of a compliance program. The steps outlined below articulate all seven components of a compliance program and there are numerous suggestions for implementation within each component. Physician practices should keep in mind, as stated earlier, that it is up to the practice to determine the manner in which and the extent to which the practice chooses to implement these voluntary measures.

Step One: Auditing and Monitoring

An ongoing evaluation process is important to a successful compliance program. This ongoing evaluation includes not only whether the physician practice's standards and procedures are in fact current and accurate, but also whether the compliance program is working, *i.e.*, whether individuals are properly carrying out their responsibilities and claims are submitted appropriately. Therefore, an audit is an excellent way for a physician practice to ascertain what, if any, problem areas exist and focus on the risk areas that are associated with those problems. There are two types of reviews that can be performed as part of this evaluation: (1) A standards and procedures review; and (2) a claims submission audit.

1. Standards and Procedures

It is recommended that an individual(s) in the physician practice be charged with the responsibility of periodically reviewing the practice's standards and procedures to determine if they are current and complete. If the standards and procedures are found to be ineffective or outdated, they should be updated to reflect changes in Government regulations or compendiums generally relied upon by physicians and insurers (*i.e.*, changes in Current Procedural Terminology (CPT) and ICD–9–CM codes).

2. Claims Submission Audit

In addition to the standards and procedures themselves, it is advisable that bills and medical records be reviewed for compliance with applicable coding, billing and documentation requirements. The individuals from the physician practice involved in these self-audits would ideally include the person in charge of billing (if the practice has such a person) and a medically trained person (*e.g.*, registered nurse or preferably a physician (physicians can rotate in this position)). Each physician practice needs to decide for itself whether to review claims retrospectively or concurrently with the claims submission. In the Third-Party Medical Billing Compliance Program Guidance, the OIG recommended that a baseline, or ''snapshot,'' be used to enable a practice to judge over time its progress in reducing or eliminating potential areas of vulnerability. This practice, known as ''benchmarking,'' allows a practice to chart its compliance efforts by showing a reduction or increase in the number of claims paid and denied.

The practice's self-audits can be used to determine whether:

- Bills are accurately coded and accurately reflect the services provided (as documented in the medical records);
- Documentation is being completed correctly;
- Services or items provided are reasonable and necessary; and
- Any incentives for unnecessary services exist.

A baseline audit examines the claim development and submission process, from patient intake through claim submission and payment, and identifies elements within this process that may contribute to non-compliance or that may need to be the focus for improving execution.[7] This audit will establish a consistent methodology for selecting and examining records, and this methodology will then serve as a basis for future audits.

There are many ways to conduct a baseline audit. The OIG recommends that claims/services that were submitted and paid during the initial three months after implementation of the education and training program be examined, so as to give the physician practice a benchmark against which to measure future compliance effectiveness.

Following the baseline audit, a general recommendation is that periodic audits be conducted at least once each year to ensure that the compliance program is being followed. Optimally, a randomly selected number of medical records could be reviewed to ensure that the coding was performed accurately. Although there is no set formula to how many medical records should be reviewed, a basic guide is five or more medical records per Federal payor (*i.e.*, Medicare, Medicaid), or five to ten medical records per physician. The OIG realizes that physician practices receive reimbursement from a number of different payors, and we would encourage a physician practice's auditing/monitoring process to consist of a review of claims from all Federal payors from which the practice receives reimbursement. Of course, the larger the sample size, the larger the comfort level

[7] *See* Appendix D.II. referencing the Provider Self-Disclosure Protocol for information on how to conduct a baseline audit.

the physician practice will have about the results. However, the OIG is aware that this may be burdensome for some physician practices, so, at a minimum, we would encourage the physician practice to conduct a review of claims that have been reimbursed by Federal health care programs.

If problems are identified, the physician practice will need to determine whether a focused review should be conducted on a more frequent basis. When audit results reveal areas needing additional information or education of employees and physicians, the physician practice will need to analyze whether these areas should be incorporated into the training and educational system.

There are many ways to identify the claims/services from which to draw the random sample of claims to be audited. One methodology is to choose a random sample of claims/services from either all of the claims/services a physician has received reimbursement for or all claims/services from a particular payor. Another method is to identify risk areas or potential billing vulnerabilities. The codes associated with these risk areas may become the universe of claims/services from which to select the sample. The OIG recommends that the physician practice evaluate claims/services selected to determine if the codes billed and reimbursed were accurately ordered, performed, and reasonable and necessary for the treatment of the patient.

One of the most important components of a successful compliance audit protocol is an appropriate response when the physician practice identifies a problem. This action should be taken as soon as possible after the date the problem is identified. The specific action a physician practice takes should depend on the circumstances of the situation. In some cases, the response can be as straight forward as generating a repayment with appropriate explanation to Medicare or the appropriate payor from which the overpayment was received. In others, the physician practice may want to consult with a coding/billing expert to determine the next best course of action. There is no boilerplate solution to how to handle problems that are identified.

It is a good business practice to create a system to address how physician practices will respond to and report potential problems. In addition, preserving information relating to identification of the problem is as important as preserving information that tracks the physician practice's reaction to, and solution for, the issue.

Step 2: Establish Practice Standards and Procedures

After the internal audit identifies the practice's risk areas, the next step is to develop a method for dealing with those risk areas through the practice's standards and procedures. Written standards and procedures are a central component of any compliance program. Those standards and procedures help to reduce the prospect of erroneous claims and fraudulent activity by identifying risk areas for the practice and establishing tighter internal controls to counter those risks, while also helping to identify any aberrant billing practices. Many physician practices already have something similar to this called ''practice standards'' that include practice policy statements regarding patient care, personnel matters and practice standards and procedures on complying with Federal and State law.

The OIG believes that written standards and procedures can be helpful to all physician practices, regardless of size and capability. If a lack of resources to develop such standards and procedures is genuinely an issue, the OIG recommends that a physician practice focus first on those risk areas most likely to arise in its particular practice.[8] Additionally, if the physician practice works with a physician practice management company (PPMC), independent practice association (IPA), physician-hospital organization, management services organization (MSO) or third-party billing company, the practice can incorporate the compliance standards and procedures of those entities, if appropriate, into its own standards and procedures. Many physician practices have found that the adoption of a third party's compliance standards and procedures, as appropriate, has many benefits and the result is a consistent set of standards and procedures for a community of physicians as well as having just one entity that can then monitor and refine the process as needed. This sharing of compliance responsibilities assists physician practices in rural areas that do not have the staff to perform these functions, but do belong to a group that does have the resources. Physician practices using another entity's compliance materials will need to tailor those materials to the physician practice where they will be applied.

Physician practices that do not have standards or procedures in place can develop them by: (1) Developing a written standards and procedures manual; and (2) updating clinical forms periodically to make sure they facilitate and encourage clear and complete documentation of patient care. A practice's standards could also identify the clinical protocol(s), pathway(s), and other treatment guidelines followed by the practice.

Creating a resource manual from publicly available information may be a cost-effective approach for developing additional standards and procedures. For example, the practice can develop a ''binder'' that contains the practice's written standards and procedures, relevant HCFA directives and carrier bulletins, and summaries of informative OIG documents (*e.g.,* Special Fraud Alerts, Advisory Opinions, inspection and audit reports).[9] If the practice chooses to adopt this idea, the binder should be updated as appropriate and located in a readily accessible location.

If updates to the standards and procedures are necessary, those updates should be communicated to employees to keep them informed regarding the practice's operations. New employees can be made aware of the standards and procedures when hired and can be trained on their contents as part of their orientation to the practice. The OIG recommends that the communication of updates and training of new employees occur as soon as possible after either the issuance of a new update or the hiring of a new employee.

1. Specific Risk Areas

The OIG recognizes that many physician practices may not have in place standards and procedures to prevent erroneous or fraudulent conduct in their practices. In order to develop standards and procedures, the physician practice may consider what types of fraud and abuse related topics need to be addressed based on its specific needs. One of the most important things in making that determination is a listing of risk areas where the practice may be vulnerable.

To assist physician practices in performing this initial assessment, the OIG has developed a list of four potential risk areas affecting physician practices. These risk areas include: (a) Coding and billing; (b) reasonable and necessary services; (c) documentation;

[8] Physician practices with laboratories or arrangements with third-party billing companies can also check the risk areas included in the OIG compliance program guidance for those industries.

[9] The OIG and HCFA are working to compile a list of basic documents issued by both entities that could be included in such a binder. We expect to complete this list later this fall, and will post it on the OIG and HCFA web sites, as well as publicize this list to physician organizations and representatives (information on how to contact the OIG is contained in Footnote 3; HCFA information can be obtained at www.hcfa.gov/medlearn or by calling 1–800–MEDICARE).

and (d) improper inducements, kickbacks and self-referrals. This list of risk areas is not exhaustive, or all-encompassing. Rather, it should be viewed as a starting point for an internal review of potential vulnerabilities within the physician practice.[10] The objective of such an assessment is to ensure that key personnel in the physician practice are aware of these major risk areas and that steps are taken to minimize, to the extent possible, the types of problems identified. While there are many ways to accomplish this objective, clear written standards and procedures that are communicated to all employees are important to ensure the effectiveness of a compliance program. Specifically, the following are discussions of risk areas for physician practices: [11]

a. Coding and Billing. A major part of any physician practice's compliance program is the identification of risk areas associated with coding and billing. The following risk areas associated with billing have been among the most frequent subjects of investigations and audits by the OIG:

- Billing for items or services not rendered or not provided as claimed; [12]
- Submitting claims for equipment, medical supplies and services that are not reasonable and necessary; [13]
- Double billing resulting in duplicate payment; [14]
- Billing for non-covered services as if covered; [15]
- Knowing misuse of provider identification numbers, which results in improper billing; [16]
- Unbundling (billing for each component of the service instead of billing or using an all-inclusive code); [17]
- Failure to properly use coding modifiers; [18]
- Clustering; [19] and
- Upcoding the level of service provided.[20]

The physician practice written standards and procedures concerning proper coding reflect the current reimbursement principles set forth in applicable statutes, regulations [21] and Federal, State or private payor health care program requirements and should be developed in tandem with coding and billing standards used in the physician practice. Furthermore, written standards and procedures should ensure that coding and billing are based on medical record documentation. Particular attention should be paid to issues of appropriate diagnosis codes and individual Medicare Part B claims (including documentation guidelines for evaluation and management services).[22] A physician practice can also institute a policy that the coder and/or physician review all rejected claims pertaining to diagnosis and procedure codes. This step can facilitate a reduction in similar errors.

b. Reasonable and Necessary Services. A practice's compliance program may provide guidance that claims are to be submitted only for services that the physician practice finds to be reasonable and necessary in the particular case. The OIG recognizes that physicians should be able to order any tests, including screening tests, they believe are appropriate for the treatment of their patients. However, a physician practice should be aware that Medicare will only pay for services that meet the Medicare definition of reasonable and necessary.[23]

Medicare (and many insurance plans) may deny payment for a service that is not reasonable and necessary according to the Medicare reimbursement rules. Thus, when a physician provides services to a Medicare beneficiary, he or she should only bill those services that meet the Medicare standard of being reasonable and necessary for the diagnosis and treatment of a patient. A physician practice can bill in order to receive a denial for services, but only if the denial is needed for reimbursement from the secondary payor. Upon request, the physician practice should be able to provide documentation, such as a patient's medical records and

[10] Physician practices seeking additional guidance on potential risk areas can review the OIG's Work Plan to identify vulnerabilities and risk areas on which the OIG will focus in the future. In addition, physician practices can also review the OIG's semiannual reports, which identify program vulnerabilities and risk areas that the OIG has targeted during the preceding six months. All of these documents are available on the OIG's webpage at http://www.hhs.gov/oig.

[11] Appendix A of this document lists additional risk areas that a physician practice may want to review and incorporate into their practice standards and procedures.

[12] For example, Dr. X, an ophthalmologist, billed for laser surgery he did not perform. As one element of proof, he did not even have laser equipment or access to such equipment at the place of service designated on the claim form where he performed the surgery.

[13] Billing for services, supplies and equipment that are not reasonable and necessary involves seeking reimbursement for a service that is not warranted by a patient's documented medical condition. See 42 U.S.C. 1395i(a)(1)(A) (''no payment may be made under part A or part B [of Medicare] for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member''). *See* also Appendix A for further discussion on this topic.

[14] Double billing occurs when a physician bills for the same item or service more than once or another party billed the Federal health care program for an item or service also billed by the physician. Although duplicate billing can occur due to simple error, the knowing submission of duplicate claims—which is sometimes evidenced by systematic or repeated double billing—can create liability under criminal, civil, and/or administrative law.

[15] For example, Dr. Y bills Medicare using a covered office visit code when the actual service was a non-covered annual physical. Physician practices should remember that ''necessary'' does not always constitute ''covered'' and that this example is a misrepresentation of services to the Federal health care programs.

[16] An example of this is when the practice bills for a service performed by Dr. B, who has not yet been issued a Medicare provider number, using Dr. A's Medicare provider number. Physician practices need to bill using the correct Medicare provider number, even if that means delaying billing until the physician receives his/her provider number.

[17] Unbundling is the practice of a physician billing for multiple components of a service that must be included in a single fee. For example, if dressings and instruments are included in a fee for a minor procedure, the provider may not also bill separately for the dressings and instruments.

[18] A modifier, as defined by the CPT–4 manual, provides the means by which a physician practice can indicate a service or procedure that has been performed has been altered by some specific circumstance, but not changed in its definition or code. Assuming the modifier is used correctly and appropriately, this specificity provides the justification for payment for those services. For correct use of modifiers, the physician practice should reference the appropriate sections of the *Medicare Provider Manual. See Medicare Carrier Manual* Section 4630. For general information on the correct use of modifiers, a physician practice can consult the National Correct Coding Initiative (NCCI). *See* Appendix F for information on how to download the NCCI edits. The NCCI coding edits are updated on a quarterly basis and are used to process claims and determine payments to physicians.

[19] This is the practice of coding/charging one or two middle levels of service codes exclusively, under the philosophy that some will be higher, some lower, and the charges will average out over an extended period (in reality, this overcharges some patients while undercharging others).

[20] Upcoding is billing for a more expensive service than the one actually performed. For example, Dr. X intentionally bills at a higher evaluation and management (E&M) code than what he actually renders to the patient.

[21] The official coding guidelines are promulgated by HCFA, the National Center for Health Statistics, the American Hospital Association, the American Medical Association and the American Health Information Management Association. *See* International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9 CM)(and its successors); 1998 Health Care Financing Administration Common Procedure Coding System (HCPCS) (and its successors); and Physicians' CPT. In addition, there are specialized coding systems for specific segments of the health care industry. Among these are ADA (for dental procedures), DSM IV (psychiatric health benefits) and DMERCs (for durable medical equipment, prosthetics, orthotics and supplies).

[22] The failure of a physician practice to: (i) document items and services rendered; and (ii) properly submit the corresponding claims for reimbursement is a major area of potential erroneous or fraudulent conduct involving Federal health care programs. The OIG has undertaken numerous audits, investigations, inspections and national enforcement initiatives in these areas.

[23] ''* * * for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.'' 42 U.S.C. 1395y(a)(1)(A).

physician's orders, to support the appropriateness of a service that the physician has provided.

c. Documentation. Timely, accurate and complete documentation is important to clinical patient care. This same documentation serves as a second function when a bill is submitted for payment, namely, as verification that the bill is accurate as submitted. Therefore, one of the most important physician practice compliance issues is the appropriate documentation of diagnosis and treatment. Physician documentation is necessary to determine the appropriate medical treatment for the patient and is the basis for coding and billing determinations. Thorough and accurate documentation also helps to ensure accurate recording and timely transmission of information.

i. Medical Record Documentation. In addition to facilitating high quality patient care, a properly documented medical record verifies and documents precisely what services were actually provided. The medical record may be used to validate: (a) The site of the service; (b) the appropriateness of the services provided; (c) the accuracy of the billing; and (d) the identity of the care giver (service provider). Examples of internal documentation guidelines a practice might use to ensure accurate medical record documentation include the following: [24]

- The medical record is complete and legible;
- The documentation of each patient encounter includes the reason for the encounter; any relevant history; physical examination findings; prior diagnostic test results; assessment, clinical impression, or diagnosis; plan of care; and date and legible identity of the observer;
- If not documented, the rationale for ordering diagnostic and other ancillary services can be easily inferred by an independent reviewer or third party who has appropriate medical training;
- CPT and ICD–9–CM codes used for claims submission are supported by documentation and the medical record; and
- Appropriate health risk factors are identified. The patient's progress, his or her response to, and any changes in, treatment, and any revision in diagnosis is documented.

The CPT and ICD–9–CM codes reported on the health insurance claims form should be supported by documentation in the medical record and the medical chart should contain all necessary information. Additionally, HCFA and the local carriers should be able to determine the person who provided the services. These issues can be the root of investigations of inappropriate or erroneous conduct, and have been identified by HCFA and the OIG as a leading cause of improper payments.

One method for improving quality in documentation is for a physician practice to compare the practice's claim denial rate to the rates of other practices in the same specialty to the extent that the practice can obtain that information from the carrier. Physician coding and diagnosis distribution can be compared for each physician within the same specialty to identify variances.

ii. HCFA 1500 Form. Another documentation area for physician practices to monitor closely is the proper completion of the HCFA 1500 form. The following practices will help ensure that the form has been properly completed:

- Link the diagnosis code with the reason for the visit or service;
- Use modifiers appropriately;
- Provide Medicare with all information about a beneficiary's other insurance coverage under the Medicare Secondary Payor (MSP) policy, if the practice is aware of a beneficiary's additional coverage.

d. Improper Inducements, Kickbacks and Self-Referrals. A physician practice would be well advised to have standards and procedures that encourage compliance with the anti-kickback statute [25] and the physician self-referral law.[26] Remuneration for referrals is illegal because it can distort medical decision-making, cause overutilization of services or supplies, increase costs to Federal health care programs, and result in unfair competition by shutting out competitors who are unwilling to pay for referrals. Remuneration for referrals can also affect the quality of patient care by encouraging physicians to order services or supplies based on profit rather than the patients' best medical interests.[27]

In particular, arrangements with hospitals, hospices, nursing facilities, home health agencies, durable medical equipment suppliers, pharmaceutical manufacturers and vendors are areas of potential concern. In general the anti-kickback statute prohibits knowingly and willfully giving or receiving anything of value to induce referrals of Federal health care program business. It is generally recommended that all business arrangements wherein physician practices refer business to, or order services or items from, an outside entity should be on a fair market value basis.[28] Whenever a physician practice intends to enter into a business arrangement that involves making referrals, the arrangement should be reviewed by legal counsel familiar with the anti-kickback statute and physician self-referral statute.

In addition to developing standards and procedures to address arrangements with other health care providers and suppliers, physician practices should also consider implementing measures to avoid offering inappropriate inducements to patients.[29] Examples of such inducements include routinely waiving coinsurance or deductible amounts without a good faith determination that the patient is in financial need or failing to make reasonable efforts to collect the cost-sharing amount.[30]

Possible risk factors relating to this risk area that could be addressed in the practice's standards and procedures include:

- Financial arrangements with outside entities to whom the practice

[24] For additional information on proper documentation, physician practices should also reference the *Documentation Guidelines for Evaluation and Management Services*, published by HCFA. Currently, physicians may document based on the 1995 or 1997 E&M Guidelines, whichever is most advantageous to the physician. A new set of draft guidelines were announced in June 2000, and are undergoing pilot testing and revision, but are not in current use.

[25] The anti-kickback statute provides criminal penalties for individuals and entities that knowingly offer, pay, solicit, or receive bribes or kickbacks or other remuneration in order to induce business reimbursable by Federal health care programs. *See* 42 U.S.C. 1320a–7b(b). Civil penalties, exclusion from participation in the Federal health care programs, and civil False Claims Act liability may also result from a violation of the prohibition. *See* 42 U.S.C. 1320a–7a(a)(5), 42 U.S.C. 1320a–7(b)(7), and 31 U.S.C. 3729–3733.

[26] The physician self-referral law, 42 U.S.C. 1395nn (also known as the ''Stark law''), prohibits a physician from making a referral to an entity with which the physician or any member of the physician's immediate family has a financial relationship if the referral is for the furnishing of designated health services, unless the financial relationship fits into an exception set forth in the statute or implementing regulations.

[27] *See* Appendix B for additional information on the anti-kickback statute.

[28] The OIG's definition of ''fair market value'' excludes any value attributable to referrals of Federal program business or the ability to influence the flow of such business. *See* 42 U.S.C. 1395nn(h)(3). Adhering to the rule of keeping business arrangements at fair market value is not a guarantee of legality, but is a highly useful general rule.

[29] *See* 42 U.S.C. 1320a–7a(a)(5).

[30] In the OIG Special Fraud Alert ''Routine Waiver of Part B Co-payments/Deductibles'' (May 1991), the OIG describes several reasons why routine waivers of these cost-sharing amounts pose concerns. The Alert sets forth the circumstances under which it may be appropriate to waive these amounts. *See* also 42 U.S.C. 1320a–7a(a)(5).

may refer Federal health care program business;[31]

• Joint ventures with entities supplying goods or services to the physician practice or its patients;[32]

• Consulting contracts or medical directorships;

• Office and equipment leases with entities to which the physician refers; and

• Soliciting, accepting or offering any gift or gratuity of more than nominal value to or from those who may benefit from a physician practice's referral of Federal health care program business.[33]

In order to keep current with this area of the law, a physician practice may obtain copies, available on the OIG web site or in hard copy from the OIG, of all relevant OIG Special Fraud Alerts and Advisory Opinions that address the application of the anti-kickback and physician self-referral laws to ensure that the standards and procedures reflect current positions and opinions.

2. Retention of Records

In light of the documentation requirements faced by physician practices, it would be to the practice's benefit if its standards and procedures contained a section on the retention of compliance, business and medical records. These records primarily include documents relating to patient care and the practice's business activities. A physician practice's designated compliance contact could keep an updated binder or record of these documents, including information relating to compliance activities. The primary compliance documents that a practice would want to retain are those that relate to educational activities, internal investigations and internal audit results. We suggest that particular attention should be paid to documenting investigations of potential violations uncovered by the compliance program and the resulting remedial action. Although there is no requirement that the practice retain its compliance records, having all the relevant documentation relating to the practice's compliance efforts or handling of a particular problem can benefit the practice should it ever be questioned regarding those activities.

Physician practices that implement a compliance program might also want to provide for the development and implementation of a records retention system. This system would establish standards and procedures regarding the creation, distribution, retention, and destruction of documents. If the practice decides to design a record system, privacy concerns and Federal or State regulatory requirements should be taken into consideration.[34]

While conducting its compliance activities, as well as its daily operations, a physician practice would be well advised, to the extent it is possible, to document its efforts to comply with applicable Federal health care program requirements. For example, if a physician practice requests advice from a Government agency (including a Medicare carrier) charged with administering a Federal health care program, it is to the benefit of the practice to document and retain a record of the request and any written or oral response (or nonresponse). This step is extremely important if the practice intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals.

In short, it is in the best interest of all physician practices, regardless of size, to have procedures to create and retain appropriate documentation. The following record retention guidelines are suggested:

• The length of time that a practice's records are to be retained can be specified in the physician practice's standards and procedures (Federal and State statutes should be consulted for specific time frames, if applicable);

• Medical records (if in the possession of the physician practice) need to be secured against loss, destruction, unauthorized access, unauthorized reproduction, corruption, or damage; and

• Standards and procedures can stipulate the disposition of medical records in the event the practice is sold or closed.

Step Three: Designation of a Compliance Officer/Contact(s)

After the audits have been completed and the risk areas identified, ideally one member of the physician practice staff needs to accept the responsibility of developing a corrective action plan, if necessary, and oversee the practice's adherence to that plan. This person can either be in charge of all compliance activities for the practice or play a limited role merely to resolve the current issue. In a formalized institutional compliance program there is a compliance officer who is responsible for overseeing the implementation and day-to-day operations of the compliance program. However, the resource constraints of physician practices make it so that it is often impossible to designate one person to be in charge of compliance functions.

It is acceptable for a physician practice to designate more than one employee with compliance monitoring responsibility. In lieu of having a designated compliance officer, the physician practice could instead describe in its standards and procedures the compliance functions for which designated employees, known as ''compliance contacts,'' would be responsible. For example, one employee could be responsible for preparing written standards and procedures, while another could be responsible for conducting or arranging for periodic audits and ensuring that billing questions are answered. Therefore, the compliance-related responsibilities of the designated person or persons may be only a portion of his or her duties.

Another possibility is that one individual could serve as compliance officer for more than one entity. In situations where staffing limitations mandate that the practice cannot afford to designate a person(s) to oversee compliance activities, the practice could outsource all or part of the functions of a compliance officer to a third party, such as a consultant, PPMC, MSO, IPA or third-party billing company. However, if this role is outsourced, it is beneficial for the compliance officer to have sufficient interaction with the physician practice to be able to effectively understand the inner workings of the practice. For example, consultants that are not in close geographic proximity to a practice may not be effective compliance officers for the practice.

[31] All physician contracts and agreements with parties in a position to influence Federal health care program business or to whom the doctor is in such a position to influence should be reviewed to avoid violation of the anti-kickback, self-referral, and other relevant Federal and State laws. The OIG has published safe harbors that define practices not subject to the anti-kickback statute, because such arrangements would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. Rather, the safe harbors set forth specific conditions that, if fully met, would assure the entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. One such safe harbor applies to personal services contracts. *See* 42 CFR 1001.952(d).

[32] *See* OIG Special Fraud Alert ''Joint Venture Arrangements'' (August 1989) available on the OIG web site at http://www.hhs.gov/oig. *See also* OIG Advisory Opinion 97–5.

[33] Physician practices should establish clear standards and procedures governing gift-giving because such exchanges may be viewed as inducements to influence business decisions.

[34] There are various Federal regulations governing the privacy of patient records and the retention of certain types of patient records. Many states also have record retention statutes. Practices should check with their state medical society and/or affiliated professional association for assistance in ascertaining these requirements for their particular specialty and location.

One suggestion for how to maintain continual interaction is for the practice to designate someone to serve as a liaison with the outsourced compliance officer. This would help ensure a strong tie between the compliance officer and the practice's daily operations. Outsourced compliance officers, who spend most of their time offsite, have certain limitations that a physician practice should consider before making such a critical decision. These limitations can include lack of understanding as to the inner workings of the practice, accessibility and possible conflicts of interest when one compliance officer is serving several practices.

If the physician practice decides to designate a particular person(s) to oversee all compliance activities, not just those in conjunction with the audit-related issue, the following is a list of suggested duties that the practice may want to assign to that person(s):

- Overseeing and monitoring the implementation of the compliance program;
- Establishing methods, such as periodic audits, to improve the practice's efficiency and quality of services, and to reduce the practice's vulnerability to fraud and abuse;
- Periodically revising the compliance program in light of changes in the needs of the practice or changes in the law and in the standards and procedures of Government and private payor health plans;
- Developing, coordinating and participating in a training program that focuses on the components of the compliance program, and seeks to ensure that training materials are appropriate;
- Ensuring that the HHS–OIG's List of Excluded Individuals and Entities, and the General Services Administration's (GSA's) List of Parties Debarred from Federal Programs have been checked with respect to all employees, medical staff and independent contractors; [35] and
- Investigating any report or allegation concerning possible unethical or improper business practices, and monitoring subsequent corrective action and/or compliance.

Each physician practice needs to assess its own practice situation and determine what best suits that practice in terms of compliance oversight.

Step Four: Conducting Appropriate Training and Education

Education is an important part of any compliance program and is the logical next step after problems have been identified and the practice has designated a person to oversee educational training. Ideally, education programs will be tailored to the physician practice's needs, specialty and size and will include both compliance and specific training.

There are three basic steps for setting up educational objectives:

- Determining who needs training (both in coding and billing and in compliance);
- Determining the type of training that best suits the practice's needs (*e.g.*, seminars, in-service training, self-study or other programs); and
- Determining when and how often education is needed and how much each person should receive.

Training may be accomplished through a variety of means, including in-person training sessions (*i.e.*, either on site or at outside seminars), distribution of newsletters,[36] or even a readily accessible office bulletin board. Regardless of the training modality used, a physician practice should ensure that the necessary education is communicated effectively and that the practice's employees come away from the training with a better understanding of the issues covered.

1. Compliance Training

Under the direction of the designated compliance officer/contact, both initial and recurrent training in compliance is advisable, both with respect to the compliance program itself and applicable statutes and regulations. Suggestions for items to include in compliance training are: The operation and importance of the compliance program; the consequences of violating the standards and procedures set forth in the program; and the role of each employee in the operation of the compliance program.

There are two goals a practice should strive for when conducting compliance training: (1) All employees will receive training on how to perform their jobs in compliance with the standards of the practice and any applicable regulations; and (2) each employee will understand that compliance is a condition of continued employment. Compliance training focuses on explaining why the practice is developing and establishing a compliance program. The training should emphasize that following the standards and procedures will not get a practice employee in trouble, but violating the standards and procedures may subject the employee to disciplinary measures. It is advisable that new employees be trained on the compliance program as soon as possible after their start date and employees should receive refresher training on an annual basis or as appropriate.

2. Coding and Billing Training

Coding and billing training on the Federal health care program requirements may be necessary for certain members of the physician practice staff depending on their respective responsibilities. The OIG understands that most physician practices do not employ a professional coder and that the physician is often primarily responsible for all coding and billing. However, it is in the practice's best interest to ensure that individuals who are directly involved with billing, coding or other aspects of the Federal health care programs receive extensive education specific to that individual's responsibilities. Some examples of items that could be covered in coding and billing training include:

- Coding requirements;
- Claim development and submission processes;
- Signing a form for a physician without the physician's authorization;
- Proper documentation of services rendered;
- Proper billing standards and procedures and submission of accurate bills for services or items rendered to Federal health care program beneficiaries; and
- The legal sanctions for submitting deliberately false or reckless billings.

3. Format of the Training Program

Training may be conducted either in-house or by an outside source.[37]

[35] The HHS–OIG ''List of Excluded Individuals/Entities'' provides information to health care providers, patients, and others regarding individuals and entities that are excluded from participation in Federal health care programs. This report, in both an on-line searchable and downloadable database, can be located on the Internet at http://www.hhs.gov/oig. The OIG sanction information is readily available to users in two formats on over 15,000 individuals and entities currently excluded from program participation through action taken by the OIG. The on-line searchable database allows users to obtain information regarding excluded individuals and entities sorted by: (1) The legal bases for exclusions; (2) the types of individuals and entities excluded by the OIG; and (3) the States where excluded individuals reside or entities do business. In addition, the General Services Administration maintains a monthly listing of debarred contractors, ''List of Parties Debarred from Federal Programs,'' at http://www.arnet.gov/epls.

[36] HCFA also offers free online training for general fraud and abuse issues at *http://www.hcfa.gov/medlearn. See* Appendix F for additional information.

[37] As noted earlier in this guidance, another way for physician practices to receive training is for the physicians and/or the employees of the practice to attend training programs offered by outside entities, such as a hospital, a local medical society or a

Training at outside seminars, instead of internal programs and in-service sessions, may be an effective way to achieve the practice's training goals. In fact, many community colleges offer certificate or associate degree programs in billing and coding, and professional associations provide various kinds of continuing education and certification programs. Many carriers also offer billing training.

The physician practice may work with its third-party billing company, if one is used, to ensure that documentation is of a level that is adequate for the billing company to submit accurate claims on behalf of the physician practice. If it is not, these problem areas should also be covered in the training. In addition to the billing training, it is advisable for physician practices to maintain updated ICD–9, HCPCS and CPT manuals (in addition to the carrier bulletins construing those sources) and make them available to all employees involved in the billing process. Physician practices can also provide a source of continuous updates on current billing standards and procedures by making publications or Government documents that describe current billing policies available to its employees.[38]

Physician practices do not have to provide separate education and training programs for the compliance and coding and billing training. All in-service training and continuing education can integrate compliance issues, as well as other core values adopted by the practice, such as quality improvement and improved patient service, into their curriculum.

4. Continuing Education on Compliance Issues

There is no set formula for determining how often training sessions should occur. The OIG recommends that there be at least an annual training program for all individuals involved in the coding and billing aspects of the practice.[39] Ideally, new billing and coding employees will be trained as soon as possible after assuming their duties and will work under an experienced employee until their training has been completed.

Step Five: Responding To Detected Offenses and Developing Corrective Action Initiatives

When a practice determines it has detected a possible violation, the next step is to develop a corrective action plan and determine how to respond to the problem. Violations of a physician practice's compliance program, significant failures to comply with applicable Federal or State law, and other types of misconduct threaten a practice's status as a reliable, honest, and trustworthy provider of health care. Consequently, upon receipt of reports or reasonable indications of suspected noncompliance, it is important that the compliance contact or other practice employee look into the allegations to determine whether a significant violation of applicable law or the requirements of the compliance program has indeed occurred, and, if so, take decisive steps to correct the problem.[40] As appropriate, such steps may involve a corrective action plan,[41] the return of any overpayments, a report to the Government,[42] and/or a referral to law enforcement authorities.

One suggestion is that the practice, in developing its compliance program, develop its own set of monitors and warning indicators. These might include: Significant changes in the number and/or types of claim rejections and/or reductions; correspondence from the carriers and insurers challenging the medical necessity or validity of claims; illogical patterns or unusual changes in the pattern of CPT–4, HCPCS or ICD–9 code utilization; and high volumes of unusual charge or payment adjustment transactions. If any of these warning indicators become apparent, then it is recommended that the practice follow up on the issues. Subsequently, as appropriate, the compliance procedures of the practice may need to be changed to prevent the problem from recurring.

For potential criminal violations, a physician practice would be well advised in its compliance program procedures to include steps for prompt referral or disclosure to an appropriate Government authority or law enforcement agency. In regard to overpayment issues, it is advised that the physician practice take appropriate corrective action, including prompt identification and repayment of any overpayment to the affected payor.

It is also recommended that the compliance program provide for a full internal assessment of all reports of detected violations. If the physician practice ignores reports of possible fraudulent activity, it is undermining the very purpose it hoped to achieve by implementing a compliance program.

It is advised that the compliance program standards and procedures include provisions to ensure that a violation is not compounded once discovered. In instances involving individual misconduct, the standards and procedures might also advise as to whether the individuals involved in the violation either be retrained, disciplined, or, if appropriate, terminated. The physician practice may also prevent the compounding of the violation by conducting a review of all confirmed violations, and, if appropriate, self-reporting the violations to the applicable authority.

The physician practice may consider the fact that if a violation occurred and was not detected, its compliance program may require modification. Physician practices that detect violations could analyze the situation to determine whether a flaw in their compliance program failed to anticipate the detected problem, or whether the compliance program's procedures failed to prevent the violation. In any event, it is prudent, even absent the detection of any violations, for physician practices to periodically review and modify their compliance programs.

Step Six: Developing Open Lines of Communication

In order to prevent problems from occurring and to have a frank discussion

carrier. This sort of collaborative effort is an excellent way for the practice to meet the desired training objective without having to expend the resources to develop and implement in-house training.

[38] Some publications, such as OIG's Special Fraud Alerts, audit and inspection reports, and Advisory Opinions are readily available from the OIG and can provide a basis for educational courses and programs for physician practice employees. *See* Appendix F for a partial listing of these documents. *See* Footnote 3 for information on how to obtain copies of these documents.

[39] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one hour annually for basic training in compliance areas. Additional training may be necessary for specialty fields such as claims development and billing.

[40] Instances of noncompliance must be determined on a case-by-case basis. The existence or amount of a monetary loss to a health care program is not solely determinative of whether the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss to a health care provider, but corrective actions are still necessary to protect the integrity of the applicable program and its beneficiaries, *e.g.,* where services required by a plan of care are not provided.

[41] The physician practice may seek advice from its legal counsel to determine the extent of the practice's liability and to plan the appropriate course of action.

[42] The OIG has established a Provider Self-Disclosure Protocol that encourages providers to voluntarily report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The Provider Self-Disclosure Protocol can be located on the OIG's web site at: www.hhs.gov/oig. *See* Appendix D for further information on the Provider Self-Disclosure Protocol.

of why the problem happened in the first place, physician practices need to have open lines of communication. Especially in a smaller practice, an open line of communication is an integral part of implementing a compliance program. Guidance previously issued by the OIG has encouraged the use of several forms of communication between the compliance officer/committee and provider personnel, many of which focus on formal processes and are more costly to implement (*e.g.,* hotlines and e-mail). However, the OIG recognizes that the nature of some physician practices is not as conducive to implementing these types of measures. The nature of a small physician practice dictates that such communication and information exchanges need to be conducted through a less formalized process than that which has been envisioned by prior OIG guidance.

In the small physician practice setting, the communication element may be met by implementing a clear ''open door'' policy between the physicians and compliance personnel and practice employees. This policy can be implemented in conjunction with less formal communication techniques, such as conspicuous notices posted in common areas and/or the development and placement of a compliance bulletin board where everyone in the practice can receive up-to-date compliance information.[43]

A compliance program's system for meaningful and open communication can include the following:

- The requirement that employees report conduct that a reasonable person would, in good faith, believe to be erroneous or fraudulent;
- The creation of a user-friendly process (such as an anonymous drop box for larger practices) for effectively reporting erroneous or fraudulent conduct;
- Provisions in the standards and procedures that state that a failure to report erroneous or fraudulent conduct is a violation of the compliance program;
- The development of a simple and readily accessible procedure to process reports of erroneous or fraudulent conduct;
- If a billing company is used, communication to and from the billing company's compliance officer/contact and other responsible staff to coordinate billing and compliance activities of the practice and the billing company, respectively. Communication can include, as appropriate, lists of reported or identified concerns, initiation and the results of internal assessments, training needs, regulatory changes, and other operational and compliance matters;
- The utilization of a process that maintains the anonymity of the persons involved in the reported possible erroneous or fraudulent conduct and the person reporting the concern; and
- Provisions in the standards and procedures that there will be no retribution for reporting conduct that a reasonable person acting in good faith would have believed to be erroneous or fraudulent.

The OIG recognizes that protecting anonymity may not be feasible for small physician practices. However, the OIG believes all practice employees, when seeking answers to questions or reporting potential instances of erroneous or fraudulent conduct, should know to whom to turn for assistance in these matters and should be able to do so without fear of retribution. While the physician practice may strive to maintain the anonymity of an employee's identity, it also needs to make clear that there may be a point at which the individual's identity may become known or may have to be revealed in certain instances.

Step Seven: Enforcing Disciplinary Standards Through Well-Publicized Guidelines

Finally, the last step that a physician practice may wish to take is to incorporate measures into its practice to ensure that practice employees understand the consequences if they behave in a non-compliant manner. An effective physician practice compliance program includes procedures for enforcing and disciplining individuals who violate the practice's compliance or other practice standards. Enforcement and disciplinary provisions are necessary to add credibility and integrity to a compliance program.

The OIG recommends that a physician practice's enforcement and disciplinary mechanisms ensure that violations of the practice's compliance policies will result in consistent and appropriate sanctions, including the possibility of termination, against the offending individual. At the same time, it is advisable that the practice's enforcement and disciplinary procedures be flexible enough to account for mitigating or aggravating circumstances. The procedures might also stipulate that individuals who fail to detect or report violations of the compliance program may also be subject to discipline. Disciplinary actions could include: Warnings (oral); reprimands (written); probation; demotion; temporary suspension; termination; restitution of damages; and referral for criminal prosecution. Inclusion of disciplinary guidelines in in-house training and procedure manuals is sufficient to meet the ''well publicized'' standard of this element.

It is suggested that any communication resulting in the finding of non-compliant conduct be documented in the compliance files by including the date of incident, name of the reporting party, name of the person responsible for taking action, and the follow-up action taken. Another suggestion is for physician practices to conduct checks to make sure all current and potential practice employees are not listed on the OIG or GSA lists of individuals excluded from participation in Federal health care or Government procurement programs.[44]

C. Assessing A Voluntary Compliance Program

A practice's commitment to compliance can best be assessed by the active application of compliance principles in the day-to-day operations of the practice. Compliance programs are not just written standards and procedures that sit on a shelf in the main office of a practice, but are an everyday part of the practice operations. It is by integrating the compliance program into the practice culture that the practice can best achieve maximum benefit from its compliance program.

III. Conclusion

Just as immunizations are given to patients to prevent them from becoming ill, physician practices may view the implementation of a voluntary compliance program as comparable to a form of preventive medicine for the practice. This voluntary compliance program guidance is intended to assist physician practices in developing and implementing internal controls and procedures that promote adherence to Federal health care program requirements.

As stated earlier, physician compliance programs do not need to be time or resource intensive and can be developed in a manner that best reflects the nature of each individual practice. Many of the recommendations set forth in this document are ones that many physician practices already have in place and are simply good business practices that can be adhered to with a

[43] In addition to whatever other method of communication is being utilized, the OIG recommends that physician practices post the HHS–OIG Hotline telephone number (1–800–HHS–TIPS) in a prominent area.

[44] *See* Footnote 35 for information on how to access these lists.

reasonable amount of effort. By implementing an effective compliance program, appropriate for its size and resources, and making compliance principles an active part of the practice culture, a physician practice can help prevent and reduce erroneous or fraudulent conduct in its practice. These efforts can also streamline and improve the business operations within the practice and therefore innoculate itself against future problems.

Dated: September 27, 2000.

June Gibbs Brown,

Inspector General.

Appendix A: Additional Risk Areas

Appendix A describes additional risk areas that a physician practice may wish to address during the development of its compliance program. If any of the following risk areas are applicable to the practice, the practice may want to consider addressing the risk areas by incorporating them into the practice's written standards and procedures manual and addressing them in its training program.

I. Reasonable and Necessary Services

A. Local Medical Review Policy

An area of concern for physicians relating to determinations of reasonable and necessary services is the variation in local medical review policies (LMRPs) among carriers. Physicians are supposed to bill the Federal health care programs only for items and services that are reasonable and necessary. However, in order to determine whether an item or service is reasonable and necessary under Medicare guidelines, the physician must apply the appropriate LMRP.[1]

With the exception of claims that are properly coded and submitted to Medicare solely for the purpose of obtaining a written denial, physician practices are to bill the Federal health programs only for items and services that are covered. In order to determine if an item or service is covered for Medicare, a physician practice must be knowledgeable of the LMRPs applicable to its practice's jurisdiction. The practice may contact its carrier to request a copy of the pertinent LMRPs, and once the practice receives the copies, they can be incorporated into the practice's written standards and procedures manual. When the LMRP indicates that an item or service may not be covered by Medicare, the physician practice is responsible to convey this information to the patient so that the patient can make an informed decision concerning the health care services he/she may want to receive. Physician practices convey this information through Advance Beneficiary Notices (ABNs).

[1] HCFA has recently developed a web site which, when completed by the end of the year 2000, will contain the LMRPs for each of the contractors across the country. The web site can be accessed at http://www.lmrp.net.

B. Advance Beneficiary Notices

Physicians are required to provide ABNs before they provide services that they know or believe Medicare does not consider reasonable and necessary. (The one exception to this requirement is for services that are performed pursuant to EMTALA requirements as described in section II.A). A properly executed ABN acknowledges that coverage is uncertain or yet to be determined, and stipulates that the patient promises to pay the bill if Medicare does not. Patients who are not notified before they receive such services are not responsible for payment. The ABN must be sufficient to put the patient on notice of the reasons why the physician believes that the payment may be denied. The objective is to give the patient sufficient information to allow an informed choice as to whether to pay for the service.

Accordingly, each ABN should:

I. Be in writing;
II. Identify the specific service that may be denied (procedure name and CPT/HCPC code is recommended);
III. State the specific reason why the physician believes that service may be denied; and
IV. Be signed by the patient acknowledging that the required information was provided and that the patient assumes responsibility to pay for the service.

The Medicare Carrier's Manual[2] provides that an ABN will not be acceptable if: (1) The patient is asked to sign a blank ABN form; or (2) the ABN is used routinely without regard to a particularized need. The routine use of ABNs is generally prohibited because the ABN must state the specific reason the physician anticipates that the specific service will not be covered.

A common risk area associated with ABNs is in regard to diagnostic tests or services. There are three steps that a physician practice can take to help ensure it is in compliance with the regulations concerning ABNs for diagnostic tests or services:

1. Determine which tests are not covered under national coverage rules;
2. Determine which tests are not covered under local coverage rules such as LMRPs (contact the practice's carrier to see if a listing has been assembled); and
3. Determine which tests are only covered for certain diagnoses.

The OIG is aware that the use of ABNs is an area where physician practices experience numerous difficulties. Practices can help to reduce problems in this area by educating their physicians and office staff on the correct use of ABNs, obtaining guidance from the carrier regarding their interpretation of whether an ABN is necessary where the service is not covered, developing a standard form for all diagnostic tests (most carriers have a developed model), and developing a process for handling patients who refuse to sign ABNs.

[2] The relevant manual provisions are located at MCM, Part III, §§ 7300 and 7320. This section of the manual also includes the carrier's recommended form of an ABN.

C. Physician Liability for Certifications in the Provision of Medical Equipment and Supplies and Home Health Services

In January 1999, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG web site at *www.hhs.gov/oig/frdalrt/index.htm.* The following is a summary of the Special Fraud Alert.

The OIG issued the Special Fraud Alert to reiterate to physicians the legal and programmatic significance of physician certifications made in connection with the ordering of certain items and services for Medicare patients. In light of information obtained through OIG provider audits, the OIG deemed it necessary to remind physicians that they may be subject to criminal, civil and administrative penalties for signing a certification when they know that the information is false or for signing a certification with reckless disregard as to the truth of the information. (*See Appendix B* and *Appendix C* for more detailed information on the applicable statutes).

Medicare has conditioned payment for many items and services on a certification signed by a physician attesting that the physician has reviewed the patient's condition and has determined that an item or service is reasonable and necessary. Because Medicare primarily relies on the professional judgment of the treating physician to determine the reasonable and necessary nature of a given service or supply, it is important that physicians provide complete and accurate information on any certifications they sign. Physician certification is obtained through a variety of forms, including prescriptions, orders, and Certificates of Medical Necessity (CMNs). Two areas where physician certification as to whether an item or service is reasonable and necessary is essential and which are vulnerable to abuse are: (1) Home health services; and (2) durable medical equipment.

By signing a CMN, the physician represents that:

1. He or she is the patient's treating physician and that the information regarding the physician's address and unique physician identification number (UPIN) is correct;
2. the entire CMN, including the sections filled out by the supplier, was completed *prior* to the physician's signature; and
3. the information in section B relating to whether the item or service is reasonable and necessary is true, accurate, and complete to the best of the physician's knowledge.

Activities such as signing blank CMNs, signing a CMN without seeing the patient to verify the item or service is reasonable and necessary, and signing a CMN for a service that the physician knows is not reasonable and necessary are activities that can lead to criminal, civil and administrative penalties.

Ultimately, it is advised that physicians carefully review any form of certification (order, prescription or CMN) before signing it to verify that the information contained in the certification is both complete and accurate.

D. Billing for Non-covered Services as if Covered

In some instances, we are aware that physician practices submit claims for services in order to receive a denial from the carrier, thereby enabling the patient to submit the denied claim for payment to a secondary payer.

A common question relating to this risk area is: If the medical services provided are not covered under Medicare, but the secondary or supplemental insurer requires a Medicare rejection in order to cover the services, then would the original submission of the claim to Medicare be considered fraudulent? Under the applicable regulations, the OIG would not consider such submissions to be fraudulent. For example, the denial may be necessary to establish patient liability protections as stated in section 1879 of the Social Security Act (the Act) (codified at 42 U.S.C. 1395pp). As stated, Medicare denials may also be required so that the patient can seek payment from a secondary insurer. In instances where a claim is being submitted to Medicare for this purpose, the physician should indicate on the claim submission that the claim is being submitted for the purpose of receiving a denial, in order to bill a secondary insurance carrier. This step should assist carriers and prevent inadvertent payments to which the physician is not entitled.

In some instances, however, the carrier pays the claim even though the service is non-covered, and even though the physician did not intend for payment to be made. When this occurs, the physician has a responsibility to refund the amount paid and indicate that the service is not covered.

II. Physician Relationships with Hospitals

A. The Physician Role in EMTALA

The Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. 1395dd, is an area that has been receiving increasing scrutiny. The statute is intended to ensure that all patients who come to the emergency department of a hospital receive care, regardless of their insurance or ability to pay. Both hospitals and physicians need to work together to ensure compliance with the provisions of this law.

The statute imposes three fundamental requirements upon hospitals that participate in the Medicare program with regard to patients requesting emergency care. First, the hospital must conduct an appropriate medical screening examination to determine if an emergency medical condition exists.[3] Second, if the hospital determines that an emergency medical condition exists, it must either provide the treatment necessary to stabilize the emergency medical condition or comply with the statute's requirements to effect a proper transfer of a patient whose condition has not been stabilized.[4] A hospital is considered to have met this second requirement if an individual refuses the hospital's offer of additional examination or treatment, or refuses to consent to a transfer, after having been informed of the risks and benefits.[5]

If an individual's emergency medical condition has not been stabilized, the statute's third requirement is activated. A hospital may not transfer an individual with an unstable emergency medical condition unless: (1) The individual or his or her representative makes a written request for transfer to another medical facility after being informed of the risk of transfer and the transferring hospital's obligation under the statute to provide additional examination or treatment; (2) a physician has signed a certification summarizing the medical risks and benefits of a transfer and certifying that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the transfer outweigh the increased risks; or (3) if a physician is not physically present when the transfer decision is made, a qualified medical person signs the certification after the physician, in consultation with the qualified medical person, has made the determination that the benefits of transfer outweigh the increased risks. The physician must later countersign the certification.[6]

Physician and/or hospital misconduct may result in violations of the statute.[7] One area of particular concern is physician on-call responsibilities. Physician practices whose members serve as on-call emergency room physicians with hospitals are advised to familiarize themselves with the hospital's policies regarding on-call physicians. This can be done by reviewing the medical staff bylaws or policies and procedures of the hospital that must define the responsibility of on-call physicians to respond to, examine, and treat patients with emergency medical conditions. Physicians should also be aware of the requirement that, when medically indicated, on-call physicians must generally come to the hospital to examine the patient. The exception to this requirement is that a patient may be sent to see the on-call physician at a hospital-owned contiguous or on-campus facility to conduct or complete the medical screening examination as long as:

1. All persons with the same medical condition are moved to this location;
2. there is a bona fide medical reason to move the patient; and
3. qualified medical personnel accompany the patient.

B. Teaching Physicians

Special regulations apply to teaching physicians' billings. Regulations provide that services provided by teaching physicians in teaching settings are generally payable under the physician fee schedule only if the services are personally furnished by a physician who is not a resident or the services are furnished by a resident in the presence of a teaching physician.[8]

Unless a service falls under a specified exception, such as the Primary Care Exception,[9] the teaching physician must be present during the key portion of any service or procedure for which payment is sought.[10] Physicians should ensure the following with respect to services provided in the teaching physician setting [11]

- Only services actually provided are billed;
- Every physician who provides or supervises the provision of services to a patient is responsible for the correct documentation of the services that were rendered;
- Every physician is responsible for assuring that in cases where the physician provides evaluation and management (E&M) services, a patient's medical record includes appropriate documentation of the applicable key components of the E&M services provided or supervised by the physician (*e.g.,* patient history, physician examination, and medical decision making), as well as documentation to adequately reflect the procedure or portion of the services provided by the physician; and
- Unless specifically excepted by regulation, every physician must document his or her presence during the key portion of any service or procedure for which payment is sought.

C. Gainsharing Arrangements and Civil Monetary Penalties for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries

In July 1999, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG web site at *www.hhs.gov/oig/frdalrt/index.htm.* The following is a summary of the Special Fraud Alert.

The term ''gainsharing'' typically refers to an arrangement in which a hospital gives a physician a percentage share of any reduction in the hospital's costs for patient care attributable in part to the physician's efforts. The civil monetary penalty (CMP) that applies to gainsharing arrangements is set forth in 42 U.S.C. 1320a–7a(b)(1). This section prohibits any hospital or critical access hospital from knowingly making a payment directly or indirectly to a physician as an inducement to reduce or limit services to Medicare or Medicaid beneficiaries under a physician's care.

It is the OIG's position that the Civil Monetary Penalties Law clearly prohibits any gainsharing arrangements that involve payments by, or on behalf of, a hospital to physicians with clinical care responsibilities to induce a reduction or limitation of services to Medicare or Medicaid beneficiaries. However, hospitals and physicians are not prohibited from working together to reduce unnecessary hospital costs through other

[3] *See* 42 U.S.C. 1395dd(a).

[4] *See* 42 U.S.C. 1395dd(b)(1).

[5] *See* 42 U.S.C. 1395dd(b)(2) and (3).

[6] *See* 42 U.S.C. 1395dd(c)(1)(A).

[7] Hospitals and physicians, including on-call physicians, who violate the statute may face penalties that include civil fines of up to $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) per violation, and physicians may be excluded from participation in the Federal health care programs.

[8] 42 CFR 415.150 through 415.190.

[9] 42 CFR 415.174.

[10] *Id.*

[11] This section is not intended to be and is not a complete reference for teaching physicians. It is strongly recommended that those physicians who practice in a teaching setting consult their respective hospitals for more guidance.

arrangements. For example, hospitals and physicians may enter into personal services contracts where hospitals pay physicians based on a fixed fee at fair market value for services rendered to reduce costs rather than a fee based on a share of cost savings.

D. Physician Incentive Arrangements

The OIG has identified potentially illegal practices involving the offering of incentives by entities in an effort to recruit and retain physicians. The OIG is concerned that the intent behind offering incentives to physicians may not be to recruit physicians, but instead the offer is intended as a kickback to obtain and increase patient referrals from physicians. These recruitment incentive arrangements are implicated by the Anti-Kickback Statute because they can constitute remuneration offered to induce, or in return for, the referral of business paid for by Medicare or Medicaid.

Some examples of questionable incentive arrangements are:

- Provision of free or significantly discounted billing, nursing, or other staff services.
- Payment of the cost of a physician's travel and expenses for conferences.
- Payment for a physician's services that require few, if any, substantive duties by the physician.
- Guarantees that if the physician's income fails to reach a predetermined level, the entity will supplement the remainder up to a certain amount.

III. Physician Billing Practices

A. Third-Party Billing Services

Physicians should remember that they remain responsible to the Medicare program for bills sent in the physician's name or containing the physician's signature, even if the physician had no actual knowledge of a billing impropriety. The attestation on the HCFA 1500 form, *i.e.,* the physician's signature line, states that the physician's services were billed properly. In other words, it is no defense for the physician if the physician's billing service improperly bills Medicare.

One of the most common risk areas involving billing services deals with physician practices contracting with billing services on a percentage basis. Although percentage based billing arrangements are not illegal *per se,* the Office of Inspector General has a longstanding concern that such arrangements may increase the risk of intentional upcoding and similar abusive billing practices.[12]

A physician may contract with a billing service on a percentage basis. However, the billing service cannot directly receive the payment of Medicare funds into a bank account that it solely controls. Under 42 U.S.C. 1395u(b)(6), Medicare payments can only be made to either the beneficiary or a party (such as a physician) that furnished the services and accepted assignment of the beneficiary's claim. A billing service that contracts on a percentage basis does not qualify as a party that furnished services to a beneficiary, thus a billing service cannot directly receive payment of Medicare funds. According to the *Medicare Carriers Manual* Section 3060(A), a payment is considered to be made directly to the billing service if the service can convert the payment to its own use and control without the payment first passing through the control of the physician. For example, the billing service should not bill the claims under its own name or tax identification number. The billing service should bill claims under the physician's name and tax identification number. Nor should a billing service receive the payment of Medicare funds directly into a bank account over which the billing service maintains sole control. The Medicare payments should instead be deposited into a bank account over which the provider has signature control.

Physician practices should review the third-party medical billing guidance for additional information on third-party billing companies and the compliance risk areas associated with billing companies.

B. Billing Practices by Non-Participating Physicians

Even though nonparticipating physicians do not accept payment directly from the Medicare program, there are a number of laws that apply to the billing of Medicare beneficiaries by non-participating physicians.

Limiting Charges

42 U.S.C. 1395w–4(g) prohibits a nonparticipating physician from knowingly and willfully billing or collecting on a repeated basis an actual charge for a service that is in excess of the Medicare limiting charge. For example, a nonparticipating physician may not bill a Medicare beneficiary $50 for an office visit when the Medicare limiting charge for the visit is $25. Additionally, there are numerous provisions that prohibit nonparticipating physicians from knowingly and willfully charging patients in excess of the statutory charge limitations for certain specified procedures, such as cataract surgery, mammography screening and coronary artery bypass surgery. Failure to comply with these sections can result in a fine of up to $10,000 per violation or exclusion from participation in Federal health care programs for up to 5 years.

Refund of Excess Charges

42 U.S.C. 1395w–4(g) mandates that if a nonparticipating physician collects an actual charge for a service that is in excess of the limiting charge, the physician must refund the amount collected above the limiting charge to the individual within 30 days notice of the violation. For example, if a physician collected $50 from a Medicare beneficiary for an office visit, but the limiting charge for the visit was $25, the physician must refund $25 to the beneficiary, which is the difference between the amount collected ($50) and the limiting charge ($25). Failure to comply with this requirement may result in a fine of up to $10,000 per violation or exclusion from participation in Federal health care programs for up to 5 years.

Specifically, 42 U.S.C. 1395u(l)(A)(iii) mandates that a nonparticipating physician must refund payments received from a Medicare beneficiary if it is later determined by a Peer Review Organization or a Medicare carrier that the services were not reasonable and necessary. Failure to comply with this requirement may result in a fine of up to $10,000 per violation or exclusion from participation in Federal health care programs for up to 5 years.

C. Professional Courtesy

The term ''professional courtesy'' is used to describe a number of analytically different practices. The traditional definition is the practice by a physician of waiving all or a part of the fee for services provided to the physician's office staff, other physicians, and/or their families. In recent times, ''professional courtesy'' has also come to mean the waiver of coinsurance obligations or other out-of-pocket expenses for physicians or their families (*i.e.,* ''insurance only'' billing), and similar payment arrangements by hospitals or other institutions for services provided to their medical staffs or employees. While only the first of these practices is truly ''professional courtesy,'' in the interests of clarity and completeness, we will address all three.

In general, whether a professional courtesy arrangement runs afoul of the fraud and abuse laws is determined by two factors: (i) How the recipients of the professional courtesy are selected; and (ii) how the professional courtesy is extended. If recipients are selected in a manner that directly or indirectly takes into account their ability to affect past or future referrals, the anti-kickback statute—which prohibits giving anything of value to generate Federal health care program business—may be implicated. If the professional courtesy is extended through a waiver of copayment obligations (*i.e.,* ''insurance only'' billing), other statutes may be implicated, including the prohibition of inducements to beneficiaries, section 1128A(a)(5) of the Act (codified at 42 U.S.C. 1320a–7a(a)(5)). Claims submitted as a result of either practice may also implicate the civil False Claims Act.

The following are general observations about professional courtesy arrangements for physician practices to consider:

- A physician's regular and consistent practice of extending professional courtesy by waiving the entire fee for services rendered to a group of persons (including employees, physicians, and/or their family members) may not implicate any of the OIG's fraud and abuse authorities so long as membership in the group receiving the courtesy is determined in a manner that does not take into account directly or indirectly any group member's ability to refer to, or otherwise generate Federal health care program business for, the physician.
- A physician's regular and consistent practice of extending professional courtesy by waiving otherwise applicable copayments for services rendered to a group of persons (including employees, physicians, and/or their family members), would not implicate the anti-kickback statute so long as membership in the group is determined in a

[12] This concern is noted in Advisory Opinion No. 98–4 and also the Office of Inspector General Compliance Program Guidance for Third-Party Medical Billing Companies. Both are available on the OIG web site at http://www.hhs.gov/oig.

manner that does not take into account directly or indirectly any group member's ability to refer to, or otherwise generate Federal health care program business for, the physician.

• Any waiver of copayment practice, including that described in the preceding bullet, does implicate section 1128A(a)(5) of the Act if the patient for whom the copayment is waived is a Federal health care program beneficiary who is not financially needy.

The legality of particular professional courtesy arrangements will turn on the specific facts presented, and, with respect to the anti-kickback statute, on the specific intent of the parties. A physician practice may wish to consult with an attorney if it is uncertain about its professional courtesy arrangements.

IV. Other Risk Areas

A. Rental of Space in Physician Offices by Persons or Entities to Which Physicians Refer

In February 2000, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG web site at *www.hhs.gov/oig/frdalrt/index.htm.* The following is a summary of the Special Fraud Alert.

Among various relationships between physicians and labs, hospitals, home health agencies, etc., the OIG has identified potentially illegal practices involving the rental of space in a physician's office by suppliers that provide items or services to patients who are referred or sent to the supplier by the physician-landlord. An example of a suspect arrangement is the rental of physician office space by a durable medical equipment (DME) supplier in a position to benefit from referrals of the physician's patients. The OIG is concerned that in such arrangements the rental payments may be disguised kickbacks to the physician-landlord to induce referrals.

Space Rental Safe Harbor to the Anti-Kickback Statute

To avoid potentially violating the anti-kickback statute, the OIG recommends that rental agreements comply with all of the following criteria for the space rental safe harbor:

• The agreement is set out in writing and signed by the parties.

• The agreement covers all of the space rented by the parties for the term of the agreement and specifies the space covered by the agreement.

• If the agreement is intended to provide the lessee with access to the space for periodic intervals of time rather than on a full-time basis for the term of the rental agreement, the rental agreement specifies exactly the schedule of such intervals, the precise length of each interval, and the exact rent for each interval.

• The term of the rental agreement is for not less than one year.

• The aggregate rental charge is set in advance, is consistent with fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

• The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

B. Unlawful Advertising

42 U.S.C. 1320b–10 makes it unlawful for any person to advertise using the names, abbreviations, symbols, or emblems of the Social Security Administration, Health Care Financing Administration, Department of Health and Human Services, Medicare, Medicaid or any combination or variation of such words, abbreviations, symbols or emblems in a manner that such person knows or should know would convey the false impression that the advertised item is endorsed by the named entities. For instance, a physician may not place an ad in the newspaper that reads ''Dr. X is a cardiologist approved by both the Medicare and Medicaid programs.'' A violation of this section may result in a penalty of up to $5,000 ($25,000 in the case of a broadcast or telecast) for each violation.

Appendix B: Criminal Statutes

This Appendix contains a description of criminal statutes related to fraud and abuse in the context of health care. The Appendix is not intended to be a compilation of all Federal statutes related to health care fraud and abuse. It is merely a summary of some of the more frequently cited Federal statutes.

I. Health Care Fraud (18 U.S.C. 1347)

Description of Unlawful Conduct

It is a crime to knowingly and willfully execute (or attempt to execute) a scheme to defraud any health care benefit program, or to obtain money or property from a health care benefit program through false representations. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

Penalty for Unlawful Conduct

The penalty may include the imposition of fines, imprisonment of up to 10 years, or both. If the violation results in serious bodily injury, the prison term may be increased to a maximum of 20 years. If the violation results in death, the prison term may be expanded to include any number of years, or life imprisonment.

Examples

1. Dr. X, a chiropractor, intentionally billed Medicare for physical therapy and chiropractic treatments that he never actually rendered for the purpose of fraudulently obtaining Medicare payments.

2. Dr. X, a psychiatrist, billed Medicare, Medicaid, TRICARE, and private insurers for psychiatric services that were provided by his nurses rather than himself.

II. Theft or Embezzlement in Connection with Health Care (18 U.S.C. 669)

Description of Unlawful Conduct

It is a crime to knowingly and willfully embezzle, steal or intentionally misapply any of the assets of a health care benefit program. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine, imprisonment of up to 10 years, or both. If the value of the asset is $100 or less, the penalty is a fine, imprisonment of up to a year, or both.

Example

An office manager for Dr. X knowingly embezzles money from the bank account for Dr. X's practice. The bank account includes reimbursement received from the Medicare program; thus, intentional embezzlement of funds from this account is a violation of the law.

III. False Statements Relating to Health Care Matters (18 U.S.C. 1035)

Description of Unlawful Conduct

It is a crime to knowingly and willfully falsify or conceal a material fact, or make any materially false statement or use any materially false writing or document in connection with the delivery of or payment for health care benefits, items or services. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

Example

Dr. X certified on a claim form that he performed laser surgery on a Medicare beneficiary when he knew that the surgery was not actually performed on the patient.

IV. Obstruction of Criminal Investigations of Health Care Offenses (18 U.S.C. 1518)

Description of Unlawful Conduct

It is a crime to willfully prevent, obstruct, mislead, delay or attempt to prevent, obstruct, mislead, or delay the communication of records relating to a Federal health care offense to a criminal investigator. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

Examples

1. Dr. X instructs his employees to tell OIG investigators that Dr. X personally performs all treatments when, in fact, medical technicians do the majority of the treatment and Dr. X is rarely present in the office.

2. Dr. X was under investigation by the FBI for reported fraudulent billings. Dr. X altered patient records in an attempt to cover up the improprieties.

V. Mail and Wire Fraud (18 U.S.C. 1341 and 1343)

Description of Unlawful Conduct

It is a crime to use the mail, private courier, or wire service to conduct a scheme to defraud another of money or property. The term ''wire services'' includes the use of a telephone, fax machine or computer. Each use of a mail or wire service to further fraudulent activities is considered a separate crime. For instance, each fraudulent claim that is submitted electronically to a carrier would be considered a separate violation of the law.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

Examples

1. Dr. X knowingly and repeatedly submits electronic claims to the Medicare carrier for office visits that he did not actually provide to Medicare beneficiaries with the intent to obtain payments from Medicare for services he never performed.

2. Dr. X, a neurologist, knowingly submitted claims for tests that were not reasonable and necessary and intentionally upcoded office visits and electromyograms to Medicare.

VI. Criminal Penalties for Acts Involving Federal Health Care Programs (42 U.S.C. 1320a–7b)

Description of Unlawful Conduct

False Statement and Representations

It is a crime to knowingly and willfully:

(1) make, or cause to be made, false statements or representations in applying for benefits or payments under all Federal health care programs;

(2) make, or cause to be made, any false statement or representation for use in determining rights to such benefit or payment;

(3) conceal any event affecting an individual's initial or continued right to receive a benefit or payment with the intent to fraudulently receive the benefit or payment either in an amount or quantity greater than that which is due or authorized;

(4) convert a benefit or payment to a use other than for the use and benefit of the person for whom it was intended;

(5) present, or cause to be presented, a claim for a physician's service when the service was not furnished by a licensed physician;

(6) for a fee, counsel an individual to dispose of assets in order to become eligible for medical assistance under a State health program, if disposing of the assets results in the imposition of an ineligibility period for the individual.

Anti-Kickback Statute

It is a crime to knowingly and willfully solicit, receive, offer, or pay remuneration of any kind (*e.g.,* money, goods, services):

- for the referral of an individual to another for the purpose of supplying items or services that are covered by a Federal health care program; or
- for purchasing, leasing, ordering, or arranging for any good, facility, service, or item that is covered by a Federal health care program.

There are a number of limited exceptions to the law, also known as ''safe harbors,'' which provide immunity from criminal prosecution and which are described in greater detail in the statute and related regulations (found at 42 CFR 1001.952 and www.hhs.gov/oig/ak). Current safe harbors include:

- investment interests;
- space rental;
- equipment rental;
- personal services and management contracts;
- sale of practice;
- referral services;
- warranties;
- discounts;
- employment relationships;
- waiver of Part A co-insurance and deductible amounts;
- group purchasing organizations;
- increased coverage or reduced cost sharing under a risk-basis or prepaid plan; and
- charge reduction agreements with health plans.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine of up to $25,000, imprisonment of up to 5 years, or both. In addition, the provider can be excluded from participation in Federal health care programs. The regulations defining the aggravating and mitigating circumstances that must be reviewed by the OIG in making an exclusion determination are set forth in 42 CFR part 1001.

Examples

1. Dr. X accepted payments to sign Certificates of Medical Necessity for durable medical equipment for patients she never examined.

2. Home Health Agency disguises referral fees as salaries by paying referring physician Dr. X for services Dr. X never rendered to the Medicare beneficiaries or by paying Dr. X a sum in excess of fair market value for the services he rendered to the Medicare beneficiaries.

Appendix C: Civil and Administrative Statutes

This Appendix contains a description of civil and administrative statutes related to fraud and abuse in the context of health care. The Appendix is not intended to be a compilation of all federal statutes related to health care fraud and abuse. It is merely a summary of some of the more frequently cited Federal statutes.

I. The False Claims Act (31 U.S.C. 3729–3733)

Description of Unlawful Conduct

This is the law most often used to bring a case against a health care provider for the submission of false claims to a Federal health care program. The False Claims Act prohibits knowingly presenting (or causing to be presented) to the Federal Government a false or fraudulent claim for payment or approval. Additionally, it prohibits knowingly making or using (or causing to be made or used) a false record or statement to get a false or fraudulent claim paid or approved by the Federal Government or its agents, like a carrier, other claims processor, or State Medicaid program.

Definitions

False Claim—A ''false claim'' is a claim for payment for services or supplies that were not provided specifically as presented or for which the provider is otherwise not entitled to payment. Examples of false claims for services or supplies that were not provided specifically as presented include, but are not limited to:

- a claim for a service or supply that was never provided.
- a claim indicating the service was provided for some diagnosis code other than the true diagnosis code in order to obtain reimbursement for the service (which would not be covered if the true diagnosis code were submitted).
- a claim indicating a higher level of service than was actually provided.
- a claim for a service that the provider knows is not reasonable and necessary.
- a claim for services provided by an unlicensed individual.

Knowingly—To ''knowingly'' present a false or fraudulent claim means that the provider: (1) Has actual knowledge that the information on the claim is false; (2) acts in deliberate ignorance of the truth or falsity of the information on the claim; or (3) acts in reckless disregard of the truth or falsity of the information on the claim. It is important to note the provider does not have to deliberately intend to defraud the Federal Government in order to be found liable under this Act. The provider need only ''knowingly'' present a false or fraudulent claim in the manner described above.

Deliberate Ignorance—To act in ''deliberate ignorance'' means that the provider has deliberately chosen to ignore the truth or falsity of the information on a claim submitted for payment, even though the provider knows, or has notice, that information may be false. An example of a provider who submits a false claim with deliberate ignorance would be a physician who ignores provider update bulletins and thus does not inform his/her staff of changes in the Medicare billing guidelines or update his/her billing system in accordance with changes to the Medicare billing practices. When claims for non-reimbursable services are submitted as a result, the False Claims Act has been violated.

Reckless Disregard—To act in ''reckless disregard'' means that the provider pays no regard to whether the information on a claim submitted for payment is true or false. An example of a provider who submits a false claim with reckless disregard would be a physician who assigns the billing function to an untrained office person without inquiring whether the employee has the requisite knowledge and training to accurately file such claims.

Penalty for Unlawful Conduct

The penalty for violating the False Claims Act is a minimum of $5,500 up to a maximum of $11,000 for *each* false claim submitted. In addition to the penalty, a provider could be found liable for damages of up to three times the amount unlawfully claimed.

Examples

• A physician submitted claims to Medicare and Medicaid representing that he had personally performed certain services when, in reality, the services were performed by a nonphysician and they were not reimbursable under the Federal health care programs.

• Dr. X intentionally upcoded office visits and angioplasty consultations that were submitted for payment to Medicare.

• Dr. X, a podiatrist, knowingly submitted claims to the Medicare and Medicaid programs for non-routine surgical procedures when he actually performed routine, non-covered services such as the cutting and trimming of toenails and the removal of corns and calluses.

II. Civil Monetary Penalties Law (42 U.S.C. 1320a–7a)

Description of Unlawful Conduct

The Civil Monetary Penalties Law (CMPL) is a comprehensive statute that covers an array of fraudulent and abusive activities and is very similar to the False Claims Act. For instance, the CMPL prohibits a health care provider from presenting, or causing to be presented, claims for services that the provider ''knows or should know'' were:

• not provided as indicated by the coding on the claim;

• not medically necessary;

• furnished by a person who is not licensed as a physician (or who was not properly supervised by a licensed physician);

• furnished by a licensed physician who obtained his or her license through misrepresentation of a material fact (such as cheating on a licensing exam);

• furnished by a physician who was not certified in the medical specialty that he or she claimed to be certified in; or

• furnished by a physician who was excluded from participation in the Federal health care program to which the claim was submitted.

Additionally, the CMPL contains various other prohibitions, including:

• offering remuneration to a Medicare or Medicaid beneficiary that the person knows or should know is likely to influence the beneficiary to obtain items or services billed to Medicare or Medicaid from a particular provider;

• employing or contracting with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program.

The term ''should know'' means that a provider: (1) Acted in deliberate ignorance of the truth or falsity of the information; or (2) acted in reckless disregard of the truth or falsity of the information. The Federal Government does not have to show that a provider specifically intended to defraud a Federal health care program in order to prove a provider violated the statute.

Penalty for Unlawful Conduct

Violation of the CMPL may result in a penalty of up to $10,000 per item or service and up to three times the amount unlawfully claimed. In addition, the provider may be excluded from participation in Federal health care programs. The regulations defining the aggravating and mitigating circumstances that must be reviewed by the OIG in making an exclusion determination are set forth in 42 CFR part 1001.

Examples

1. Dr. X paid Medicare and Medicaid beneficiaries $20 each time they visited him to receive services and have tests performed that were not preventive care services and tests.

2. Dr. X hired Physician Assistant P to provide services to Medicare and Medicaid beneficiaries without conducting a background check on P. Had Dr. X performed a background check by reviewing the HHS–OIG List of Excluded Individuals/Entities, Dr. X would have discovered that he should not hire P because P is excluded from participation in Federal health care programs for a period of 5 years.

3. Dr. X and his oximetry company billed Medicare for pulse oximetry that they knew they did not perform and services that had been intentionally upcoded.

III. Limitations on Certain Physician Referrals (''Stark Laws'') (42 U.S.C. 1395nn)

Description of Unlawful Conduct

Physicians (and immediate family members) who have an ownership, investment or compensation relationship with an entity providing ''designated health services'' are prohibited from referring patients for these services where payment may be made by a Federal health care program unless a statutory or regulatory exception applies. An entity providing a designated health service is prohibited from billing for the provision of a service that was provided based on a prohibited referral. Designated health services include: clinical laboratory services; physical therapy services; occupational therapy services; radiology services, including magnetic resonance imaging, axial tomography scans, and ultrasound services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics, prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.

New regulations clarifying the exceptions to the Stark Laws are expected to be issued by HCFA shortly. Current exceptions articulated within the Stark Laws include the following, provided all conditions of each exception as set forth in the statute and regulations are satisfied.

Exceptions for Ownership or Compensation Arrangements

• physician's services;

• in-office ancillary services; and

• prepaid plans.

Exceptions for Ownership or Investment in Publicly Traded Securities and Mutual Funds

• ownership of investment securities which may be purchased on terms generally available to the public;

• ownership of shares in a regulated investment company as defined by Federal law, if such company had, at the end of the company's most recent fiscal year, or on average, during the previous 3 fiscal years, total assets exceeding $75,000,000;

• hospital in Puerto Rico;

• rural provider; and

• hospital ownership (whole hospital exception).

Exceptions Relating to Other Compensation Arrangements

• rental of office space and rental of equipment;

• bona fide employment relationship;

• personal service arrangement;

• remuneration unrelated to the provision of designated health services;

• physician recruitment;

• isolated transactions;

• certain group practice arrangements with a hospital (pre-1989); and

• payments by a physician for items and services.

Penalty for Unlawful Conduct

Violations of the statute subject the billing entity to denial of payment for the designated health services, refund of amounts collected from improperly submitted claims, and a civil monetary penalty of up to $15,000 for each improper claim submitted. Physicians who violate the statute may also be subject to additional fines per prohibited referral. In addition, providers that enter into an arrangement that they know or should know circumvents the referral restriction law may be subject to a civil monetary penalty of up to $100,000 per arrangement.

Examples

1. Dr. A worked in a medical clinic located in a major city. She also owned a free standing laboratory located in a major city. Dr. A referred all orders for laboratory tests on her patients to the laboratory she owned.

2. Dr. X agreed to serve as the Medical Director of Home Health Agency, HHA, for which he was paid a sum substantially above the fair market value for his services. In return, Dr. X routinely referred his Medicare and Medicaid patients to HHA for home health services.

3. Dr. Y received a monthly stipend of $500 from a local hospital to assist him in meeting practice expenses. Dr. Y performed no specific service for the stipend and had no obligation to repay the hospital. Dr. Y referred patients to the hospital for in-patient surgery.

IV. Exclusion of Certain Individuals and Entities From Participation in Medicare and other Federal Health Care Programs (42 U.S.C. 1320a–7)

Mandatory Exclusion

Individuals or entities convicted of the following conduct must be excluded from

participation in Medicare and Medicaid for a minimum of 5 years:

(1) a criminal offense related to the delivery of an item or service under Medicare or Medicaid;

(2) a conviction under Federal or State law of a criminal offense relating to the neglect or abuse of a patient;

(3) a conviction under Federal or State law of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct against a health care program financed by any Federal, State, or local government agency;

(4) a conviction under Federal or State law of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

If there is one prior conviction, the exclusion will be for 10 years. If there are two prior convictions, the exclusion will be permanent.

Permissive Exclusion

Individuals or entities convicted of the following offenses, may be excluded from participation in Federal health care programs for a minimum of 3 years:

(1) a criminal offense related to the delivery of an item or service under Medicare or Medicaid;

(2) a misdemeanor related to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct against a health care program financed by any Federal, State, or local government agency;

(3) interference with, or obstruction of, any investigation into certain criminal offenses;

(4) a misdemeanor related to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance;

(5) exclusion or suspension under a Federal or State health care program;

(6) submission of claims for excessive charges, unnecessary services or services that were of a quality that fails to meet professionally recognized standards of health care;

(7) violating the Civil Monetary Penalties Law or the statute entitled ''Criminal Penalties for Acts Involving Federal Health Care Programs;''

(8) ownership or control of an entity by a sanctioned individual or immediate family member (spouse, natural or adoptive parent, child, sibling, stepparent, stepchild, stepbrother or stepsister, in-laws, grandparent and grandchild);

(9) failure to disclose information required by law;

(10) failure to supply claims payment information; and

(11) defaulting on health education loan or scholarship obligations.

The above list of offenses is not all inclusive. Additional grounds for permissive exclusion are detailed in the statute.

Examples

1. Nurse R was excluded based on a conviction involving obtaining dangerous drugs by forgery. She also altered prescriptions that were given for her own health problems before she presented them to the pharmacist to be filled.

2. Practice T was excluded due to its affiliation with its excluded owner. The practice owner, excluded from participation in the Federal health care programs for soliciting and receiving illegal kickbacks, was still participating in the day-to-day operations of the practice after his exclusion was effective.

Appendix D: OIG–HHS Contact Information

I. OIG Hotline Number

One method for providers to report potential fraud, waste, and abuse problems is to contact the OIG Hotline number. All HHS and contractor employees have a responsibility to assist in combating fraud, waste and abuse in all departmental programs. As such, providers are encouraged to report matters involving fraud, waste and mismanagement in any departmental program to the OIG. The OIG maintains a hotline that offers a confidential means for reporting these matters.

Contacting the OIG Hotline

By Phone: 1–800–HHS–TIPS (1–800–447–8477)
By E-Mail: *HTips@os.dhhs.gov*
By Mail: Office of Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW., Washington, DC 20201

When contacting the Hotline, please provide the following information to the best of your ability:

- Type of Complaint:

Medicare Part A
Medicare Part B
Indian Health Service
TRICARE
Other (please specify)

- HHS Department or program being affected by your allegation of fraud, waste, abuse/mismanagement:

Health Care Financing Administration (HCFA)
Indian Health Service
Other (please specify)

Please provide the following information. (However, if you would like your referral to be submitted anonymously, please indicate such in your correspondence or phone call.)

Your Name
Your Street Address
Your City/County
Your State
Your Zip Code
Your email Address

- Subject/Person/Business/Department that allegation is against.

Name of Subject
Title of Subject
Subject's Street Address
Subject's City/County
Subject's State
Subject's Zip Code

Please provide a brief summary of your allegation and the relevant facts.

II. Provider Self-Disclosure Protocol

The recommended method for a provider to contact the OIG regarding potential fraud or abuse issues that may exist in the provider's own organization is through the use of the Provider Self-Disclosure Protocol. This program encourages providers to voluntarily disclose irregularities in their dealings with Federal health care programs. While voluntary disclosure under the protocol does not guarantee a provider protection from civil, criminal, or administrative actions, the fact that a provider voluntarily disclosed possible wrongdoing is a mitigating factor in OIG's recommendations to prosecuting agencies. Although other agencies may not have formal policies offering immunity or mitigation for self-disclosure, they typically view self-disclosure favorably for the self-disclosing entity. Self-reporting offers providers the opportunity to minimize the potential cost and disruption of a full-scale audit and investigation, to negotiate a fair monetary settlement, and to avoid an OIG permissive exclusion preventing the provider from doing business with Federal health care programs. In addition, if the provider is obligated to enter into an Integrity Agreement (IA) as part of the resolution of a voluntary disclosure, there are three benefits the provider might receive as a result of self-reporting:

- If the provider has an effective compliance program and agrees to maintain its compliance program as part of the False Claims Act settlement, the OIG may not even require an IA;
- In cases where the provider's own audits detected the disclosed problem, the OIG may consider alternatives to the IA's auditing provisions. The provider may be able to perform some or all of its billing audits through internal auditing methods rather than be required to retain an independent review organization to perform the billing review; and
- Self-disclosing can help to demonstrate a provider's trustworthiness to the OIG and may result in the OIG determining that it can sufficiently safeguard the Federal health care programs through an IA without the exclusion remedy for a material breach, which is typically included in an IA.

Specific instructions on how a physician practice can submit a voluntary disclosure under the Provider Self-Disclosure Protocol can be found on the OIG's internet site at www.hhs.gov/oig or in the **Federal Register** at 63 FR 58399 (1998). A physician practice may, however, wish to consult with an attorney prior to submitting a disclosure to the OIG.

The Provider Self-Disclosure Protocol can also be a useful tool for baseline audits. The protocol details the OIG's views on the appropriate elements of an effective investigative and audit plan for providers. Physician practices can use the self-disclosure protocol as a model for conducting audits and self-assessments.

In relying on the protocol for audit design and sample selection, a physician practice should pay close attention to the sections on self-assessment and sample selection. These two sections provide valuable guidance regarding how these two functions should be performed.

The self-assessment section of the protocol contains information that can be applied to audit design. Self-assessment is an internal financial assessment to determine the

monetary impact of the matter. The approach of a review can include reviewing either all claims affected or a statistically valid sample of the claims.

Sample selection must include several elements. These elements are drawn from the Government sampling program known as RAT–STATS.[1] All of these elements are set forth in more detail in the Provider Self-Disclosure Protocol, but the elements are (1) Sampling unit, (2) sampling frame, (3) probe, (4) sample size, (5) random numbers, (6) sample design and (7) missing sample items. All of these sampling items should be clearly documented by the physician practice and compiled in the format set forth in the Provider Self-Disclosure Protocol. Use of the format set forth in the Provider Self-Disclosure Protocol will help physician practices to ensure that the elements of their internal audits are in conformance with OIG standards.

Appendix E: Carrier Contact Information

Medicare

A complete list of contact information (address, phone number, email address) for Medicare Part A Fiscal Intermediaries, Medicare Part B Carriers, Regional Home Health Intermediaries, and Durable Medical Equipment Regional Carriers can be found on the HCFA web site at *www.hcfa.gov/medicare/incardir.htm.*

Medicaid

Contact information (address, phone number, email address) for each State Medicaid carrier can be found on the HCFA web site at *www.hcfa.gov/medicaid/mcontact.htm.* In addition to a list of Medicaid carriers, the web site includes contact information for each State survey agency and the HCFA Regional Offices.

Contact information for each State Medicaid Fraud Control Unit can be found on the OIG web site at *www.hhs.gov/oig/oi/mfcu/index.htm.*

Appendix F: Internet Resources

Office of Inspector General—U.S. Department of Health and Human Services

www.hhs.gov/oig

This web site includes a variety of information relating to Federal health care programs, including the following:

Advisory Opinions
Anti-kickback Information
Compliance Program Guidance
Corporate Integrity Agreements
Fraud Alerts

Links to web pages for the:

Office of Audit Services (OAS)
Office of Evaluation and Inspections (OEI)
Office of Investigations (OI)
OIG List of Excluded Individuals/Entities
OIG News
OIG Regulations
OIG Semi-Annual Report
OIG Workplan

Health Care Financing Administration

www.hcfa.gov

This web site includes information on a wide array of topics, including the following:

Medicare

National Correct Coding Initiative
Intermediary-Carrier Directory
Payment
Program Manuals
Program Transmittals & Memorandum
Provider Billing/HCFA Forms
Statistics and Data

Medicaid

HCFA Regional Offices
Letters to State Medicaid Directors
Medicaid Hotline Numbers
Policy & Program Information
State Medicaid Contacts
State Medicaid Manual
State Survey Agencies
Statistics and Data

HCFA Medicare Training

www.hcfa.gov/medlearn

This site provides computer-based training on the following topics:

HCFA 1500 Form
Fraud & Abuse
ICD–9–CM Diagnosis Coding
Adult Immunization
Medicare Secondary Payer (MSP)
Women's Health
Front Office Management
Introduction to the World of Medicare
Home Health Agency
HCFA 1450 (UB92)

Government Printing Office

www.access.gpo.gov

This site provides access to Federal statutes and regulations pertaining to Federal health care programs.

The U.S. House of Representatives Internet Library

uscode.house.gov/usc.htm

This site provides access to the United States Code, which contains laws pertaining to Federal health care programs.

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[1] Available through the OIG web site at http://www.hhs.gov/oas/ratstat.html.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: October 12–13, 2000.

Time: 9:00 AM to 4:00 PM.

Agenda: Town Hall Meeting. Topic will be Improving Cancer Care for All: Real People—Real Problems.

Place: Radisson Northern Hotel, 19 North 28th Street, Billings, MT 59101.

Contact Person: Maureen O. Wilson, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, 301/496–1148.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25538 Filed 10–4–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: October 17–18, 2000.

Time: 8 AM to 12:30 PM.

Agenda: To discuss NCI's activities related to Health Disparities and Quality of Care, and Update on the Office of Communications reorganization regarding DCLG activities, including reports from the working groups.

Place: National Cancer Institute, 6116 Executive Boulevard, Suite 300C, Rockville, MD 20852.

Contact Person: Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Institutes of Health,

National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25539 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: November 16–17, 2000.

Time: 9:00 AM to 4:00 PM.

Agenda: Town Hall Meeting to review Improving Cancer Care for All: Real People—Real Problems.

Place: Vanderbilt University, Vanderbilt Cancer Center, Medical Research Building II, Nashville, TN 37322–6838.

Contact Person: Maureen O. Wilson, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, room 4A48, Bethesda, MD 20892, 301/496–1148.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2000.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25540 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Institutional Clinical Oncology Research Career Development Program PAR–00–63.

Date: October 11, 2000.

Time: 5 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: David E. Maslow, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8054, Bethesda, MD 20892–7405, 301/496–2330.

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 Assistance Program Nos. 93.392, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25542 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health, National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: November 6, 2000.

Time: 9:30 AM to 11:00 PM.

Agenda: The purpose of this meeting will be to discuss the Brain Tumor Progress Review Group Report.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A10, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Susan J. Waldrop, Executive Secretary, National Institutes of Health, National Cancer Institute, Office of Science Policy, Bethesda, MD 20892, 301/496–1458.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 27, 2000.

LaVerne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25543 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting;

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such

as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: November 13, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: Discussion of program policies and issues.

Place: National Institutes of Health, Two Rockledge Center, Conference Room 9112, 9116, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Charles M Peterson, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25544 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Women's Ischemia Syndrome Evaluation Study (WISE) Extension.

Date: October 30, 2000.

Time: 3:30 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: David T George, Scientific Review Administrator, Review Branch, Room 7188, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25545 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institutes of Mental Health Special Emphasis Panel, October 18, 2000, 8:30 AM to October 19, 2000, 5:30 PM, Embassy Square, 2000 N Street, NW, Washington, DC, 20036 which was published in the **Federal Register** on September 21, 2000, 65 FR 57198.

The dates and times for the meeting are the same but the location has changed to the Woodfin Suites Hotel, 1380 Piccard Drive, Rockville, MD. The meeting is closed to the public.

Dated: September 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25541 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: October 10–11, 2000.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Gerald L. Becker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12–13, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12–13, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12–13, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel, 1914 Connecticut Ave, NW, Washington, DC 20009.

Contact Person: Nancy Lamontagne, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12–13, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bill Bunnag, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 1.

Date: October 12–13, 2000.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12–13, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Westin Fairfax Hotel, 2100 Massachusetts Ave, N.W., Washington, DC 20008.

Contact Person: Gillian Einstein, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, (301) 435–4433, einsteig@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 1.

Date: October 12–13, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Michael H. Sayre, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, Bethesda, MD 20892, (301) 435–1219.

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: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

Date: October 12–13, 2000.

Time: 8:30 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: The Don Cesar Hotel, 3400 Gulf Boulevard, St. Petersburg, FL 33706.

Contact Person: Calbert A. Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, laingc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12, 2000.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12, 2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jay Cinque, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12–13, 2000.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, kozakm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.

Date: October 12–13, 2000.

Time: 9:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: David J. Remondini, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, remondid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12–13, 2000.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12, 2000.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard D. Rodewald, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 12, 2000.

Time: 4:30 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 13, 2000.
Time: 3:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Paul K. Strudler, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 15–17, 2000.
Time: 8:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: University Center Hotel, 1535 SW Archer Rd, Gainesville, FL 32608.
Contact Person: Nadarajen A. Vydelingum, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.
Date: October 16–17, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.
Contact Person: Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.
Date: October 16–17, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: Syed M. Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, amirs@csr.nih.gov.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, General Medicine A Subcommittee 1.
Date: October 16–17, 2000.
Time: 8:00 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Harold M. Davidson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, davidsoh@csr.nih.gov.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Biochemical Endocrinology Study Section.
Date: October 16, 2000.
Time: 8:00 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Debora L. Hamernik, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, Bethesda, MD 20892, (301) 435–4511, hamernid@csr.nih.gov.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.
Date: October 16–17, 2000.
Time: 8:00 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Radiology Study Section.
Date: October 16–17, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 1.
Date: October 16–17, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Biochemical Sciences Integrated Review Group, Medical Biochemistry Study Section.
Date: October 16–17, 2000.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Alexander S. Liacouras, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Experimental Virology Study Section.
Date: October 16–17, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.
Contact Person: Rona L. Hirschberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25536 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 12, 2000.
Time: 3:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 436–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN–6.
Date: October 16–17, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, Washington, DC 20036.
Contact Person: Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 16–17, 2000.
Time: 8:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dharam S. Dhindsa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 16–17, 2000.
Time: 9:00 AM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: St James Suites, 950 24th Street, NW, Washington, DC 20037.
Contact Person: Ellen K. Schwartz, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, schwarte@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 16–17, 2000.
Time: 3:00 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Nancy Pearson, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2112, MSC 7890, Bethesda, MD 20892, (301) 435–1047, pearsonn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 16, 2000.
Time: 6:00 AM to 7:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW, Washington, DC 20007.
Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 16, 2000.
Time: 7:00 AM to 9:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 111 30th Street, NW, Washington, DC 20007.
Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 16, 2000.
Time: 12:00 PM to 12:30 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 17–18, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Rosslyn, 1900 North Fort Myer Drive, Arlington, VA 22209.
Contact Person: Joanne T. Fujii, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 17, 2000.
Time: 8:00 AM to 8:30 AM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Syed Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 4.
Date: October 17–18, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Dan Kenshalo, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 17, 2000.
Time: 10:00 AM to 11:00 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 17, 2000.
Time: 1:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 17, 2000.
Time: 3:00 PM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abubaker A. Shaikh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042, shaikha@csr.nih.gov.).

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology Study Section.
Date: October 17–18, 2000.
Time: 8:30 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.
Contact Person: Rita Anand, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 1.

Date: October 18–19, 2000.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@csr.nih.gov.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Medicinal Chemistry Study Section.

Date: October 18–19, 2000.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald J. Dubois, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group, Chemical Pathology Study Section.

Date: October 18–20, 2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Syed Quadri, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–25546 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://www.health.org/workpl.htm*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh or Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468
DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609
Express Analytical Labs, 1301 18th Ave NW, Suite 110, Austin, MN 55912, 507–437–7322
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232 (formerly: Cedars Medical Center, Department of Pathology)
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (formerly: Laboratory Specialists, Inc.)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., a Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., a Member of the Roche Group)
Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339 (formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (formerly: Roche Biomedical Laboratories, Inc.)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361 (formerly: NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942 (formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600/800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947, (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484, (formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (formerly: SmithKline Beecham Clinical Laboratories)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995/858–677–7970
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–

727–6300/800–999–5227 South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176,
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–339–4299, (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**FEDERAL REGISTER**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **FEDERAL REGISTER**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–25683 Filed 10–4–00; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare Comprehensive Conservation Plan for Crab Orchard National Wildlife Refuge in Williamson, Jackson and Union Counties, IL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent (Revised) to prepare a Comprehensive Conservation Plan (CCP) for Crab Orchard National Wildlife Refuge.

SUMMARY: This revised notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan and an associated environmental document for Crab Orchard National Wildlife Refuge in Williamson, Jackson and Union Counties, Illinois. The Service is furnishing this notice in compliance with Service comprehensive conservation plan policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues, opportunities, and concerns for inclusion in the environmental assessment.

DATES: The Service will solicit information from the public via open houses, workshops, focus groups, and written comments. Special mailings, newspapers articles and radio announcements will inform people of the time and place of open houses. The date, time and place of open houses will also be posed on the Crab Orchard National Wildlife Refuge planning web site: http://www.fws.gov/r3pao/planning/cotop.htm

Public Involvement: Public scoping will begin with three open houses in October. The first meeting is scheduled Thursday, October 19, from 4 p.m. to 8 p.m. at Southwestern Illinois College in Red Bud, Illinois. The College is located at 500 West South Fourth Street. The meeting will be in the Dining Room of the New Classroom Building. A second meeting is scheduled Friday, October 20, from 2 p.m. to 8 p.m. at the Marion Hotel and Conference Center in Marion, Illinois. The hotel is located at 2600 West DeYoung Street near the intersection of Interstate 57 (Exit 54B) and Illinois New Route 13. A third open house is scheduled from 8 a.m. to 12 p.m. at Crab Orchard National Wildlife Refuge Visitor Center. The Visitor Center is located on the east side of Route 148 about 1¾ miles south of the intersection of Route 148 and New Route 13.

ADDRESSES: Address comments and requests from more information to: Refuge Manager, Crab Orchard National Wildlife Refuge, 8588 Route 148, Marion, IL 62959; or E-mail: conwr-ccp@fws.gov

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Palmer, Planning Coordinator, Crab Orchard National Wildlife Refuge, U.S. Fish and Wildlife Service, 8588 Route 148, Marion, IL 62959–9970, telephone 618–997–3344; or Mr. John Schomaker, Refuge Planning Specialist, U.S. Fish and Wildlife Service, RO/AP, BHW Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111, telephone 612–713–5476.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies Refuge goals, objectives, and strategies for achieving Refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired future conditions of the Refuge and how the Service will implement management strategies. Some of the issues to be addressed in the plan include the following:

(a) Habitat management;
(b) Public use management;
(c) Wildlife population management;
(d) Wilderness management;
(e) Industrial facilities management; and
(f) Cultural resource identification and protection.

After the public scoping of issues, a decision will be made whether to prepare an environmental assessment or an environmental impact statement. If we decide to prepare an environmental impact statement, another notice of intent will be published announcing that decision. The environmental assessment or environmental impact statement will include several alternatives that address the issues and management strategies associated with these topics.

Crab Orchard National Wildlife Refuge was established on August 5, 1947, by Public law 80–361. This Act of Congress transferred certain Federal lands acquired in connection with the Crab Orchard Creek project and the Illinois Ordnance Plant to the Secretary of the Interior. This legislation

mandated that these lands be administered by the Secretary through the Fish and Wildlife Service ''for the conservation of wildlife, and for the development of the agricultural, recreational, industrial, and related purposes specified in this Act.''

The 43,890-acre Refuge contains three large man-made lakes and numerous small ponds totaling 9,000 acres, 26,000 acres of forest and brush land, 5,000 acres of cropland, 2,000 acres of grassland, and 2,000 acres of administrative lands. The Refuge supports an extensive variety of plant and animal species, hosts 1.2 million recreational visitors per year, provides facilities for industrial tenants, and sponsors cooperative farmers and permittee graziers. The 4,050-acre Crab Orchard Wilderness, the first wilderness are a designated in the State of Illinois, is within the Refuge.

Dated: September 29, 2000.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 00–25552 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment for the Colorado River Irrigation Project, Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rate adjustment.

SUMMARY: The Bureau of Indian Affairs proposes to adjust the assessment rates for operating and maintaining the Colorado River Irrigation Project for the 2001 irrigation season.

DATES: Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before December 4, 2000.

ADDRESSES: All comments concerning the proposed rate adjustment must be in writing and addressed to the Bureau of Indian Affairs, Director of Trust Responsibilities, ATTN: Irrigation and Power, Mail Stop 3061, 1849 C Street, NW., Washington, DC 20240, telephone; (202) 208–5480.

FOR FURTHER INFORMATION CONTACT: Regional Director, Bureau of Indian Affairs, Western Region, P.O. Box 10, Phoenix, Arizona 85001; telephone (602) 379–6956.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices. The new rates are specified in the following schedule.

This notice is given in accordance with Section 171.1(e) and 171.1(g) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information of Bureau of Indian Affairs irrigation projects.

Background

The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salaries and benefits for the project engineer/manager and our employees under his management/control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(e) Capitalization expenses;

(f) Acquisition expenses; and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30 days after the due date, interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90 days old and will accrue from the date the debt became delinquent. No water shall be delivered to any farm unit until all irrigation charges have been paid. Within 180 days a delinquent debt will be forwarded to the U.S. Treasury for further action in accordance with Debt Collection Improvement Act of 1996 (Public Law 104–134).

Rate Adjustment

The following table illustrates the impact of the rate adjustment:

COLORADO RIVER IRRIGATION PROJECT

[Irrigation rate per assessable acre]

	Present 2000	Proposed 2001	Proposed 2002
Up to 5 acre-feet/acre	$38.50	$37.00	$37.00.
Excess Water/acre-foot	17.00	Unchanged	Unchanged.

Determinations and Certifications

Regulatory Planning and Review (E.O. 12866): This rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act: This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates'' (5 U.S.C. § 601(2)).

Unfunded Mandates Reform Act: This rate adjustment imposes no unfunded

mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Reform Act of 1995.

Takings Implication Assessment (E.O. 12630): The Department has determined that this rate adjustment does not have significant ''takings'' implications.

Federalism (E.O. 13132): The Department has determined that this rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (E.O. 12988): The Department has certified to the Office of Management and Budget (OMB) that this rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act: This rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

National Environmental Policy Act (NEPA): The Department has determined that this rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Public Comment Solicitation

Interested persons may submit written comments regarding the proposed rate adjustment to the location identified in the **ADDRESSES** section of this document. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: September 27, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs

[FR Doc. 00–25531 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–00–0777XQ–241A]

Sierra Front-Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council; Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. Topics for discussion will be a presentation and discussion of Fiscal Year 2000 operations, and outlook for Fiscal Year 2001 of the BLM in Nevada; opening and closeout reports of the three RACs; implementation of the Southern Nevada Public Land Management Act of 1998; breakout meetings of the three RACs; and other topics the Councils may raise. There will be luncheon speakers both days.

All meetings are open to the public. The public may present written comments to the Council. The public comment period for the Council meeting will be at such times during the meeting as determined by the State Director, and at 2:00 p.m. on Friday, October 27. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Nevada State Office, BLM, 1340 Financial Blvd., Reno, telephone (775) 861–6586.

DATES, TIMES: The Council will meet on Thursday, October 26, 2000, from 8:30 a.m. to 4:30 p.m. and Friday, October 27, 2000, from 8 a.m. to 3 p.m., or when business is complete, at The Casa Blanca Hotel in Mesquite, Nevada. If due to unforeseeable problems this site is not available, the meeting will be rescheduled. Public comment will be received at the discretion of the State Director, as meeting moderator, with a general public comment period on Friday, October 27, 2000, at 2 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Affairs Specialist, Office of Communications, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, 89502–7147, telephone (775) 861–6586.

Dated: September 29, 2000.

Robert V. Abbey,

Nevada State Director.

[FR Doc. 00–25551 Filed 10–04–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 89002]

Public Land Order No. 7463; Withdrawal of Public Land for Devil's Elbow Recreation Site; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 100.81 acres of public land from surface entry and mining for a period of 20 years for protection and development of a Bureau of Land Management public campground and day use recreation area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949, or Susie Williams, BLM Butte Field Office, P.O. Box 3388, Butte, Montana 59702–3388, 406–494–7634.

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 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described land is hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for protection and development of Devil's Elbow Recreation Site:

Principal Meridian, Montana

T. 11 N., R. 2 W.,

Sec. 23, that portion of the E½NE¼ lying east of the York Road (State Highway 280) as set out on the Certificate of Survey (COS) filed under Document No. 259800 and tracts 7 and 8 as set out on the COS filed under Document No. 452285/T;

Sec. 24, tracts 4 and 5 as set out on the COS filed under Document 452285/T, and tract 6–A as set out on the COS filed under Document No. 464941/B.

The area described contains 100.81 acres in Lewis and Clark County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 18, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–25585 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 89170]

Public Land Order No. 7464; Withdrawal of Public Land To Aid in Reclamation of the Zortman-Landusky Mining Area; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,530.62 acres of public land from surface entry and mining for a period of 5 years to protect the reclamation of the Zortman-Landusky mining area. The land has been and will remain open to mineral leasing and mineral material disposal under the Materials Act.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5052, or Robert Padilla, BLM Lewistown Field Office, Box 1160, Lewistown, Montana 59457–1160, 406–538–1922.

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 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described land is hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws or mineral material disposal under the Materials Act, to protect the reclamation of the Zortman-Landusky mining area:

Principal Meridian, Montana

T. 25 N., R. 24 E.,
Sec. 1, lot 13;
Sec. 10, lots 7 to 11, inclusive, and NE¼SE¼;
Sec. 11, lots 8 and 9;
Sec. 12, lots 8, 11, 12, 13, 17, 18, 19, 20 and 22, and SE¼SW¼;
Sec. 13, NE¼NE¼ and W½NW¼;
Sec. 14, lots 1 to 11, inclusive, E½NE¼, SW¼NE¼, and N½SE¼;
Sec. 15, lots 4 to 18, inclusive;
Sec. 21, E½NE¼, NE¼SE¼, and W½SE¼SE¼;
Sec. 22, lot 1, lots 3 to 7, inclusive, SE¼NE¼, W½NW¼, N½SW¼, E½SW¼SW¼, SE¼SW¼, N½SE¼, E½SE¼SE¼, NW¼SE¼SE¼, E½SW¼SE¼SE¼, and NW¼SW¼SE¼SE¼;
Sec. 23, N½.

T. 25 N., R. 25 E.,
Sec. 6, lots 13 to 17, inclusive, NE¼SW¼, and SE¼;
Sec. 7, lots 5 to 9, inclusive, lots 14, 17, 18, 22, 23, and 24, lots 26 to 31, inclusive, and NW¼NE¼;
Sec. 8, SW¼SW¼;
Sec. 16, lot 2, N½NW¼SW¼, N½SE¼NW¼SW¼, S½S½SW¼SW¼, NE¼SE¼SW¼, S½SE¼SW¼, and SW¼SE¼;
Sec. 17, lots 3 and 4, NE¼, E½NW¼, N½N½NE¼SE¼, N½NE¼NW¼SE¼, SW¼NE¼NW¼SE¼, W½NW¼SE¼, W½SE¼NW¼SE¼, W½NE¼SW¼SE¼, W½SW½SE¼, SE¼SW¼SE¼, and S½SE¼SE¼;
Sec. 18, lots 1 to 5, inclusive, lots 8, 9, and 10, and SW¼NE¼.

The area described contains 3,530.62 acres in Phillips County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 18, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–25586 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–ET; NMNM 52408, NMNM 52409, NMNM 52410]

Public Land Order No. 7462; Revocation of Three Secretarial Orders dated May 1, 1929, April 27, 1939, and May 24, 1939; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three Secretarial orders in their entirety as to the remaining 240 acres of lands withdrawn for Air Navigation Site Nos. 29, 125, and 128. The lands are not needed for the purpose for which they were withdrawn. Eighty acres have been conveyed out of Federal ownership and revocation of the withdrawal on those lands is a record-clearing action only. The remaining 160 acres will be opened to all forms of appropriation under the public land laws.

EFFECTIVE DATE: November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, 505–438–7597.

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 (1994), it is ordered as follows:

1. The Secretarial Orders dated April 27, 1939 and May 24, 1939, which withdrew lands for Air Navigation Site Nos. 125, and 128 are hereby revoked in their entirety as to the remaining lands described below:

New Mexico Principal Meridian

T. 4 S., R. 1 E.,
Sec. 10, NW¼SW¼.

T. 13 S., R. 1 W.,
Sec. 7, E½SW¼;
Sec. 18, NE¼NW¼.

The areas described aggregate 160 acres in Sierra and Socorro Counties.

2. The Secretarial Order dated May 1, 1929, which withdrew lands for Air Navigation Site No. 29, is hereby revoked in its entirety as to the remaining lands described below:

T. 4 N., R. 18 E.,
Sec. 13, NW¼SW¼.

T. 3 N., R. 23 E.,
Sec. 3, SE¼NW½.

The areas described aggregate 80 acres in Guadalupe and De Baca Counties.

3. At 10 a.m. on November 6, 2000, the lands described in paragraph 1 will be opened to all forms of appropriation under the public land laws.

4. The land described in paragraph 2 has been conveyed out of Federal ownership and this is a record-clearing action only for those lands.

Dated: September 12, 2000

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–25579 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG01–0001; OR–52315]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, filed an application to withdraw approximately 9,533 acres of National Forest System lands to protect recreational, scenic, cultural and traditional use values in addition to threatened, endangered, and sensitive flora and fauna natural resource values. This notice closes the lands for up to 2 years from location and entry under the mining laws, subject to valid existing rights. The lands will remain open to such forms of disposition as may by law be made of National Forest System lands. The lands have been and remain open to mineral leasing.

DATES: Comments should be received on or before January 4, 2001.

ADDRESSES: Comments should be sent to the Forest Supervisor, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501.

FOR FURTHER INFORMATION CONTACT: Bengt Hamner, Rogue River National Forest, 541–858–2304.

SUPPLEMENTARY INFORMATION: The Forest Service filed an application to withdraw the following described National Forest System lands from location and entry under the mining laws, subject to valid existing rights:

Willamette Meridian

Rogue River and Umpqua National Forests

T. 30 S., R. 2 E.,
- Sec. 22, those portions of the SW¼NW¼, W½SW¼, and SE¼SW¼, lying westerly and southwesterly of the Rogue-Umpqua Divide Wilderness boundary;
- Sec. 23, that portion of the SE¼ SW¼ lying westerly of the Abbott Creek Research Natural Area and southeasterly of the Rogue-Umpqua Divide Wilderness boundary;
- Sec. 25, SW¼SW¼ SW¼;
- Sec. 26, SW¼NE¼, SW¼ SE¼ NE¼, that portion of the NW ¼ lying southeasterly of the Rogue-Umpqua Divide Wilderness boundary and southwesterly of the Abbott Creek Research Natural Area, and S½;
- Sec. 27, those portions of the E½ lying westerly, southwesterly and southeasterly of the Rogue-Umpqua Divide Wilderness boundary, and W½;
- Sec. 28, S½NW¼ and S½;
- Sec. 29, S½S½ SE¼;
- Sec. 31, lots 6 and 7, NE¼ and N½ SE ¼;
- Sec. 32 and 33;
- Sec. 34, lots 1, 2, N½, and N½ S½;
- Sec. 35, NW¼ NE¼, and NW¼.

T. 31 S., R. 1 E.,
- Sec. 1, S½ of lot 5, lots 6, and 7, S½ SW¼ NE¼, SW¼, and W½SE ¼;
- Sec. 2,lots 1 and 2, S½ NE¼, S½ S½ SW¼ and SE¼ ;
- Sec. 3, S½SE¼;
- Sec. 10, N½, E½SW¼, SE¼;
- Sec. 11, N½, N½S½, SE¼SW¼, S½SE¼;
- Sec. 12, lots 1 and 2, E½NE¼, NW¼;
- Sec. 13, W½NW¼;
- Sec. 14, NE¼, E½NW¼;
- Sec. 15, N½NE¼, NE¼NW¼.

T. 31 S., R. 2 E.,
- Sec. 3, W½ of lot 3, lot 4, SW¼NW¼, W½SE¼NW¼, W½E½SW¼, and W½SW¼;
- Secs. 4 and 5;
- Sec. 6, lots 1, 2, 6, and 7, S½NE¼, E½SW¼, and SE¼;
- Sec. 7, lot 1, N½NE¼, SE¼NE¼, and NE¼NW¼;
- Sec. 8, N½, E½NE¼SE¼, and NE¼SE¼SE¼;
- Sec. 9, N½, N½SW¼, N½S½SW¼, W½NE¼SE¼, NW¼SE¼, N½SW¼SE¼, NW¼SE¼SE¼;
- Sec. 10, W½NW¼.

The areas described aggregate approximately 9,533 acres in Jackson and Douglas County.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor, Rogue River National Forest.

Notice is hereby given that a public meeting relative to the proposed withdrawal will be held at a later date. A notice of time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands proposed for withdrawal at least 30 days before the scheduled date of the meeting.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: September 29, 2000.

Sherrie L. Reid,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 00–25555 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–ET; WYW 149499]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw approximately 4.93 acres of public land in Sweetwater County, to protect capital improvements of the Rock Springs administrative site. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by January 4, 2001.

ADDRESSES: Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124, or Stan McKee, BLM Rock Springs Field Manager, 280 Highway 191 North, Rock Springs, Wyoming 82901, 307–352–0256.

SUPPLEMENTARY INFORMATION: On September 15, 2000, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 19 N., R. 105 W.,
- Sec. 14, Lot 19.

The area described contains approximately 4.93 acres in Sweetwater County.

The purpose of the proposed withdrawal is to protect the capital improvements associated with development and maintenance of the Rock Springs administrative site pending further study and possibly longer-term actions.

For a period of 90 days from the date of publication of this notice, all persons

who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: September 27, 2000.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 00–25556 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Holiday Inn Fair Oaks Hotel in Fairfax, Virginia, on October 25–26, 2000.

The agenda will cover the following principal subjects;

Congressional Update. This presentation will focus on the status of timely congressional issues related to the OCS Program.

Natural Gas Supply Situation. This presentation will address the natural gas supply situation from the United States' perspective; Canada's ability to supply natural gas to the U.S. in the future; and, the industry's supply challenge and the transportation and distribution of natural gas, including the possibility of a natural gas pipeline from Alaska.

EPA Initiatives. This presentation will address marine protected waters, Section 403 of the Clean Water Act, and study results of synthetically based drilling muds.

Ocean Issues. This panel presentation will address implementation of the Ocean Act, the Ocean Exploration Panel, and the Ocean Task Force.

MMS Environmental Initiatives. This panel presentation will address the Deep Spill project, biotechnology (bioprospecting), recent sperm whale cruise results in the Gulf, and acoustic impacts on marine mammals.

Conservation and Reinvestment Act. This presentation will provide an update on the status of the Conservation and Reinvestment Act and any other pertinent information related to this issue.

Onshore Impacts of Increasing Offshore Activity. This presentation will address infrastructure, social and political impacts, and wetlands loss.

Hard Minerals Update. This presentation will provide an update on subcommittee activities and other pertinent hard minerals information.

MMS Regional Updates. The Regional Directors will highlight activities in the Gulf of Mexico and off the California and Alaska coasts.

The meeting is open to the public. Upon request, interested parties may make oral or written presentation to the OCS Policy Committee. Such requests should be made no later than October 13, 2000, to the Minerals Management Service, 381 Elden Street, MS–4001, Herndon, Virginia, 20170, Attention: Jeryne Bryant.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Jeryne Bryant at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

DATES: Wednesday, October 25 and Thursday, October 26, 2000.

ADDRESSES: Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033, (703) 352–2525.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant at the address and phone number listed above.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 29, 2000.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 00–25647 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Mojave National Preserve, Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mojave National Preserve Advisory Commission will be held on October 17, 2000. The meeting will begin at 9 a.m. at the Primm Valley Resort in Primm, Nevada.

The agenda will include updates on park activities, Kelso Depot design status, Hole-in-the-Wall Interagency Fire Center design status, Comprehensive Interpretive Planning overview, and the status of the revised draft General Management Plan.

The Advisory Commission was established by Public Law 103–433 to provide advice on the development and implementation of the general management plan for the Preserve.

Current members of the Commission are: Irene Ausmus, Rob Blair, Peter Burk, Donna Davis, Kathy Davis, Gerald Freeman, Willis Herron, Eldon Hughes, Claudia Luke, Clay Overson, Norbert Riedy, Mal Wessel.

This meeting is open to the public.

Dennis Schramm,

Acting Superintendent, Mojave National Preserve.

[FR Doc. 00–25565 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; extension of a currently approved collection; National Center for Victims of Crime: Service referral questionnaire.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 14, 2000 (Volume 65, page 13791–13792), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's/component's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of the Information Collection is Listed Below

(1) *Type of information collection.* Extension of a currently approved collection.

(2) *The title of the form/collection.* National Center for Victims of Crime: Service Referral Questionnaire.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form: COPS PPSE/02. Office of Community Oriented Policing Services, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Approximately 10,000 victims' services organizations nationwide will be asked to respond. The Service Referral Questionnaire will allow the National Center for Victims of Crime (NCVC) to collect information on agency name, contact information, types of services provided to crime victims, types of crime victims primarily served by the organization, and to request permission to allow the NCVC to include the listing in its service database on its website.

NCVC will use the information collected to provide referral assistance to victims of crime who request information via the telephone through a toll-free number, e-mail, general mail and the NCVC website.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Surveys will be administered by telephone to approximately 10,000 victims' service organizations nationwide. The survey will also be available to respondents on the NCVC website to allow on-line completion. Administrative preparation and survey completion will take approximately 0.25 hours per respondent (there is no record keeping burden for this collection).

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 2,500 hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: September 29, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–25521 Filed 10–4–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection for review: extension of a currently approved collection; grants management system online application.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 25, 2000 (Volume 65, page 24224), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until March 28, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via fascimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) Type of information collection: Extension of a currently approved collection.

(2) Title of the form/collection: Grants Management System Online Application.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be as or required to respond, as well as a brief abstract:

Primary: State Government.
Other: None.

The Grants Management System Online Application will be used by respondents from State and Local Government offices to request grants from Offices and Bureaus within the Office of Justice Programs. This information, once collected from grantees, will be used to approve applications for funding, that grantees have requested, for grantee use within State and Local Government offices.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: The time burden of the 3,000 respondents to complete the surveys is 4 hours per application.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete applications for the Grants Management System Online Application is 12,000 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: September 29, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–25520 Filed 10–4–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; extension of a currently approved collection; crime mapping survey.

The Department of Justice, National Institute of Justice, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 28, 2000 (Volume 65, page 16419), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 6, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the Collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Crime Mapping Survey.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form: None. Office of Research and Evaluation, National Institute of Justice, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Law enforcement agencies. *Other:* None. This national survey is designated to determine the extent to which police departments, specifically crime analysts, are using computerized crime mapping. Surveys will be mailed to a randomly selected sample of police departments. The questionnaire will determine the level of crime mapping within departments, both in terms of hardware and software resources, as well as the types of maps that are produced and how they are used. The information collected from this survey will be used to advise the activities of the Crime Mapping Research Center.

(5) An estimate of the total number of respondents and the amount of time estimated for the average respondent to respond/reply: 2,798 respondents for an average of 33 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: The total burden to complete the nomination is 562.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: September 29, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–25519 Filed 10–4–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1301]

Announcement of the Availability of the ''NIJ Science and Technology Solicitation''

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 ''NIJ Science and Technology Solicitation.''

DATES: Proposals must be received by 4 p.m. ET on Tuesday, October 24, 2000.

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

For fiscal year 2001, NIJ will accept proposals for technology-related awards under this solicitation, and several months later it will accept behavioral and social science-related awards under a separate solicitation.

This solicitation is open to a wide variety of proposals in order to achieve a balanced portfolio of technology product development, implementation, and evaluation projects. This solicitation focuses on near-term (one to three years) development and implementation projects.

To assist in obtaining information that may be helpful in submitting a proposal, you are encouraged to use the resources and expertise of the NIJ National Law Enforcement and Corrections Technology Center (NLECTC) located in Rockville, Maryland; and the regional NLECTCs located in Rome, New York; Charleston, South Carolina; Denver, Colorado; El Segundo, California; and the Border Research and Technology Center (BRTC) located in San Diego, California. More information about the NLECTC system is available on the Internet at <http://www.nlectc.org>.

To learn more about projects currently funded by NIJ, on the Internet go to http://www.nlectc.org/techproj/ or call NIJ's Office of Science and Technology at 202–307–0645.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''NIJ Science and Technology Solicitation'' (refer to document no. SL000440). 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.

Dated: September 27, 2000.

Doug Horner,

Acting Assistant Director, National Institute of Justice.

[FR Doc. 00–25623 Filed 10–4–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 20, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Records of Preshift and Onshift Inspections of Slope and Shaft Areas.

OMB Number: 1219–0082.

Affected Public: Business or other for-profit.

Frequency: Twice per shift.

Number of Respondents: 35.

Number of Annual Responses: 11,858.

Total Estimated Burden Hours: 14,823.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems of purchasing services): $0.

Description: Requires coal mine operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiencies, before and during each shift and before blasting. Records of the results of the inspections are required to be kept.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Fire Protection, Escape and Evacuation Plan.

OMB Number: 1219–0051.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 59.

Number of Annual Responses: 59.

Total Estimated Burden Hours: 263.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Requires coal mine operators to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of exiting work areas.

Type of Review: Revision of a currently approved collection.

Agency: Employment and Training Administration.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205–0173.

Affected Public: State and local governments.

Frequency of Response: Quarterly.

Total Respondents: 53.

Total Responses: 212.

Total Estimated Burden Hours: 2,968.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating and Maintenance: $0.

Description: The Secretary of Labor has interpreted applicable sections of Federal law to require States to include reasonable provisions in their Unemployment Insurance (UI) laws that concern the prevention, detection and recovery of benefit overpayment caused by willful misrepresentation or errors by claimants or others. This report provides an accounting of the types and amounts of such overpayment and serves as a useful management tool for monitoring overall integrity in the UI system.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–25611 Filed 10–04–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 29, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Ionizing Radiation.

OMB Number: 1218–0103.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 15,859.

Number of Annual Responses: 258,745.

Estimated Time Per Response: Varies from 5 minutes to maintain radiation-exposure records to 15 minutes for employers to prepare a written report of employee overexposure for submission to OSHA

Total Burden Hours: 42,518.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $2,512,066.

Description: The information-collection requirements specified in the Ionizing Radiation Standard protect employees from the adverse health effects that may result from their exposure to ionizing radiation. The information-collection requirements of the Ionizing Radiation Standard include employers phoning OSHA when radiation exposure incidents expose employees over radiation limits stated in the Standard; sending written reports of radiation over exposure to OSHA; maintaining employee exposure records; and furnishing exposure records to employees upon request.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–25612 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 20, 2000, applicable to workers of PCS Nitrogen, Camanche, Iowa. The notice was published in the **Federal Register** on July 24, 2000 (65 FR 45620).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New company information shows that worker separations occurred at the LaPlatte, Nebraska facility of PCS Nitrogen in late 1999-early 2000. The workers produced ammonia, urea, nitric acid, ammonium nitrate and fertilizer solutions before ceasing in August, 1999.

Accordingly, the Department is amending the certification to cover the workers of PCS Nitrogen, LaPlatte, Nebraska.

The intent of the Department's certification is to include all workers of PCS Nitrogen who were adversely affected by increased imports.

The amended notice applicable to TA–W–36,693 is hereby issued as follows:

All workers of PCS Nitrogen, Camanche, Iowa (TA–W–37,693) and LaPlatte, Nebraska (TA–W–37,693A) who became totally or partially separated from employment on or after May 22, 1999 through June 20, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of September, 2000.

Edward A. Tomchick,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 00–25610 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,899]

Hannah Hardy Inc., New York, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 2000, in response to a petition filed on the same date on

behalf of workers at Hannah Hardy, Inc., New York, New York.

The Department of Labor has been unable to locate an official of the company to provide the information necessary to render a trade adjustment assistance determination. Consequently, the Department of Labor cannot conduct an investigation to make a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974. Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of September, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–25609 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Unemployment Compensation for Federal Employees (UCFE) Program Forms Comment Request

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor (DOL), 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 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 is soliciting comments concerning the proposed revision and extension of the Unemployment Compensation for Federal Employees (UCFE) Handbook.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before December 4, 2000.

ADDRESSES: Merri Baldwin, Office of Workforce Security, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 219–7301 ext. 185 (this is not a toll-free number), fax number (202) 219–8506. E-mail address: mbaldwin@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The UCFE law (5 U.S.C. 8501–8509) requires State employment security agencies (SESAs) to pay UCFE in the same amount and under the same terms and conditions as would be payable under the unemployment insurance law of the State if claimants' Federal service and Federal wages had been included as employment and wages under that State law. Each State agency must obtain from the Federal agency wage and separation information for each claimant filing a UCFE claim to enable it to determine his/her eligibility for benefits. The State agencies obtain and record required UCFE information on forms developed by the Department of Labor: ES–931, ES–931A, ES–933, ES–934, and ES–935. The use of each of these forms is essential to the UCFE claims process.

Information pertaining to the UCFE claimant may be obtained from the individual's former employing Federal agency only by using Form ES–931, Request for Wage and Separation Information. If the claimant's former employer does not provide the information, the next most feasible and effective way to obtain this information is by use of Form ES–935, claimants' Affidavit of Federal Civilian Service, Wages and Reason for Separation, prescribed by the Department of Labor for State agency use. Without this information, States could not adequately determine the UCFE eligibility of former Federal employees and would not be able to properly administer the program.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This is a request for Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control no. 1205–0179. A current inventory of 78,000 UCFE claims was filed in calendar year 1999, and an estimated inventory of 78,000 UCFE claims will be reported for fiscal year (FY) 2000, reflecting both a significant decrease of 110,000 from FY 1997 and a decrease of 10,025 hours toward ETA's Information Collection Budget. Following a massive downsizing during FY 1997, the Federal Government workforce now has stabilized, and, therefore, there are fewer UCFE claims being filed.

Fifty-three (53) SESAs fill out these forms. Form ES–931 is completed by SESAs whenever a Federal civilian employee files a claim (UCFE) for unemployment compensation. Form ES–931A is used to request separation information or the reason for non-pay status when a claimant has a previously established benefit year and is reopening his claim after an intervening period of employment in a federal agency. Form ES–933 is used to obtain information from the Office of Workers' Compensation. Form ES–934 is used to obtain information when missing or clarified data is needed from a Federal agency. This form is used in about 10% of claims. Form ES–935 is used, generally, to overcome delays in the normal claims process caused by delayed returns of completed Form ES–931 by the employing Federal agency. The ES–935 is required to be completed in 100% of all claims. Form ES–936, Request for Verification of Wage and Separation Information Furnished on Form ES–931, is sent to payroll offices to verify a sample of the Forms ES–931 submitted by that office and to provide the Federal agency with an opportunity to request technical assistance concerning the UCFE program. This form is used semi-annually. Form ES–939, Federal Agency Visits Report, is completed by a SESA representative, on each visit to a Federal agency installation in connection with the

UCFE program. The number of times this form is used varies with each State. Form ETA 8–32, Report of UCFE Activities, is used by each SESA every 6-months to verify activities and Federal agency visits.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Federal Employees (UCFE) Handbook.

OMB Number: 1205–0179.

Recordkeeping: DOL does not maintain a system of records for the UCFE program. UCFE records are maintained by the SESAs acting as agents for the Federal Government in the administration of the UCFE program. The DOL procedures permit the SESAs, upon request, to dispose of UCFE records according to State law provisions, 3 years after final action (including appeals or court action) on the claim, or such records may be transferred in less than the 3-year period if micro photographed in accordance with appropriate micro photography standards.

Affected Public: State governments (State employment security agencies) and Federal Government agencies.

Cite/Reference/Form/etc.: Forms ES–931, ES–931A, ES–933, ES–934, ES–935, ES–936, ES–939, and ETA 8–32.

Total Respondents: 78,000.

Frequency: As needed.

Total Responses: 209,521.

Average Time per Response: .05 min.

Estimated Total Burden Hours: 215.78 hrs.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
ES–931	78,000	1	78,000	.05 min.	<3,900 min> 65 hrs.
ES–931A	19,500	1	19,500	.05	<975 min> or 16.25 hrs.
ES–935	78,00	1	78,000	.08	<6,240 min> or 104 hrs.
ES–933	3,760	1	1,560	.05	<376 min> 3.13 hrs.
ES–934	20,680	1	20,680	.05	<1,034 min> 17.23 hrs.
ES–936	9,400	1	9,400	.05	<470 min> or 7.83 hrs.
ES–939	75	1	75	1.75	<131.25 min> or 2.2 hrs.
ETA 8–32	53	2	106	.08 min.	<8.48 min> or .14 hrs.
Total			189,721		215.78 hrs.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $65,807.

Comments submitted in response to this comment request 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: September 26, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–25607 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04129]

Imaging Technologies, Inc., Cookeville, TN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 28, 2000, on behalf of workers at Imaging Technologies Inc., Cookeville, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 26th day of September, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–25608 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 29, 2000, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on September 28, 2000 to the following applicants:

Wayne Z. Trivelpiece, Permit No. 2001–011;

John T. Lisle, Permit No. 2001–014;

Thomas W. Yelvington, Permit Nos. 2001–016 and 2001–021;

Jerry L. Mullins, Permit No. 2001–018.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–25493 Filed 10–4–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8778–MLA–2; ASLBP No. 00–775–03–MLA]

Atomic Safety and Licensing Board; Molycorp, Inc.; Site Decommissioning Plan; Notice of Hearing

September 29, 2000.

This proceeding involves a proposed amendment by Molycorp, Inc. to its Source Materials License No. SMB–1393, to authorize a site decommissioning plan (SDP) for the Licensee's former processing facility in Washington, Pennsylvania. The proposal under review (a modification of a previously submitted proposal) represents Part 1 of the SDP. It was submitted to the Nuclear Regulatory Commission on June 30, 1999, and would authorize the decommissioning to unrestricted levels of a portion of the site. (Part 2 of the SDP, covering restricted decommissioning of the remainder of the site, was submitted to the Nuclear Regulatory Commission on August 14, 2000, but an opportunity for hearing has not yet been noticed.)

Notice is hereby given that, by Memorandum and Order dated September 28, 2000, LBP–00–25, 52 NRC , the Presiding Officer has granted the request for a hearing submitted by Canton Township, Pennsylvania, with respect to Part 1 of the SDP. Parties to this proceeding are the Licensee, Molycorp, Inc.; Canton Township, Pennsylvania, Intervenor; and the Staff of the Nuclear Regulatory Commission.

This proceeding will be conducted under the Commission's informal hearing procedures set forth in 10 CFR Part 2, Subpart L. In response to a Notice of Opportunity for Hearing, published at 64 FR 62227 (November 16, 1999), Canton Township submitted a timely hearing request. Administrative Judge Charles Bechhoefer has been designated Presiding Officer and, pursuant to 10 CFR 2.722 and 2.1209, Administrative Judge Richard F. Cole has been appointed as Special Assistant to assist the Presiding Officer in taking evidence and preparing a suitable record for review. 65 FR 3258 (January 20, 2000).

During the course of this proceeding, the Presiding Officer, pursuant to 10 CFR 2.1211(a), will entertain limited appearance statements from any member of the public who is not a party to the proceeding, for the purpose of stating his or her views on the issues involved in this proceeding. Although these statements are not evidence and do not become part of the decisional record, they may assist the Presiding Officer and parties in their consideration of matters at issue in this proceeding. Limited appearance statements should be made in writing. If the Presiding Officer conducts an oral argument or in-person prehearing conference, the Presiding Officer may, at his discretion, hear oral statements from members of the public, at a time and location yet to be determined. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of such statement or request should also be served on the Presiding Officer, T–3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or CXB2@nrc.gov.

Documents related to this proceeding, issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the Commission's Public Document Room (PDR), Room O–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and many public libraries have terminals for public access to the Internet.

Dated: September 29, 2000.

Charles Bechhoefer,

Administrative Judge, Presiding Officer, Rockville, Maryland.

[FR Doc. 00–25492 Filed 10–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 AND 50–301]

Nuclear Management Company, LLC; Point Beach Nuclear Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.60, for Facility Operating License Nos. DPR–24 and DPR–27, issued to the Nuclear Management Company, LLC (the licensee), for operation of the Point Beach Nuclear Plant (PBNP), Units 1 and 2, Facility Operating License Nos. DPR–24 and DPR–27, respectively, located in the town of Two Rivers, Manitowoc County, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of 10 CFR 50.60 to allow the application of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Code Case N–641, for determining the pressure-temperature (P–T) limit curves, the power-operated relief valve setpoint for low temperature overpressure protection (LTOP), and the LTOP effective temperature.

The proposed action is in accordance with the licensee's application for an exemption dated July 14, 2000.

The Need for the Proposed Action

ASME Code Case N–641 is needed to (1) determine stress intensity factors for postulated circumferential defects in circumferential welds, and for postulated axial defects in plates, forgings, and axial welds; (2) use the K_{IC} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, in lieu of the K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–22101, as the lowest bound for fracture toughness; and (3) determine the LTOP system effective temperature on a plant-specific basis consistent with ASME Code, Section XI, Appendix G. Also, ASME Code Case N–641 is needed to revise the method used to determine the RCS P–T limits since continued use of the present curves unnecessarily restricts the P–T operating window. Therefore, application of the code case will relax the LTOP operating window and reduce potential challenges to the reactor coolant system power-operated relief valves.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the reactor pressure vessels at PBNP, Units 1 and 2.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation

exposure. Therefore, there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for PBNP, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on September 22, 2000, the staff consulted with the Wisconsin State official, Ms. S. Jenkins of the Public Service Commission, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 14, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publically available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:\\www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 29th day of September, 2000.

For The Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–25562 Filed 10–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Experts' Meeting on High-Burnup Fuel Behavior Under Postulated Accident Conditions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will hold a meeting to complete the Phenomena Identification and Ranking Tables (PIRTs) for three accidents. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About twenty of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The current PIRT activity is addressing high-burnup fuel behavior for a PWR control rod ejection accident, a BWR failure to scram accident with power oscillations, and a loss of coolant accident for a BWR and a PWR.

DATES: October 26–27, 2000, 8:30 am–5:30 pm.

ADDRESSES: Room T10A1 (TWFN) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at www.nrc.gov/RES/meetings.htm by October 17, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby.

FOR FURTHER INFORMATION CONTACT: Ralph Meyer, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6789.

Dated at Rockville, Maryland, this 29th day of September 2000.

For the Nuclear Regulatory Commission.

John H. Flack,

Acting Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 00–25560 Filed 10–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide 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 NRC'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.

The draft guide, temporarily identified by its task number, DG–8026 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Health Physics Surveys in Uranium Recovery Facilities.'' This guide is being revised to describe health physics surveys that are acceptable to the NRC staff for protecting workers at uranium recovery facilities from radiation and the chemical toxicity of uranium while on the job. Uranium recovery facilities can include uranium mills, in situ leach facilities, ion exchange recovery facilities and certain other types of recovery facilities.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by December 15, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; email *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. J.H. Lusher at (301) 415–7694; e-mail JHL@NRC.GOV.

Although a time limit is given for comments on this draft guide, 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.

Regulatory guides are available for inspection at the Commission's Public Document Room. The PDR's mailing address is USNRC Public Document Room, Washington, DC 20555; email <*pdr@nrc.gov*>. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of September 2000.

For the Nuclear Regulatory Commission.

Clare V. Kasputys,

Deputy Director, Program Management, Policy Development and Analysis Staff Office of Nuclear Regulatory Research.

[FR Doc. 00–25561 Filed 10–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide 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 NRC'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.

The draft guide, temporarily identified by its task number, DG–8027 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Information Relevant to Ensuring that Occupational Radiation Exposures at Uranium Recovery Facilities Will Be As Low As Is Reasonably Achievable.'' This guide is being revised to provide guidance on design criteria and administrative practices that are acceptable to the NRC staff for maintaining occupational exposures as low as is reasonably achievable in uranium recovery facilities.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by December 15, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; email *CAG@NRC.GOV.* For information about the draft guide and the related documents, contact Mr. J. H. Lusher at (301) 415–7694; email JHL@NRC.GOV.

Although a time limit is given for comments on this draft guide, 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.

Regulatory guides are available for inspection at the Commission's Public Document Room. The PDR's mailing address is USNRC Public Document Room, Washington, DC 20555; email <*pdr@nrc.gov*>. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of September 2000.

For the Nuclear Regulatory Commission.

Clare V. Kasputys,

Deputy Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 00–25563 Filed 10–4–00; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24671]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 29, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail.

Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Strategist Income Fund, Inc. [File No. 811–7305]

Summary: Applicant, whose three series are feeder funds in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant's series transferred their assets to the following corresponding funds: AXP Federal Income Fund, Inc., AXP Extra Income Fund, Inc., and AXP Selective Fund, Inc., based on net asset value. Expenses of $14,460 incurred in

connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master funds.

Filing Date: The application was filed on August 17, 2000.

Applicant's Address: 200 AXP Financial Center, Minneapolis, Minnesota 55474.

Strategist Growth Fund, Inc. [File No. 811–7401]

Summary: Applicant, whose three series are feeder funds in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant's series transferred their assets to the following corresponding funds: AXP Growth Series, Inc. and AXP New Dimensions Fund, Inc., based on net asset value. Expenses of $14,460 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master funds.

Filing Date: The application was filed on August 17, 2000.

Applicant's Address: 200 AXP Financial Center, Minneapolis, Minnesota 55474.

Strategist Growth and Income Fund, Inc. [File No. 811–7403]

Summary: Applicant, whose four series are feeder funds in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant's series transferred their assets to the following corresponding funds: AXP Investment Series, Inc., AXP Stock Fund, Inc., and AXP Managed Series, Inc., based on net asset value. Expenses of $19,280 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master funds.

Filing Date: The application was filed on August 17, 2000.

Applicant's Address: 200 AXP Financial Center, Minneapolis, Minnesota 55474.

Strategist World Fund, Inc. [File No. 811–7405]

Summary: Applicant, whose four series are feeder funds in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant's series transferred their assets to corresponding series of AXP Global Series, Inc., based on net asset value. Expenses of $19,280 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master funds.

Filing Date: The application was filed on August 17, 2000.

Applicant's Address: 200 AXP Financial Center, Minneapolis, Minnesota 55474.

Strategist Tax-Free Income Fund, Inc. [File No. 811–7407]

Summary: Applicant, a feeder fund in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant transferred its assets to AXP High Yield Tax-Exempt Fund, Inc., based on net asset value. Expenses of $4,820 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master fund.

Filing Date: The application was filed on August 17, 2000.

Applicant's Address: 200 AXP Financial Center, Minneapolis, Minnesota 55474.

The Russia Growth Fund, Inc. [File No. 811–8456]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Date: The application was filed on July 19, 2000, and amended on September 26, 2000.

Applicant's Address: Fleming International Asset Management Ltd., 25 Coptall Avenue, London EC2R 7DR, England.

Municipal Fund for Temporary Investment [File No. 811–2919]; Municipal Fund for California Investors, Inc. [File No. 811–3574]; and Municipal Fund for New York Investors, Inc. [File No. 811–3678]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On February 10, 1999, each applicant transferred its assets to Provident Institutional Funds based on net asset value. Applicants incurred no expenses in connection with the reorganizations.

Filing Dates: The applications were filed on August 4, 2000, and amended on September 22, 2000.

Applicants' Address: 400 Bellevue Parkway, Wilmington, Delaware 19809.

Floating Rate Portfolio [File No. 811–7969]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $10,730 incurred in connection with the liquidation were paid by AIM Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on September 14, 2000.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

GT Global Floating Rate Fund, Inc. (d/b/a AIM Floating Rate Fund) [File No. 811–7957]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 2000, applicant transferred its assets to AIM Floating Rate Fund based on net asset value. Applicant paid $55,355 in expenses incurred in connection with the reorganization, and applicant's investment adviser, AIM Advisors, Inc., paid the remaining $198,813.

Filing Date: The application was filed on September 14, 2000.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

Deep Discount Partners Fund Incorporated [File No. 811–9683]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made a public offering of its securities, is not now engaged, or intending to engage, in any business actiities other than those necessary for winding up its affairs.

Filing Date: The application was filed on September 19, 2000.

Applicant's Address: 11 South La Salle Street, Chicago, Illinois 60603.

Excelsior Funds [File No. 811–8132]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 16, 1999, applicant transferred its assets to Excelsior Funds, Inc.'s Money Fund based on net asset value. Expenses of $314,616 incurred in connection with the reorganization were paid by the acquiring fund's investment advisers, United States Trust Company of New York and U.S. Trust Company.

Filing Date: The application was filed on September 11, 2000.

Applicant's Address: 73 Tremont Street, Boston, Massachusetts 02108–3913.

Marketwatch Funds [File No. 811–6696]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 1998, applicant transferred its assets to

The Wachovia Funds and The Wachovia Municipal Funds based on net asset value. All expenses incurred in connection with the reorganization were paid by Wachovia Bank, N.A., applicant's investment adviser.

Filing Date: The application was filed on September 14, 2000.

Applicant's Address: 3435 Stelzer Road, Columbus, Ohio 43219–3035.

Dreyfus New York Insured Tax Exempt Bond Fund [File No. 811–4884]; and Dreyfus Asset Allocation Fund, Inc. [File No. 811–7710]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 1999, Dreyfus New York Insured Tax Exempt Bond Fund transferred its assets to General New York Municipal Bond Fund, Inc., based on net asset value. On the same date, Dreyfus Asset Allocation Fund, Inc. transferred its assets to Dreyfus LifeTime Portfolios, Inc.—Growth and Income Portfolio, based on net asset value. Expenses of $15,000 and $35,000, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Date: The applications were filed on August 24, 2000.

Applicant's Address: 200 Park Avenue, New York, New York 10166.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–25590 Filed 10–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43371; File No. SR–Amex–00–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Its Rules To Require Companies to Publicly Disclose Receipt of a Delisting Notice

September 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its rules to require companies to publicly disclose receipt of a written delisting notice frame the Exchange. On September 26, 2000, the Amex submitted Amendment No. 1 to the proposal to make certain technical modifications.[3] The proposal, as amended, is 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

It is currently the policy of the Exchange whenever delivering a delisting notice to a company whose securities trade on the Exchange to require the company to disclose the receipt of such delisting notice in a public announcement. The Exchange proposes to codify the requirements of this policy in its rules. Below is the text of the proposed rule change. Proposed new language appears in italics; proposed deletions appear in brackets.

* * * * *

Sec. 401. OUTLINE OF EXCHANGE DISCLOSURE POLICIES

The Exchange considers that the conduct of a fair and orderly market requires every listed company to make available to the public information necessary for informed investing and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the Exchange has adopted the following [six]*seven* specific policies concerning disclosure, each of which is more fully discussed (in a Question and Answer format) in § 402:

(a)–(f) No change.

(g) Receipt of Written Delisting Notice—A company is required to publicly disclose that it has received a written notice indicating that the Exchange has determined to remove a company's securities from listing (or unlisted trading) as a result of non-compliance with the continued listing requirements. (See § 1010).

Sec. 402. EXPLANATION OF EXCHANGE DISCLOSURE POLICIES

(a)–(f) No change.

(g) Receipt of Written Delisting Notice.

Q. What kinds of information should be included in the public announcement?

A. The public announcement must indicate that the Exchange has determined to remove the company's securities from listing (or unlisted trading) and the reason(s) for the determination. In order to assist the company in the preparation of the public announcement, Exchange staff will provide the company with the Section(s) upon which its determination was based and a template for disclosure.

Q. When must the public announcement be made?

A. The public announcement must be made as promptly as possible, but no more than seven calendar days following the company's receipt of the written notice from the Exchange. The Exchange notes that companies should not construe the seven calendar day time frame as a safe harbor for disclosure.

Q. What steps must be taken before the public announcement is made?

A. The public announcement must be provided to Amex's StockWatch Department at (212) 306–8383 (phone), (212) 306–1488 (facsimile) and Listing Qualifications Department at (212) 858–5267 (phone), (212) 858–4780 (facsimile) prior to public dissemination.

Q. What action may the Exchange take if a company fails to make a public announcement indicating that the Exchange has determined to remove the company's securities from listing (or unlisted trading)?

A. Failure by a company to make the required public announcement will result in the institution of a trading halt in the company's securities until the announcement is made, even if the company appeals the determination as provided for under Section 1010. If the company fails to make the announcement by the time that the Adjudicatory Council issues its decision, that decision will also determine whether to delist the company's securities for failure to make the public announcement.

Q. Does Section 1010(b) relieve the company of its disclosure obligations under the federal securities laws?

A. No. Section 1010(b) does not relieve the company of its obligation to make a materiality assessment of the pending delisting action as it may relate to the disclosure requirements of the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. The Exchange suggests that the company consult with corporate/securities counsel in assessing its disclosure

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Ryan, Senior Vice President, Chief of Staff, and Senior Legal Office, Amex, to Alton Harvey, Office Chief, Division of Market Regulation, Commission, dated September 20, 2000.

obligations under the federal securities laws.

* * * * *

Sec. 1010. DELISTING PROCEDURES

Whenever the Exchange determines that it is appropriate to consider removing a security from listing (or from unlisted trading) for other than routine reasons (such as redemptions, maturities, etc.), it will follow, insofar as practicable, the following procedures:

(a) No change.

(b) If, after such conference, the Exchange determines that the security should be removed, it will notify the company in writing, indicating the basis for such decision and the specific delisting policies and guidelines under which action will be taken. Such notice will also inform the company that it may appeal to the Board of Governors of the Exchange, or such committee or committees as the Board may authorize, and request a hearing. *A company shall make a public announcement through the news media that it has received such notice, including the specific policies and guidelines upon which the determination was based. Prior to the release of the public announcement, the company shall provide such disclosure to Amex's StockWatch and Listing Qualifications Departments.* The public announcement shall be made as promptly as possible, but not more than seven calendar days following receipt of the written notice from the Exchange.*

(c)–(h) 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

**Notification may be provided to Amex's StockWatch Department at (212) 306–8383 (telephone), (212) 306–1488 (facsimile), and Listing Qualifications Department at (212) 858–5267 (telephone), (212) 858–4780 (facsimile).*

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange presently has a policy of requiring any company whose securities are listed on the Exchange (or trade on the Exchange pursuant to unlisted trading privileges) to publicly disclose its receipt from the Exchange of a written delisting notice for failure to comply with the Exchange's continued listing guidelines. The purpose of the proposed rule change is to codify this policy in order to protect present and potential investors in the securities of such a company.

In order to provide investors with the greatest protection possible, the Exchange believes that a company's public announcement of pending delisting should not only disclose the receipt of a written notice from the Exchange, but also indicate upon which section(s) of the Amex Company Guide the determination to delist has been based. The Exchange believes that requiring companies to disclose to investors which specific listing guideline(s) a company has failed to meet will better enable investors to make informed decisions regarding the advisability of making or maintaining investments in the securities of such company. The Exchange additionally proposes that a company be required to make public its announcement regarding the pending delisting as promptly as possible, but not more than seven calendar days following its receipt of the written delisting notice from the Exchange. The Amex believes that the proposed seven-day time frame is consistent with its current policy and that such time frame would provide the subject company with sufficient opportunity to prepare its public announcement and also ensure that investors receive the information in a timely manner. If a company fails to disclose the receipt of a written delisting notice under the proposed requirement, trading of its securities shall be halted until the announcement has been made, even if the company appeals the underlying delisting determination as provided for under Section 1010. In this regard, the Exchange proposes that, if the company has failed to make the required announcement before the Adjudicatory Council issues its decision with regard to the company's appeal, such decision by the Adjudicatory Council whether to delist the company's securities may also be based on the company's failure to make the public announcement.

2. Statutory Basis

The Exchange believes that the proposed rule change, whose purpose is to ensure that investors be notified when the Exchange has determined to delist a company's securities for non-compliance with the continued listing guidelines, is consistent with the provisions of Section 6(b)(5) of the Act[4] which requires that an exchange have rules that are, in general, designed to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to 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 findingse 450 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

[4] 15 U.S.C. 78f(b)(5).

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 number SR–Amex–00–43 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43368; File No. SR–NASD–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 9 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities

September 27, 2000.

On September 20, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Continue to suspend the current PMM standards until June 30, 2001; and (2) extend the NASD's Short Sale Rule pilot until June 30, 2001 (''Amendment No. 9'').[3]

Amendment No. 9 to the proposed rule change, SR–NASD–96–28, is described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice and order to solicit comments on Amendment No. 9 from interested persons and to approve the amendment on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In the current amendment, Nasdaq is proposing to extend the Short Sale Rule pilot and the suspension of the existing PMM standards from September 30, 2000 until June 30, 2001. The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

NASD Rule 3350

(a)–(k) No Changes.

(l) This Rule shall be in effect until [September 30, 2000] *June 30, 2001.*

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 NASD 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 NASD 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) Background on the NASD's Short Sale Rule

Section 10(a) of the Exchange Act[4] gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. In 1992, Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by Rule 10a–1 of the Exchange Act.[5] On June 29, 1994, the Commission approved the NASD's short sale rule, Rule 3350 (''Short Sale Rule''), applicable to short sales[6] in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[7] The NASD and the Commission have extended NASD Rule 3350 numerous times, most recently, until September 30, 2000.[8]

Nasdaq's short-sale rule employs a ''bid'' test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. Nasdaq's short sale rule prohibits short-sales at or below the inside bid when the current inside bid is below the previous inside bid. Nasdaq calculates the inside bid from all market makers in the security (including bids on exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an ''up-bid'' or a ''down-bid.'' To effect a ''legal'' short-sale on a down-bid, the short-sale must be executed at a price at least 1/16th above the current inside bid. The rule is in effect from 9:30 a.m. E.T. until 4 p.m. E.T. each trading day.

To reduce the compliance burdens on its members, Nasdaq's short sale rule also incorporates seven exemptions contained in Rule 10a–1 under the Exchange Act that are relevant to trading on Nasdaq.[9] In addition, in an effort to not constrain the legitimate hedging needs of options market markers, the NASD's short sale rule contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers.

(2) Background on the NASD's Primary Market Maker Standards

To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is involved,

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission dated September 20, 2000. The current suspension and extension would expire on September 30, 2000. *See* Securities Exchange Act Release No. 42219 (December 9, 1999), 64 FR 70753 (December 17, 1999).

[4] 15 U.S.C. 78j(a).

[5] 17 CFR 240.10a–1.

[6] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a ''short sale'' contained in Rule 3b–3 of the Exchange Act, which is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[7] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (''Short Sale Rule Approval Order'').

[8] *See supra,* note 3.

[9] *See* NASD Rule 3350(c)(2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security, and that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Short Sale Rule, notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that SEC staff interpretations to Rule 10a–1 under the Exchange Act dealing with the liquidation of index arbitrage positions and an ''international equalizing exemptions'' are equally applicable to the NASD's short sale rule. *See* NASD Rule 3350(f).

NASD Rule 3350(c)(1) provides an exemption for ''qualified'' Nasdaq market makers) *i.e.,* market makers that meet the PMM standards). Presently, NASD Rule 4612 provides that a member registered as a Nasdaq market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards.

Since NASD Rule 3350 has been in effect, there have been two methods used to determine whether a market maker is eligible for the PMM exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers that maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from Rule 3350 for short sales in that security, provided the short sales were made in connection with bona fide market making activity (''the 20-day'' test).[10] From February 1, 1996 until the February 14, 1997, the ''20-day'' test was replaced with a four-part quantitative test known as the PMM standards.[11]

Beginning on February 14, 1997, the PMM standards were suspended for all NNM securities due to the impact of the SEC's Order Handling Rules, and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[12] For example, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the ''102% Average Spread Standard.'' Since that time all market makers have been designated as PMMs.

In March 1998, Nasdaq proposed PMM standards that received substantially negative comments.[13] In light of those comments, Nasdaq staff convened an advisory subcommittee to develop new PMM standards (''Subcommittee'') in August 1998. The Subcommittee met nine times and formulated new PMM standards. On December 9, 1998, the NASD/Nasdaq staff met with the Commission staff and the Subcommittee to receive informal feedback on the new PMM standards. At the conclusion of the meeting, Commission staff noted the progress made by the Subcommittee and requested time to digest and more carefully analyze the proposed new PMM standards.

On July 29, 1999, members of the Nasdaq staff conducted a conference call with members of the Commission staff to receive feedback on the PMM standards that Nasdaq presented at the December 9, 1998 meeting. During the meeting, the Commission staff suggested that Nasdaq modify several of the proposed standards and analyze the impact of those modifications on the primary market maker determination. On September 27, 1999, Nasdaq reported that the NASD Economic Research staff had analyzed data based on the Commission's suggested revisions, and concluded that the Commission's modified standards produced unfavorable results.[14]

The Commission notes that it has separately proposed amendments to Rule 10a–1 under the Exchange Act, which applies to exchanges. Nasdaq has announced that it is considering registering as an exchange.

(3) Current Amendment

Nasdaq believes that it is in the best interest of investors to extend the short sale regulation pilot program. In the Short Sale Approval Order, the Commission stated that ''recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.'' [15] In addition, the Commission stated that it ''believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure.'' [16] Nasdaq believes the benefits that the Commission recognized when it first approved NASD Rule 3350 apply to equal force today.

Similarly, Nasdaq believes the concerns that caused the Commission to waive the PMM standards in February 1997 continue to exist today. Nasdaq and the Commission agreed to waive the PMM standards to avoid frustrating operation of the Commission's Order Handling Rules, in light of market factors that were not apparent at the time the Order Handling Rules were implemented.[17] Nasdaq has worked to address those concerns to the Commission's satisfaction, including convening a special subcommittee on PMM issues, proposing two different sets of PMM standards, and being continuously available and responsive to Commission staff to discuss this issue. Despite these efforts, the Commission and Nasdaq have been unable to establish satisfactory PMM standards. Nasdaq believes that re-

[10] *See* Short Sale Rule Approval Order, *Supra* note 7.

[11] *Id.* Under the PMM standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its ''proportionate'' volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.*, the ''P'' next to its market maker identification was removed). Market makers could re-qualify for designation as a PMM by satisfying the threshold standards in the next review period.

[12] *See* Securities Exchange Act Release Nos. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) (order granting temporary accelerated approval of suspension of PMM standards until October 1, 1997; File No. SR–NASD–97–07); 39198 (October 3, 1997), 62 FR 53365 (October 14, 1997) (order granting temporary accelerated approval of continuing suspension until April 1, 1998; File No. SR–NASD–97–73); 39819 (March 30, 1998), 63 FR 16841 (April 6, 1998) (order granting temporary accelerated approval of continuing suspension until May 1, 1998; File No. SR–NASD–98–26); 39936 (April 30, 1998), 63 FR 25253 (May 7, 1998) (order granting temporary accelerated approval of continuing suspension until July 1, 1998; Amendment No. 3 to File No. SR–NASD–98–26); 40140 (June 26, 1998), 63 FR 36464 (July 6, 1998) (order granting temporary accelerated approval of continuing suspension until October 1, 1998; Amendment No. 4 to File No. SR–NASD–98–26); 40485 (September 25, 1998), 63 FR 52780 (October 1, 1998) (order granting temporary accelerated approval of continuing suspension until March 31, 1999; Amendment No. 5 to File No. SR–NASD–98–26); 41195 (March 19, 1999), 64 FR 14778 (March 26, 1999) (order granting temporary accelerated approval of continuing suspension until June 30, 1999; Amendment No. 6 to File No. SR–NASD–98–26); 41568 (June 28, 1999), 64 FR 36416 (July 6, 1999) (order granting temporary accelerated approval of continuing suspension until December 31, 1999; Amendment No. 7 to File No. SR–NASD–98–26); 42219 (December 9, 1999), 64 FR 70753 (December 17, 1999) (order granting temporary accelerated approval of continuing suspension until September 30, 2000; Amendment No. 8 to File No. SR–NASD–98–26).

[13] *See* Securities Exchange Act Release 39819 (March 30, 1998), 63 FR 16841 (April 6, 1998).

[14] *See* letter from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated September 27, 1999.

[15] *See* Short Sale Rule Approval Order, *supra* note 8.

[16] *Id.*

[17] Nasdaq stated at the time that it believed the implementation of the Order Handling Rules created the following three issues: (1) Many market makers voluntarily chose to display customer limit orders in their quotes although the Limit Order Display Rule does not yet require it; (2) SOES decrementation for all Nasdaq stocks significantly affected market makers' ability to meet several of the primary market maker standards; and (3) with the inability to meet the existing criteria for a larger number of securities, a market maker may be prevented from registering as a primary market maker in an initial public offering because it fails to meet the 80% primary market maker test contained in Rule 4612(g)(2)(B). *See* Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997).

instating the PMM standards set forth in NASD Rule 4612 would be extremely disruptive to the market and harmful to investors.

Nasdaq also notes that the Commission has signaled to the securities industry that it is considering fundamental changes to Rule 10a–1 of the Exchange Act that could impact the manner in which Nasdaq and the other markets regulate short sales. On October 20, 1999, the Commission issued a Concept Release on Short Sales in which it sought comment on, among other things, revising the definition of short sale, extending short sale regulation to non-exchange listed securities, and eliminating short sale regulation altogether.[18] Nasdaq believes it would be inappropriate for Nasdaq to dramatically alter its regulation of short sales while the Commission is considering fundamentally changing Rule 10a–1 of the Exchange Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 9, including whether the proposed Amendment 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 No. SR–NASD–98–26 and should be submitted by October 26, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of the Amendment

After careful consideration, the Commission finds, for the reasons set forth below, that the extension of the Short Sale Rule pilot and the suspension of the existing PMM standards until June 30, 2001 is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 15A(b)(6)[19] of the Act, which requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade.

The Commission finds that continuation of the Short Sale Rule pilot and the continued suspension of the current PMM standards will maintain the status quo while the Commission considering amending Rule 10a–1 under the Exchange Act.

The Commission finds good cause for approving the extension of the Short Sale Rule pilot and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register.** It could be disruptive to the Nasdaq market and confusing to market participants to reintroduce the previous PMM standards while new PMM standards are being developed, and while the Commission is considering amending Rule 10a–1 under the Exchange Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[20] that Amendment No. 9 to the proposed rule change, SR–NASD–98–26, which extends the NASD Short Sale Rule pilot and the suspension of the current PMM standards to June 30, 2001, is approved on an accelerated basis.[21]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

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[18] *See* Securities Exchange Act Release No. 42037 (October 20, 1999), 64 FR 57996 (October 28, 1999).

[19] 15 U.S.C. 78o–3(b)(6).

[20] 15 U.S.C. 78s(b)(2).

[21] In approving Amendment No. 9, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43383; File No. SR–NASD–00–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Require an Issuer To Publicly Disclose the Receipt of a Delisting Notice for Failure To Comply With the Continued Listing Standards of The Nasdaq Stock Market

September 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. 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 proposes to require issuers to publicly disclose the receipt of a delisting notice for failure to comply with Nasdaq's continued listing requirements. Below is the text of the proposed rule change. Proposed new language is in italics. Proposed deletions are in brackets.

Rule 4120. Trading Halts

(a) Authority to Initiate Trading Halts.

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq may, pursuant to the procedures set forth in paragraph (b):

(1)–(4) No change.

(5) Halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

(i) No change;

(ii) The issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300 , [and] 4400*, and 4800* Series; or

(iii) No change.

(b) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

IM–4120–2. Disclosure of Written Notice of Staff Determination

Rule 4815(b) requires that an issuer make a public announcement through the news medial disclosing the receipt of a Written Notice of Staff Determination (''Staff Determination'') to prohibit continued listing of the issuer's securities under Rule 4815(a) as a result of the issuer's failure to comply with the continued listing requirements, and the Rule(s) upon which the Staff Determination was based. Such public announcement shall be made as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. If the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule 4820. If the issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

Rule 4815(b) does not relieve an issuer of its obligation to make a materially assessment of the pending delisting action as it may relate to the disclosure requirements of the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the issuer consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

(Existing IM–4120–2 and IM–4120–3 renumbered as IM–4120–3 and IM–4120–4)

Rule 4815. Written Notice of Staff Determination

(a) If the Listing Qualifications Department or the Listing Investigations Department reaches a determination (the ''Staff Determination'') to limit or prohibit the initial or continued listing of an issuer's securities, it will notify the issuer, describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer will be provided an opportunity for a hearing under this Rule 4800 Series.

(b) An issuer that receives a Staff Determination to prohibit continued listing of the issuer's securities under Rule 4815(a) shall make a public announcement through the news media disclosing the receipt of the Staff Determination, including the Rule(s) upon which the Staff Determination was based. Prior to the release of the public announcement, an issuer shall provide such disclosure to Nasdaq's Stock Watch and Listing Qualifications Departments. The public announcement shall be made as promptly as possible, but not more than seven calendar days following receipt of the Staff Determination.*

** Notification may be provided to the StockWatch section of Nasdaq's MarketWatch Department at 1–800–537–3929 or (301) 590–6411 (telephone), (301) 590–6482 (facsimile) and to the Hearings Department of Nasdaq's Listing Qualifications Department at (301) 978–8079 (telephone), (301) 978–8080 (facsimile).*

* * * * *

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

1. Purpose

The purpose of the proposed rule change is to require a Nasdaq issuer to publicly disclose the receipt of a written delisting notice for failure to comply with the continued listing requirements (''Staff Determination''). Since Nasdaq does not currently have such a requirement, some Nasdaq issuers publicly disclose the receipt of a Staff Determination while other issuers do not make the disclosure. Nasdaq believes that requiring public disclosure of the receipt of a Staff Determination serves to protect present and potential investors in an issuer's securities.

In order to provide investors with the greatest protection possible, Nasdaq believes that the public announcement should not only disclose the receipt of a Staff Determination, but also indicate the Marketplace Rule(s) upon which the Staff Determination was based. By furnishing investors with the specific continued listing requirement(s) that an issuer has failed to meet, Nasdaq believes that investors will be able to make a more informed decision regarding their investment (or potential investment) in an issuer's securities. Furthermore, Nasdaq proposes that an issuer be required to make the public announcement as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. Nasdaq believes that this time frame will provide an issuer with a sufficient opportunity to prepare a public announcement while also ensuring that investors receive the information in a timely manner. If an issuer fails to disclose the receipt of a Staff Determination, trading of its securities will be halted until the disclosure is made, even if the issuer appeals the determination to the Listing Qualifications Panel, as provided for under Marketplace Rule 4820. If an issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist an issuer's securities for failure to make the public announcement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] in that the proposal is designed to protect investors and the public interest. As noted above, the proposed rule change is aimed at ensuring that investors are notified that Nasdaq has determined to delist an issuer's securities for non-compliance with the continued listing requirements.

B. Self-Regulatory 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-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[3] 15 U.S.C. 78o–3(b)(6).

publishes its reasons for so finding or (ii) as to which the NASD 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–00–48 and should be submitted by October 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43367; File No. SR–NASD–00–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Recording and Recordkeeping Requirements of Certain Quotation Data

September 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3,2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to add new NASD Rule 6630 to require members to record and maintain their quotations displayed in certain automated, inter-dealer quotation systems, such as the Electronic Pink Sheets (''EPS''), and to report such data to NASD Regulation upon request.

Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

* * * * *

6600. [REPORTING TRANSACTIONS IN] OVER-THE-COUNTER EQUITY SECURITIES

This Rule 660 Series sets forth *recording and reporting requirements for certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and* the trade reporting requirements applicable to members' transactions in equity securities for which real-time trade reporting is not otherwise required (hereinafter referred to as ''OTC Equity Securities''). Members shall utilize the Automated Confirmation Transaction Service (ACT) for trade reporting in OTC Equity Securities. Rules 6610 and 6620 No Change.

Rule 6630. Recording of Quotation Information

(a) Quotation Recording Requirements

(1) Subject to the terms and conditions contained herein, each OTC Market Maker that displays priced quotations (bid and/or offer) or unpriced indications of interest in OTC Equity Securities in an inter-dealer quotation system that permits quotation updates on a real-time basis shall record each item of information described in paragraph (b) of this Rule. This quote activity record must reflect all changes in an OTC Market Maker's priced quotation or quotation size displayed or unpriced indication of interest, and the time any such change was effected.

(2) Members shall record each item of information required to be recorded under this Rule in such form as is prescribed by the Association from time to time.

(3) Maintaining and Preserving Records

(A) Each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(a).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on ''micrographic media'' as defined in SEC Rule 17a–4(f)(1)(i) or by means of ''electronic storage media'' as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and may be maintained and preserved for the required time in that form.

(b) Information to be Recorded

The quotation activity record required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every priced quotation (bid and/or offer) or unpriced indication of interest displayed by the member during the trading day:

(1) Submitting firm;

(2) Inter-dealer quotation system or medium;

(3) Trade date;

(4) Time quotation displayed (expressed in hours, minutes and seconds);

(5) Security name and symbol;

(6) Bid and bid quotation size (if applicable);

(7) Offer and offer quotation size (if applicable);

(8) Prevailing Inside Bid; and

(9) Prevailing Inside Offer

If no updates were entered to an OTC Market Maker's quotation or quotation size for any given trading day, the member must record the information in subparagraphs (b)(1) through (7).

(c) Quotations Not Required To Be Recorded

The recording requirements contained in paragraphs (a) and (b) of this Rule shall not apply to quotations of OTC Equity Securities that are displayed on an inter-dealer quotation system that is:

(1) qualified pursuant to Section 17B of the Act; or

(2) operated by a member of the Association.

(d) Reporting Requirements

(1) General Requirement

Members shall report information required to be recorded under this Rule to the Association upon its request.

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(2) Method of Transmitting Data

Members shall transmit this information in such form prescribed by the Association.

(e) Reporting Agent Agreements

(1) ''Reporting Agent'' shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.

(2) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(3) All written documents evidencing an agreement described in paragraph (e)(2) shall be maintained by each party to the agreement.

(4) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph. If a member knows or has reason to believe that its Reporting Agent is not complying with the requirements of this Rule, the member must immediately withdraw its quotations or unpriced indications of interest until such time that the member is satisfied that the quotation data is being properly maintained and reported.

* * * * *

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B and C, below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In September 1999, EPS, which is operated by the Pink Sheets LLC (''Pink Sheets'') began displaying real-time, on-line stock quotations for approximately 5,000 securities. Some NASD members may now enter quotations in the EPS, which are displayed over the Internet at the EPS website on a real-time basis. Prior to the availability of EPS, the ''pink sheets'' consisted of weekly lists of quotes printed in hard copy by Pink Sheets. Pink Sheets updated these non-binding quotations by means of a daily facsimile to subscribers. Market participants could learn of changes to intra-day quotations only by telephone or similar means of communication to market makers in the security.

Because the EPS now displays quotations on a real-time basis, NASD Regulation staff requires access to this quotation data to surveil adequately for member compliance with applicable rules and regulations and, when necessary, to reconstruct market activity. For example, member activities in the EPS are subject to NASD Rule 3320, ''Offers at Stated Prices,'' which requires that a member's quotations be ''firm,'' *i.e.,* that the member buy or sell at least a normal unit of trading in the quoted stock at its then prevailing quotations, unless clearly designated otherwise. In addition, NASD Rule 6750 provides that every member firm that functions as a market maker in over-the-counter (''OTC'') equity securities on an inter-dealer quotation system that permits quotation updates on a real-time basis must honor those quotations for the minimum size applicable to the market maker's firm bid or ask. Although complete trade execution data would be available through existing trade reporting requirements and systems, NASD Regulation staff does not otherwise have access to historical quotation activity at the time of trades.[3] Therefore, NASD Regulation is proposing that members that participate in an inter-dealer quotation system,[4] such as the EPS, that permits quotation updates on a real-time basis, be required to record and maintain their quotation data.

Under the proposed rule change, members that publish quotations on the EPS (or any similar automated quotation system) would be required to record and maintain priced quotations and unpriced indications of interest data and to report such quotation data to NASD Regulation upon its request. The proposed rule change would require members to record and report the time of the quotation displayed, the bid and bid quotation size, the offer and offer quotation size, and the prevailing inside bid and offer in the inter-dealer quotation system at the time of the quotation. The member would need to record this information for all updates in quotations or quotation size.

The proposed rule change also would require that members preserve such records in accordance with Rule 17a–4(a) under the Act.[5] Specifically, under Rule 17a–4,[6] members would be required to preserve these records for a period of not less than six years, the first two years in an accessible place.

The proposed rule change would not apply to quotations provided on an inter-dealer quotation system that is qualified pursuant to Section 17B of the Act,[7] because by definition, such a system would be sponsored and regulated by a registered securities association or national securities exchange, and quotation information would be available from the system directly. This includes, for example, the OTC Bulletin Board, which is sponsored and regulated by the NASD. In addition, the proposed rule change would not apply to an inter-dealer quotation system that is operated by a member of the NASD because the NASD would obtain quotation data (or in some cases, the display of limit orders) directly from the member that operates the system.

The proposed rule change would permit a member to use a reporting agent to provide the quotation data to NASD Regulation.[8] NASD Regulation believes that most, if not all, members would use the services of a reporting agent, which would likely be the operator of the system, such as Pink Sheets with respect to the EPS. In this regard, NASD Regulation anticipates that the system operator, as reporting agent, would provide NASD Regulation all relevant quotation data directly on a daily or ongoing basis. The member, however, would remain ultimately responsible for compliance with all requirements of the proposed rule, notwithstanding the use of a reporting agent. If a member knows or has reason to believe that it or its reporting agent is not complying with the requirements of the rule, the member would be

[3] While quotation data generally is provided directly by the exchange or system on which it is displayed, in this instance, the operator of the system, Pink Sheets, is not a registered broker-dealer, a member of the NASD, or a national securities exchange.

[4] As defined in Rule 15c2–11(e) of the Act, 17 CFR 240.15c2–11(e), the term inter-dealer quotation system means any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.

[5] 17 CFR 240.17a–4(a).

[6] 17 CFR 240.17a–4.

[7] 15 U.S.C. 78q–2.

[8] Proposed Rule 6630(e) provides that a ''Reporting Agent'' means a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this rule.

required immediately to withdraw its priced quotations or unpriced indications of interest until such time that the member is satisfied that the quotation data is being properly maintained and reported. In this regard, NASD Regulation would expect a member to periodically review or monitor a reporting agent's activities to ensure continued compliance.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will provide it with the quotation data necessary to surveil for and enforce applicable NASD rules and the federal securities laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 00–17 (March 2000) (''Notice''). The comment period expired on April 10, 2000. Six comment letters were received in response to the Notice.[10] Copies of the Notice and the comment letters have been provided to the Commission. Of the six comment letters received, two supported the proposal and four opposed the proposal. The majority of commenters, however, generally supported the concept that regulators should have access to the information sought by the NASD, but differed on the means of obtaining the information.

One commenter opposing the proposal stated that the proposed requirements were overly burdensome for members and recommended that the SEC require that the system operator, not the member, provide the information to the NASD. As an initial matter, NASD Regulation does not have the authority or jurisdiction to require a system operator to provide the necessary information unless the operator is an NASD member. In addition, SEC rules currently do not require the system operators to provide such information to the NASD. Further, although members are ultimately responsible for complying with the proposed rule, the proposed rule permits a member to enter into an agreement with a reporting agent pursuant to which the reporting agent agrees to fulfill the obligations of the member. In this regard, NASD Regulation expects that, in most cases, a system operator will transmit the quotation data to NASD Regulation pursuant to a reporting agent agreement with a member.

Two commenters opposing the proposal recommended, as an alternative, the negotiation of a private contract between NASD Regulation and the system operator. Again, because NASD Regulation does not have jurisdiction over the system operator, NASD Regulation cannot rely on a private contract to obtain the required quotation data, since the system operator could at any time refuse to provide the data to NASD Regulation. Where the system operator is an NASD member, the proposed rule change specifically excludes quotations on such a system from the recording and reporting requirements because NASD Regulation can obtain the quotation data directly from the system operator.

Two commenters viewed as excessively strict the requirement that members immediately withdraw their quotations in the information required by the proposed rule is not furnished to the NASD. In this regard, one commenter suggested that, as an alternative to requiring members to remove quotations entirely, the proposed rule change permit members to maintain unpriced indications of interest. NASD Regulation, however, believes that if quotation information, including unpriced indications of interest, is not properly recorded, NASD Regulation will be unable to ensure that members are in compliance with applicable rules. Therefore, the proposed rule requires members to immediately withdraw their quotations or unpriced indications of interest until such time as the member has obtained assurances that the quotation information is being properly recorded.

In addition, one commenter stated that it is overly burdensome to place on a member firm the responsibility of determining whether its reporting agent is complying with the requirements of the rule. Instead, the commenter suggests that NASD Regulation notify the member in writing that the reporting agent is not complying. However, NASD Regulation believes that the responsibility should lie with the member to determine that, if it chooses to use a reporting agent, the reporting agent is reporting properly on the member's behalf.

Finally, one commenter stated that the proposed rule change lacks objective standards for the form or means of delivery of the data to NASD Regulation. NASD Regulation has specified in the proposed rule change what quotation data and related information must be recorded and reported, and will prescribe the form in which this data will be required to be transmitted to NASD Regulation in a Notice to Members.

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, N.W., Washington, D.C. 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

[9] 15 U.S.C. 78o(b)(6).

[10] Comment letters were received from Thomas Murphy, Bishop, Rosen & Co. (''Bishop Rosen''); Elena Fusillo, Clark Dodge and Company (''Clark Dodge''); Trish Stone-Damen, IRM Distributors, Inc. (''IRM Distributors''); Michael Dorsey, Knight Securities, L.P. (''Knight Securities''); Cromwell Coulson, Pink Sheets (''NQB''); and Cindy Witt, US Bancorp Piper Jaffray (''Piper Jaffray'').

Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–42 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43369; File No. SR–PCX–00–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Pacific Exchange, Inc. Relating to the Conversion to Decimal Pricing

September 27, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Exchange filed amendments to the proposed rule change on August 25, 2000 and September 22, 2000, respectively.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain PCX rules to implement the securities industry's Decimals Implementation Plan submitted to the Commission on July 24, 2000. The text of the proposed rule change is available at the PCX and at the Commission.

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 PCX 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 PCX has prepared summaries, set forth in section 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

On June 8, 2000, the Commission issued an order (''Order'')[7] requiring the national securities exchanges and the National Association of Securities Dealers, Inc. (''Participants'') to act jointly in planning, discussing, developing, and submitting to the Commission a plan that will begin phasing in the implementation of decimal pricing in equity securities and options on or before September 5, 2000 (''Plan''). The Commission directed the Participants to submit the Plan to the Commission by July 24, 2000, and further directed each Participant to file the rule changes necessary to implement the phase-in plan. In compliance with the Order, the Exchange submitted the proposed rule change to implement the Plan.

Equity Trading Rules. The Exchange proposes to amend PCX Rule 7.10(b) to establish a $.01 minimum price variation (''MPV'') for equity securities pricing in decimals, as required by the Plan,[7] and to amend Commentary .01 to Rule 7.10 to clarify that the Exchange is prohibited from changing the MPV for securities pricing in decimals while Plan is in effect.[8] The Exchange is also proposing to amend Rule 7.19(c)(1) to provide that a bid or offer will have price priority over another bid or offer only if its price exceeds the price of the other bid or offer by the MPV. The Exchange is proposing to add commentary .06 to PCX Rule 7.41(b) to clarify that for the purposes of the rule, the term ''closest trading differential'' means the MPV. In addition, the Exchange is proposing to add Commentary .01 to PCX Rule 7.29(a) to clarify that for purposes of the rule, the term ''price improvement'' means an improvement in price by at least the MPV. The Exchange is also proposing to amend Rule 7.66 to conform the rule to recent amendments to the ITS Plan. Finally, the remaining proposed changes add a decimal reference to Rule 7.12(b), Commentary .05, Rule 7.66(b)(8)(i)(A)(1), and Rule 7.79(e) to supplement the existing fractional references.

Options Trading Rules

PCX Rule 6.37(b)(1) currently specifies the maximum bid/ask spread differentials that an options market maker is permitted to create in the course of maintaining a fair and orderly market.[9] The Exchange is proposing to amend this rule to provide the bid/ask spread differentials in decimals. In addition, the Exchange is proposing to amend PCX Rule 6.37(b)(3) and Commentary .10, Rule 6.75, Commentaries .02–.03, Rule 6.80, Commentary .01, Rule 8.102(f), and Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission agreed to waive the 5-day pre-filing notice requirement. The Commission also finds good cause to waive the 30-day pre-operative waiting period. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Letter dated August 24, 2000, from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). Amendment No. 1 clarifies that the Exchange is prohibited from changing the minimum price variation for securities pricing in decimals while the Decimals Implementation Plan submitted to the Commission on July 24, 2000 is in effect. Amendment No. 1 also withdraws proposed amendments to PCX Rule 7.40, governing short sales, and clarifies that the minimum price variation for SPDRs and MidCap SPDRs trading in decimals will be $.01. In addition, Amendment No. 1 makes certain technical corrections to the proposed rule change. *See also* Letter dated September 21, 2000, from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission (''Amendment No. 2''). Amendment No. 2 conforms PCX Rule 7.66 to a recent proposed amendment to the Intermarket Trading System Plan (''ITS Plan'') relating to decimal pricing.

[7] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[7] The Plan provides for MPVs for equities and options of no less than one cent. The Order requires the Participants to submit joint or individual studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Exchange Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

[8] *See* Amendment No. 1, *supra* n.6.

[9] For example, if a market maker's bid price is between $2 and $5, the maximum difference between that bid price and the corresponding offering price will be ⅜ of $1 (*i.e.,* $.40).

6.64, Commentary .03(c)–(d) to replace fractional references with decimal references. The Exchange is also proposing to amend PCX Rule 6.47(a)(2) and (b)(2), governing non-facilitation crosses, to require floor brokers to bid above the highest bid or below the lowest offer by at least the MPV before crossing orders.

Finally, the PCX proposes to adopt new Rule 6.72 to explicitly state and give effect to the minimum price increments for options mandated by the Plan. Thus, to the extent an option class is pricing in decimals, the MPVs would be as follows: For options quoting under $3 a contract, the MPV would be $.05; and for options quoted at $3 a contract or greater, the MPV would be $.10.[10] This rule would replace current Rule 6.72, which requires bids and offers above $3 to be expressed in eighths of the one dollar and bids and offers below $3 to be expressed in sixteenths of one dollar.

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the PCX believes that the proposed rule change is consistent with Section 6(b)(5) [12] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition 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

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,[13] it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The PCX has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date will ensure that the PCX is able to operate in accordance with the terms and conditions of the Plan. For these reasons, the Commission finds good cause to designate that the proposal, as amended, become operative immediately upon filing.[16]

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 PCX. All submissions should refer to the File No. SR–PCX–00–23 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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[10] The Plan contemplates that the options exchanges may wish to consider a pilot program for one-cent minimum price variations for quoting in a limited number of options (''Penny Pilot'') at some point in the implementation process. The Commission expects that, before implementing a Penny Pilot, the options exchanges will carefully coordinate on such issues as the selection and number of options to be included in the pilot to ensure the continued orderly operation of the markets and clearing organizations. In particular, the Commission expects that the options exchanges will consult with the Commission regarding the impact on market-wide capacity. Before implementing a Penny Pilot, each options exchange should also submit appropriate rule filings to the Commission under Section 19(b) of the Exchange Act.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] The Exchange requested the Commission to waive 5 day pre-filing notice requirement and the 30-day operative period.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19–4(f)(6).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43384; File No. SR–PCX–00–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to PACEX Reports for Options Order Flow Providers

September 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2000, the Pacific Exchange, Inc. (''PCX'' 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 PCX. 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 PCX proposes to begin furnishing Pacific Exchange Customer Execution (''PACEX'') Reports to its order flow providers on a daily basis. PACEX Reports are designed to provide objective data on option order executions so that PCX order flow

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

providers can assess the quality of the executions they receive on the PCX. The text of the proposed rule change is available at the principal offices of the PCX.

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 PCX 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 PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of the statments.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is adopting a new procedure to provide PCX order flow providers with objective data so that they can assess the quality of the executions they receive on their option orders at the PCX.[3] This rule filing is intended to provide a description of the data to be furnished and to provide a general summary of the PCX's electronic systems involved in transmitting and executing option orders.

1. Pacific Exchange Customer Execution Reports

The PCX intends to begin furnishing PACEX Reports to its order flow providers on a daily basis. The PACEX Reports will provide objective data on the quality of execution that order flow providers receive at the PCX. Specifically, the Reports will include statistical information on:

- Price Improvement—this shows the number of trades and option contracts receiving improved pricing on the PCX; and
- Turnaround Time—this shows the time it took to execute a given customer's order on the PCX.

PACEX Reports provide data on all option orders routed to the PCX electronically that remain in an electronic environment. This includes all orders sent through the member firm interface and executed automatically via an automatic execution system (''Auto-Ex''), as well as all option orders routed to a floor broker hand-held terminal, executed by open outcry, and reported electronically.

The Exchange will provide PACEX Reports to order flow providers on a daily basis, whether electronically or in ''hard'' copy. Upon request, the Exchange will also send the raw data from the Reports to order flow providers so that they may analyze the data in a manner that suits their own requirements.

a. Price Improvement Statistics. PACEX Reports show the dollar amount by which order flow providers improved upon the PCX's prevailing best bid or offer (''BBO'') in executing their orders at the PCX. Specifically, PACEX Reports provide data on price improvement for each of the following four classifications: (1) Orders executed via Auto-Ex; (2) orders executed by a hand-held terminal; (3) market orders; and (4) marketable limit orders. Within each of these four categories, the PACEX Reports show the percentage of trades that were executed at prices: (1) where the PCX improved the national best bid or offer (''NBBO''); (2) where the PCX set the NBBO; (3) where the PCX matched the NBBO; (4) where the NBBO was set by another market; and (5) where the PCX was the BBO. With regard to category (5), where the PCX was the BBO, the Reports show the amount by which an execution via a hand-held terminal was less favorable than the then-prevailing NBBO. The Reports do not cover orders that were executed during the opening rotation—whether by automated opening rotation or manually—or during a ''fast market,'' as described in PCX Rule 6.28.

PACEX Reports also provide summary information with respect to: (1) Orders executed via Auto-Ex; (2) orders executed by a hand-held terminal; (3) market orders; and (4) marketable limit orders. The Report shows, for each classification, the aggregate dollar amount that the customer saved per contract, the average trade size (in numbers of option contracts), and the average turnaround time during a specific time period.

b. Details on Turnaround Time. Turnaround time shows how quickly orders were executed on the PCX. The Report provides data on turnaround time for each of the following four classifications: (1) Orders executed via Auto-Ex; (2) orders received and reported by a hand-held terminal; (3) market orders; and (4) marketable limit orders. PACEX shows within each of these four categories the percentage of trades that were executed within: (a) 0 to 1 seconds; (b) 1 to 5 seconds; (c) 5 to 15 seconds; (d) 15 to 60 seconds; (e) 1 minute to 3 minutes; (f) 3 to 10 minutes; (g) 10 to 15 minutes; and (h) 15 to 30 minutes.

For each of these eight time frames, PACEX Reports also show the percentage of trades that were executed during the regular session and the percentage of trades that were executed during the opening session, *i.e.,* during the opening rotation, which may include executions during the Automated Opening Rotation or during a manual opening rotation.

2. PCX Electronic Trading System

a. POETS. The Pacific Options Exchange Trading System (''POETS'') is the PCX's automated options trading system, which includes an options routing system, an automatic execution system (''Auto-Ex''), an on-line limit order book system, and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm Interface (''MFI''). Market and marketable limit orders that are sent through the MFI first check the limit order book for an eligible contra side.[4] Any unfilled portion of an inbound order will be executed by Auto-Ex, subject to the maximum Auto-Ex size parameters. Non-marketable limit orders may be directed to the limit order book either electronically or manually, subject to established order type and maximum size parameters. Prior to the opening, market orders may be directed to the limit order book so that they may participate in the Automated Opening Rotation. Orders in the limit order book executed in strict price/time priority sequence.

b. Auto-Ex. Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet the order type and size requirements designated by the Exchange. Orders executed on Auto-Ex receive the PCX's disseminated market price or better. Pursuant to PCX Rule 6.87, Lead Market Makers (''LMMs'') may set Auto-Ex to provide automatic price improvement when the national best bid or offer (''NBBO'') is better than the PCX's BBO by one trading increment. In addition, LMMs may set Auto-Ex to execute inbound orders at the NBBO price regardless of whether it is only one trading increment better than the PCX's

[3] The PCX recently adopted a new fee on market makers' transactions in designated equity option issues. The funds are made available to Lead Market Makers, who may use the funds to pay order flow providers for their options order flow. In publishing the PCX's proposed rule change, the Commission stated its concerns that brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe the customers to obtain the best execution available. *See* Securities Exchange Act Release No. 43290 (Sept. 13, 2000), 65 FR 57213 (Sept. 21, 2000).

[4] The Exchange notes that this procedure has been in effect since the inception of POETS in 1989.

BBO, *i.e.,* orders may be executed at prices that may be multiple trading increments better than the PCX's then-prevailing BBO. Furthermore, LMMs may execute improved prices regardless of whether the NBBO is locked or crossed. Auto-Ex prevents inbound orders from being executed at prices inferior to the NBBO. Pursuant to PCX Rule 6.87, only non-broker-dealer customer orders are eligible to be executed by Auto-Ex. The PCX designates the eligible order size, which may be between 20 and 50 option contracts, on an issue-by-issue basis.

c. Hand-Held Terminals. Member firms may electronically route orders to the PCX via the floor broker hand-held terminal system pursuant to PCX Rule 6.88. The system allows member firms to route their orders directly to POETS, to a member firm booth on the trading floor, or to a floor broker who is operating a hand-held terminal located in a trading crowd (or elsewhere) on the options floor. Accordingly, orders sent through MFI may be transmitted to a floor broker almost instantaneously for immediate representation in the trading crowd. In the event that option prices have changed to make an order immediately executable, the floor broker can submit the order to POETS for automatic execution (subject to the Exchange's order size requirements). The Exchange notes that the Report uses an extreme measurement standard—the NBBO at the time an order reaches the Exchange. Consequently, the Exchange believes that the reporting process may be subject to some positive or negative price movement. This will occur, for example, if there are changes in the price of the underlying security or there are other orders reaching the trading crowd between the time the original order reaches the trading floor and the time it is executed.

d. AOR. Option orders executed at the opening of trading are eligible for execution via the Exchange's Automated Opening Rotation (''AOR''). The AOR permits the Exchange to establish electronically, for eligible option series, a single price opening for executing eligible market and marketable limit orders in the POETS system. Under AOR, various series in an option issue may be opened simultaneously, so that orders in POETS in that issue are executed within seconds. Once the market in an underlying stock has opened, the PCX can open the market in the overlying option almost simultaneously. AOR also allows automated openings when trading in an issue has been halted and then reopened.

The PCX represents that the PACEX Reporting program is designed to provide member firms with greater assurance that they have acted in a manner consistent with the fulfillment of their duty of best execution when they direct orders to the PCX. Accordingly, the Exchange believes that the proposed rule change is consistent with and in furtherance of the objectives of the Act, including specifically Section 6(b)(5) thereof,[5] which requires that the rules of exchanges promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the PCX has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of existing Exchange rules and procedures, it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[6] and Rule 19b–4(f)(1) thereunder.[7] At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–31 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–25597 Filed 10–4–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43376; File No. SR–Phlx–00–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Prohibition on the Entry of Certain Electronically Generated Orders into the Exchange's AUTOM System

September 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (''AUTOM'') and Automatic Execution System (''AUTO–X''), by adopting paragraph (i), which would restrict the entry of certain options orders that are created and communicated electronically, without manual input, into the Exchange's AUTOM system. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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 IV 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 Phlx proposes to adopt new section (i) to its Rule 1080, governing the entry of certain options orders that are created and communicated electronically, without manual input, into AUTOM.[3] Proposed Phlx Rule 1080(i) would provide that members may not enter nor permit or facilitate the entry of orders into AUTOM if those orders are created and communicated electronically without manual input and if such orders are eligible for execution via AUTO–X[4] at the time they are received. To be permitted under the Rule, order entry by public customers or associated persons of members must involve manual input, such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent. The proposed rule states that members are not prohibited from electronically communicating to the Exchange orders manually entered by customers into front-end communications systems, such as Internet gateways and online networks.

The proposed rule clarifies that an order is eligible for execution via AUTO–X if: (1) Its size is equal to or less than the maximum AUTO–X order size for the particular series; (2) the order is marketable at the time it is received; and (3) the order either has no contingency or has a contingency that is accepted for execution by the AUTOM system. As defined in the proposed rule, a marketable order is a market order or a limit order where the specified price to sell is below or at the current bid, or the specified price to buy is above or at the current offer.

The Exchange believes that the proposed rule change will permit specialists and Registered Options Traders (''ROTs'') to compete more effectively with customers who are equipped with electronic systems. The Phlx represents that its business model depends on specialists and ROTs to maintain fair and orderly markets and depends on specialists and market makers for competition and liquidity. Public customer orders on the Phlx are provided with certain benefits pursuant to various rules of the Exchange, including Phlx Rule 1080 (Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X), Phlx Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders), Phlx Rule 1015 (Quotation Guarantees), and Options Floor Procedure Advice A–11 (Responsibility to Make Ten-Up Markets). Allowing electronically generated and communicated customer orders to be routed directly to AUTOM and AUTO–X would give customers with such electronic systems a significant advantage over specialists and ROTs. The Exchange believes that this could undercut its business model, which is dependent on specialists and ROTs for competition and liquidity. The Phlx notes that under the proposed rule change, computer generated orders can still be sent for execution on the Exchange; however, they may not be sent for execution through AUTOM and AUTO–X.

Currently, Phlx member firms and customers who are not located on the trading floor may send option orders to the trading floor in various ways. First, a member firm representative or a customer may telephone an order to a Floor Broker member firm booth on the trading floor. From that point the order may be taken manually to the proper specialist post and trading crowd and represented; alternatively, it may be sent electronically from the Floor Broker booth via the Exchange's Floor Broker Order Entry System. A member firm may also send an order to the Exchange through its interface with AUTOM. Eligible orders sent through AUTOM may be: (1) Placed on the limit order book; (2) automatically executed via AUTO–X; or (3) executed manually by the specialist and the trading crowd.

Under the proposed rule change, electronically generated and communicated orders that are eligible for execution via AUTO–X at the time they are received would be ineligible for routing through AUTOM. These orders could, however, be sent to the trading floor for execution as otherwise described above, *i.e.*, by telephone or through a member firm's proprietary order routing system.

2. Statutory Basis

The Phlx believes that the restriction of the entry of certain options orders that are created and communicated electronically, without manual input, into AUTOM will ensure that Exchange specialists maintain fair and orderly markets and will enable them to continue to provide competition and liquidity in the options markets. The Phlx therefore represents that the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to perfect the mechanisms of a free and open market and a national market system and to protect investors and the public interest.

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 has neither solicited nor received comments on the proposed rule change.

[3] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[4] AUTO–X is the automatic execution feature of the AUTOM system.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).[9]

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of filing. Rule 19b–4(f)(6)(iii),[11] however, permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may become operative immediately upon filing. The immediate effectiveness would allow the Exchange to promptly implement the rule change concurrently with new Chicago Board Options Exchange to promptly implement the rule change concurrently with new Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.8A. CBOE Rule 6.8A restricts the entry of certain options orders that are created and communicated electronically, without manual input, into the CBOE's Order Routing System.[12]

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing for the following reasons. Specifically, the Commission previously approved similar proposals by two other exchanges.[13] The Commission notes that the proposed rule change concerns issues that have previously been the subject of a full comment period pursuant to Section 19(b) of the Act,[14] and the Commission does not believe that the proposed rule change raises any new regulatory issues.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately upon the date of filing, September 15, 2000. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[15]

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–Phlx–00–79 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–25593 Filed 10–4–00; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *Id.*

[10] *Id.*

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (order approving CBOE Rule 6.8A, File No. SR–CBOE–00–01).

[13] *See* Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (order approving CBOE Rule 6.8A, File No. SR–CBOE–00–01) and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (order approving International Stock Exchange LLC Rule 717(f)).

[14] 15 U.S.C. 78s(b).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3427]

Bureau of Educational and Cultural Affairs; Fulbright American Studies Institutes for Foreign University Faculty

NOTICE: Request for Proposals (RFP).

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for four (4) assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(C) may apply to develop and implement one of the following four post-graduate level American Studies programs designed for multinational groups of 18 to 30 experienced foreign university faculty and educators:

1. The Civilization of the United States—An Introduction
2. U.S. Foreign Policy: Foundations and Formulation
3. The U.S. Constitution: Origins, Evolution and Contemporary Issues
4. American Studies for Foreign Secondary School Educators

These programs are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad.

Programs are six weeks in length and will be conducted during the Summer of 2001.

The Bureau is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program theme.

Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and must have a minimum of four years experience in conducting international exchange programs.

Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

Program Information

Overview and Objectives: The ''Fulbright American Studies Institutes'' are intended to offer foreign scholars and teachers whose professional work focuses on the United States the opportunity to deepen their understanding of American institutions and culture. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in universities abroad.

Programs should be six weeks in length and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than two weeks should also be planned and should directly complement the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

All institutes should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institutes should be organized through an integrated series of lectures, readings, seminar discussions, regional travel, site visits, and they should also include some opportunity for limited but well-directed independent research.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of the program's thematic focus and organizing framework, proposals should also be designed to:

A. Provide participants with a survey of contemporary scholarship within the institute's governing academic discipline, delineating the current scholarly debate within the field. In this regard, the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. A variety of scholarly viewpoints should be included;

B. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content when appropriate;

C. Give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Programs should include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

D. Insure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Program Description

1. The Civilization of the United States—An Introduction

This institute is intended for foreign university faculty who are attempting to develop and introduce courses on the United States at their home institutions. Its main purpose is therefore to introduce grantees to the major disciplines that either singly or in combination are likely to constitute an American studies curriculum in a foreign university. Accordingly, the Institute should be designed as a foreign area studies program on the United States. During the four-week residency segment, the program should offer participants a highly selective yet integrated introduction to the major themes—historical, political, literary and cultural—that scholars abroad would want to present to their students in a comprehensive course on U.S. civilization. A variety of teaching methodologies and media should be employed. During the study tour, the group will be expected to visit and consult with faculty from universities with recognized foreign area studies programs in order to explore various models of foreign area studies scholarship and teaching in the United States.

2. U.S. Foreign Policy: Foundations and Formulation

This Institute should examine the domestic institutional foundations—political, social, economic and cultural—of U.S. foreign policy with particular attention to the Post-Cold War era. Principal themes, critical policy debates, and contemporary issues in U.S. foreign policy should be examined in light of the history of U.S. international relations since World War II and within the larger framework of U.S. diplomatic history as a whole. An overarching goal of the program is to illuminate the relationships between U.S. policies and the political, social and economic forces in the United States that make up the domestic institutional context in which such policies are debated, formulated and executed. The program should be structured to give attention to U.S. policy both globally and in particular geographic areas.

3. The U.S. Constitution: Origins, Evolution, and Contemporary Issues

This institute should examine the U.S. Constitution in terms of its origins, its historical evolution and its significance in contemporary American life. The program should explore the Constitution's foundations, examine its fundamental political principles (*e.g.* federalism, republicanism, checks and balances, separation of powers), trace its political evolution over time, and explore current Constitutional issues in the United States in both their present and historical context. Throughout the program, consideration should be given to how the Constitution has served as a defining text through which the central values and institutions of American society have been defined and redefined throughout American history.

4. American Studies for Foreign Secondary School Educators

This Fulbright American Studies Institute should provide a multinational group of up to 30 experienced foreign secondary school educators with a deeper understanding of U.S. society, culture, values and institutions, past and present. The institute should be organized around a central theme or themes in U.S. civilization and should have a strong contemporary component. Through a combination of traditional, multi-disciplinary and interdisciplinary approaches, the strongest proposals will be imaginatively integrated in such a way that the history and evolution of U.S. institutions will illuminate the contemporary political, social, and economic debates in U.S. society, thus

providing insights into the nature of U.S. values, broadly defined. The program's ultimate goal is to promote the development and improvement of courses and teaching about the U.S. at secondary schools and teacher training institutions abroad.

Program Dates: Ideally, the programs should be 44 days in length (including participant arrival and departure days), and should begin in mid to late June, 2001. However, the Bureau is willing to consider other program dates, based on the needs of the host institution.

Participants: As specified in the guidelines in the solicitation package, programs should be designed for groups of either 18 or 30 highly-motivated and experienced foreign university faculty and teacher trainers who are interested in participating in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions. Most participants can be expected to come from educational institutions where the study of the U.S. is relatively well-developed. Thus, while they may not have in-depth knowledge of the particular institute program theme, most will have had some experience in teaching about the United States. Many will have had sustained professional contact with American scholars and American scholarship, and some may have had substantial prior experience studying in the U.S. Participants will be drawn from all regions of the world and will be fluent in English.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. Nominations will be reviewed by the Study of the U.S. Branch. Final selection of grantees will be made by the Fulbright Scholarship Board.

Program Guidelines: While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. The syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines: Based on groups of 18 participants, the total Bureau-funded budget (program and administrative) for programs one, two and three above should be approximately $176,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $53,000. Based on a group of 30 participants, the total Bureau-funded budget (program and administrative) for program four above should be approximately $245,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $56,000. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete institute budget guidelines and formatting instructions.

Announcement Name and Number: All communications with the Bureau concerning this announcement should refer to the following titles and reference numbers:

1. The Civilization of the United States—An Introduction (ECA/A/E/USS–01–01–Dardeli)
2. U.S. Foreign Policy: Foundations and Formulation (ECA/A/E/USS–01–02–Taylor)
3. The U.S. Constitution: Origins, Evolution, and Contemporary Issues (ECA/A/E/USS–01–03–Bate)
4. American Studies for Foreign Secondary School Educators (ECA/A/E/USS–01–04–Emerson)

For Further Information: To request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, Attention: Richard Taylor; Telephone number: (202) 619–4557; Fax number: (202) 619–6790; Internet address: rtaylor@pd.state.gov.

Please specify Senior Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package Via Internet:

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps/. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington D.C. time on Wednesday, January 10, 2001. Faxed documents will NOT be accepted, nor will documents postmarked January 10, 2001 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: (insert appropriate reference number from above, *e.g.* ECA/A/E/USS–00–xx–xxxxxx), Program Management Staff, ECA/EX/PM, Room 336, State Annex 44, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants should also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

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,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process: The Bureau 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. Eligible proposals will then be forwarded to panels of senior Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. Particular weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. *Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. *Support for Diversity:* Substantive support of the bureau's policy on diversity should be demonstrated. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. *Evaluation and Follow-up:* A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Cost Effectiveness:* Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

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.''

Notice: The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFP does not constitute an award commitment on the part of the Government. The Bureau 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, and allocated and committed through internal Bureau procedures.

Dated: September 27, 2000.

Helena Kane Finn,

Prinicpal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 00–25372 Filed 10–4–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3429]

Bureau of Educational and Cultural Affairs Request for Proposals: Future Leaders Exchange (FLEX) Disability Reentry Workshops

ACTION: Request for Proposals.

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the FLEX Disability Reentry Workshops. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals for the conduct of special year-end reentry workshops for students with disabilities participating, respectively, in the 2000/01 and 2001/02 Future Leaders Exchange (FLEX) programs. Approximately 12–15 students will participate each year (a total of 25–30).

All programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Budget Guidelines: Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $55,000. 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. Administrative costs should be kept as low as possible. Cost sharing is encouraged. Allowable costs for the program include the following:

(1) Transportation for participants from their host city/town to workshop site
(2) Daily travel at workshop site location
(3) Room and board during the time of the workshops
(4) Rental of facilities and equipment
(5) Fees for related activities/excursions
(6) Honoraria for speakers/trainers, as appropriate
(7) Necessary reasonable accommodations

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–75.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, phone: 202/619–6299, fax: 202/619–5311, e-mail: <daronson@pd.state.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 Bureau 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, Bureau 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 the Bureau's website at http://exchanges.state.gov/education/rfps.

Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, December 4, 2000. 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 seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–01–75, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

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,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau 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 Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's 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 Bureau'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 organization will meet the program's objectives and plan.

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

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposing organization should demonstrate it has experience with disability programming and international youth exchange, as well as familiarity with the culture of the New Independent States (NIS) of the former Soviet Union.

6. *Track Record:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Multiplier effect/impact:* Proposed programs should describe how workshop participants will be motivated and enabled to reach out to other individuals with disabilities in their home countries.

8. *Follow-on Activities:* Proposals should describe how workshop participants will be provided with knowledge and tools that will prepare them to work in support of disability rights in their home countries.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. 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 a final report after the project has been completed.

10. *Cost-effectiveness/Cost Sharing:* 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. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

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 of the Freedom Support Act.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau 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 Bureau 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 Bureau procedures.

Dated: September 29, 2000.

Helena Kane Finn,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–25650 Filed 10–4–00; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice #: 3413]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy, reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will meet on Friday, October 20, 2000 in Room 600, 301 4th St., SW, Washington, D.C. from 10:30 a.m. to 12:30 p.m.

The Commission will discuss the release of its report on the consolidation of USIA into the State Department and the effectiveness of U.S. public diplomacy in the former Soviet Union.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees. Persons who plan to attend should contact David J. Kramer, Executive Director, at (202) 619–4463.

September 29, 2000.

David J. Kramer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 00–25781 Filed 10–4–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collection. The ICR describes the nature of their information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 30, 2000, (FR 65, page 40716).

DATES: Comments must be submitted on or before November 6, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Office of the Associate Administrator for Commercial Space Standards Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0611.

Forms(s): N/A.

Affected Public: Approximately 300 representatives of the U.S. commercial launch industry and other industry representatives from related industries such as U.S. satellite manufacturers and users, as well as representatives from businesses and associations which have an interest in our business-related concerns with the U.S. commercial launch industry.

Abstract: This survey is being disseminated to collect industry input on the Customer Service standards published and disseminated by the Office of the Associate Administrator for commercial Space Transportation (AST).

Estimated Annual Burden Hours: 300 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden on the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, in including the use of automated collection techniques of other forms of information technology.

Issued in Washington, DC, on September 29, 2000.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 00–25641 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 9, 2000, [FR 65, pages 26871–26872].

DATES: Comments be submitted on or before November 6, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice and Approval of Airport Noise and Access Restrictions.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0563.

Forms(s): None.

Affected Public: Estimated annual count is 8 (Airport Operators, and aircraft operators).

Abstract: The Airport Noise and Capacity Act of 1990 mandates the formulation of a national noise policy. One part of the mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and 3 aircraft. 14 CFR part 161 is the principal means to implement this part of the Act. Respondents are airport operators proposing voluntary agreements and/or mandatory restrictions on Stage 2 and Stage 3 aircraft operations, and aircraft operators that request reevaluation of a restriction.

Estimated Annual Burden Hours: 30,000 annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, in including the use of automated collection techniques of other forms of information technology.

Issued in Washington, DC, on September 27, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–25645 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PRE–2000–55]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 6, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Docket Management Facility, U.S. Department of Transportation, Docket No. FAA–2000–8016, 400 Seventh Street, SW., Nassif Building, Room Plaza 401, Washington, DC 20590.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Plaza 401, Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Washington, DC 20590; telephone 1–800–647–5527.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to § 11.85 and 11.91 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on October 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

docket No.: FAA–20000–8016 (Old Docket Number 30040)

Petitioner: Jerry L. Adams, et al

Section of the FAR Affected: 14 CFR 121.383(c)

Description of Relief Sought: To permit 69 airline pilots seeking exemptions from the age 60 rule, to serve as pilots in air carrier operations after their sixtieth birthdays, subject to appropriate periodic proficiency and fitness requirements, and based on the recommendation of the Age 60 Exemption Panel. (The Age 60 Exemption Panel was formed privately in 1999 to evaluate the medical/neuropsychological status of airline pilots seeking exemptions from the age 60 rule. It was not formed or supervised by the FAA.) This request for exemption was originally denied on July 30, 2000, Docket No. 30040. The petition for exemption is reopened for public comment and reconsideration by the FAA. Personal medical records submitted in support of the petition are not included in the public docket.

[FR Doc. 00–25646 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Appalachian Rail Car Services, Inc.

[Docket Number FRA–2000–7947]

Appalachian Rail Car Services, Inc, on behalf of Big Eagle Rail LLC, has petitioned for a permanent waiver of compliance for one locomotive from the requirements of the Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The petitioner indicates that the locomotive is used in captive service hauling coal from a mine to a coal dock a distance of six miles in Winifrede, West Virginia. The petitioner states that the locomotive, a SW 1500 switcher, is only partially equipped with FRA certified glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–7947) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, D.C., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on October 1, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–25624 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Charlotte Southern Railroad

[Docket Number FRA–2000–7929]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan has petitioned on behalf of Charlotte Southern Railroad Company (CHS) for a permanent waiver of compliance for one locomotive from the requirements of the Railroad Safety Appliance Standards, 49 CFR Part 231.30, which requires all locomotives used in switching service be equipped with four corner stairway openings and each stairway opening must be equipped with two vertical handholds. The waiver request is for a 65 ton mid-cab locomotive built by General Electric in 1956. The locomotive is equipped with one set of ladder style steps on each side leading to the cab. CHS indicates that the locomotive is used in switching service over 3.22 miles at a speed not to exceed 10 mph. All switching movements are made with the locomotive attached and air brakes cut in.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–7929) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, D.C., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on October 1, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–25627 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation

[Docket Number FRA–2000–7701]

The CSX Transportation (CSX) seeks a waiver of compliance for locomotives that operate (move over) hump yard retarders from the requirements of the *Locomotive Safety Standards,* 49 CFR Part 229.123, which requires each lead locomotive be equipped with an end plate, pilot plate, or snow plow, that extends across both rails at a maximum clearance of six inches. CSX indicates that due to the height of the retarders (2 ¾ inches over top of rail) it is not

uncommon for locomotive pilots to strike the retarder. If the waiver is granted, CSX would increase the height of the pilot plates on locomotives assigned to hump yard service to nine inches, these locomotives would be restricted to trailing position outside hump yard and when moving over the railroad for service or re-assignment.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–7701) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street S.W., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on October 1, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–25630 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Detroit Connecting Railroad Company

[Docket Number FRA–2000–7928]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan has petitioned on behalf of Detroit Connecting Railroad Company (DCON) for a permanent waiver of compliance for one locomotive from the requirements of the Railroad Safety Appliance Standards, 49 CFR Part 231.30, which requires all locomotives used in switching service to be equipped with four corner stairway openings and each stairway opening must be equipped with two vertical handholds. The waiver request is for a 65 ton mid-cab locomotive built by General Electric in 1942. The locomotive is equipped with one set of ladder style steps on each side leading to the cab. DCON indicates that the locomotive is used in switching service over 2.29 miles at a speed not to exceed 10 mph. All switching movements are made with the locomotive attached and air brakes cut in.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–7928) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, D.C., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on October 1, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–25625 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Inman Service Company

[Docket Number FRA–2000–7586]

The Inman Service Company of Baytown, Texas, has petitioned on behalf of Watco Switching Company for a temporary waiver of compliance for one locomotive from the requirements of the *Safety Glazing Standards,* 49 CFR Part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotive is used in switching service within the Greensport Industrial Park, in Houston, Texas. They also indicate that some of the cab windows meet the FRA glazing requirements The locomotive is scheduled to be re-built within two years at which time all windows will be replaced with FRA compliant glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–7586) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–

0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on October 1, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–25626 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Thrall Car Manufacturing Company

[Docket Number FRA–1999–6358]

Thrall Car Manufacturing Company (TCMC) seeks a permanent waiver of compliance with certain provisions of the Railroad Safety Appliance Standards, 49 CFR Part 231.24, as they apply to auto carrying railcars as follows:

1. Use the reduced wording described in Parts 231.24(j)(1) and 231.24(j)(2) rather than 231.27(j)(1) and (j)(2). Part 231.24.(j)(1) states ''That section of each car more than fifteen (15) feet above the top of the rail shall be painted with contrasting reflectorized paint and shall bear the words ''No running boards'' to the left of center and ''Excess height car'' to the right of center.'' Section 231.24(j)(2) states ''On each side sill near end corner there shall be painted a yellow rectangular area with a three-fourths (¾) inch black border containing the words ''This car excess height-no running board'' Lettering to be not less than one and one-half (1½) inches high.''

Thrall Car Manufacturing Company (TCMC) has petitioned to eliminate the stencilling regarding running boards on these cars account of the cars not being so equipped.

2. They request that the word material be substituted for paint in this section to permit utilizing new technological advancements in reflectorization.

3. Section 231. 24(j)(2) requires that ''On each side sill near end corner there shall be painted a yellow rectangular area with a three-fourths (¾) inch black border containing the words ''This car excess height* * * TCMC has petitioned to relocate this stencil/decal from the side-sill, if room is not available, to the shear panel of the auto rack.'' The stencil/decal will be located as low as possible on three of the corners and directly above the handbrake on the ''BL'' corner.

4. TCMC requests that ''contrasting color'' borders be allowed on cars with a dark exterior paint where a black border, required in 231.24(j)(2) and 231.27(j)(2), would not be readily visible.

5. TCMC requests that the maximum allowable misalignment between the front inside edge of the auto rack ladder style to the inside edge of the flat car sill step be increased from the dimensions listed in Motive Power and Equipment Technical Bulletin 98–05 to six (6) inches. This relief would be consistent with guidelines set forth in AAR's Manual of Standards and Recommended Practices, S–2038–85, 2.3.4.

FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–1999–6358) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC on October 1, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–25629 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket No. FRA–2000–7780]

Applicant: Paducah & Louisville Railway, Incorporated, Mr. D. Edwards, General Supervisor of Signals and Structures, 1500 Kentucky Avenue, Paducah, Kentucky 42003.

Paducah & Louisville Railway, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, near Charleston, Kentucky, Hopkins County, milepost JK 157.13, consisting of the discontinuance and removal of Control Point Six Vein and associated controlled signals 2R and 2L. The proposed changes are associated with the installation of electronic coded track circuits and pole line elimination.

The reason given for the proposed changes is that Six Vein Mine has long been closed and all switches and tracks have been removed; the location is no longer needed, and maintenance costs will be reduced.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket

Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on October 1, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–25628 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, ''(MA)-Real Estate Lending and Appraisals—12 CFR 34.''

DATES: You should submit written comments by December 4, 2000.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0190, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from Jessie Dunaway or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division (1557–0190), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)-Real Estate Lending and Appraisals—12 CFR 34.

OMB Number: 1557–0190.

Description: The collections of information contained in 12 CFR Part 34 are as follows:

Subpart C establishes real estate appraisal requirements that a national bank must follow for all federally-related real estate transactions. These requirements provide protections for the bank, further public policy interests, and were issued pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).

Subpart D requires that a national bank adopt and maintain written policies for real estate related lending transactions. These requirements ensure bank safety and soundness and were issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828(o)).

Subpart E requires that a national bank file an application to extend the five-year holding period for Other Real Estate Owned (OREO) and file notice when it makes certain expenditures for OREO development or improvement projects. These requirements further bank safety and soundness and were issued pursuant to 12 U.S.C. 29.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 2,800.

Estimated Total Annual Responses: 3,540.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 240,160 burden hours.

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

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 29, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 00–25588 Filed 10–4–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–65]

Cancellation of Customs Broker Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Broker license cancellations.

I, as Assistant Commissioner, Office Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs broker licenses without prejudice.

Name, Port, and License No.

Patricia L. Blasdel, Dallas, 06335
Lancer International Corp., Miami, 12183
Meston and Brings, Inc., Seattle, 06060
Paul Joseph Moskowitz, San Francisco, 03251
Hans Joerg Wintsch, San Francisco, 04515

Dated: September 27, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–25584 Filed 10–4–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–64]

Cancellation of Customs Broker Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Broker license cancellations.

I, as Assistant Commissioner of Customs, Office of Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers licenses due to the deaths of the license holders.

Name, Port, and License No.

Manuel A. Enciso, Nogales, 01981
George Flandorffer, Jr., New York, 03598

Dated: September 27, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–25583 Filed 10–4–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–66]

Retraction of Revocation Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs broker licenses in the **Federal Register**.

Port, Name, and License No.

Maimi, Olaya Reynaldo, 13732
Chicago, Tammie Krauskopf, 14704

Licenses 13732 and 14704 are valid licenses.

Dated: September 27, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–25582 Filed 10–4–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8870

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8870, Information Return for Transfers Associated With Certain Personal Benefit Contracts.

DATES: Written comments should be received on or before December 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Transfers Associated With Certain Personal Benefit Contracts.

OMB Number: 1545–1702.

Form Number: 8870.

Abstract: Section 537 of the Ticket to Work and Work Incentives Improvement Act of 1999 added section 170(f)(10) to the Internal Revenue Code. Section 170(f)(10)(F) requires an organization to report annually: (1) Any premiums paid after February 8, 1999 to which section 170(f)(10) applies; (2) the name and taxpayer identification number (TIN) of each beneficiary under each contract to which the premiums relate; and (3) any other information the Secretary of the Treasury may require. A charitable organization described in section 170(c) or a charitable remainder trust described in section 664(d) that paid premiums after February 8, 1999, on certain life insurance, annuity, and endowment contracts (personal benefit contracts) must complete and file Form 8870.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 14 hours, 50 minutes.

Estimated Total Annual Burden Hours: 74,200.

The following paragraph applies to all of the collections of information covered by this notice:

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

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 27, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–25649 Filed 10–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Thursday, November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, November 2, 2000, 6 p.m. to 9 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9 p.m. on Thursday November 2, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 28, 2000.

John J. Mannion,

Program Manager, Taxpayer Advocate Service.

[FR Doc. 00–25654 Filed 10–4–00; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
October 5, 2000

Part II

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for the Costs of Post-Retirement Benefit Plans Sponsored by Government Contractors; Proposed Rule

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for the Costs of Post-Retirement Benefit Plans Sponsored by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments on a proposed Cost Accounting Standard (CAS) on the costs of post-retirement benefit plans to be recognized as contract cost under Government cost-based contracts and subcontracts. This is a new Standard that would directly address the costs of post-retirement benefit plans for the first time in detail. The proposed Standard provides criteria for measuring the costs of post-retirement benefit plans, assigning the measured costs to cost accounting periods, and allocating the assigned costs to segments of an organization. The allocation of a segment's assigned post-retirement benefit costs to contracts and subcontracts is addressed in other existing Standards. The proposed Standard also provides for the adjustment of post-retirement benefit costs for the effect of a curtailment of a post-retirement benefit plan, a settlement of a post-retirement benefit obligation, a granting of termination benefits, a termination of a post-retirement benefit plan, or a segment closing.

DATES: Comments must be in writing and must be received by December 19, 2000.

ADDRESSES: Comments regarding this Advance Notice of Proposed Rulemaking should be addressed to Mr. Eric Shipley, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, DC 20503, Attn: CASB Docket No. 96–02A. Please include an electronic copy of your comments in a format readable by MS Word.

FOR FURTHER INFORMATION CONTACT: Eric Shipley, Project Director, (telephone: 410–786–6381 or e-mail: EShipley@hcfa.gov) or Rein Abel, Director of Research, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (*e.g.,* promulgation of a Staff Discussion Paper.)
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

This ANPRM is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g)(1)(B) and (C) and is step two of the four-step process.

B. Background and Summary

Prior Promulgations

Post-retirement benefit plans have existed for many years, sometimes as an adjunct to a company's pension plan, but they generally received little attention until the Financial Accounting Standards Board (FASB) decided to examine the potential liabilities and costs of these plans and ultimately issued Statement No. 106, ''Employers' Accounting for Post-Retirement Benefits Other Than Pensions,'' (SFAS 106) in December of 1990. The adoption of SFAS 106 had the effect of exposing the substantial unfunded liabilities associated with post-retirement benefit plans.

The Cost Accounting Standards Board has received numerous public comments recommending that it establish a case concerning the measurement, assignment, and allocation of the costs of post-retirement benefit plans. These letters came from Federal Government agencies, Government contractors, law firms, trade associations and other respondents. The Board recognized the need to establish a case addressing contract cost accounting issues related to post-retirement benefit plans, but because of the similarities between post-retirement benefit plans and more traditional pension plans, it was decided to defer commencement of this case until the pension case was completed. The pension case was completed when the amendments to Cost Accounting Standards 9904.412 and 9904.413 were published as a final rule on March 30, 1995 (60 FR 16534). At its February 24, 1995 meeting, the CAS Board directed the staff to begin work on a Staff Discussion Paper addressing the accounting treatment of costs of post-retirement benefit plans.

As part of the development of the Staff Discussion Paper, the staff solicited preliminary comments from certain interested and knowledgeable organizations and individuals from both the procuring agencies and contractor communities. The staff also sought comments from organizations and individuals from the accounting, actuarial, and legal professions. The staff asked for assistance in identifying existing guidance and operational practices that should be investigated. These comments provided important information and ideas that were incorporated into the Staff Discussion Paper.

The Board made available on September 20, 1996, (61 FR 49533), a Staff Discussion Paper, Post-Retirement Benefit Plans Other Than Pension Plans Sponsored by Government Contractors, identifying the cost accounting issues related to post-retirement benefit plans. The Staff Discussion Paper identified major topics for consideration by the Board in its deliberations concerning the possible promulgation of an Interpretation, an amendment to existing Standards, or a new Standard regarding post-retirement benefit costs. The Staff Discussion Paper neither advocated nor assumed any position regarding the accounting treatment of post-retirement benefit costs. Rather, the Staff Discussion Paper explored many different approaches in depth so that the Board would have an opportunity to fully consider alternative treatments for costs of post-retirement benefit plans.

As the Board and its staff analyzed the comments and other information submitted for consideration, it became apparent that many commenters had strongly held opposing positions regarding the firmness of the SFAS 106 liability and the role, if any, that funding should play. To better understand these opposing positions, and hopefully to be able to reconcile these positions, on January 12, 1999 the Board sent a letter to all the respondents to the Staff Discussion Paper. This letter was also made widely available for public comment on February 18, 1999 (64 FR 8141).

Public Comments

The Board received eighteen (18) sets of public comments in response to the Staff Discussion Paper. These comments came from contractors, Government agencies, professional associations, actuarial firms, and individuals. These public comments are briefly summarized as follows:

Most respondents did not favor the promulgation of a new Standard and believed that the Board could adequately address post-retirement benefit costs through amendments to CAS 9904.412 and 9904.413. A few respondents expressed the belief that the measurement, assignment, and allocation of post-retirement benefit costs were complex and technical subjects and recommended that the Board address post-retirement benefit costs in a comprehensive manner.

The respondents almost universally agreed that accrual accounting following the provisions of SFAS 106 was the most appropriate basis for measuring and assigning the costs of a post-retirement benefit plan that created a firm liability. They stated that the pay-as-you-go cost method (cash basis accounting) was appropriate if there was not a firm; *i.e.,* compellable, liability to provide the promised benefits. However, there was no general agreement as to the criteria for ascertaining the firmness of a plan's liability; especially as to whether funding of the cost should serve as a criterion. There was agreement that if funding was to be a prerequisite for accrual accounting, then any rule or amendments should provide sufficient flexibility in the choice of accounting methods to permit contractors to align their cost accounting practice with their funding opportunities.

Respondents recommended that the Board address special events such as a curtailment of benefits or the termination of the post-retirement benefit plan. Many commenters suggested that a funding requirement may not be necessary if the Board provided adequate safeguards in case of a plan termination or segment closing. Some respondents asked that the segment closing provisions for post-retirement benefit costs be explicitly coordinated with the segment closing provisions of paragraph 9904.413–50(c)(12) regarding pensions.

The Board also received ten (10) sets of comments in response to the Board's letter of January 12, 1999 which can be summarized as follows:

The comments from contractors and other industry representatives reiterated their belief that funding was not necessary to substantiate the liability. Several of these respondents opined that funding did not improve the firmness of the liability. Instead, these respondents expressed the belief that the terms of the post-retirement benefit plan determined the firmness of the liability.

Most commenters, including the Office of the Under Secretary of Defense (OUSD), argued that funding was an allowability; *i.e.,* procurement policy issue, and not an accounting issue. The other two Government respondents expressed a strong belief that funding demonstrated the contractor's intent to continue the post-retirement benefit plan and to be financially prepared to provide the promised benefits.

The Board also reviewed proposed amendments to CAS 9904.412 and 9904.413 addressing post-retirement benefit costs which were voluntarily submitted by the Council of Defense and Space Industry Associations (CODSIA), as well as comments submitted by the American Bar Association's (ABA) Public Contract Law Section regarding CODSIA's proposal.

The Board reviewed information from the Towers Perrin surveys of ''SFAS 87 [Statement 87 of the Financial Accounting Standards Board] and SFAS 106 Annual Report Footnote Data'' for years 1995, 1996, 1997, and 1998 which was extracted from the corporate financial statements of the ''Fortune Top 100'' companies. The Board notes three (3) major observations that one can generally conclude from this survey information that influenced the development of this proposed Standard.

1. For pensions, the plan assets generally equaled or exceeded the liability for projected benefits, as measured by the SFAS 87 projected benefit obligation. On the other hand, only slightly over one-half (½) [1] of the companies included in the survey reported any plan assets for their post-retirement benefits plans. For companies that did report plan assets, for 1998 the average plan assets only covered around one-third (⅓) of the average SFAS 106 accumulated post-retirement benefit obligation.

2. While the average SFAS 106 accumulated post-retirement benefit obligation for these Fortune 100 companies is less than one-third [2] of the average SFAS 87 projected benefit obligation for pensions, at $2,312.5 million for 1998, the average post-retirement benefit obligation is still quite large.

3. The 1998 average net periodic cost for post-retirement benefit plans ($150.7 million) exceeds the average net periodic cost for pension plans ($58.4 million).

This proposed Standard is based upon the continuing research performed by the staff of the Cost Accounting Standards Board and the public comments received in response to the Staff Discussion Paper and the Board's January 12, 1999 letter.

The various comments and proposals are discussed in greater detail under Section E, Public Comments. The Board and its staff would like to thank all the organizations and individuals who provided comments and information in response to the Staff Discussion Paper and the Board's January 12, 1999 letter.

Conclusions

While accounting for post-retirement benefits has some similarities with pension accounting, the Board has concluded that post-retirement benefit costs should be treated distinctly from pension costs. The Board proposes to address the accounting treatment of post-retirement benefit costs through the promulgation of a new Cost Accounting Standard rather than through an Interpretation of or an amendment to an existing Standard or Standards. Post-retirement benefits, pensions, and insurance are each intrinsically complex and technical subjects. The Board has determined that it would be extremely difficult, if not impossible, to effectively and efficiently interleave coverage for post-retirement benefit costs into either the pension or insurance Standards.

The Board believes that accrual accounting is the appropriate method for determining the costs of post-retirement benefit plans that create a sufficiently firm liability for contract cost recognition. The Board has concluded that SFAS 106 with some modifications and restrictions provides adequate and appropriate accounting guidance regarding the measurement and period assignment of post-retirement benefit costs when accrual accounting is utilized. In order to implement a definite determination of a firm liability, the Board decided that the annual accrual of the post-retirement benefit cost must be compared to the nonforfeitable portion of the accumulated post-retirement benefit obligation. Post-retirement benefit plans that do not create a firm liability for contract costing purposes must be accounted for using the pay-as-you-go cost method.

The Board has also determined that specific guidance is required regarding the allocation of post-retirement benefit cost to segments. Specifically, the Board believes criteria are necessary regarding when the post-retirement benefit costs of a segment should be based on a general allocation or a separate calculation. Furthermore, because the current and future costs of post-retirement benefit plans are dependent upon the costs accrued in prior periods and the funding of such prior accruals, the Board finds it necessary to provide for the accounting treatment for assets

[1] 82 companies reported pension plan assets in their SFAS 87 footnotes and 45 companies reported post-retirement benefit plan assets in their SFAS 106 footnotes.

[2] The average Projected Benefit Obligation reported in the SFAS 87 footnotes was $7,170.6 million.

and for the accumulation and reporting of unfunded accruals at the segment level.

The Board has concluded that the SFAS 106 provisions on benefit curtailments, liability settlements, and the granting of special termination benefits are inadequate for contract costing purposes and additional guidance is needed. The Board further concluded that specific guidance is needed to address the appropriate contract cost accounting when a segment, as defined by paragraph 9904.403–30(a)(4), is abandoned, sold, or otherwise closed.

Benefits

The Board's proposal will eliminate the existing confusion as to which Standard, if any, addresses the contract cost accounting for post-retirement benefits. There have been various opinions and theories as to the proper basis for contract cost accounting for post-retirement benefit plans. Various parties have advocated using either the pension Standards, CAS 9904.412 and 9904.413, or the insurance Standard, Cost Accounting Standard 9904.416. Others have expressed a belief that no existing Cost Accounting Standard addresses such costs. Many parties have argued that Generally Accepted Accounting Principles (GAAP) as evidenced by SFAS 106 should govern the accounting of post-retirement benefit costs, and in fact, paragraph 31.205–6(o) of the Federal Acquisition Regulation (FAR 31.205–6(o)) specifies SFAS 106 as the basis for accrual accounting. A few have even suggested that the tax accounting rules for Internal Revenue Code (IRC) section 501(c) (26 U.S.C. 501(c)) trusts might be an appropriate basis. The Board proposes to clarify the accounting treatment of post-retirement benefit costs for Government contract costing purposes by specifying SFAS 106 as the basis for measurement and period assignment when the proposed criteria for accrual accounting are satisfied.

The Board acknowledges that the accounting for post-retirement benefit costs is a complex subject. When accrual accounting is used, the reliance on the methods and techniques of SFAS 106 for measurement and period assignment eases the burden of complying with this proposed Standard because contractors will be able to use much of the same data and methods used for financial accounting purposes. If use of the pay-as-you-go cost method is required, the determination of costs will be based on actual payments of benefits. Therefore, there should be minimal additional cost associated with complying with the Standard for the plan as a whole, although certain additional effort may be necessary to comply with the proposed provisions regarding the accounting for costs of segments. Furthermore, the proposed criteria regarding when to use accrual accounting or the pay-as-you-go cost method will eliminate disputes and will increase uniformity among contractors.

In the Board's judgement, a Standard is needed to increase consistency of results between accounting periods. Various provisions of SFAS 106 permit contractors to select between full immediate recognition, amortization, and in the case of annual gains and losses, delayed recognition of the various components of post-retirement benefit cost. The Standard being proposed today generally limits the contractor's cost recognition to the amortization method. Besides enhancing uniformity between accounting periods, dampening volatility through amortization will increase predictability when cost data is used to price contracts covering future periods.

The provisions of SFAS 106 and GAAP generally do not address the allocation of costs to segments of the contractor. The additional guidance being proposed addresses this point. While SFAS 106 addresses how major changes in the post-retirement benefit plan; i.e., benefit curtailments, liability settlements, and granting special termination benefits, are to be reported within the results of operations for financial reporting purpose, SFAS 106 does not address how such results are allocated to cost objectives. This proposal provides guidance on how the costs resulting from such major changes in post-retirement benefit plans are to be allocated and recognized for Government contract costing purposes. This proposed Standard also provides for a final settlement based on the proposed measure of the firm liability when the contracting relationship between the Government and a segment ends; this is not addressed by SFAS 106.

The proposed Standard also delineates how post-retirement benefit assets and liabilities are to be accounted for when a segment is divided or combined with another segment as part of an internal reorganization, corporate merger, or when part of the segment is sold or ownership is transferred. This delineation will enable the parties to the sale or transfer to better determine the value of the segment's post-retirement benefit plan assets and liabilities maintained for Government contracting purposes.

In summary, the Board believes that the consistency with financial accounting, specificity as to which benefits are recognized on an accrual or cash accounting basis, and the guidance on allocation of cost to segments will enhance the cost proposal, price negotiation, contract administration and audit processes. The benefits of such enhancements should be substantial and should greatly outweigh any added costs.

Summary Description of Proposed Standard

The proposed Standard is divided into six subsections which address (a) the recognition and identification of post-retirement benefit costs, (b) the measurement and period assignment of post-retirement benefit costs, (c) the allocation of post-retirement benefit costs to segments, (d) the allocation of post-retirement benefit costs from segments to the intermediate and final cost objectives of a segment, (e) the adjustment of the contractor's records when there is a curtailment, settlement, or granting of special termination benefits, and (f) the adjustment of contract pricing when a segment is closed. Once it is determined under subsection (a) whether the cost of a particular post-retirement benefit plan is to be accounted for using accrual accounting or the pay-as-you-go cost method, the other sections present the relevant provisions in the following order of applicability: all plans, plans using the pay-as-you-go cost method, defined-contribution plans using accrual accounting, and finally, defined-benefit plans using accrual accounting. In this way, readability and the ability to reference is enhanced. For example, contractors using the more straightforward pay-as-you-go cost method do not need to search the entire subsection for applicable guidance.

1. Definitions

Proposed subsection 9904.419–30(a) includes several new definitions of terms that are unique to post-retirement benefit plans. These new definitions include modified SFAS 106 definitions and selected unmodified SFAS 106 definitions that are frequently used in the proposed Standard. Terms that are applicable to post-retirement benefits plans, but which have previously been defined for pensions, have been modified (usually substituting ''post-retirement benefit'' for ''pension'') in subsection 9904.419–30(b) for purposes of this proposed rule. Subsection (c) incorporates all other SFAS 106 definitions into the proposed Standard.

2. Recognition of Post-Retirement Benefit Costs

(a) *Criteria for accrual accounting.* For SFAS 106 purposes, the post-retirement benefit promise arises from the written documents or established practices that comprise the ''substantive plan.'' Subsection 9904.419–40(a) sets forth criteria for determining when the liability for the post-retirement benefit is sufficiently estimable, contractually obligated (compellable), and reasonably foreseeable to warrant accrual accounting for government contract accounting purposes. The proposed criteria require that the promise of future benefits be: (i) Documented in writing, (ii) communicated to employees, (iii) nonforfeitable once earned, and (iv) legally enforceable.

The proposed Standard's requirement that the benefit promise be formalized in writing is consistent with similar CAS provisions regarding pension, insurance, and deferred compensation costs. The pension and insurance Standards require that costs of employee benefits contingent on post-retirement events, such as mortality and inflation, be actuarially determined and funded. This proposed Standard, like Cost Accounting Standard 9904.415, which addresses the accounting for costs of deferred compensation, does not require funding but instead requires that the contractor have a duty to pay the benefit earned by the employee which the contractor cannot unilaterally avoid. As with the pension and insurance Standards, if the post-retirement benefit plan fails to meet the specified criteria for accrual accounting, then the contractor must use the pay-as-you-go cost method.

(b) *Identification of the post-retirement benefit plan.* Some companies that have chosen to fund all or a portion of their post-retirement liability use a combination of investment vehicles to achieve tax-efficient funding of post-retirement benefits. Companies sometimes find they must sponsor somewhat different retiree insurance plans for different plants, states, or classes of employees in order to provide an overall general post-retirement benefit promise. Thus, their post-retirement benefit program is frequently not a single benefit plan, but several different benefit promises to different groups of employees.

To accommodate such pragmatic concerns associated with sponsoring and administering a post-retirement benefit program, the proposal being published today permits contractors to combine different investment vehicles and trust arrangements when identifying the assets of a post-retirement benefit plan. Similarly, the proposed Standard also provides that different benefits provided to the same group of employees, or the same benefit provided to different groups of employees may be aggregated for Government contract accounting purposes. Conversely, different benefits within a single overall plan may be accounted for separately.

Consistent with the position taken by the FASB, the proposed paragraph 9904.419–50(a)(7) explicitly covers separate accounts for medical benefits that are a part of a qualified pension plan and trust (IRC section 401(h) accounts) in this proposed Standard on post-retirement benefits. These medical benefit accounts, which are established, accounted for, and funded distinctly from the retirement income benefit of a qualified pension plan, are not an ''integral part of a pension plan.''

3. Measurement and Assignment of Post-Retirement Benefit Costs

(a) *Pay-as-you-go cost method.* The proposed Standard provides that for plans using the pay-as-you-go cost method, the assignable cost is measured by an amount equal to the payments made to or on behalf of the plan beneficiaries, providers, and insurers for benefits incurred during the current period, except that any amount paid to settle or terminally fund a liability for current and future benefits must be amortized over fifteen (15) years. Because the fifteen-year period represents an approximation to the life expectancy of a newly retired employee, this provision is consistent with paragraph 52 of SFAS 106 which requires the cost to be spread over the life expectancy of the retirees if the obligation is primarily attributable to such retirees. The proposed Standard is also consistent with the analogous provisions for pensions and insurance which are found at 9904.412–40(b)(3)(ii) and 9904.416–50(a)(1)(v)(C), respectively. The proposed transition provisions permit the continued use of the terminal funding method (without amortization) for contractors who have an established practice of terminal funding prior to this proposed Standard becoming applicable.

When describing the post-retirement benefit payments considered under the pay-as-you-go cost method, the proposed Standard augments the CAS 9904.412 definition of the ''pay-as-you-go cost method'' by adding the phrase ''or on behalf of'' because post-retirement benefit payments are often made directly to third parties, *e.g.,* health care providers. The proposed Standard also refers to the ''net amount'' of the benefit paid to indicate that the cost is based on the contractor's share of the post-retirement benefit after considering refunds, co-payments, deductibles, and amounts payable by unrelated third parties, such as Medicare and Medicaid. This use of ''net amount'' is consistent with the SFAS 106 provisions relating to ''incurred claim cost (by age)'' and ''net incurred claim cost (by age).'' This concept is also consistent with subparagraphs 9904.416–50(a)(1)(i) and (a)(1)(vi) of the insurance Standard, CAS 9904.416.

(b) *Accrual accounting for defined-contribution plans.* For defined-contribution plans using accrual accounting, the proposed Standard follows paragraph 104 of SFAS 106 and measures the assignable cost as the annual amount paid to or otherwise distributed to individual participant accounts. However, in contrast to paragraph 105 of SFAS 106, the proposed Standard does not permit the pre-retirement accrual of contributions expected to be made after retirement. Rather, contributions made after retirement are recognized in the period when the contribution is required under the terms of the plan. This proposed provision, paragraph 9904.419–40(b)(3), is generally consistent with paragraph 9904.412–40(a)(2) of the pension Standard.

(c) *Accrual accounting for defined-benefit plans.* For post-retirement benefit plans that meet the proposed prerequisites for accrual accounting, the Standard being proposed today accepts the actuarial cost method and actuarial assumptions used by the contractor for financial accounting purposes under SFAS 106. The assignable cost is based on the same six (6) components used by SFAS 106, namely: service cost, interest cost, actual return on assets, amortization of prior service costs, amortization of gains and losses, and recognition of the transition obligation.[3] However, the Board proposes to modify or restrict the SFAS 106 measurement and assignment of some components as explained below. Therefore, the values of these components used for contract costing purposes may differ from the values used for financial accounting purposes. Because the proposed measurement and assignment methods and techniques follow SFAS 106 rather than CAS 9904.412, there is no floor placed on the measurement and assignment of the period cost; *e.g.,* the

[3] Throughout this preamble, the term ''transition obligation'' is used to refer to either a transition obligation or a transition asset.

assignable post-retirement benefit cost could be a negative amount.

Because contractors may wish to maintain the right to curtail or terminate the benefits for employees who have not yet reached full eligibility, the Board has decided that it would be inappropriate for Government contract costing purposes for the accumulated value of accruals, whether funded or unfunded, to exceed the unavoidable liability for post-retirement benefits. The proposed rules include a ceiling on the accrual cost recognition equal to the benefits paid during the period plus the unfunded portion of the accumulated post-retirement benefit obligation for benefits that cannot be forfeited.[4] The Board notes that the greater the portion of forfeitable benefits included in the accumulated post-retirement benefit obligation, the more restrictive will be the effect of the ceiling.

(i) Service cost, amortization of prior service costs, and interest components. The Board proposes to accept the SFAS 106 provisions regarding the measurement and assignment of the service cost and the amortization of prior service cost components of post-retirement benefit cost but restricts that measurement to the written terms of the post-retirement benefit plan rather than the ''substantive plan.'' Otherwise, there are no modifications or restrictions to the SFAS 106 measurement and assignment provisions for these three components of post-retirement benefit cost.

(ii) Return on assets component and associated asset values. The Board proposes to accept the same measurement of the fair value of assets and the market-related value of assets used for financial accounting. The terminology of the proposed Standard follows that of SFAS 106 and differs from that used for pensions in CAS 9904.412 and 9904.413. The CAS 9904.412 term ''market value of plan assets'' is analogous to the term ''fair value of plan assets'' as used in SFAS 106 and this proposed Standard. The term ''actuarial value of assets'' used in the Employees' Retirement Income Security Act of 1974 (ERISA) and CAS 9904.412 is defined similarly to the ''market-related value of plan assets'' as used by SFAS 106 and this proposed Standard. For pensions the actuarial value of assets not only affects the recognition of gains and losses, but also is used to determine the unfunded actuarial liability. However, the market-related value of plan assets is only used to measure the annual asset gain or loss under SFAS 106 and this proposal. In SFAS 106 and in this proposed Standard, the fair value of assets is used to determine the unfunded accumulated post-retirement benefit obligation.

SFAS 106 is not concerned with the sources of any net accumulated accrued (unfunded) or prepaid post-retirement benefit cost. By contrast, the Board proposes that the contractor record and track each portion of unfunded accrual and prepayment credit. Consistent with CAS 9904.412, the accumulated values of unfunded accruals and prepayment credits are carried forward and adjusted for interest. The accumulated value of unfunded accruals is treated as if it were a plan asset and the accumulated value of prepayment credits is treated as a reduction to assets. The proposed Standard requires that the actual return on assets component be increased by an interest equivalent on the accumulated value of unfunded accruals to reflect that assets would have generated earnings had the full accrual amount been funded. Similarly, the actual return on assets component is reduced by an interest equivalent on the accumulated value of prepayment credits to reflect the additional earnings generated by any funding in excess of the annual accrual.

The Board has decided that the interest rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97, shall be used to measure the interest equivalent on the accumulated values of unfunded accruals and prepayment credits. The Board notes that for unfunded plans, there are no assets (no investments) and the contractor does not need to make an assumption concerning the long-term expected rate of return. In other cases, the amount of plan assets may be so small that reliance on this assumption may be inappropriate for Government contracting purposes. Also, use of the Treasury rate is consistent with the other Standards.

(iii) Annual gain or loss component. In order to more closely assign costs to cost accounting periods in which they arise, the proposed Standard requires the amortization over the average remaining service period of active participants[5] of the full amount of the annual gain or loss for a cost accounting period, that is, gains and losses other than gains and losses attributable to curtailments, settlements, or special termination benefits. While SFAS 106 permits such amortization, SFAS 106 only requires amortization of that part of the cumulative net gain or loss that falls outside a corridor defined by 10% of the greater of the accumulated post-retirement benefit obligation or the market-related value of plan assets. Under SFAS 106, recognition of any gain or loss within that corridor may be delayed indefinitely. Such delayed recognition is not permitted by this proposed Standard.

(iv) Amortization of the transition obligation component. This proposed Standard restricts the measurement and period assignment of the transition obligation to the delayed recognition method described in paragraphs 112 and 113 of SFAS 106. The proposed Standard provides that when a contractor first becomes subject to the proposed Standard, the contractor will base its period costs on the annual amortization installment for the unrecognized portion of the transition obligation already established for financial accounting purposes. The proposed transition provisions address the recognition of any portion of the SFAS 106 transition obligation that was recognized for financial statement purposes during prior periods for those contractors that used the pay-as-you-go cost method for Government contract costing purposes.

(d) *Post-retirement benefits provided through insurance contracts.* If the contractor provides all or a portion of the post-retirement benefit by purchasing insurance, the Board proposes that the contract accounting cost be determined by the net premium paid for such insurance and that the measurement, assignment to cost accounting periods, and allocation of such premium be subject to the provisions of CAS 416. However, if the insurance is acquired from a captive insurer, then the cost of the post-retirement benefit remains subject to the provisions of this proposed Standard. Because the SFAS 106 definition of ''captive insurer'' differs from the term as used in the FAR, a potential for disputes exists. In addition, the proposed definition clarifies that affiliates, related organizations and entities that are ''owned by or under the control of'' the contractor are also included so that the proposed Standard incorporates the phrase found at FAR 31.201–19(c) which is already in use for Government contracting purposes. Consistent with SFAS 106, this proposed Standard permits benefits provided by purchased insurance to be accounted for separately from any portion of a plan's benefits that are not

[4] Hereafter, the accumulated post-retirement benefit obligation for benefits that cannot be forfeited is referred to as the ''nonforfeitable post-retirement benefit obligation.''

[5] If the plan population is composed primarily of retirees, the gain or loss is spread over the life expectancies of the retirees. (See paragraphs 52 and 112 of SFAS 106.)

provided through such insurance. The Board notes that this treatment contrasts with the analogous provision in the pension Standard, paragraph 9904.412–50(a)(6), which specifies the accounting for so-called ''split-funded'' plans.

4. Allocation of Post-Retirement Benefit Costs to Segments

The proposed Standard applies to all post-retirement benefit plans regardless of whether accrual accounting or the pay-as-you-go cost method is used. It embraces the general precepts of paragraph 9904.403–40(b)(4) dealing with the allocation of central payments and accruals to segments. However, this proposed Standard provides specific criteria regarding the allocation of post-retirement benefit costs to intermediate home offices and segments.[6] The contractor must allocate a portion of the total post-retirement plan cost to each segment, including home offices, either by use of an appropriate allocation base (*i.e.,* indirect allocation) or, if certain conditions exist, by use of post-retirement benefit costs separately computed (*i.e.,* direct allocation) at the segment level.

Consistent with the pension and insurance Standards, the Board proposes that the total post-retirement benefit plan cost be allocated to intermediate home offices and segments based upon the factors used to determine the costs. For plans that are accounted for using the pay-as-you-go cost method, the cost is to be allocated only to segments and intermediate home offices that can be identified with the post-retirement benefit plan (*e.g.,* those segments having inactive participants who are eligible to receive benefits under that plan). For defined-benefit plans using accrual accounting, the proposed Standard requires that both active and inactive plan participants of the segment or intermediate home office be included in the allocation base because five of the six components of post-retirement benefit cost are dependent upon the obligation for both groups.[7]

The criteria requiring separate calculation are similar to those found in CAS 9904.413 for pension costs of segments. If actual benefits are disproportionately paid to participants of certain segments, the proposed Standard requires a separate calculation of the cost for the segment instead of an allocation, even for costs determined under the pay-as-you-go cost method. An additional criterion for separate calculation that looks at the ''cost of benefits'' reflects the fact that post-retirement benefit costs may vary significantly due to differences in state laws, geographical location, or insurance market.

Unless the post-retirement benefit cost allocable to a segment is separately calculated, the same set of actuarial assumptions is used to determine the cost for all segments. Similar to CAS 9904.413, if costs are separately calculated, only those assumptions relating to the demographic differences of a segment's employees are permitted to be different than the assumptions used for other segments. For example, the use of a different turnover assumption to reflect the unique termination of employment experience of one segment does not permit the contractor to use a different pre-retirement mortality assumption without evidence that the segment's mortality is materially different from the average mortality assumed for the plan as a whole.

For defined-benefit plans using accrual accounting the proposed Standard requires that the tracking of assets and funding at the segment level be maintained if costs are separately calculated for the segment. This provision increases the visibility and verifiability of post-retirement benefit costs that are separately calculated for a segment.

This proposed Standard also requires that the market-related value of plan assets be allocated each year in proportion to the fair vale of plan assets allocated to the segments. This provision ensures that the sum of the market-related value of plan assets for all segments equals the total plan's market-related value of assets.

The proposed provisions regarding transfers of plan participants between segments reflect the fact that the accumulated post-retirement benefit obligation is determined by and must follow the plan participants. Therefore, both the assets that funded the obligation and the unfunded portion of the accumulated post-retirement benefit obligation follow the participants, so that future contract costs better follow the performance of future contracts. The Board notes that the exception for immaterial transfers might create a small gain or loss because assets and other values are not transferred.

5. Allocation to Intermediate and Final Cost Objectives of the Segment

Once the post-retirement benefit cost has been measured, assigned to a period, and initially allocated to segments and home offices, the Board believes that Cost Accounting Standard 9904.403 adequately addresses the reallocation from home offices to segments and that Cost Accounting Standard 9904.410 and Cost Accounting Standard 9904.418 fully and adequately address the intra-segment allocation of cost to intermediate and final cost objectives.

6. Adjustments for Curtailments, Settlements, and Special Termination Benefits

(a) *Defined-contribution plans using accrual accounting.* While a defined-contribution plan is on-going, any nonvested account balances that are forfeited by participants who terminate employment during a cost accounting period are typically either reallocated to the other participants or used to reduce the contribution (deposit) required under the terms of the plan. The Board presumes that such forfeiture credits are fairly evenly distributed among periods and therefore no undue volatility occurs. However, when a defined-contribution plan is terminated, the forfeiture of nonvested account balances could cause an inordinately large and non-recurrent credit. In fact, the values of the non-vested account balances could revert to the contractor. To prevent the disruption to the budgeting process for cost type contracts and the forward pricing process for cost-based fixed price contracts, the Board proposes that forfeiture credits due to a termination of a defined-contribution plan using accrual accounting be amortized over 10 years so that the credit can flow to costs included in both cost type contracts and the forward pricing of other negotiated cost-based contracts.

The Board also proposes that this provision will apply to forfeitures that occur whenever the plan participants' rights to become vested are eliminated because the right to earn future vesting or retirement eligibility service is curtailed or terminated by plan amendment or other unilateral action of the contractor.

The pension Standards do not contain a similar provision because qualified pension plans are subject to the vesting requirements of ERISA. However, many post-retirement benefit plans are not subject to similar vesting standards and the Board believes these provisions are necessary to address the significant

[6] Throughout the discussions of allocations to segments and to intermediate and final cost objectives, the term ''segment'' is used to refer to a segment, home office, or intermediate home office.

[7] The service cost component is only determined for active plan participants who are still in the attribution period, *i.e.,* prior to the date of full eligibility. A service cost is not developed for inactive plan participants.

amount of nonvested account balances that might be forfeited.

(b) *Defined-benefit plans using accrual accounting.* Consistent with the Board's intention to accept the accounting provisions of SFAS 106 where practicable, the proposed Standard begins by accepting the SFAS 106 measurement of the adjustment for gains and losses due to benefit curtailments, benefit settlements, and granting of special termination benefits. SFAS 106 provides that any gain or loss not offset against the unrecognized gain or loss, unrecognized transition obligation, or unrecognized prior service cost, as appropriate under SFAS 106, will be immediately recognized in income. To require an analogous immediate recognition for Government contract costing purposes could disrupt the budgeting of cost type contracts as well as the forward-pricing process for cost-based fixed price contracts. Regardless of whether or not the post-retirement plan is terminated, the proposed Standard requires that an adjustment be recorded and that the adjustment for the curtailment, settlement, or termination benefit gain or loss be amortized over a period of 10 years.

7. Adjustments for Segment Closings.

The Board proposes to adopt the CAS 9904.413 definition of segment closing which encompasses three situations: (i) The ownership of the segment changes by sale or transfer, (ii) the segment discontinues operations or is abandoned, and (iii) the contractor is no longer performing or actively seeking government contract work at that segment. Based on comments regarding the amendments to the pension rule, the Board has modified the CAS 9904.413 definition of segment closing to explicitly state that segment mergers or splits within the contractor's on-going operations are not considered to be a segment closing for purposes of this proposed Standard.

(a) *Pay-as-you-go cost method.* When a segment is closed for any of the reasons described above, this proposed Standard does not provide for any adjustment to current or previously determined post-retirement benefit costs for plans that use the pay-as-you-go cost method. The post-retirement benefit costs attributable to current and prior periods were previously determined by the net amount paid to or on behalf of retired employees or their beneficiaries for post-retirement benefits incurred during those periods. The measurement of these prior actual expenditures is unaltered by the segment closing. These previously determined costs include any amortization installments assigned to such prior periods for net amounts paid to irrevocably settle an obligation for post-retirement benefits.

The proposed segment closing provisions also require that any inactive participants left ''homeless'' (that is, inactive participants that are no longer associated with an operational segment) when a segment is sold or abandoned must be moved to the intermediate or corporate home office to which the closed segment had directly reported. In the future the pay-as-you-go costs for these transferred inactive participants will be included in the post-retirement benefit costs allocated by the closed segment's immediate home office (the proximate home office to which the segment had reported.) Likewise the amortization of lump sums and other settlements for these inactives will continue unabated after being transferred to the closed segment's immediate home office. Any Government contracts performed in other segments reporting to that home office will receive an allocated portion of the post-retirement benefit costs attributable to the transferred inactive participants.

(b) *Defined-contribution plans using accrual accounting.* When a segment is closed for any of the reasons described above, the Board proposes that the contractor measure an immediate period adjustment to recognize any unrecognized portions of any credits for forfeited nonvested account balances due to plan termination or curtailment of vesting or retirement eligibility service. Essentially, this provision aborts the amortization of these credits because there will be no Government contracts in future periods to absorb a share of the credit.

(c) *Defined-benefit plans using accrual accounting.* When a segment is closed for any of the reasons described above, the Board proposes that the contractor measure an immediate period adjustment based upon the unavoidable liability for post-retirement benefits. The adjustment is measured as the difference between the nonforfeitable post-retirement benefit obligation and the sum of the plans assets plus the accumulated value of unfunded accruals (net of any prepayment credits.)

Basing the segment closing adjustment on the nonforfeitable post-retirement benefit obligation may appear to be a fundamental conceptual departure from both the original and amended CAS 9904.412 and 9904.413. The benefit liability for pension plans generally is subject to the stringent controls of ERISA. For post-retirement benefit plans, the nonforfeitable post-retirement benefit obligation provides the nearest analogue to the ERISA protected liability.

In addition to the above proposed general rules for segment closings, the following points should be noted:

(i) Massive layoff gains. The Board notes that when a segment closes, often there is a sizable termination of employees which was one of the original Board's concerns that eventually led to the original 9904.413–50(c)(12) segment closing provision. For post-retirement benefit plans, the effects of any ''abnormal forfeitures'' or massive layoff gain will dramatically reduce the liability such that the remaining accumulated post-retirement benefit obligation will approximate or equal the nonforfeitable post-retirement benefit obligation.

(ii) Sale or other transfer of ownership of a segment. When a segment is sold or transferred, the active participants of the segment immediately before the sale is effective can be: (i) Transferred with the segment and become active employees of the buyer, (ii) transferred as active employees to other operational segments of the seller, or (iii) terminated and become inactive participants of the seller. When analyzing the proposed provision concerning the sale or transfer of a segment, the reader should carefully consider the plan participants' status in the post-retirement benefit plans of each party to the sale. If both parties to the sale sponsor post-retirement benefit plans, the segment's employees can be both inactive participants in the seller's post-retirement benefit plan and active participants in the buyer's plan.

If only a portion of the operations of a segment is acquired, the proposed Standard provides that the selling contractor first divide the accounting records for the segment into two groups based upon the liability for participants being retained and transferred. Then the segment closing adjustment will be determined using the accounting records for the participants being transferred to the buyer or transferee. This proposed Standard also provides that, when a segment is divided into two or more segments as part of a reorganization, the assets shall be divided in proportion to the accumulated post-retirement benefit obligation. This provision is more specific than the similar coverage found at 9904.413–50(c)(v) for pension plans.

If no active employees are retained in the segment, the unrecognized transition obligation, prior service cost, gains and losses attributed to the remaining inactive participants are moved up to the next immediate home office along with the associated fair

value of plan assets, accumulated value of unfunded accruals and accumulated value of prepayment credits. All amortizations continue unabated. This amortization of these unrecognized amounts parallels the treatment of the liability for future payments to remaining inactives under the pay-as-you-go method.

Unless a segment is sold to a successor-in-interest, the adjustment will be determined using the values of assets and accumulated benefit obligations immediately prior to the sale. If the segment is sold to a successor-in-interest, this proposed Standard provides that the segment accounting will continue at the successor contractor based on the segment accounting up to the time of the sale, taking into account any division of the segment's assets and obligations.

(iii) Government's share of segment closing adjustment. The Government's share of the segment closing adjustment shall reflect the Government's historical participation in post-retirement benefit cost from the time this proposed Standard first becomes applicable. The intent of this provision is for the cognizant Federal agency official and the contractor to generally determine the Government's historical share of post-retirement benefit costs that were allocated to cost type and negotiated cost-based fixed price contracts. The proposed transition provisions extend this period of participation for contractors who employed accrual accounting for Government contract costing in accordance with SFAS 106 prior to this proposed Standard becoming applicable. In such cases, the Government's participation shall be measured from the date that SFAS 106 accruals used for financial statement purposes were first used for Government contract costing purposes. The proposed Standard also permits the parties to negotiate a delayed recognition of the segment closing adjustment through an amortization process. This proposed provision provides more flexibility for the parties to determine the appropriate proportion than paragraph 9904.413–50(c)(vii) of the pension Standard.

8. Illustrations

Generally the illustrations show the accumulated post-retirement benefit obligation and other liabilities or losses as debit balances and the fair value of assets and other asset equivalent values and gains as credit balances. However, for consistency with financial accounting presentation, when the illustrations include SFAS 106 disclosures, the accumulated post-retirement benefit obligations are shown as credit balances and fair values of assets and other asset equivalent values are shown as debit balances.

Because health and life benefits account for about 98% of all post-retirement benefit plan obligations, there are no illustrations or special provisions for post-retirement benefits other than health and life benefits. This lack of text or illustrations regarding other types of post-retirement benefits does not imply nor indicate that the obligations for such benefits, if material, are excluded from coverage under this proposed Standard.

9. Transition Provisions

One of the issues raised in discussions about post-retirement benefit costs concerns inactive plan participants who may have worked for a strictly commercial segment or a government segment that was sold or abandoned at some time in the past. It has been argued that the post-retirement benefit costs associated with these so-called ''homeless'' inactives should be explicitly excluded from the post-retirement benefit costs allocated to current and future Government contracts. However, often it is impossible to ascertain whether these ''homeless'' inactives were formerly employed in an abandoned or sold segment or if they are ''homeless'' because of incomplete human resource records. Rather than require a herculean and possibly futile effort to identify where these inactive participants had been employed, the Board proposes that the retained liability for these ''homeless'' inactive participants be assigned to an intermediate home office or corporate office in accordance with the contractor's past practice. The costs associated with these inactive participants will be treated as a general cost of doing business for such home office and allocated in accordance with CAS 9904.403.

Some contractors may not have established a specific practice or method for assigning the ''homeless'' participants to a corporate or intermediate home office. In that case, the Board envisions several acceptable methods of making such an assignment to home offices. These include, but are not limited to:

(i) Assigning all ''homeless'' to the corporate home office if the post-retirement plan covers employees in all units that report to the corporate home office;

(ii) Assigning the ''homeless'' to the immediate home office that had responsibility for the closed or abandoned segment;

(iii) If the closed or abandoned segment(s) were primarily associated with a portion of the contractor's current business, assigning the ''homeless'' to a home office which allocates the post-retirement benefit cost as a residual expense to segments currently performing work for that portion of the contractor's business; or,

(iv) Those ''homeless'' participants for whom employment records are unavailable, or who worked in a multiplicity of the contractor's operations could be assigned to the corporate home office.

In any of these cases, the Board accepts the fact that the costs associated with these ''homeless'' will bear no relationship to its current activities and the cost would be allocated to intermediate home offices and segments as an residual expense.

The proposed transition provisions address how a contractor's prior accounting practices are to be reconciled with the accounting provisions of the proposed rule. Some contractors who were using accrual accounting prior to becoming subject to the proposed rule will continue to use accrual accounting if the criteria for accrual accounting are satisfied. Likewise, other contractors who had been using the pay-as-you-go method will continue to use the pay-as-you-go method if those criteria are not satisfied. However, special provisions are needed whenever a contractor must change its previously disclosed accounting practice for post-retirement benefit costs.

If a contractor changes from the pay-as-you-go cost method to accrual accounting for contract costing purposes, the transition section of the proposed Standard provides for the establishment of a supplemental transition obligation so that prior SFAS 106 accruals measured during prior periods when the contractor had cost-based Government contracts can be assigned to periods after the contractor becomes subject to the proposed Standard. Once established, the supplemental transition obligation is accorded the same treatment as the SFAS 106 transition obligation. The prior accruals included in the supplemental transition obligation are based on the delayed recognition of the transition obligation regardless of how the transition obligation was recognized for financial accounting purposes. As an alternative to establishing a supplemental transition obligation, the proposed Standard permits these contractors to use a so-called ''fresh start'' approach provided the contractor has continually been performing government cost-based contracts since adopting SFAS 106.

If a contractor switches from accrual accounting to the pay-as-you-go cost method, this proposed Standard requires that the accumulated value of prior unfunded accruals measured during periods when the contractor had cost type or cost-based fixed price Government contracts be carried forward. Like the analogous provision in the amendments to the pension Standard, CAS 9904.412, benefit payments must be charged against the accumulated value of unfunded accruals before pay-as-you-go costs can be measured, assigned to cost accounting periods, and allocated to cost objectives.

If the contractor has an established practice of using terminal funding for its post-retirement benefit costs, that contractor may continue the use of the terminal funding method. A switch from terminal funding to pay-as-you-go accounting is permitted if the criteria for accrual accounting are not met. Any payments previously considered as terminal funding and allocated to cost objectives would not be subject to the fifteen-year amortization requirement. If the criteria for accrual accounting are met and the contractor switches from terminal funding to accrual accounting, then any prior SFAS 106 accruals that exceeded amounts paid for terminal funding may be treated as a supplemental transition obligation

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposed rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The records required by this proposed rule are those normally maintained by contractors who claim reimbursement of post-retirement benefit costs under government contracts.

D. Executive Order 12866 and the Regulatory Flexibility Act

Because most contractors must measure and report their post-retirement benefit liabilities and expenses in order to comply with the requirements of SFAS 106 for financial accounting purposes, the economic impact of this final rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this rule will not result in the promulgation of a ''major rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposed rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

Public Comments: This proposed Standard is based upon responses to the Staff Discussion Paper made available for public comment on September 20, 1996, 61 FR 49533. Eighteen (18) sets of public comments were received from contractors, Government agencies, professional associations, actuarial firms, law firms, public accounting firms, and individuals. The proposed Standard is also based upon the ten (10) sets of responses to the Board's letter of January 12, 1999 which was also made available for public comment on February 18, 1999, 64 FR 8141. The comments received and the Board's actions taken in response thereto are summarized below:

1. Need for a Cost Accounting Standard

Comment: The industry associations and some contractors expressed the belief that a Standard might not be needed because GAAP, as articulated by SFAS 106 and augmented by CAS 9904.403, 9904.412, 9904.413, and 9904.418, provide full and adequate guidance on the measurement, assignment to periods, and allocation of post-retirement benefit costs. Some commenters expressed the notion that the promulgation of a Cost Accounting Standard on any subject already addressed by a FASB Statement would be superfluous. But, many respondents noted subject areas where SFAS 106 was either inadequate or inappropriate for contract cost accounting purposes and suggested that some CASB guidance would be helpful.

Both contractor and Government commenters generally preferred amendments to the pension Standards, CAS 9904.412 and 9904.413, and possibly the insurance Standard, CAS 9904.416, rather than the promulgation of a new Standard. The commenters unanimously agreed that a Board Interpretation would be insufficient to address the new and complex issues concerning post-retirement benefit costs. Several commenters opined that substantive action should be taken by the Board. SDP Technologies wrote: ''While many technical questions need to be resolved, SDP urges the CASB to pursue this effort and develop a comprehensive solution.'' And, TRW stated, ''the level of detail and range of issues posed in the Discussion Paper highlight the numerous accounting, legal, and practical considerations that must be addressed.'' The OUSD generally concurred when it stated: ''While it is generally preferable to amend existing Standards, a new Standard may be necessary if amendments of existing Standards cannot be accomplished without unreasonably complicating existing Standards.''

In its letter of August 4, 1997, CODSIA submitted a straightforward and simple proposal to illustrate how the Board might address post-retirement benefit costs by amending CAS 9904.412 and CAS 9904.413. CODSIA did not support the development of a separate Cost Accounting Standard on post-retirement benefits on the grounds that it would not be an economical and efficient way to address this issue. The Board also received a letter from the ABA discussing some of the shortcomings of the CODSIA proposal, but which generally favored CODSIA's approach of amending the pension Standards.

Response: The Board recognizes the concerns expressed regarding the promulgation of a new Standard. These concerns appear to be driven by fears that a new Standard might be conceptually different from the current pension and insurance Standards. However, the Board has determined that amending CAS 9904.412, 9904.413, and 9904.416 would be extremely cumbersome and would add unnecessary complexity. The Board notes that the FASB did not merely extend Statements 87 and 88 (SFAS 87 and 88) to post-retirement benefits, but promulgated a separate Statement, SFAS 106, building upon the concepts and structures of SFAS 87 and 88. The Board believes that the most manageable approach to providing substantive measurement, assignment, and allocation criteria is the promulgation of a new and separate Standard addressing the costs of post-retirement benefits. The Board does not see any reason to unnecessarily muddy the water for the sake of arbitrarily avoiding the promulgation of another Standard.

The Board believes it is appropriate to promulgate a separate Cost Accounting Standard on a subject matter that the FASB has addressed for financial accounting purposes. The Board notes the CASB Concepts Statement (57 FR 31039) which states:

> The Board will give careful consideration to the pronouncements affecting financial and tax reporting and, in the development of Cost Accounting Standards, it will take those pronouncements into account to the extent it can do so in accomplishing its objectives.

The nature of the Board's authority and its mission, however, is such that it must retain and exercise full responsibility for meeting its objectives.

In this regard the Board must specifically consider what elements constitute a proper measure of post-retirement benefit costs for contract cost accounting purposes.

The Board agrees that SFAS 106 should be used as the baseline for the development of any promulgation regarding post-retirement benefit costs. However, the Board believes that SFAS 106, augmented by existing Standards, does not provide adequate guidance on contract cost accounting for post-retirement benefit costs. The Board proposes to generally accept the terminology, measurement, assignment, and adjustment provisions of SFAS 106. Modifications and restrictions are made only where necessary for Government contract cost accounting purposes. Thus, the Standard being proposed today does modify, augment, and restrict SFAS 106 provisions that are either inadequate or inappropriate for contract cost accounting. This proposed Standard also augments SFAS 106 and existing Standards by addressing the allocation of costs to segments, segment closing adjustments, and the transition from current contract cost accounting practices to this new Cost Accounting Standard for post-retirement benefit costs.

The essence of the CODSIA proposal to amend CAS 9904.412 was simply to add a sentence to subsection 9904.412–40(b) stating that for administrative convenience, the contractor may, at its option, utilize the methodology provided in SFAS 106 to measure the costs of postretirement medical and life insurance costs. The CODSIA approach would permit very different alternative accounting practices for the same category of cost without any justification for having a choice of accounting methods. Such an approach would be contradictory to the Board's goal of uniformity. The Board does not believe that post-retirement benefit costs should be subjected to the pension rules of CAS 9904.412 and 9904.413 that were originally designed and recently amended to coordinate with the vagaries of the tax code. Furthermore, the subject matter and the terminology employed in the current CAS 9904.412 and 9904.413, as compared with SFAS 106, are so different that any attempt to treat them together in a single amended CAS 9904.412 and 9904.413 would produce an unwieldy document that would be difficult to comprehend or implement.

Thus, the Board has concluded that the promulgation of a new Standard is necessary to adequately and clearly address the cost accounting (measurement, period assignment, and allocation) issues unique to post-retirement benefit costs of Government contracts. Having a separate and distinct Standard will make it clear to users and practitioners where the CAS Standards and GAAP are in agreement and where the Standards and GAAP diverge. Promulgating a new and separate Standard will reduce the administrative burden of trying to apply a single pronouncement for two different purposes; to wit, financial reporting and contract cost determination.

2. Relationship to Existing Standards

Comment: Generally the respondents agreed that tax consequences should not be considered in the determination of contract cost. The Aerospace Industries Association (AIA) did suggest that if funding were required as a condition of using accrual accounting, the tax consequences might have to be considered ''because funding and tax considerations are irretrievably interwoven.'' The AIA also noted that if the Board ''permits accrual accounting without a funding requirement, tax consequences are generally irrelevant.'' The industry associations and most contractors believed that CAS 9904.412 and 9904.413, possibly augmented by CAS 9904.416, should form the baseline if there were to be a funding requirement. While some industry commenters felt that the Board should consider tax-rate complementary funding, others expressed their belief that tax-rate complementary funding for nonqualified pension plans in CAS 9904.412 is overly complicated. While Government respondents opposed the use of such tax-rate complementary funding, the OUSD did express its belief that ''tax consequences should be considered only to the extent the contractor is unable to fund the entire amount of the accrued cost to a tax deductible funding vehicle.''

Some industry commenters expressed their belief that if funding were to be required for cost recognition, then an ''assignable cost limitation'' would be reasonable, especially if spread-gain actuarial cost methods were permitted. The AIA noted, ''the original CAS Board limited the application of spread gain methods by imposing an assignable cost limitation (see old CAS 412.50(b)(2)).'' Government respondents believed there should be an assignable cost limitation defined similarly to the one used for pensions regardless of whether funding would be required as a prerequisite for accrual accounting.

The Government respondents did not favor any explicit linkage between segment closing adjustments for pension and post-retirement benefit plans. Industry respondents asked that the Board provide that any pension surplus measured under 9904.413–50(c)(12) be explicitly offset against any unfunded post-retirement benefit obligation when a segment closes. Texas Instruments stated:

Conceivably, the same business interruption event that triggers an adjustment to PRB costs will also trigger a similar adjustment to pension costs. Therefore, both these determinations should be connected.

The Department of Defense commenters expressed an interest in amending CAS 9904.416 to reflect the differences between life insurance, medical insurance, and property and casualty insurance. These respondents noted that each of these types of insurance requires unique actuarial approaches and are generally unrelated to each other. They also recommended that the Board review workers' compensation coverage, which includes health, disability and liability provisions. The comments from industry generally stated that they had no major concerns or problems with CAS 9904.416.

Response: When developing these proposed modifications to SFAS 106, the Board sought to maintain consistency where practicable with the analogous provisions of (a) CAS 9904.412 and 9904.413 on pensions, (b) CAS 9904.415 on deferred compensation plans, and (c) CAS 9904.416 on insurance costs. However, this proposed Standard addresses the accounting issues of measurement and period assignment of post-retirement benefit costs and does not address tax-deductibility concerns. The recent amendments to CAS 9904.412 and 9904.413 were exceptional in the incorporation of tax-implications into a Standard. The Board recognizes that tax accounting rules can produce volatility and that such tax rules primarily affect the timing of cost recognition. The Board notes that pension accounting and practices, unlike those for post-retirement benefits, evolved in an environment in which funding was not only permitted, but dominated by tax law and Internal Revenue Service (IRS) and Department of Labor regulations regarding the determination of the benefits and the actual funding and administration of pension plans.

In this proposed Standard, the determination of the cost for a period when accrual accounting is used generally follows SFAS 106 with some

restrictions and modifications. SFAS 106 imposes no minimum or maximum limits, such as the assignable cost limitation, on the determination of the net periodic post-retirement benefit cost, and neither does this proposed Standard.[8]

The proposed Standard does not address the offsetting of a post-retirement benefit segment closing adjustment against any pension segment closing adjustment. The Board believes that CAS 9904.413 determines the plan termination and segment closing adjustment for pension plans and this proposed Standard would determine the adjustment for post-retirement benefit plans. How either adjustment is actually transacted or effected is best determined by the contracting parties. This proposed Standard and CAS 9904.413 neither require nor preclude the aggregation of these adjustments with each other or other issues for resolution and settlement purposes.

This proposed Standard addresses many issues similar to those considered in the March 30, 1995 amendments to CAS 9904.412 and 9904.413. The fact that any of these issues are treated differently in this proposed Standard on post-retirement benefit costs does not necessarily imply that changes will be made to the pension Standards, nor does it preclude such possibility.

The Board notes the comments from the Department of Defense regarding a general review of CAS 9904.416, but believes that addressing post-retirement benefits as defined by SFAS 106 is a substantial task in its own right. To expand this case to include a comprehensive review of CAS 9904.416 would make the case unmanageable. The Board proposes that the provisions of CAS 9904.416 relating to prefunding of retiree benefits be replaced by this Standard. Otherwise the Board has concluded that any general review of CAS 9904.416 is outside the scope of this project.

3. Funding as a Prerequisite for Accrual Accounting

Comment: The perception that any post-retirement benefit liability recognized in the financial statements might be a ''soft'' liability led some respondents, especially Government respondents, to express the belief that funding must be used as a tool in assessing the firmness of these liabilities.

In general, industry commenters argued funding does not necessarily substantiate the liability. They expressed their belief that funding may be an important business consideration, but such considerations generally deal with cash flow consequences and income tax considerations. They recommended that any criteria established as a prerequisite for accrual accounting should address the existence of the liability rather than the existence of funding. They also believed that funding is an allowability issue, not an accounting issue.

The ABA noted that for financial accounting purposes the threshold for recognition is met by a probability that an obligation exists. The ABA did suggest there may be situations when the funding of the annual accrual might serve a legitimate purpose. The ABA wrote in part:

> We do, however, agree that contractors should not be permitted to accrue costs without funding them in cases where the payment cannot be compelled. In such cases, no valid liability has been incurred unless the liability is funded. Additionally, if circumstances indicate that a contractor is likely to default on its PRB obligations, accrual without funding should not be allowed.

The NDIA also acknowledged that while funding could be one means to substantiate (validate) the obligation, there were disadvantages to using funding for contract cost measurement and assignment.

> It is clear that funding validates a liability. It is also clear that funding does not match cost with products. It is also clear that the use of funding (or any other cash payment) as a determinant of cost incurrence decreases uniformity and consistency in accounting.

Industry representatives pointed out the reason for including a funding requirement in the pension Standards and the inappropriateness of a funding requirement for post-retirement benefits costs. The AIA made the point as follows:

> Public policy, as articulated in the tax code, has long encouraged pension plan sponsors to fund their programs at an adequate level. While industry does not agree that funding has any place in the Cost Accounting Standards, the addition of a funding requirement in the recent changes to CAS 412, as well as explicit recognition of tax deductible limits, did not create tension between public policies as expressed in the Internal Revenue Code and the Cost Accounting Standards. ''In contrast, however, Congress has intentionally discouraged prefunding of post-retirement medical benefits. It would be inconsistent for the Cost Accounting Standards Board to in essence force contractors to fund these post-retirement benefit costs.

On the other hand, in its response to the Staff Discussion Paper, the OUSD articulated the concern of some members of the Government procurement community that any potential risk that the liability might not be liquidated is unacceptable. The OUSD unequivocally stated:

> Yes, funding is necessary to substantiate accrual of costs. The level of funding necessary is 100 percent of the maximum amount of possible funding in accordance with the contractor's funding vehicle. Permitting funding at less than 100 percent of the cost accrual results in a potential risk that the liabilities for which the Government has paid its fair share might never be liquidated. A 100 percent funding requirement assures the Government that the money will be available when the liability must be paid. If there are valid reasons to accrue the liabilities, the accruals should be fully funded. Permitting less than 100 percent funding effectively results in the Government providing a long-term interest free loan to contractors. Permitting funding at less than 100 percent of the cost accrual would require that earnings on the unfunded amounts be imputed each year to preclude increased costs to the Government resulting from lost earnings on the unfunded amounts.

Government respondents stated there are no appropriate alternatives to a requirement that the cost accrual be fully (100%) funded. Generally, industry respondents stated that the Board did not need to consider any alternatives to a funding requirement because funding was unnecessary to substantiate the cost accrual. Boeing concurred with the belief that funding does not necessarily substantiate the liability, but suggested that more restrictive measures of accrual accounting or cash basis accounting might be used where the contractual rights to a benefit are lacking. Boeing commented that:

> The accounting must be based upon the likelihood that the contractor will liquidate the liability. If the likelihood is in some doubt or remote then the costs should be recognized on more limited accrual basis, *i.e.,* terminal funding or those vested, or if not appropriate on a cash basis. Otherwise the costs must be recognized on an accrual basis over the period of time the benefit is earned.

The responses to the Board's January 12, 1999 letter did focus and advance the discussions regarding the role of funding. Most industry representatives continued to argue that funding neither enhances nor proves the firmness of the liability for post-retirement benefits. Some industry commenters expressed the belief that once established, a contractor's promise to provide post-retirement benefits could not easily be avoided and therefore, a funding

[8] As discussed elsewhere, the proposed Standard does compare and limit the net periodic post-retirement benefit cost so that the accumulated value of plan assets and unfunded accruals do not exceed the unavoidable liability, *i.e.,* the nonforfeitable post-retirement benefit obligation.

requirement might be superfluous. Industry commenters again argued that funding was merely a cash-flow or financial management decision and as such, was an inappropriate consideration for an accounting standard. These respondents did believe that funding would be a proper consideration for an allowability rule which addresses procurement policy concerns.

Comments from the Department of Defense Inspector General (DOD IG) and the Department of Energy reiterated the position that full (100%) funding of post-retirement benefit costs should be included in the criteria for accrual accounting. The OUSD maintained its opinion that post-retirement benefit costs must be funded, but agreed with the industry comments that funding should be addressed as an allowability constraint and not within the allocability criteria of an accounting standard.

Response: In Standards promulgated by the original CAS Board dealing with pension and insurance costs, in most instances the applicable Standards require that pension and retiree insurance costs be funded. Therefore, the Board believes that to maintain consistency with the promulgations of the original CAS Board and amendments promulgated by the current Board, the Board had to consider the role of funding as a prerequisite for the use of accrual accounting for the costs of post-retirement benefits. The Board considered a criterion for accrual accounting based on the contractor's documented commitment to fund at least the government segments' post-retirement benefit costs. But, after reviewing the merits of assessing the liability's firmness using funding as opposed to the terms of the post-retirement benefit plan, the Board decided to propose criteria concerning the contractor's ability to unilaterally reduce or eliminate benefits.

The original pension Standard, CAS 412, and the March 30, 1995 amendments were developed in an environment wherein the large majority of pension costs arose from qualified pension plans subject to ERISA. For qualified pensions plans there was less concern with whether the pension obligation would be systematically funded as costs are accrued for benefits earned by employees working on Government contracts. Tax accounting, financial accounting and contract cost accounting for pensions mostly differ in the pattern in which tax deductible accruals (contributions), financial accounting expense accruals and the contract cost accruals are ascribed to accounting periods.

Generally CAS 412 did not have to establish the contractor's commitment to fund its tax-qualified pension plan as a prerequisite for accrual accounting, the funding requirement was already imposed by ERISA. Even as far back as 1968 paragraph 42 of APB–8 stated: ''This Opinion [APB 8] is written primarily in terms of pension plans that are funded.'' Conversely, for post-retirement benefits, financial accounting uses ''pure'' accrual accounting while tax accounting for post-retirement benefits is generally limited to cash basis accounting. Thus post-retirement benefits are shown on an accrual basis for the more conservative financial accounting purposes (which tend to maximize liability recognition), but are usually operated on a pay-as-you-go basis.

Despite assertions by some respondents, the original Board did believe that funding played a legitimate role in determining whether the liability for a pension or post-retirement benefit was sufficiently firm for contract cost recognition. In the May 15, 1978 preamble to the Notice of Proposed Rulemaking for CAS 416 (43 FR 20806), the original Board addressed the funding issue when it proposed subparagraph 416.50(a)(1)(v) (which was unchanged when published in the final rule):

> ''One respondent objected to the requirement that costs which represent additions to a 'retired lives' reserve be evidenced by payments to an insurer or trustee. Retired lives benefits are analogous to pension costs in that a contract cost is to be recognized in the present but payment of the benefit is to take place in the relatively distant future. In most such programs, the employer reserves the right to discontinue the program at any time, and benefits are limited to those which can be provided by amounts already funded. If an amount is to be recognized currently as a cost of a retired lives program, there should be some evidence that a contractor has, in fact, incurred a liability which he cannot subsequently avoid by a unilateral decision.
>
> ''Some respondents suggested the deletion of the requirement that the contractor have no right of recapture of the fund as long as any active or retired participant in the program remains alive. Under some fully prefunded programs, a substantial portion of the fund is to provide for liability to active employees. Without the cited provision, it would be possible for the contractor, at any time, to terminate the program as to employees who had not yet retired, thereby creating a surplus in the fund and obtaining a windfall.''

And in Section (1) ''RELATIONSHIP TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 AND TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES'' of the September 24, 1975 preamble to the promulgation of CAS 412 as a final rule (40 FR 43873), the original Board stated:

> APB–8 provides criteria for accounting for the cost of pension plans for financial accounting purposes. The Board believes that certain of these criteria are not appropriate for Government contract costing purposes. For example, a fundamental concept of APB–8 is that the annual pension cost to be charged to expense for financial accounting purposes is not necessarily determined by the funding of a pension-plan. The Board believes that a requirement of law for annual minimum funding of pension costs on an irrevocable basis, is strong evidence that an obligation for at least such period.

The Board went on to state:

> In developing the accompanying Cost Accounting Standard, the Board has attempted to stay within the general constraints of APB–8 and the funding provisions of ERISA.

Later, in Section (11) ''ASSIGNMENT OF PENSION COST'' of the September 24, 1975 Preamble, the Board writes:

> ''Certain commentators expressed their disagreement with the sections of the **Federal Register** proposal dealing with the assignment of pension costs among cost accounting periods. The concept set forth in the proposal related in the assignment of costs to the validity of the liability for such costs. Commentators referred to the concept set forth in APB–8 that the accrual of pension expenses and the funding of pensions are not necessarily related. They stated that cost should be assigned to cost accounting periods irrespective of whether or when funded.
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> ''The Board believes that assigning pension costs to cost accounting periods on a cash basis is inappropriate from an accounting viewpoint and could lead to the improper assignment of pension costs among periods. **The Board believes also that the concept which states that funding is unrelated to pension accruals is not appropriate for contract costing because, under such a concept, pension costs could be assigned to cost accounting periods and never be funded; yet such costs would be reimbursed by the Government.** (Emphasis added)
>
> ''The underlying concept of the Standard is that when a valid liability exists, the corresponding costs may be accrued irrespective of when the liability is liquidated. If the liability (to the pension fund or, for pay-as-you-go plans, to retirees) is not valid, it cannot be accrued; in order for it to be allocated to cost objectives of the current period, it must be liquidated (funded) in that period or within a reasonable period of time thereafter. In order to clarify its intent with regard to the allocation of pension costs to cost objectives of individual cost accounting periods, the Board has revised the wording of 412.40(c) of the Standard.''

Clearly, the original Board believed that funding was a proper accounting

consideration in promulgating a Cost Accounting Standard. This Board agrees and recognizes that in any case, funding is one method for validating the liability.

The Board also considered adopting the tax-rate complementary funding requirement applicable to nonqualified pension plans. While negating the tax consequences of funding such plans, tax-rate complementary funding adds administrative burden and complexity. Since the amendments to the pension Standards were published in March 1995, it appears that very few, if any, contractors have elected to use the ''tax-complement'' approach. Furthermore, unlike pensions, the funding of post-retirement benefits is not driven by tax law. The Board has concluded that it is inappropriate to develop provisions of this proposed rule based on tax law.

Looking to other accounting standards, an alternative to imposing a funding requirement might be to follow the approach that the National Association of Insurance Commissioners (NAIC) uses for the statutory accounting policy for ''Employer's Accounting for Post-retirement Benefits Other Than Pensions'' wherein the obligation is determined for recognizing only benefits for which plan participants are currently eligible. However, the responses to the Staff Discussion Paper, ''Accounting for Unfunded Pension Costs,'' published on June 17, 1991 (56 FR 27780), argued that such recognition would neither have the simplicity and ease of cash basis accounting nor the matching of costs with activities achieved by accrual accounting. These same comments and criticisms would apply to such an approach for post-retirement benefit costs. The Board disagrees and believes that such a restrictive approach does have merit and can address the issue of whether a firm liability exists. Therefore, the Standard being proposed today imposes a cap on the net periodic post-retirement benefit cost for a period which is based on the firm liability for benefits payable to vested and fully-eligible participants.

There is much confusion, misinformation, and perhaps disinformation, concerning funding as a prerequisite for accrual accounting. The Board believes the question of whether accrual accounting or cash basis accounting should be used to measure, assign and allocate costs to Government contracts is an accounting question within the purview of the Cost Accounting Standards Board. The establishment of criteria concerning when alternative accounting approaches (cash versus accrual) should apply is also an accounting question that the CAS Board can and should address. (See CASB Statement of Objectives, Policies and Concepts published May 1992, after SFAS 87 and 106 were promulgated.) The Board disagrees that requiring funding of the period cost developed under an accrual accounting method converts the funded accrual to cash basis accounting because the primary measurement and assignment is still based on accrual accounting. Although this proposal does not impose a funding requirement, the Board reiterates its belief that funding can be an appropriate criterion to ascertain the contractor's commitment to ultimately provide a promised benefit.

4. Criteria for Assessing the Firmness of the Post-Retirement Benefit Liability

Comment: The Staff Discussion Paper asked if the post-retirement benefit liability was reasonably foreseeable and could be reasonably estimated. The response from the National Defense Industrial Association (NDIA) was representative of the comments from both industry and the government when NDIA stated: ''If it can be determined that there is a valid obligation to pay, determining an annual estimate of the cost of that liability is feasible.'' Several commenters concurred with AIA who noted that the FASB had ''considered this issue at length, and concluded that these amounts could be reasonably estimated (see paragraphs 159 through 163 of SFAS 106).'' Towers-Perrin, an actuarial consulting firm, stated that it performs nearly 600 SFAS 106 postretirement benefit plan valuations for nearly 600 clients each year.

Most commenters who addressed the SFAS 106 definition of the ''substantive plan'' stated the definition might be inadequate for contract cost accounting purposes. There appeared to be a general consensus that in order for a post-retirement benefit to be recognizable, criteria similar to that found in CAS 412 requiring that the plan be in writing and communicated to the employees, and that the benefits be materially nonforfeitable should be applied.

However, comments from the industry associations questioned the usefulness of requiring that the post-retirement benefit plan be written as adequate evidence of a firm liability. NDIA argued that the SFAS 106 concept of established practice coupled with employee communication might be more appropriate: ''A written document enhances the likelihood that there is a valid obligation. However, employee notification of future benefits, coupled with a history of payment of benefits, also seems to be substantial evidence of an intent to pay.'' AIA agreed with NDIA: ''A formal document does not make the liability any more compellable than informal documentation or an established practice. A formal document may enhance the auditing of the liability but it doesn't necessarily enhance the validity of the liability.''

Funding as a precondition to the use of accrual accounting remains controversial and was discussed in the previous subsection (3). Other than a funding requirement, no commenters suggested any additional or alternative criteria that might be used to assess the firmness of the post-retirement benefit obligation.

The Staff Discussion Paper also inquired whether the firmness of the liability could be enhanced by not projecting benefit levels. None of the commenters found any utility to placing such a restriction on the recognition of the post-retirement benefit liability.

Response: The Board agrees that the liability for a plan that meets the criteria for accrual accounting set forth in this proposed Standard can be reasonably estimated. However, the Board does not believe that a liability is a firm liability simply because it can be estimated. The financial effect of many contingencies can be estimated, but the estimated value associated with these contingencies may not rise to the level of a firm liability for contract costing purposes without meeting other criteria.

The SFAS 106 definition is intended to identify any potential liability for financial accounting disclosure purposes. For contract cost accounting purposes, the Board believes there must be a greater expectation that the benefits will ultimately be paid to the employees. The Board concludes that, at a minimum, when accrual accounting is used for contract cost accounting, the benefits must be described in a formal written document, the right to the benefits must be communicated to the plan participants, and the benefit must be materially nonforfeitable once eligibility is attained. The formal document provides the vehicle by which employees can legally enforce payment of the promised benefits. Furthermore, with the numerous changes that corporations have been making to their post-retirement benefit plans to reduce or eliminate benefits or shift the cost to the employees, the Board believes that only benefits currently provided by the written document and which the contractor cannot unilaterally negate or otherwise eliminate form a firm liability that should be recognized on an accrual basis.

The Board notes that, unlike pension benefits, employees' rights to promised post-retirement benefits often do not vest until the employee approaches retirement eligibility, *e.g.,* age 50 and 20 years of employment. Because of this substantial delay in vesting, a contractor can have a formal, ironclad contractual promise that is communicated to its employees, but still be able to discontinue the plan leaving only those employees who are currently eligible or close to eligibility with rights to post-retirement benefits. This Board, like its predecessor, is concerned that the contractor could reap a substantial gain attributable to the liability released by nonvested participants. The recent court decision in *Sprague* v. *General Motors Corporation,* (Nos. 94–1896, 94–1897, 94–1898, 94–1937, U.S. Court of Appeals, 6th Circuit, January 7, 1998) throws into question the usefulness of relying on established practice, documentation, and communication collectively or individually. Even when the post-retirement benefits are provided pursuant to a collectively bargained agreement, a Circuit Court recently found that the commitment to provide post-retirement benefits does not survive beyond the current bargaining agreement (*Joyce, Charles* v. *Curtiss-Wright Corporation* (1999, CA2, 1999 WL 152535). The Board is aware that a similar systemic weakness in the promise of pension benefits to the employees of Studebaker Corporation was a major impetus for the enactment of ERISA in 1974.

The Board examined how the earning of post-retirement benefits is attributed to cost accounting periods by the actuarial cost method employed by SFAS 106. The Board also considered the ERISA and DOL rules which require that pension benefits, once earned, cannot be reduced by the plan sponsor. For accrual accounting, this proposed Standard similarly requires that the portion of the post-retirement benefit for which the employee has achieved eligibility cannot be eliminated or reduced by the unilateral action of the contractor.

Because the Board does not accept the SFAS 106 substantive plan as the basis for the recognizable liability and has chosen not to use funding to substantiate the cost, the proposed rule relies on the nonforfeitable portion of the accumulated post-retirement benefit obligation as the measure of the valid, that is, compellable, liability. To accomplish this, the proposed rule imposes a limitation on the post-retirement benefit cost measured for a period. The proposed limitation is measured as the benefits paid during the period plus the unfunded amount of nonforfeitable accumulated post-retirement benefit obligation. The amount of valuation assets is the fair value of plan assets plus the accumulated value of unfunded accruals minus the accumulated value of prepayment credits. The proposed rule further requires that the measurement of nonforfeitable accumulated post-retirement benefit obligation include nonforfeitable benefits that would be earned during the year.[9]

5. Identification of the Post-Retirement Benefit Plan

Comment: Industry and Government commenters alike argued that the Board should permit the use of different accounting methods for different benefits because a post-retirement benefit plan often is not a single-purpose, homogeneous plan. As the AIA expressed it:

> One area of difference between pensions and post-retirement benefits concerns the definition of a single ''plan.'' While the contracting parties must be clear as to the underlying benefits that are reflected in contract costs, and how amounts funded or accrued relate to those individual cost elements, industry feels strongly that the CAS Board should not require contractors to restructure their plans from an ERISA perspective in order to achieve effective cost allocation. In other words, form should not be elevated over substance with regard to plan structure.

The OUSD summed it up this way:

> If separate plans are used to provide different types of post-retirement benefits, different accounting methods should be permitted. Different accounting methods also should be permitted for different benefits provided through the same plan, but only if separate records are maintained. Different accounting methods generally should not be permitted for different groups within the same plan population (*e.g.,* union versus non-union). However, if contractors are permitted to use cash accounting for current retired employees and accrual accounting for active employees, the treatment of post-retirement benefit costs for future retirees must be on an accrual basis. Since the post-retirement benefit liability would have already been accrued during the period of active employment, there is no additional liability to be recognized when active employees retire.

Most commenters felt that immaterial benefits, *e.g.,* legal services, retiree discounts, etc., could be accounted for by the contractor in any reasonable manner. They stated that, as with any item of cost, the CAS should only address costs that are material.

Response: The Board agrees. The Board is aware that it is often necessary for a company to use a combination of investment vehicles, *e.g.,* a Voluntary Employee Benefit Association (VEBA) trust combined with an IRC § 401(h) trust, to achieve tax-favorable funding of post-retirement benefits. Similarly, slightly different retiree insurance plans may be required in different plants, locations, or states to provide an overall general post-retirement benefit promise. Thus, the post-retirement benefit plan is frequently not a single benefit plan, but several different benefit promises to different groups of employees.

The proposed Standard permits the contractor to parse its overall post-retirement benefit plan or its plan population into several separately identified plans for purposes of contract cost accounting. Once so established, such division of the plan or population must be consistently maintained and often will require disclosure on the DS–1 Statement. For administrative ease, the proposed Standard also allows the contractor to aggregate different plans or populations for which the same contract cost accounting method is used.

Costs of post-retirement benefits that are immaterial may be accounted for separately on a consistent basis. This proposed Standard does not address post-retirement benefit costs that are immaterial.

6. Cash Basis Accounting (Pay-as-You-Go Cost Method and Terminal Funding)

Comments: Many commenters expressed their belief that cash basis (pay-as-you-go) accounting is appropriate whenever the post-retirement benefit liability is not firm. Some commenters expressed a desire for cash basis accounting to be permitted even when the criteria for accrual accounting are satisfied so that contractors could maintain the flexibility to coordinate their contract cost accounting with their financial management decisions regarding the funding of the liability. Other commenters asked that cash basis accounting be permitted as an alternative if a funding requirement were to be imposed as a prerequisite to accrual accounting.

The commenters who addressed terminal funding stated that while terminal funding was not an acceptable accounting method, the Board should permit contractors to continue use of the terminal funding method.

Response: The Board generally agrees. Therefore, this proposal provides that if the post-retirement benefit plan does

[9] Including the additional nonforfeitable post-retirement benefit obligation accrued during the year is analogous to, but more straight-forward than, measuring and adding a nonforfeitable annual service cost.

not satisfy the criteria for accrual accounting, then cash basis accounting is the only appropriate cost accounting method. However, this proposed Standard requires that if the plan does meet the proposed criteria for accrual accounting, then the contractor must use accrual accounting.

The Board agrees that terminal funding is not a generally acceptable accounting method and may introduce excessive volatility into costs. This proposal does not permit contractors to use the terminal funding method, although the transition provisions permit a contractor who has an established practice of using terminal funding to continue such practice.

As discussed later, if the plan fails the criteria for accrual accounting, the Board believes it is inappropriate to recognize any unfunded liability that may exist when a segment closes.

7. Accounting for the Funding of Post-Retirement Benefit Plans

Comment: The commenters generally agreed that any portion of the accrued cost for the period that is not funded should be accounted for in some manner. The commenters suggested that the provisions of CAS 9904.412 regarding unfunded accruals could serve as appropriate guidance. The NDIA suggested that some restrictions might be placed on the interest equivalent used to update the accumulated value of the unfunded accruals. The OUSD recommended that the accumulated value of the unfunded accruals be reduced appropriately when post-retirement benefits are paid.

Response: The Board agrees with these comments. For plans using the pay-as-you-go cost method, funding is accomplished by payments made directly to the participant or else to a third party to provide service or insurance for the participant. The cost of defined-contribution plans using accrual accounting is measured by the net distribution to individual participant accounts of the amount deposited to the funding agency or paid to cover the administrative expenses of the plan. Interest expenses or other costs of borrowing are excluded from post-retirement benefit costs. For defined-benefit plans using accrual accounting, deposits to the funding agencies plus benefits paid to or on behalf of participants comprise the funding. When accrual accounting is used, the Board believes that contractors who pay benefits directly from corporate resources should be accorded the same treatment as contractors who would make a deposit to a funding agency and then almost immediately use that funded deposit to pay benefits.

Depending on its financial management decisions, a contractor's actual funding may be more or less than its assigned post-retirement benefit cost, therefore the proposed measurement and assignment section includes provisions to account for unfunded accruals and prepayment credits. The Board proposes that any portion of the period accrual that is not funded shall be accounted for and accumulated with interest as an accumulated value of unfunded accruals. Generally the accumulated value of unfunded accruals would be treated the same as a plan asset.

This proposed Standard specifically provides that prepayment credits are not allocated to segments until used to fund the post-retirement benefit cost in a future period. When a portion of the prepayment credit is used to fund post-retirement benefit cost, that portion will be allocated as part of the total funding for that cost accounting period. This means that the paragraph 9904.419–40(b)(5)(iii) balance tests would not include the prepayment credit when applied at the segment level.

Consistent with the pension Standard, CAS 9904.413, a contractor may choose to allocate funding to those segments, including home offices, that allocate costs to contracts subject to this Standard before allocating any funding to other segments. This proposed provision gives contractors flexibility to comply with any funding requirement that might be imposed by procurement allowability rules. Post-retirement benefit plans, like nonqualified pension plans, are not subject to plan-wide minimum funding requirements so that funding the Government segments first could create a situation where those segments are fully funded while the commercial segments are unfunded. The Board is concerned that because all participants generally would have a claim to any assets of the plan, the Government could, in fact, be subsidizing the obligations of commercial operations and therefore funding must then be applied to those segments once the Government segment(s) is funded. Note that in Illustration 9904.419–60(d)(6), the contribution in excess of the minimum required to fund the cost of the Government segments was allocated toward the funding of the commercial segments rather than as a prepayment credit for the Government segments.

If the criteria for accrual accounting are satisfied, this proposed Standard provides that the full post-retirement benefit cost be allocated to segments based on either a separate calculation of costs or general allocation using an appropriate base, *e.g.,* headcount or salaries, etc. Once the post-retirement benefit cost is allocated to segments and intermediate home offices, this proposal provides that the cost be allocated to intermediate and final cost objectives in the same manner as other personal service compensation costs of that segment or home office.

8. Accounting for the Assets of Post-Retirement Benefit Plans

Comment: Both Government and industry respondents found IRC Section 401(h) accounts within a qualified pension trust, VEBA trusts, and secular trusts to be acceptable trust arrangements. Industry respondents believed that ''rabbi'' trusts would be acceptable funding agencies for post-retirement benefit plans just as they are acceptable for nonqualified pension plans under CAS 9904.412. The AIA advised the Board that ''any Standards should permit the use of these and other new arrangements as they emerge.'' Government respondents expressed their belief that any trust arrangement must not be subject to the claims of creditors and therefore objected to ''rabbi'' trusts. The DOD IG stated:

> CAS 9904.416.50(a)(1)(v)(B) requires that there be no right of recovery from a trust by the trustor as long as any active or retired participant in the program remains alive unless the interests of such remaining participants are satisfied through reinsurance or otherwise. This provision has served to adequately restrain contractors from attempting to cost contingent liabilities in current costing periods.

Some industry respondents believed there was no accounting difference between treating IRC Section 401(h) separate accounts as the assets of a post-retirement benefit plan or the assets of an ancillary benefit that is an integral part of the pension plan. On the other hand, the OUSD said:

> Separate 401(h) accounts should be considered part of the post-retirement benefit plan assets because the assets are segregated in a trust and they are restricted by the IRC to be used solely for post-retirement benefits. This is consistent with the description of post-retirement benefit plan assets contained in paragraph 63 of SFAS 106.

Commenters noted many insurance arrangements, *e.g.,* restricted insurance reserves, separate investment accounts, trust owned life insurance (TOLI) arrangements, that might qualify as funding agencies. While they agreed that all insurance arrangement should be considered, they also agreed that access to the assets must be restricted. In this regard, the commenters

expressed a belief that a corporate owned life insurance (COLI) arrangement should not be considered a funding vehicle because a COLI is an unrestricted investment of the company and not the post-retirement benefit plan. The Government respondents believe insurance arrangements must be subject to the same criteria as trusts. The OUSD echoed their concern about ''rabbi'' trusts and stated, ''Insurance arrangements should be permitted to the extent the assets are protected from general creditors and cannot be used at the contractor's discretion.''

The commenters agreed that several funding agencies could be combined to form the assets of a post-retirement benefit plan. No one believed that any particular type of funding agency should be given preference or priority.

Response: This proposed Standard on post-retirement benefit costs adopts the CAS 9904.412 definition of funding agency. Any investment vehicle or arrangement and any insurance product or reserve that satisfies that definition can be recognized as an asset of the post-retirement benefit plan. Several individual arrangements, such as a VEBA trust, a TOLI arrangement, and an IRC section 401(h) subaccount could be aggregated together to form the plan assets. The Board expresses no preference for one arrangement over another.

The Board is not concerned about the use of ''rabbi'' trusts. If a ''rabbi'' trust meets the funding agency definition, the plan participants' and beneficiaries' rights are superior to that of the contractor. Because the procuring agencies are responsible for ensuring that their contractors are financially viable, the Board does not perceive any undue risk to the Government that should affect this proposed accounting Standard.

9. Measurement and Assignment Under the Accrual Accounting Method

Comment: The commenters were in general agreement that accrual accounting is the most desirable accounting method for determining the costs of post-retirement benefit plans that meet the criteria for establishing a firm liability. They uniformly observed that accrual accounting affords the best matching of post-retirement benefit costs with the contract activity.

None of the commenters favored limiting the measurement and period assignment of post-retirement costs to a single accounting method. In addition to the firmness of the liability, the commenters expressed their belief that the choice of the appropriate cost accounting method would depend on the nature of the post-retirement benefit plan, the financial management of the plan, and factors affecting a particular industry and employee population. As AIA observed:

> CAS consistency and uniformity is referring to identical treatment under like circumstances. In this area, it is highly unlikely there will be like circumstance. Contractors are different, plans are different, IRS rules are changing and the health care environment is extremely dynamic. A ''one size fits all'' uniformity is not appropriate for measuring, assigning or allocating this type of cost.

Similarly, TRW stated:

> Due to the different characteristics of post-retirement benefit obligations (for example, the magnitude of the obligation or the ability to fund in a tax-effective manner), a contractor should be free to determine which method is most appropriate.

Response: The Board generally agrees that accrual accounting does provide the best matching of costs associated with a firm liability with contract activities. Therefore, for a post-retirement benefit plan that meets the criteria set-forth in this proposed Standard the contractor must use accrual accounting. Post-retirement benefit plans that do not meet the proposed criteria must use cash basis accounting.

10. Actuarial Cost Methods and Assumptions

Comment: Looking to SFAS 106 as the primary model, some respondents have implicitly advocated the use of a single method; that is, the unit credit cost method. Other commenters, concerned with matching costing and funding to the greatest degree possible, advised the Board to permit any generally accepted actuarial cost method, including spread-gain methods. Discussing why spread-gain methods should be permitted, TRW suggested:

> Spread-gain methods should be allowed because they frequently are the basis for determining deductible contributions to *401(k)* [Sic] accounts and VEBAs. If only immediate gain methods are permitted, many contractors will find it difficult if not impossible, to match permitted funding with the expense accrual.

Echoing TRW's comment, the AIA recommended ''flexibility to follow tax rules is critical if funding is to be a prerequisite for cost allowability.'' The AIA went on to suggest that ''changes in the techniques used from one year to the next should not be treated as accounting changes.''

Respondents also commented that the Board should consider addressing actuarial assumptions, especially those used for discount rates and medical cost inflation rates. They were concerned that the SFAS 106 emphasis on current period results, rather than long-term expectations, would cause volatility in annual costs. Several commenters recommended that the assumptions be subject to the same ''best-estimate,'' long-range expectation criteria as the actuarial assumptions used for pension costs. The ABA was adamant that the Board should ''refrain from mandating actuarial assumptions.'' None of the commenters felt that any certification by the plan's actuary or any sensitivity analysis was necessary.

Some commenters held the view that changes in actuarial assumptions should not be treated as a change in cost accounting practice. Other commenters stated that if the basis for actuarial assumptions is changed, rather than the numeric values of assumptions themselves, such changes would appear to meet the criteria of CAS 9903.302 as a change to a cost accounting practice. One commenter added that the Standards need not include guidance already provided for in the regulations.

Response: As part of its acceptance of SFAS 106 for the measurement of post-retirement benefit obligations and costs, the Board accepts the SFAS 106 provisions regarding actuarial assumptions. The Board does remain somewhat concerned that currently post-retirement benefit plans are generally unfunded or significantly underfunded. Furthermore, there are no insurance products available to settle the liability for health care benefits. Therefore assumptions regarding expected discount rates cannot be based on the results of actual fund yields nor are there any insurance contracts from which discount rates can be extracted.

The Board notes that the amended CAS 9904.412 prohibits the use of spread-gain methods. Furthermore, when CAS 9904.412 was promulgated, the original Board was concerned that spread-gain methods did not separately identify gains and losses and explicitly imposed a form of assignable cost limitation on costs determined under a spread-gain actuarial cost method.

The Board concurs that post-retirement benefit costs are not sufficiently distinct from pensions and insurance to warrant any special actuarial certification. The Board also notes that when an actuary performs a post-retirement benefit valuation or advises contractors concerning their plans, the actuary is personally subject to the professional standards promulgated by Actuarial Standards Board. The Board has concluded that no special certification requirements are necessary.

The Board proposes to expand the provisions of CAS 9904.416 that require the accrual cost of prefunded retiree insurance plans be ''actuarially determined'' and move these provisions to this proposed Standard. By accepting SFAS 106 as the basis for the actuarial determination of the accrual accounting costs for defined-benefit post-retirement plans, the Board is accepting the unit credit actuarial cost method as described in SFAS 106. The proposed Standard does not preclude the contractor from using a spread-gain actuarial cost method to determine the annual contribution to a tax-qualified funding agency, but the contract cost determination is limited to the unit credit cost method as described in SFAS 106.

What constitutes a change in cost accounting practice should be determined in accordance with the provisions of CAS 9903.302. Those provisions describe cost accounting practices as ''* * * any disclosed or established accounting method or technique which is used for allocation of cost to cost objectives, assignment of cost to cost accounting periods, or measurement of cost.'' Additional guidance regarding the disclosure of cost accounting practices applicable to post-retirement benefit plans is provided in Part VII of the Disclosure Statement (Form CASB DS–1 (Rev 2/96)). The DS–1 guidance makes clear that any disclosure only applies to the basis for setting and updating significant actuarial assumptions. Such disclosure does not apply to the current numerical values of the actuarial assumptions which may change in response to experience. On the other hand, a change in the basis used for determining actuarial assumptions would constitute a change in cost accounting practice that should be addressed on a case-by-case basis under the provisions of CAS 9903.302. Additional provisions in this proposed Standard are not deemed necessary.

The Board proposes to place a restriction on the health care trend rate assumption. The proposed limit is implemented by imposing a cap on the health care trend rate equal to the long-term expected rate of return. Of all the actuarial assumptions, the health care trend rate is one of the most volatile and difficult to estimate. Moreover, many economists and other experts do not believe that health care expenditure can continue to increase as a percentage of Gross Domestic Product. Therefore, the Board believes that this restriction will not only reduce volatility, but will introduce a long-term reasonability [10] limit on this problematic assumption. The Board does note that increases in the projected and accumulated post-retirement benefit obligations that are attributable to a period of high health care cost increases will be measured and recognized as an actuarial loss.

11. Accounting for the Transition Obligation

Comment: Both industry and Government commenters agreed that if a firm liability exists, then the transition obligation portion of the total liability is a firm liability and should be included in any accrual accounting provisions promulgated by the Board. The commenters noted that both the original and amended CAS 9904.412 identify the initial unfunded liability, which is analogous to the SFAS 106 transition obligation, as one of the portions of unfunded actuarial liability to be recognized and amortized. Similarly, CAS 9904.416 recognized and amortized the actuarial present value of benefits for employees already retired when contractors switched from the pay-as-you-go cost method to the terminal funding method. The commenters generally agreed that immediate recognition of the transition obligation would be disruptive to contract cost accounting. The commenters recommended that the transition obligation be amortized over either a period of 10 to 30 years as required by CAS 9904.412 or else over the average future working lives of the participants as required by SFAS 106.

One commenter argued for some mechanism to reflect the contractor's historical level of cost-based contracts as a means of achieving equity for both parties if there had been a major increase or decrease in the contractor's cost-based Government work over the last ten (10) years. Another commenter suggested that the contractor and the cognizant Federal agency official should be given the latitude to negotiate such an equitable arrangement. Other commenters opined that attempting to reflect past levels of Government participation in costs assigned to future periods would be exceedingly complicated and would impose an administrative burden for both parties.

Response: Consistent with the conceptual approaches of CAS 9904.412, SFAS 87 and SFAS 106, the Board agrees that if the post-retirement benefit plan meets the criteria for accrual accounting, the transition obligation should be recognized in accordance with SFAS 106. However, immediate recognition of the transition obligation, as permitted by SFAS 106, would be unmanageable and disruptive to the budgeting process for cost type contracts and the forward-pricing process for negotiated fixed price contracts. The Board proposes to limit recognition of the transition obligation to the delayed recognition method of paragraphs 112 and 113 of SFAS 106.

Neither CAS 9904.412 nor CAS 9904.416 includes any provision to reflect past levels of Government contracting prior to the initial recognition of the prior service liability. Furthermore, the Board views the granting of prior service benefits, which creates the transition obligation, as an inducement or compensation for current and future employment. Accordingly the transition obligation component is to be allocated to the final cost objectives of the period in the same manner as the other five post-retirement benefit components.

12. Accounting for Annual Gains and Losses

Comment: The commenters generally recommended that annual gains and losses (also referred to as experience gains and losses) should be amortized. Industry representatives preferred the gain and loss provisions of SFAS 106, while the Government representatives preferred the 15-year amortization period used in CAS 9904.413 and CAS 9904.416. The commenters agreed that immaterial gains and losses could be recognized immediately.

Response: As with the other components of post-retirement benefit costs, determination of the annual gain and loss component will follow the provisions of SFAS 106. However, the annual gain and loss measures the experience of a specific cost accounting period and the Board believes that it is inappropriate to inordinately delay contract cost recognition. Therefore, the proposed Standard requires that the full amount of the annual (experience) gain and loss for a cost accounting period be amortized, not just the portion in excess of the corridor established by SFAS 106. The proposed Standard permits the full current period recognition of any immaterial annual gain and loss. Once the contractor has established its policy for recognizing annual gains and losses, the proposed Standard requires the contractor to consistently follow that amortization policy in the future as part of its cost accounting practice. Similar

[10] The Board has generally accepted the SFAS 106 guidance on actuarial assumptions which places more emphasis on current conditions rather than long-term expectations. However, in this instance, placing a long-term expectation on the health care trend rate which can exert such a leveraging effect on post-retirement benefit costs seems appropriate.

to the provisions of paragraph 9904.412–50(a)(3), the established policy regarding the recognition of annual gains and losses can be dependent upon the size and nature of the gain or loss.

13. Recognition of Other Changes in the Accumulated Post-Retirement Benefit Obligation

Comment: Industry representatives recommended that any gain or loss due to a change in actuarial assumptions or a change in actuarial cost method need not be separately recognized from other causes of the annual gain or loss in accordance with SFAS 106, while the Government representatives suggested the gain and loss amortization rules of CAS 9904.412 should be followed. Similar recommendations were made regarding a change in the benefit provisions of the post-retirement benefit plan.

The commenters agreed that the SFAS 106 market-related value of assets should be used to determine the annual gain or loss. They noted that the market-related value of assets, like the somewhat analogous actuarial value of assets for pensions, helps smooth gains and losses from period to period. The commenters also acknowledged that the actuarial cost method, including the method of determining the market-related value of assets, is part of the contractor's cost accounting practice.

Response: Gains and losses due to changes in the actuarial assumptions, the actuarial cost method, or the benefit provisions of the plan are to be determined in accordance with SFAS 106. The Board notes that although the actuarial cost method is prescribed by SFAS 106, substantive changes in the manner in which the actuarial cost method is applied, such as a change in the attribution pattern or in the method of determining the market-related value of assets, would constitute a change in cost accounting practice.

The annual gain and loss includes the effect of actual experience deviating from expected changes in assets and demographics. Under SFAS 106 and this proposed Standard, this component also includes the effects of changes in actuarial assumptions. The Board notes that in CAS 9904.412 the cost effects of changes in actuarial assumptions are determined and amortized separately from the effects of annual experience. This higher level of visibility allows the contractor and the Government to assess the continuing reasonableness of the assumptions in the aggregate. However, because the Board proposes to accept and rely on the assumptions used for SFAS 106, this higher visibility would not seem to serve any function in this proposed Standard and no separate identification of the effect of a change in actuarial assumptions is required.

14. Allocation of Post-Retirement Benefit Costs to Segments

Comment: Industry respondents generally expressed a belief that CAS 9904.403 provides sufficient guidance on allocating post-retirement benefit costs to segments. Government respondents suggested that allocation guidance similar to that contained in paragraph 9904.413–50(c)(1) might be needed. The commenters agreed that the allocation method would not necessarily be dependent on the accounting method employed. They did acknowledge that the causal-beneficial relationship between the employees of a segment and the benefits provided to those employees by the post-retirement benefit plan should be a factor in determining the proper allocation basis.

Response: The Board agrees and this proposed Standard on post-retirement benefit costs contains provisions analogous to those found in CAS 9904.413. The Board believes that the guidance provided in this proposed Standard regarding the allocation of post-retirement benefits costs to segments is compatible with the allocation process applicable to central payments or accruals as outlined in paragraph 9904.403–40(b)(4). The Board notes that post-retirement health care costs often will be appropriately allocated on a head-count basis as opposed to most pension costs which are related to benefits that are salary-related. The Board proposes that the costs of plans using the pay-as-you-go cost method be allocated to segments and home offices having participants and beneficiaries eligible to receive benefits so that the cost is allocated to the segments where the benefits had been earned, *i.e.,* a new start-up commercial segment will not absorb costs of participants who had retired from a historically Government segment.

The Board concluded that consistent with its decision to accept the measurement and assignment provisions of SFAS 106 and to permit contractors to use the data produced for financial accounting purposes, this proposal will in some instances permit a contractor to apply a general allocation of the total plan cost to segments in spite of the inherent, but immaterial, inaccuracy.

15. Separate Calculation of Post-Retirement Costs of Segments

Comment: The respondents generally agreed that separate computation of cost at the segment level should be required whenever demographic, benefit, or experience differences cause material differences in the post-retirement benefit cost of the segment. Government respondents pointed out that such guidance is already a part of the pension and insurance standards, notably at paragraphs 9904.413–50(c)(2) and 9904.416–50(b)(1) and (2). Texas Instruments observed:

> Differences in demographics or other factors may support a separate calculation of post-retirement costs at the segment level. In addition, such a segmented approach may be useful in recognizing acquired groups of employees as well as variations in union contracts, benefit levels, etc. In many cases, however, continued use of composite methodology would remain appropriate.

Although separate computations by corporate division are fairly commonplace, the commenters supported requiring separate computation only when the post-retirement benefit cost for a segment would be materially affected. AIA made the point as follows:

> ''We also feel that the following excerpt from the prefatory comments to the old CAS 413 remains appropriate:
>
> 'The Board believes that, in most cases, it will be obvious to the contracting parties whether the presence of one or more of these conditions for a segment will materially affect the pension cost for that segment * * * The Board emphasizes that separate calculations are not routinely required, even though no two segments are likely to be identical with respect to the actuarial factors set forth in the Standard.' ''

The respondents did support the creation of special segments for retired or other inactive plan participants. They suggested that paragraph 9904.413–50(c)(9) would serve as an appropriate model. AIA noted that ''this method, which has been present in CAS 413 for nearly 20 years, has been of considerable aid in facilitating allocation of pension cost.''

Response: The Board generally agrees. The proposed Standard adopts the separate calculation requirements of CAS 9904.413. Looking to CAS 9904.413 for consistency and guidance, the proposed Standard does require separate computations whenever certain conditions exist or certain events occur that can be expected to cause a material difference between a general allocation and a separate calculation of post-retirement benefit cost.

The Board considered requiring that post-retirement benefit costs always be

individually calculated for each segment. There would have been an exemption permitting costs to be determined for the plan as a whole and then allocated across the segments if such composite computation and general allocation did not produce materially different results as compared to the cost separately calculated for the segment. When CAS 9904.413 was written in the 1970's, actuarial valuations involved extensive and expensive manual computations. Now that actuaries use high-speed computers to do the basic annual valuation computations, it is standard practice for an employer to have valuation results produced for subgroups of employees by division or subsidiary, often using differing sets of assumptions by location when warranted. The primary advantage of separately calculating post-retirement benefit costs would be achieving the most accurate determination of the benefit obligation and cost for the particular employees of a segment. However, the Board found no material advantage to requiring separate calculations if there were no material effect on contract cost determination.

The Board also considered a general requirement that costs be separately calculated whenever such a separate calculation would yield a materially different result from a general allocation of costs. But this requirement could cause a contractor to produce the separate calculation in order to assess if a material difference would occur. Therefore, the Board found no particular advantage to such a requirement.

This proposed Standard does not provide for nor permit the use of inactive segments. Instead, consistent with the general concept that costs associated with retired and terminated employees should be regarded as a general cost of doing business, each nonactive participant must be assigned to the appropriate segment, an intermediate home office, or corporate home office.

When the pension Standard, CAS 9904.413, was developed, a common practice for pension plans funded or operated through insurance company products, such as, deposit administration contracts or immediate participation guarantee contracts, was to either purchase annuities as participants retired or to move the participants to a separate account or ''retired life reserve'' which effectively annuitized the participants' benefits. To alleviate the administrative expense associated with tracking retirees by the segment from which they retired, CAS 9904.413 emulated this concept of a retired life reserve by permitting retirees, and other terminated participants, to be transferred to an inactive segment. The advent of computer-based participant data systems has eliminated most of the administrative work associated with tracking plan participants and such a provision is no longer needed. The Board also is aware that the creation of a non-operational segment is contrary to the 9904.403–30(a) definition of a ''segment'' and has frequently caused confusion for contractors and auditors.

16. Accounting for the Assets Allocated to Segments

Comment: Industry commenters generally expressed that if funding were to be required, then the Board should include a provision allowing Government segments to be funded first. They noted that with the lack of tax-advantaged funding, such a provision might enable a contractor to fully fund the portion of post-retirement benefit cost allocated to Government segments. The NDIA noted, ''if contractors could recover through Government contracts funds set aside for post-retirement benefits, there would be some incentive to fund.'' The AIA felt such a provision was of particular importance to a contractor who performed primarily commercial work. The AIA wrote: ''In addition, if contractors that are primarily commercial are not permitted to fund only their segments performing government work, those contractors will be placed at a relative disadvantage compared to contractors that are devoted exclusively to government contracting.'' The DOD IG concurred stating:

> For the benefit of covered employees, it is most desirable to fund all segments. However, for contract costing purposes, it is acceptable to fund only those segments performing work under Government contracts.

Generally industry respondents opined that memorandum records could provide sufficient evidence of such segmented funding. The DOD IG cautioned:

> Our experience in reviewing CAS 9904.413–50(c)(7) records on business combinations is that memorandum records are adequate only if they are subject to close scrutiny and complete audits by the Government.

Many respondents believed that trust and plan documents could be drafted so that the Government and commercial segments could be effectively covered by separate plans. But they were concerned that such legal separation of the segments would require extra effort, could create employee relations problems, and might run afoul of nondiscrimination rules.

Concerning transfers between funded and unfunded segments, the respondents generally agreed that rules could be drafted, but it might be extremely difficult to draft rules that would be equitable and would not be overly complicated. The OUSD suggested that instead of transferring assets and liabilities with participants, ''any liability resulting from prior service should remain with the segment from which the employee is transferred.''

The commenters also believed that the methods of CAS 9904.413 regarding the initial allocation of assets to the segment and the subsequent annual update would provide ample guidance for post-retirement benefits plans.

Response: The proposed Standard adopts the CAS 9904.413 provisions regarding the initial allocation and subsequent update of assets for contractors that use accrual accounting and separately calculate post-retirement benefit cost for segments.

While the proposed Standard does not impose a funding requirement, this proposal permits contractors to fulfill any funding requirement that might continue to be imposed by procurement regulations regarding allowability for only those segments and home offices that allocate costs to Government contracts. This provision will enable many, if not most, contractors to align the funding of their post-retirement benefit costs with the segments that generate income from cost-based Government contracts.

Commercial segments that are not funded would record a memorandum record and account for their costs as an accumulated value of unfunded accruals. When plan participants transfer between segments, this accumulated value of unfunded accruals would be treated the same as plan assets. The requirement to separately account for the assets of each segment will enable this provision to function in a fairly simple and straightforward manner.

The Board also proposes explicit guidance on how assets and liabilities are treated when segments are split or combined. Regarding transfers, the Board believes that the unamortized portion of an employee's accumulated post-retirement benefit obligation is compensation for future service and should follow the employee. Accordingly, the proposed Standard provides that plan assets, the accumulated value of unfunded accruals, and the accumulated value of prepayment credits shall be transferred

in proportion to the employee's accumulated post-retirement benefit obligation.

17. Accounting for Curtailments, Settlements, and Special Termination Benefits

Comment: Industry commenters generally agreed that because a benefit curtailment or liability settlement does not disrupt the contractual relationship between the parties, there was no need for a special immediate period adjustment. Most commenters felt that curtailments and settlements should be accounted for as gains or losses.

The OUSD expressed a belief that accounting treatment similar to that contained in paragraph 9904.413–50(c)(12) should be provided for the effects of a post-retirement benefit curtailment, liability settlement, or plan termination whenever accrual accounting had been used. The OUSD also recommended that the unamortized portion of the initial unfunded liability, *i.e.,* the transition obligation, be excluded from the determination of the adjustment. Like industry, the OUSD believed that the Board should permit the plan termination or benefit curtailment adjustment to be amortized if the contractual relationship continued.

Industry commenters expressed their belief that the Government can protect its interests when a post-retirement benefit plan is terminated through provisions similar to the pension plan terminations or segment closing adjustments of CAS 9904.413. They believe that such a provision could provide the Government adequate protection so that a funding prerequisite for accrual accounting might not be necessary. And, they stressed that the Government should recognize its responsibility in regard to underfunded plans. As the NDIA explained:

> Industry commenters generally emphasized that the Government has a responsibility to share in any underfunding as well as any surplus when accrual accounting had been used. Some industry commenters indicated a belief that the Government should share in the underfunding of post-retirement benefit plans that had been accounted for using the pay-as-you-go cost method.

Both industry and Government respondents agreed that the contracting parties are in the best situation to determine whether the adjustment should be effected in the cost accounting period when the plan termination occurs or amortized over several periods with an interest adjustment. Some commenters opined that the option to spread the adjustment should reflect whether or not there is a continuing contractual relationship. The OUSD felt that the choice to immediately adjust or amortize should be at the Government's option. Similarly, TRW believes that the cognizant Federal agency official is in the best position to determine whether immediate adjustment or amortization is appropriate.

Response: The Board proposes that any benefit curtailment, liability settlement, or special termination benefit gain (or loss) be measured and first used to offset against unrecognized losses (or gains) in accordance with SFAS 106. While SFAS 106 would then recognize any remaining gain or loss as current period income or expense, the proposed Standard provides that the residual gain or loss be amortized over 10 years as long as the contractual relationship continues. If the segment is closed, any unamortized portion of any curtailment, settlement, or special termination benefit gain or loss is subsumed in the segment closing adjustment.

In this proposed Standard, the Board is presuming that the possibility of any inequity because of a change in the level of government contracting over the ten year amortization period is an acceptable risk when compared to the disruption that would be caused by a repricing of contracts. An additional inequity might occur because the effect of the curtailment, settlement, or termination benefits would not be reflected in currently priced cost-based fixed price contracts during the first few periods of the ten year amortization period. As this case has progressed, the Board's concern about not repricing has increased because of the magnitude of the recent benefit curtailments of some post-retirement benefit plans.

The Board believes that since SFAS 106 requires full current period recognition of curtailments, settlements, and termination benefits gains and losses, it is appropriate to accelerate the normal 15-year amortization period used for annual gains and losses to 10 years for any unrecognized curtailment, settlement, or special termination gain or loss.

If a plan is terminated, much of the unrecognized transition obligation and prior service cost, including any prior service cost from recent plan amendments and benefit improvements, will be eliminated by the coincident benefit curtailment, particularly the post-retirement benefit obligation attributable to nonvested benefits. Accordingly, unlike the pension Standard, the proposed Standard does not include a 60-month phase-in of plan amendments. Any remaining unamortized prior service cost and transition obligation would continue to serve as an inducement or compensation, albeit diminished, for future service.

18. Segment Closing Adjustment for Defined-Benefit Plans Using Accrual Accounting

Comment: Industry commenters expressed the view that the Government can protect its interests when a segment is closed through an adjustment similar to that found at paragraph 9904.413–50(c)(12). Industry commenters emphasized the Government's responsibility to share in any underfunding as well as in any surplus. The OUSD agreed that provisions similar to those found at paragraph 9904.413–50(c)(12) regarding pensions would be appropriate to address segment closings when the accrual accounting method had been employed.

Response: The proposed segment closing provisions are similar to the CAS 9904.413 segment closing provisions. This proposed Standard explicitly states that internal reorganizations do not constitute a segment closing. The proposed Standard measures an amount to be immediately recognized by an adjustment to contracts. However, this proposal provides that the contracting parties can determine the details on how the actual adjustment will be effected based upon the size of the adjustment and the contracting circumstances.

The Board proposes to measure the segment closing adjustment as the difference between the nonforfeitable post-retirement benefit obligation and the accumulated value of plan assets and unfunded accruals. These measures may result in either a credit or a charge to the Government. As previously discussed, the nonforfeitable post-retirement benefit obligation measures the firm or unavoidable liability.[11]

There has been some confusion about the CAS 9904.413 segment closing provisions when a segment is sold to a successor-in-interest and assets and liabilities are transferred from the seller to the buyer. The concept articulated in CAS 9904.413 and followed in this proposed Standard is that no adjustment is necessary to the extent that the contract cost accounting for the benefits

[11] The actuarial liability determined under the accrued benefit cost method which is used to determine the paragraph 9904.412–50(c)(12) segment closing for pensions is analogous to the nonforfeitable post-retirement benefit obligation in that it measures the firm liability for benefits earned by participants as of the date of the event (segment closing).

continues unaltered. This proposed Standard makes it clear that the contract cost accounting records used to determine the segment closing adjustment when there is a sale to a successor-in-interest are the same records that have been used up to the point of sale. The proposed Standard also describes how a segment's assets and liabilities shall be divided when part of the segment's liability is retained or the segment is otherwise split or merged as part of the sale, transfer, or other reorganization.

19. Segment Closing Under the Pay-as-You-Go Cost Method

Comment: Some industry respondents stated that regardless of whether the Cost Accounting Standards did or did not permit a contractor to use accrual accounting, the prior period post-retirement benefit costs were incurred to produce goods and services for the Government. They believed that any decision to not recognize the unfunded accumulated post-retirement benefit obligation would be a procurement allowability decision and not a cost accounting decision. Other industry commenters argued that the *Remington Arms* decision (Army Contract Adjustment Board (ACAB) Decision No. 1238 (1991)) made it clear that whenever the Government had benefitted from the contractor's use of the pay-as-you-go cost method in the past, the Government should bear responsibility for its share of the unfunded accumulated benefit obligation as a matter of equity and fairness. Texas Instruments did note that the *Remington Arms* case was based on the fact that the Government not only benefitted, but was complicit in the contractor's decision to use the pay-as-you-go cost method. SDP Technologies expanded the concept of complicity to include the Government's arguable influence on companies and segments that perform primarily Government work.

The *Remington Arms* case properly established the basic policy, *i.e.,* the Government has a special responsibility when it is the sole beneficiary of a company's operations. The responsibility is not limited to GOCO facilities but applies equally to situations where companies have been dedicated to supplying the Government, particularly under single source contracts where the Government has a substantial influence on which costs can be recovered.

In response to the Staff Discussion Paper issue on using a phase-in approach for Government responsibility for the unfunded post-retirement benefit obligation when a contractor had used the pay-as-you-go cost method in the past, the AIA made an argument for considering a phase-out of the Government's responsibility.

''In the near-term, a segment closing adjustment should apply to all situations. Industry's use of pay-as-you-go accounting has yielded considerable savings to the Government over the years; considering the unfunded amounts as an adjustment to previously determined postretirement benefit costs is highly appropriate, as it merely puts the Government in the same position it would have been in had accrual accounting been used in past years.''

* * * * *

''Over the long-run, however, there is a valid question as to whether or not contractors that account for their postretirement benefits cost on a pay-as-you-go basis should be entitled to a segment closing adjustment. By using pay-as-you-go accounting, these contractors will be relatively more competitive than other contractors that use accrual accounting (assuming that all else is equal, which is rarely true). Thus, the pay-as-you-go basis contractors might win contracts in the near-term due to their lower prices but might ultimately bill the same amount to the Government. This result hardly seems fair.

''To avoid this situation, the CAS Board could require contractors to make an election between pay-as-you-go accounting and accrual accounting with the explicit understanding that those contractors selecting pay-as-you-go accounting would not be able to claim a future segment closing adjustment. In this manner, decisions can be made by contractor management with a full understanding of the ultimate implications.''

Government respondents did not feel the Government should bear any responsibility for the unfunded accumulated post-retirement benefit obligation when the contractor had been using the pay-as-you-go cost method in the past. The DOD IG pointed out that ''the CASB–1 discloses the accounting practice under which the Government and contractor mutually agree to do business and the Government was not in any position to force the contractor to fund any PRBs.'' The OUSD commented that because Government regulations have permitted contractors to choose between accrual and cash basis accounting for such costs, the Government has no responsibility for the contractor's unilateral business decision.

Response: The segment closing adjustment measured under this proposal does not provide for the recognition of any accumulated post-retirement benefit obligation or nonforfeitable post-retirement benefit obligation for contractors that are required to use the pay-as-you-go cost method because their plan fails to meet the criteria for accrual accounting. For contractors that do use accrual accounting, this proposal measures the adjustment using the nonforfeitable post-retirement benefit obligation. While the contractor had the ability to use any appropriate accounting method, including accrual accounting, the general practice was to use the pay-as-you-go cost method prior to the adoption of SFAS 106. Once this proposed Standard becomes applicable, the contractor will be required to methodically assign and allocate the costs associated with its transition obligation to Government contracts for post-retirement benefit plans that meet the criteria for accrual accounting.

The Board understands that under the pay-as-you-go (cash basis accounting) cost method the Government may have received some benefit from lower contract costs in the past. However, the contractor may have benefitted from achieving a more competitive price by electing to use cash basis accounting. Furthermore, to impose the full responsibility on the Government for costs not accrued under cost-based contracts ignores the fact that both contractors and the accounting profession at large were content to use the pay-as-you-go cost method in the past.

The Board finds no accounting justification for imposing a current period cost adjustment which arises from the contractor's previous decision to use cash basis accounting or terminal funding. The Board does note that a legal question, not an accounting question, of equity may be involved in the very special situation of GOCO facilities, such as that addressed in the *Remington Arms* decision, where the Government was found to be involved in the selection of the accounting method.

20. Determination of the Government's Share of the Segment Closing Adjustment

Comment: In its comments, the NDIA discusses how extraordinary events and segment closings require recognition in the financial results of operations for an accounting period and how the same type of adjustments might be appropriate for Government contract cost accounting purposes. The ABA agreed that a segment closing adjustment would be appropriate but expressed concern about how the Government's share is determined and effected when they wrote:

* * * In our earlier submission we counseled against reopening the prices of fixed price type contracts, or cost type contracts in years that are closed. Limiting the adjustment mechanism to costs only is consistent with sound procurement policy

and will secure to the government and the contractor equally the benefit of their bargain. Moreover, the OFPP Act Amendments of 1988 do not provide the CAS Board with authority to adjust contract prices, other than the equitable adjustment mechanism for cost accounting practice changes or noncompliances that result in increased costs to the government. *See* Public Law 100–679, section 26(h)(1), 41 U.S.C. 422(h)(1). For this reason, we believe that CAS 413–50(c)(12), as amended March 30, 1995, is subject to challenge as exceeding the Board's statutory authority

Response: The Board proposes that this Standard, like CAS 9904.413, consider all prior cost-based contracts that become subject to this proposed Standard when determining the Government's share of any over-or under-funding of the past post-retirement benefit costs. The proposed Standard does not reopen any contracts nor adjust any prior period costs, but instead captures the Government's share of the gain or loss amounts that would have been excluded from or included in the prior period cost accruals used to price contracts had the segment closing been anticipated.

The Board notes that in addition to paragraph 9904.413–50(c)(12) regarding pensions, the original Board recognized the need for exceptional accounting treatment when an usually large or non-routine depreciation gain or loss occurs. Paragraph 9904.409–50(j)(3) provides:

> The contracting parties may account for gains and losses arising from mass or extraordinary dispositions in a manner which will result in treatment equitable to all parties.

F. Additional Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this ANPRM. All comments must be in writing and submitted to the address indicated in the **ADDRESSES** section.

When reviewing this proposed Cost Accounting Standard, the Board asks that respondents consider and provide comments regarding the questions discussed below. When responding, commenters are asked to discuss the basis for their conclusions.

1. Definition of Nonforfeitable

The Board notes that under many post-retirement benefit plans, employees are often not granted a vested right to post-retirement benefits until they attain retirement or full eligibility age. The proposed definition of the term ''nonforfeitable,'' similar to that in the pension Standard, includes an exception for benefits forfeited because an employee terminates employment prior to attaining eligibility for benefits. Given the extended delay in attaining eligibility rights to a post-retirement benefit under most plans, the Board is interested in any comments regarding the appropriateness of this exception for post-retirement benefit costs.

2. Recognition of Post-Retirement Benefit Costs

(a) *Alternative or additional criteria for determining what creates a firm liability:* As discussed in subsection F.3, the Board believes that the SFAS 106 recognition of the obligation for the ''substantive plan'' is inappropriate for Government contract cost accounting. In fact, the Board has included a limitation on the annual cost accrual because of its concern that the existence of a written description of the plan which is communicated to the plan participants may not ensure that there is a contractual and enforceable, that is, compellable, obligation to pay the promised benefits. The Board is interested in any alternative or additional criteria that might serve to ascertain the firmness of the post-retirement benefit liability.

(b) *Firmness of the liability and the role of funding:* The Board realizes that many contractors will desire to retain the right to terminate their post-retirement benefit plan or take other actions to reduce or eliminate benefits attributable to prior service. While acknowledging the limitation of tax-advantaged funding vehicles for retiree health benefits, the Board asks respondents to this proposed Standard to consider whether funding could provide an appropriate and effective alternative or whether additional criteria should be considered.

3. Measurement and Assignment of Post-Retirement Benefit Costs

(a) *Actuarial assumptions:* The Board remains concerned that the volatility of health care trends, coupled with the SFAS 106 emphasis on current market conditions, could create an unacceptable degree of uncertainty in the estimates of the liability for future post-retirement benefits, especially for retiree health care benefits. This volatility or uncertainty could adversely affect the forward pricing process which relies on CAS compliant cost data. The Board invites further comments regarding whether actuarial assumptions used for contract costing purposes should each be based on ''best-estimate,'' long-term expectations rather than relying on the SFAS 106 guidance. The Board also asks that contractors, actuaries, or Government officials submit any historical data they may have regarding the volatility of post-retirement benefit costs.

(b) *Reporting on sources of annual gains and losses:* As discussed under subsections F.12 and F.13, greater visibility of cost measurements may be obtained by requiring that annual gains and losses be reported by source, that is, separate identification of gains and losses from asset performance, population and demographic changes, assumption changes, and cost method changes. The Board asks for comments on whether visibility and oversight would be enhanced by a disclosure of each such portion of the annual gain or loss.

(c) *Amortization of gains and losses:* The Board notes that the proposed rule requires full recognition of gains and losses on an amortized basis. This differs from SFAS 106 which requires amortization of cumulative gains and losses that exceed a corridor of the greater of 10% of the projected post-retirement benefit obligation or the fair value of assets. SFAS 106 does permit full recognition of gains and losses on an amortized basis. This proposed provision is intended to keep cost recognition more closely associated with the accounting period in which the gain or loss occurred. The Board would be interested in views regarding the use of the SFAS 106 amortization corridor for Government contract costing purposes.

(d) *Limiting medical inflation assumption:* The Board seeks comments concerning whether a limit should be placed on the health care trend rate. Commenters are asked to consider what limit, *e.g.,* the long-term expected rate of return, the Treasury rate, is appropriate for Government contract costing purposes. The Board is also interested in any information concerning the degree of volatility and uncertainty in the medical inflation assumption.

(e) *Terminal funding method:* Notwithstanding the Board's response in E.6 that terminal funding is an unacceptable cost method under GAAP, the Board would like comments regarding how prevalent the use of the terminal funding method is among contractors. Commenters should also address whether a contractor should be permitted to elect to use the terminal funding method either at the time this proposed rule would first be applicable or even be permitted to later elect to use the terminal funding method.

(f) *Amortization of lump sum settlements and single premium payments:* For plans accounted for under the pay-as-you-go cost method, the proposed Standard is consistent with subparagraph 9904.412–

40(b)(3)(iii) and paragraph 9904.412–50(b)(1). The proposed Standard requires that when a portion of the liability is liquidated prior to the periods in which benefit payments are expected to occur, such lump sum settlement or single premium payment shall be amortized. The Board further notes that such amortization is consistent with paragraph 52 of SFAS 106 requiring that costs of plans primarily attributable to retirees shall be attributed to the future life-expectancy of the retirees. Commenters are asked to provide any rationale for recognizing these single period settlements on an immediate basis rather than an amortized basis, especially if the contractor has not been using terminal funding for its post-retirement benefit plan.

(g) *Long-term expected rate of return:* The Board favored using the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97. to measure the interest equivalent on the accumulated value of unfunded accruals and accumulated value of prepayment credits. The Board is interested in comments regarding the appropriateness of the Treasury rate and whether commenters believe some other rate may be more appropriate.

4. Allocation of Post-Retirement Benefit Costs to Segments

(a) *Criteria for separate calculation of post-retirement benefit costs:* This proposal includes similar criteria to that found in CAS 9904.413 for determining when separate calculations are necessary. The Board seeks comments regarding whether there are additional conditions or events that may materially affect the determination of post-retirement benefit costs at the segment level which should require a separate calculation of post-retirement benefit costs for a segment.

(b) *Separate calculation as the only measurement for segment costs:* Because of the availability of computers and the availability of sophisticated actuarial valuation software, requiring separately calculated costs by segment no longer imposes the administrative burden that it would have in 1977. The Board asks for comments regarding a requirement that costs always be separately calculated for segments unless it can be reasonably demonstrated that a general allocation would provide materially similar results.

5. Allocation to Intermediate and Final Cost Objectives

Because the determination of certain adjustments will require an assessment of the Government's historical participation in post-retirement benefit costs, the Board considered including a record-keeping requirement regarding allocations of post-retirement benefit costs to contracts subject to this Standard. The Board is interested in whether contractor or Government representatives have experience or concerns about the necessary data being readily available regarding the Government's historical participation absent such a requirement.

6. Adjustments for Curtailments, Settlements, and Special Termination Benefits

The Board would appreciate any comments regarding any alternatives to the proposed ten-year amortization period that should be considered.

7. Adjustments for Segment Closings

(a) *Government's responsibility for future salary increases and health care trends:* The preamble to the March 30, 1995 amendments to CAS 9904.413 noted that existing and past Government contracts of the closed segment neither cause nor benefit from future salary increases. The Board is interested in any comments regarding whether the effect of such future salary levels should be excluded from the determination of a segment closing adjustment for post-retirement benefit costs.

(b) *Previous use of the pay-as-you-go cost method:* As proposed, this Standard would provide for the recognition of the unfunded nonforfeitable post-retirement benefit obligation for contractors using accrual accounting that had been using the pay-as-you-go cost method before this Standard was applicable. The Board seeks any comments regarding whether there should be a phase-in of such recognition.

(c) *''Homeless'' inactives retained by a seller:* After a segment is sold, the seller may retain ''inactive'' plan participants that were formerly associated with the sold segment. Consequently, the seller (transferor) can no longer allocate accrued post-retirement benefit costs generated by these inactive participants to the sold segment for allocation to that segment's intermediate and final cost objectives. Accordingly, the Board considered allocating the assets to the inactive participants retained by the seller (transferor) before any assets are allocated to the active participants who go to the buyer (transferee). The Board is interested if there is any rationale for giving inactive participants such preferential funding when a segment is sold or ownership is otherwise transferred.

(d) *Recognition of retained liability:* The Board is aware that some hold the belief that when a segment is sold or ownership is otherwise transferred, the selling price or transfer agreement explicitly or implicitly reflects compensation to the seller for any future post-retirement benefit obligations retained by the seller. Conversely, the belief holds that there is an implicit credit to the buyer for any post-retirement benefit obligations assumed by the buyer. Based on this belief, it has been suggested that Government contractors utilizing the pay-as-you-go method to account for post-retirement benefit costs should separately identify any retained participants of the disposed segment. In such cases, the post-retirement benefit payments made for these inactive participants would not be included/recognized, after the sale or transfer, as allocable costs with respect to the seller's ongoing cost-based Government contracts.

The Board has not included such a provision in the Standard being proposed today, but is interested in any data or information that commenters can provide on alternative treatments of the liability and future payments for retained participants, for Government contract costing purposes in connection with a sale or ownership transfer.

8. Illustrations

The Board is interested in comments regarding whether displaying the accumulated post-retirement benefit obligation routinely as a debit, except when illustrating SFAS 106 disclosures, creates confusion.

List of Subjects in 48 CFR 9904

Government Procurement, Cost Accounting Standards.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

It is proposed to amend part 9904 as follows:

PART 9904—COST ACCOUNTING STANDARDS

1. The authority citation for Part 9904 continues to read as follows:

Authority: Public Law 100–679, 102 Stat 4056, 41 U.S.C. 422.

2. Section 9904.416–50 is amended by revising paragraph (*a*)(*1*)(*v*) to read as follows:

9904.416–50 Techniques for application.

(a) * * *

(1) * * *

(v) If an objective of an insurance program is to provide insurance

coverage on retired persons, then such program is subject to Cost Accounting Standard 9904.419 except as provided in 9904.419–40(b)(2).

* * * * *

9904.416–60 [Amended]

3. Section 9904.416–60 is amended by removing and reserving paragraphs (c), (d) and (e).

4. Sections 9904.419, 9904.419–20, 9904.419–30, 9904.419–40, 9904.419–50, 9904.419–60, 9904.419–62, 9904.419–63, 9904.419–64 are added to read as set forth below.

5. Section 9904.419–10 and 9904.419–61 are added and reserved to read as follows:

9904.419 Cost accounting standard for measurement, assignment, allocation, and adjustment of post-retirement benefit cost.

9904.419–10 [Reserved]

9904.419–20 Purpose.

(a) The purpose of this Standard is to provide criteria for measuring the costs of post-retirement benefit plans, assigning the measured costs to cost accounting periods, and allocating the assigned costs to segments of an organization. This Standard also provides the basis on which segments shall allocate assigned post-retirement benefit costs to their intermediate and final cost objectives. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for post-retirement benefit costs and thereby increase the probability that those costs are allocated to segments and to cost objectives within segments in a uniform and consistent manner.

(b) This Standard provides for the adjustment of post-retirement benefit costs for the effect of a curtailment of a post-retirement benefit plan, a settlement of a post-retirement benefit obligation, a granting of termination benefits, a termination of a post-retirement benefit plan, or a segment closing.

(c) This Standard is applicable to the cost of all post-retirement benefit plans except for costs of pension plans and deferred compensation which are covered in other Cost Accounting Standards.

9904.419–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meaning ascribed to them in those definitions unless paragraph (b) or (c) of this subsection requires otherwise.

(1) *Accumulated value of unfunded accruals* means the value, as of the measurement date, of post-retirement benefit costs that have been accrued but not funded, adjusted for imputed earnings and for benefits paid by the contractor.

(2) *Business unit* means any segment of an organization, or an entire business organization which is not divided into segments.

(3) *Captive insurer* means an insurance company that does business primarily with related entities. Related entities include, but are not limited to, companies that are owned by or under the control of the contractor, including affiliates, parents, subsidiaries, or controlling entities.

(4) *Fair value* means the amount that a plan could reasonably expect to receive for an investment in a current sale between a willing buyer and a willing seller, that is, other than a forced or liquidation sale.

(5) *Funded post-retirement benefit cost* means the portion of post-retirement benefit cost for a current or prior cost accounting period that has been paid to a funding agency.

(6) *Market-related value of plan assets* means a balance used to calculate the expected return on plan assets. Market-related value can be either fair value or a calculated value that recognizes changes in fair value in a systematic and rational manner over not more than five years. Different methods of calculating market-related value may be used for different classes of plan assets, but the manner of determining market-related value shall be applied consistently from year to year for each class of plan asset.

(7) *Nonforfeitable post-retirement benefit obligation* means the accumulated post-retirement benefit obligation for benefits, or that portion of benefits, for which the participant's eligibility to receive a present or future post-retirement benefit is no longer contingent on remaining in the service of the employer or attaining a specified age. The excess, if any, of the nonforfeitable post-retirement benefit obligation, including benefit eligibility as of the last day of the plan year, over the valuation assets is the unfunded nonforfeitable post-retirement benefit obligation. Any accumulated post-retirement benefit obligation in excess of the nonforfeitable post-retirement benefit obligation is the forfeitable post-retirement benefit obligation.

(8) *Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

(9) *Post-retirement benefit plan* means an arrangement that is mutually understood by an employer and its employees, whereby an employer undertakes to provide its employees with post-retirement benefits after they retire in exchange for their services over a specified period of time, upon attaining a specified age while in service, or a combination of both. A post-retirement benefit plan may be written or it may be implied by a well-defined, although perhaps unwritten, practice of paying post-retirement benefits or by oral representations made to current or former employees.

(10) *Post-retirement benefit plan participant* means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a post-retirement benefit plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active post-retirement benefit plan participant.

(11) *Post-retirement benefit plan termination* means an event in which the post-retirement benefit plan ceases to exist and all benefits are settled by the purchase of insurance contracts or by other means. The plan may or may not be replaced by another plan.

(12) *Post-retirement benefits* means all forms of benefits, other than retirement income, provided by an employer to retirees. Those benefits may be defined in terms of specified benefits, such as health care, tuition assistance, or legal services, that are provided to retirees as the need for those benefits arises, such as certain health care benefits, or they may be defined in terms of monetary amounts that become payable on the occurrence of a specified event, such as life insurance benefits not provided through a pension plan. Benefits provided in whole or in part by funds that are separately accounted for within the trust fund of a qualified pension plan shall be considered post-retirement benefits subject to this Standard.

(13) *Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or

producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority ownership, but over which it exercises control.

(14) *Successor-in-interest* means an entity that assumes all obligations under the government contract or contracts of a contractor through a novation agreement. A novation agreement is one that is executed by a contractor (transferor), a successor-in-interest (transferee), and the Government, by which the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

(15) *Unfunded accumulated post-retirement benefit obligation* means the accumulated post-retirement benefit obligation in excess of the valuation assets. The excess of the valuation assets over the accumulated post-retirement benefit obligation is an actuarial post-retirement benefit surplus and is treated as a negative unfunded accumulated post-retirement benefit obligation.

(16) *Valuation assets* means the total value of assets used to determine post-retirement benefit cost. Valuation assets are the sum of the fair value of assets plus the accumulated value of unfunded accruals reduced by the accumulated value of prepayment credits.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard:

(1) *Actuarial cost method* means a technique which uses assumptions to measure the present value of future post-retirement benefits and post-retirement benefit plan administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the market-related value of plan assets.

(2) *Funding agency* means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a post-retirement benefit plan, or for the purchase of such benefits, provided such accumulated assets form a part of a post-retirement benefit plan established for the exclusive benefit of the plan participants and their beneficiaries.

(3) *Nonforfeitable* means a right to a post-retirement benefit, either immediate or deferred, which arises from an employee's service, which is unconditional, and which is legally enforceable against the post-retirement benefit plan or the contractor. Rights to benefits that do not satisfy this definition are considered forfeitable. A right to a post-retirement benefit is not considered forfeitable solely because it may be affected by the employee's or beneficiary's death or disability. Nor is a right considered forfeitable because it can be affected by the unilateral actions of the employee.

(4) *Pay-as-you-go cost method* means a method of recognizing post-retirement benefit cost only when post-retirement benefits are paid to or on behalf of retired employees or their beneficiaries.

(5) *Prepayment credit* means the amount funded in excess of the post-retirement benefit cost assigned to a cost accounting period that is carried forward for future recognition.

(ii) *The accumulated value of prepayment credits* means the value, as of the measurement date, of the prepayment credits adjusted for imputed earnings and decreased for amounts used to fund post-retirement benefit costs or obligations, whether assignable or not.

(6) *Segment closing* means that a segment or business unit has been sold or ownership has been otherwise transferred, discontinued operations, or discontinued doing or actively seeking Government business under contracts subject to this Standard. Segment mergers or splits within the contractor's operations shall not be considered a segment closing for purposes of this Standard.

(c) Other terms used prominently in this Standard have the same meanings as in Statement of Financial Accounting Standards No. 106 ''Employers'' Accounting for Post-retirement Benefits Other Than Pensions' (SFAS 106), including subsequent amendments.

9904.419–40 Fundamental requirements.

(a) *Recognition of post-retirement benefit costs.* The commitment to provide post-retirement benefits in future periods shall be evidenced by a post-retirement benefit plan.

(1) The cost of a post-retirement benefit plan shall be accounted for using accrual accounting provided that:

(i) The right to a post-retirement benefit is communicated in writing to the participants, including notice of the right to legally enforce payment of such benefit.

(ii) The participant has an irrevocable right to any portion of a benefit for which the participant has attained eligibility.

(iii) If the contractor reserves rights to terminate or otherwise cancel, eliminate, or reduce the rights of employees to any portion of post-retirement benefits for which an employee has become eligible, the post-retirement benefit plan shall fail to meet the criteria set forth in paragraph (a)(1)(ii) of this section.

(iv) For defined-contribution post-retirement plans, the cost for a cost accounting period is the contribution required by the written provisions of the post-retirement benefit plan.

(v) For defined-benefit post-retirement plans, the cost for a cost accounting period is actuarially determined based upon the written provisions of the post-retirement benefit plan.

(2) The cost of any post-retirement benefit plan that fails to meet the criteria set forth in 9904.419–40(a)(1) shall be accounted for using the pay-as-you-go cost method.

(b) *Measurement and assignment of post-retirement benefit cost.*

(1) Except for costs assigned to future periods by 9904.419–40(b)(5)(iii), the amount of post-retirement benefit cost determined for a cost accounting period is assignable only to that period.

(2) To the extent that insurance contracts are purchased during the period to cover post-retirement benefits attributed to service in the current period:

(i) The cost of those benefits shall be accounted for in accordance with Cost Accounting Standard 9904.416, Accounting for Insurance Costs.

(ii) However, if the insurance is purchased from a captive insurer, the post-retirement benefit cost shall be determined in accordance with this Standard.

(iii) The costs of benefits attributed to current service in excess of benefits provided by such insurance contracts purchased during the current period shall be accounted for according to the provisions of this Standard applicable to plans not involving insurance contracts.

(iv) For purposes of 9904.419–40(b)(3)(ii) and 9904.419–50(e)(2)(i), the cost of purchasing contracts to irrevocably settle all obligations for post-retirement benefit obligations to a plan participant or participants shall be treated the same as any other settlement payment.

(3) For plans accounted for under the pay-as-you-go cost method, the components of post-retirement benefit cost for a cost accounting period are the contractor's share of:

(i) The net amount paid to or on behalf of retired employees or their

beneficiaries for post-retirement benefits incurred during that period, and

(ii) An amortization installment, including an interest equivalent on the unamortized settlement amount, attributable to the net amount paid to irrevocably settle an obligation for post-retirement benefits of current and future cost accounting periods.

(4) For defined-contribution plans using accrual accounting, the post-retirement benefit cost for a cost accounting period is the net contribution required to be made to participants' accounts for that period, after taking into account dividends and other credits, where applicable.

(5) For defined-benefit plans using accrual accounting:

(i) The components of post-retirement benefit cost for a cost accounting period are:

(A) Service cost,

(B) Interest cost,

(C) Actual return on the fair value of plan assets, adjusted for interest equivalents on the accumulated value of unfunded accruals or prepayment credits,

(D) Amortization of unrecognized prior service cost, if any,

(E) The amortization of the unrecognized gain or loss as provided for in this Standard, and

(F) Amortization of any unrecognized transition obligation or asset.

(ii) The post-retirement benefit cost of a cost accounting period shall be determined by use of the same methods, assumptions, and asset values used for financial reporting purposes in accordance with SFAS 106, as amended, unless specified otherwise in this Standard.

(iii) The post-retirement benefit costs assigned to a period shall not exceed the assignable post-retirement benefit cost limitation. Any amount in excess of the assignable post-retirement benefit cost limitation shall be recognized in future periods as an actuarial loss in accordance with 9904.419–50(b)(2)(vii). The assignable post-retirement benefit cost limitation is measured as the sum of:

(A) The amount of benefits paid by the contractor for the cost accounting period, and,

(B) The unfunded nonforfeitable post-retirement benefit obligation, if any.

(iv) The post-retirement benefit cost of a cost accounting period is assignable only if the unfunded accumulated post-retirement benefit obligation equals the sum of the unrecognized net gain or loss (including any unrecognized amount determined in accordance with 9904.419–50(e)(2)(i)), unrecognized prior service cost, and the unrecognized transition obligation or transition asset.

(c) *Post-retirement benefit cost of segments.*

(1) Post-retirement benefit costs shall be directly or indirectly allocated to each segment having participants identified with the post-retirement benefit plan who generate cost under the cost accounting method in use. If a post-retirement benefit plan has plan participants in a home office, the home office shall be treated as a segment for purposes of allocating the cost of the post-retirement benefit plan.

(2) A separate calculation (direct allocation) of post-retirement benefit costs for a segment is required when any of the conditions set forth in 9904.419–50(c)(2) is present. When such conditions are not present, indirect allocations may be made by calculating a composite post-retirement benefit cost for two or more segments and allocating this cost to these segments.

(3) For defined-benefit plans using accrual accounting:

(i) Except where use of a different assumption or assumptions is required by 9904.419–50(c)(2)(iii), the same assumptions shall be used for all segments covered by a plan.

(ii) Contractors shall separately account for the assets and accumulated value of unfunded accruals of each segment whenever post-retirement benefit costs are separately calculated for the segment.

(d) *Allocation of post-retirement benefit cost to cost objectives.* The post-retirement benefit costs for a segment are allocable to that segment's intermediate and final cost objectives.

(e) *Adjustments for curtailments, settlements, and termination benefits.* In the event that a contractor curtails a post-retirement benefit plan, settles a post-retirement benefit obligation, or grants termination benefits:

(1) For plans accounted for under the pay-as-you-go cost method, no adjustment attributable to previously determined post-retirement benefit costs is permitted to be recorded. Existing contract prices or costs shall not be adjusted.

(2) For defined-contribution plans using accrual accounting, if the post-retirement benefit plan is terminated or the right to earn future vesting or retirement eligibility service is curtailed, the contractor must separately determine the financial effect of such event and record an adjustment for each affected segment. The adjustment shall be amortized over the current and future periods. Existing contract prices or costs shall not be adjusted.

(3) For defined-benefit plans using accrual accounting, the contractor must separately recognize the financial effect of such event by recording an adjustment for each affected segment. The adjustment shall be amortized over the current and future periods. Existing contract prices or costs shall not be adjusted.

(f) *Adjustments for segment closings.* If a segment is closed, the contractor shall determine the effect of such segment closing on the post-retirement benefit costs of each affected segment.

(1) For plans accounted for under the pay-as-you-go cost method, no segment closing adjustment attributable to previously determined post-retirement benefit costs is permitted.

(2) For defined-contribution plans using accrual accounting, the contractor shall determine a segment closing amount which represents an adjustment to previously determined post-retirement benefit costs that were recognized as incurred costs at the closed segment. The recorded amount shall give full recognition to any unrecognized portion of any credit for plan termination or curtailment of vesting or retirement eligibility service. Recovery or payment of the Government's share of such amount shall be made as an adjustment to contract price or cost or by other suitable techniques.

(3) For defined-benefit plans using accrual accounting, the contractor shall determine a segment closing amount which represents an adjustment to previously determined post-retirement benefit costs that were recognized as incurred costs at the closed segment. The recorded amount shall give full recognition to the nonforfeitable post-retirement benefit obligation and valuations assets, except to the extent the nonforfeitable post-retirement benefit obligation and valuations assets have been assumed by a successor-in-interest to the contracts of the closed segment. To the extent that the accumulated post-retirement benefit obligation, nonforfeitable post-retirement benefit obligation, valuations assets and associated unrecognized amounts have been so transferred, the effect of such transfer will be recognized in future accounting periods by the successor-in-interest. Recovery or payment of the Government's share of the segment closing amount shall be made as an adjustment to contract price or cost or by other suitable techniques.

9904.419–50 Techniques for Application.

(a) *Recognition of post-retirement benefit costs.*

(1) Post-retirement benefit costs shall be determined separately for each post-retirement benefit plan by applying the provisions of this Standard to each such plan. Post-retirement benefit costs may be determined on an aggregate basis for two or more separate plans if those plans use the same cost accounting method, that is, accrual accounting or the pay-as-you-go method, and either:

(i) Those plans provide different benefits to the same group of plan participants, or

(ii) Those plans provide benefits that are similar in definition and amount to different groups of plan participants.

(2) If a post-retirement benefit plan provides two or more separately identifiable categories of benefits, *e.g.,* healthcare benefits and life insurance benefits, the contractor may treat each benefit as a separately identifiable post-retirement benefit plan. The costs of each such post-retirement benefit plan may be separately determined and accounted for.

(3) If a post-retirement benefit plan provides benefits to two or more mutually exclusive classes of plan participants, *e.g.,* those eligible for retirement before a specified date and those eligible after such date, the contractor may treat each such mutually exclusive class as a separately identifiable post-retirement benefit plan. The costs of post-retirement benefit plan may be separately determined and accounted for.

(4) If the substance of a post-retirement benefit plan having characteristics of both a defined-benefit post-retirement plan and a defined-contribution post-retirement plan is to provide a defined benefit, the costs of such plan shall be determined and accounted for in accordance with the provisions of this Standard applicable to defined-benefit post-retirement plans. Conversely, if the substance of a post-retirement benefit plan having characteristics of both a defined-benefit plan and a defined-contribution plan is to provide benefits determined by defined contributions, the costs of such plan shall be determined and accounted for in accordance with the provisions of this Standard applicable to defined-contribution post-retirement plans.

(5) A multiemployer post-retirement benefit plan established pursuant to the terms of a collective bargaining agreement shall be considered to be a defined-contribution post-retirement plan for purposes of this Standard.

(6) A post-retirement benefit plan applicable to a Federally-funded Research and Development Center (FFRDC) that is part of a State post-retirement benefit plan shall be considered to be a defined-contribution post-retirement plan for purposes of this Standard.

(7) Post-retirement benefits provided in whole or in part by funds that are separately accounted for within the trust fund of a qualified pension plan shall be accounted for as post-retirement benefits subject to this Standard.

(b) *Measurement and assignment of post-retirement benefit cost.*

(1) For plans accounted for under the pay-as-you-go cost method, any amount paid to irrevocably settle an obligation for post-retirement benefits payable in current and future cost accounting periods shall be amortized over a period of fifteen years in equal annual installments. Such amortization shall include an interest equivalent each period equal to the rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 at the time of the settlement. If the amount paid to settle the obligation is not material, the full amount of the settlement may be assigned to the current period.

(2) For plans using accrual accounting:

(i) Post-retirement benefit cost shall be determined based on current active and inactive plan participants. This provision shall not preclude use of an assumption concerning future reemployments.

(ii) Post-retirement benefit cost shall be determined based on the written provisions of the post-retirement benefit plan. This shall not preclude contractors from making salary projections for plans whose benefits are based on salaries and wages, nor from considering benefit revisions for plans which provide that such revisions must be made.

(iii) The assumed health care trend rate may not exceed the assumed expected long-term rate of return on plan assets. If no assumption is made concerning the expected long-term rate of return on plan assets, the health care trend rate assumption shall not exceed the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97.

(iv) The actual return on the fair value of plan assets component of post-retirement benefit cost shall be increased by an interest equivalent on the accumulated value of unfunded accruals determined using the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97.

(v) The actual return on the fair value of plan assets component of post-retirement benefit cost shall be decreased by an interest equivalent on the accumulated value of prepayment credits determined using the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97.

(vi) The fair value and market-related value of plan assets shall not be adjusted for any fee, reserve charge, or other investment charge for withdrawals from or termination of an investment or insurance contract, trust agreement, or other funding arrangement, unless such fee is determined in an arm's length transaction, and actually is incurred and paid.

(vii) The gain or loss component of post-retirement benefit cost (excluding plan asset gains and losses not yet reflected in the market-related value of plan assets) that is determined for a cost accounting period shall be recognized as follows:

(A) The contractor shall amortize each gain or loss over the average remaining service period of active plan participants. If all or almost all of a plan's participants are inactive, the average remaining life expectancy of the inactive participants shall be used instead of the average remaining service period. If the gain or loss is not material, the entire gain or loss may be included as a component of the current or ensuing period's post-retirement benefit cost.

(B) Except as provided in 9904.419–50(e)(2)(i), the contractor shall establish and consistently follow a policy for amortizing gains and losses. Any amortization policy shall include criteria for selecting specific amortization periods and may give consideration to factors such as the size and nature of the gain or loss. Once the amortization period for a gain or loss is selected, the amortization process shall continue to completion unless full recognition is required by 9904.419–50(f)(3)(i).

(viii) Any tax assessed pursuant to a law or regulation because of excess, inadequate, or delayed funding of a post-retirement benefit plan shall be excluded from the assigned post-retirement benefit cost and from the tax expense reflected in the actual return on the fair value of plan assets component of post-retirement benefit costs.

(c) *Post-retirement benefit cost of segments.*

(1) Contractors who calculate a composite post-retirement benefit cost covering plan participants in two or more segments shall allocate such composite costs to segments as follows:

(i) For plans accounted for under the pay-as-you-go cost method, the contractor shall allocate post-retirement benefit costs to a segment to the extent that such costs can be identified with

that segment. Any post-retirement benefit costs remaining after such allocation shall be categorized as a residual expense of the home office or home offices most immediately identified with the post-retirement benefit plan. The allocation of post-retirement benefit costs shall give consideration to any refund, rebate, or other credit, that is disproportionately attributable to individual segments.

(ii) For plans using accrual accounting, contractors shall indirectly allocate or separately calculate post-retirement benefit costs for each segment having active or inactive participants of the post-retirement benefit plan. Any allocation base selected shall be representative of the factors used to calculate the post-retirement benefit cost, such as headcount or salary.

(2) For plans using accrual accounting, post-retirement benefit costs shall be separately calculated for a segment (including an aggregation of segments) whenever any of the following conditions exist for that segment, provided that such condition(s) materially affect the amount of post-retirement benefit cost allocated to the segment:

(i) The cost of benefits, level of benefits, eligibility for benefits, or plan demographics are materially different for the segment than for the average of all segments; or

(ii) There is a refund, credit, or other gain or loss from one or more sources that is disproportionately attributable to the segment. If such refund, credit, gain or loss is expected to be non-recurring, separate calculations are not required unless required by other conditions of this paragraph. In that case, there shall be a special direct allocation of only the non-recurring amount which shall be accounted for and amortized at the segment level.

(iii) For defined-benefit plans, any appropriate assumption or assumptions are materially different for the segment than for the average of all segments.

(iv) For defined-benefit plans, a contractor follows a practice of funding post-retirement benefit costs disproportionately for segments subject to this Standard.

(v) For defined-benefit plans,

(A) If the post-retirement benefit plan for a segment becomes merged with the plan of another segment, or the post-retirement benefit plan is divided into two or more post-retirement benefit plans, and in either case,

(B) The ratios of valuation assets to the accumulated post-retirement benefit obligation for each of the merged or separated plans are materially different from one another after applying the benefits in effect after the post-retirement benefit plan merger or post-retirement benefit plan division.

(3) For plans using accrual accounting, notwithstanding the provisions of paragraph (c)(2) of this subsection, contractors may elect to calculate post-retirement benefit costs separately for each segment having participants in a post-retirement benefit plan.

(4) For segments whose post-retirement benefit costs are calculated separately pursuant to paragraphs (c)(2) or (3) of this subsection, such calculations shall be prospective only; post-retirement benefit costs shall not be redetermined for prior years.

(5) Funding of post-retirement benefit cost for a cost accounting period shall be considered to have taken place within such period if it is accomplished by the corporate tax filing date for such period, including any permissible extensions thereto.

(6) For defined-benefit plans using accrual accounting, whenever pension cost for a segment is calculated separately pursuant to paragraphs (c)(2) or (3) of this subsection:

(i) When post-retirement benefit costs are first separately calculated for a segment, there shall be an initial allocation of a share in the undivided fair value of plan assets and the undivided accumulated value of unfunded accruals to segments. This division shall be made in accordance with 9904.419–50(c)(6)(viii) based upon the nonforfeitable post-retirement benefit obligation and nonforfeitable post-retirement benefit obligation, except as otherwise provided for in this subparagraph. Prior to this initial allocation of assets, the accumulated value of prepayment credits, if any, shall be deducted from the undivided fair value of plan assets and separately identified.

(A) If a contractor has separately identified the fair value of plan assets in accordance with 9904.419–64(f), such fair value of plan assets and all other values previously allocated to those segments as of the date of such determination shall not be changed.

(B) If a contractor has been determining the accrual for post-retirement benefit costs on a composite basis and allocating such costs to segments, the initial allocation of the valuation assets shall reflect such prior cost determinations and allocations made pursuant to this Standard. If the necessary data are readily determinable, the fair value of plan assets to be allocated to each segment shall be the amount contributed by, or on behalf of, the segment, increased by income received on such assets, and decreased by benefits and expenses paid from such assets.

(C) If the necessary data are not readily determinable for certain prior periods, the fair value of plan assets net of any separately identified accumulated value of prepayment credits shall be allocated to segments based on the ratio of the accumulated post-retirement benefit obligation of each segment to that of the plan as a whole. The accumulated value of unfunded accruals shall be allocated to segments in the same proportions as such net fair value of plan assets.

(D) Thereafter, the fair value of plan assets allocable to each segment shall be brought forward as described in paragraph (c)(6)(iii) of this subsection. The accumulated value of unfunded accruals allocated to each segment shall be brought forward in accordance with paragraph (c)(6)(v) of this subsection and the definition at 9904.419–30(a)(1).

(ii) When post-retirement benefit costs are first separately calculated for a segment, there shall be an initial allocation of the undivided values of unrecognized prior service cost, unrecognized transition obligation, and unrecognized gains and losses (including any gains or losses from curtailments, settlements, or granting termination benefits). Such values shall be allocated to the segment based on the ratio of the unfunded accumulated post-retirement benefit obligation of the segment to that of the plan as a whole. These unrecognized amounts shall be brought forward in accordance with the separately calculated post-retirement benefit cost of the segment.

(iii) After the initial allocation of the fair value of plan assets, the contractor shall maintain a record of the portion of subsequent contributions, income, benefit payments, and expenses attributable to segments and paid from the plan assets.

(A) Amounts deposited to a funding agency shall be apportioned to segments in proportion to the post-retirement benefit costs allocated to or separately calculated for the individual segments. However, if a contractor consistently follows a practice of separately calculating post-retirement benefit costs for segments, the contractor may first apportion amounts funded to segments in proportion to the post-retirement benefit cost of such segments subject to this Standard. Any portion of the amount deposited remaining after apportioning funding to segments whose costs are subject to this Standard, shall then be apportioned to other segments. No prepayment credit shall be

measured until the post-retirement benefit cost of all segments is funded.

(B) Income and expenses shall include a portion of any investment gains and losses attributable to the plan assets. Income and expenses attributable to plan assets shall be allocated to segments in the same proportion that the average value of plan assets allocated to each segment bears to the average value of total plan assets for the period for which income and expenses are being allocated.

(iv) Once the fair value of plan assets has been determined for segments in accordance with paragraphs (c)(6)(i) or (iii) of this subsection each year, the market-related value of plan assets shall be allocated to each segment in the same proportion as the fair value of plan assets.

(v) Any portion of post-retirement benefit cost of a segment for a cost accounting period that is not funded within such period shall be accounted for as an unfunded accrual and carried forward to future accounting periods. The contractor may elect to fund portions of, and thereby reduce, the accumulated value of unfunded accruals. Such funding shall not be recognized for purposes of paragraph (c)(5) of this subsection.

(vi) Amounts funded in excess of the total post-retirement benefit cost of a segment for a cost accounting period shall be accounted for as a prepayment credit and carried forward to future accounting periods. The accumulated value of prepayment credits shall be reduced for portions of the accumulated value of prepayment credits used to fund post-retirement benefit costs or to fund portions of the accumulated value of unfunded accruals.

(vii) Any benefit payments to or on behalf of a segment's plan participants which are made by the contractor from a source other than the plan assets shall be treated as funding in accordance with paragraph (c)(5) of this subsection. The accumulated value of unfunded accruals shall be reduced by any such benefit payments that exceed the assigned post-retirement benefit cost for cost accounting period.

(viii) (A) If plan participants transfer among segments or if a segment is split into two or more segments, the contractor shall transfer fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits as follows:

(*1*) The contractor shall first allocate fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits to the nonforfeitable post-retirement benefit obligation based on the ratio of the nonforfeitable post-retirement benefit obligation to the valuation assets. Such ratio shall not exceed one (1). Allocate any remaining fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits to the forfeitable post-retirement benefit obligation.

(*2*) The contractor shall then transfer fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits allocated to the nonforfeitable post-retirement benefit obligation in proportion to the nonforfeitable post-retirement benefit obligation transferred.

(*3*) Finally, the contractor shall transfer fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits allocated to the forfeitable post-retirement benefit obligation in proportion to the forfeitable post-retirement benefit obligation transferred.

(B) In addition, a portion of each unrecognized prior service cost, unrecognized transition obligation, and unrecognized gain or loss (including any gains or losses from curtailments, settlements, or granting termination benefits) shall be transferred in proportion to the unfunded accumulated post-retirement obligation transferred. The contractor may follow a consistent practice which deems that all transfers occur at the end of the period. The undivided market-related value of plan assets shall be allocated in proportion to the fair value of plan assets of each segment after the transfer. Contractors need not transfer assets and other values if the net amount of transfers is immaterial.

(d) *Allocation of post-retirement benefit cost to cost objectives.* The allocation of post-retirement benefit cost of segments to intermediate and final cost objectives shall be made in accordance with applicable Standards.

(e) *Adjustments for curtailments, settlements, and termination benefits.*

(1) For defined-contribution plans using accrual accounting, in the event a contractor terminates a post-retirement benefit plan or curtails vesting or retirement eligibility service, then the contractor shall determine the amount of nonvested account balances subject to forfeiture. Such amount shall be determined as of the date of such plan termination or curtailment of vesting or retirement eligibility service. The amount of the credit shall be amortized and assigned over a period of ten (10) years beginning with the period in which the event occurs.

(2) For defined-benefit plans using accrual accounting:

(i) In the event a contractor curtails a post-retirement benefit plan, settles a post-retirement benefit obligation, or grants termination benefits, then the contractor shall measure the gain or loss caused by such event separately from the annual gain or loss determined for purposes of 9904.419–50(b)(2)(vii). In measuring such amount, the contractor shall apply the methods and techniques prescribed in SFAS 106. Any such gain or loss remaining after offsetting any portion of unrecognized prior service costs, prior gains and losses, or transition obligation shall be amortized and assigned over a period of ten (10) years beginning with the period in which the event occurs.

(ii) If a post-retirement benefit plan is terminated, the contracting parties may agree to establish a single plan termination amount by aggregating the net sum of any unrecognized gain or loss adjustments for curtailments, settlements, or granting of termination benefits determined in accordance with this subsection plus any remaining unrecognized net gain or loss determined in accordance with 9904.419–50(b)(2)(vii). Such plan termination amount shall be amortized and assigned over a period of ten (10) years beginning with the period in which the plan termination occurred.

(iii) If the contractor has not already allocated the fair value of plan assets and other relevant values to the segment, such an allocation shall be made in accordance with the requirements of 9904.419–50(c)(6)(i) and (ii).

(f) *Adjustments for segment closings.* If a segment is closed, the contractor shall determine a segment closing amount which represents an adjustment to previously determined post-retirement benefit costs as follows:

(1) For plans accounted for under the pay-as-you-go cost method:

(i) The contractor shall not adjust previously determined post-retirement benefit costs. Contract price or cost adjustments are not permitted.

(ii) If the segment discontinues operations, is sold, or ownership is otherwise transferred, all remaining inactive plan participants shall be transferred to the closed segment's immediate home office.

(2) For defined-contribution plans using accrual accounting, the segment closing amount shall be measured as the unrecognized portion of the plan termination or curtailment of vesting or retirement eligibility service credit determined in accordance with 9904.419–50(e)(1).

(3) For defined-benefit plans using accrual accounting:

(i) The segment closing amount shall be measured as the difference between the nonforfeitable post-retirement benefit obligation and the valuation assets.

(ii) The contractor's methods and assumptions used to determine the segment closing amount shall be consistent with those used in the measurement of post-retirement benefit costs prior to the segment closing.

(iii) If the segment discontinues operations, all remaining inactive plan participants shall be transferred to the closed segment's immediate home office, along with the accumulated post-retirement benefit obligation, fair value of plan assets and all other values attributable to such transferred inactive participants.

(iv) If the segment is sold, or ownership is otherwise transferred, and the contractor retains some or all of the accumulated post-retirement benefit obligation, the fair value of plan assets and all other values shall be split between the contractor and the buyer in accordance with 9904.419–50(c)(6)(viii) based upon the accumulated post-retirement benefit obligation retained by the contractor and the balance of the accumulated post-retirement benefit obligation which is transferred to the buyer. The accumulated post-retirement benefit obligation, fair value of plan assets and all other values retained by the contractor shall be transferred to the closed segment's immediate home office.

(v) If the segment is sold or ownership is otherwise transferred and such sale or transfer of ownership is to a successor-in-interest then:

(A) If the entire accumulated post-retirement benefit obligation, fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits are transferred to the successor contractor, there shall be no adjustment to previously determined post-retirement benefit costs.

(B) If the contractor retains some or all of the accumulated post-retirement benefit obligation, the accumulated post-retirement benefit obligation and all other values shall be allocated between the contractor and the successor-in-interest in accordance with paragraph (f)(3)(iv) of this section. The segment closing amount shall be determined based on such retained values.

(C) The contractor's methods and assumptions are deemed to be adopted by the successor-in-interest so that the effect of the segment's transferred assets and liabilities is carried forward and recognized in the accounting for post-retirement benefit cost at the successor contractor. Any changes in methods or assumptions shall be deemed to occur immediately after such transfer.

(vi) Once determined, any adjustment credit shall be first used to reduce the accumulated value of unfunded accruals. After the accumulated value of unfunded accruals has been reduced, any remaining adjustment amount shall be accounted for as a prepayment credit. Any adjustment charge shall be accounted for as an unfunded accrual to the extent that funds are not added to the fair value of assets.

(4) The Government's share of the segment closing amount (charge or credit) shall be the product of the total segment closing amount determined in accordance with paragraphs (f)(2) or (3) of this subsection and a fraction. The numerator of such fraction shall be the sum of the post-retirement benefit plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's participation in the post-retirement benefit plan costs on an accrual basis. The denominator of such fraction shall be the total post-retirement benefit plan costs assigned to cost accounting periods during the same period. The contracting parties shall recognize the Government's share of the segment closing amount that is applicable to the segment's contracts that are subject to this Standard by adjusting contract prices, target costs or cost ceilings, or, by any other suitable technique acceptable to the cognizant Federal agency official.

(5) For purposes of this subsection and paragraph (e) of this section, if the date of the event is not readily determinable, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date.

9904.419–60 Illustrations.

These illustrations presume that the contractor's post-retirement benefit plan, cost methods, and actuarial assumptions meet the requirements of this Standard except as noted in the particular illustration.

(a) *Recognition of post-retirement benefit costs.*

(1) The written terms of Contractor A's defined-contribution post-retirement plan require that the contractor make contributions of a specified percentage of each employee's base salary to individual accounts held by an organization that satisfies the 9904.419–30(b)(2) definition of a funding agency. Upon retirement each employee's accumulated account balance is annuitized and used to pay a portion of the annual premium on the retiree's ''Medigap'' health insurance policy purchased from an non-captive insurance carrier. Pursuant to 9904.419–40(a)(1)(iv), the contractor determines the cost of its defined-contribution plan for each cost accounting period as the sum of the required net contributions deposited into the individual participants' accounts held by the funding agency.

(2) Contractor B sponsors a defined-benefit retiree health plan which historically has been amended every three (3) years to increase the amounts of the annual deductible and copayment. This post-retirement benefit plan meets the criteria for accrual accounting set forth in 9904.419–40(a)(1). Pursuant to 9904.419–40(a)(1)(v), the contractor must actuarially determine the cost of its post-retirement benefit plan for the current period based upon the deductible and copayment amounts specified in the current written plan document. Pursuant to 9904.419–50(b)(2)(ii), the actuarial gain attributable to any future amendment increasing the deductible and copayment can not be recognized until such amendment is adopted.

(3) Contractor C has historically paid a percentage of the health insurance premiums for its retirees. Each year the contractor has renewed its intent to continue this program for the upcoming year in a letter to its retirees. Although active employees are occasionally informally told of this program, especially as they prepare to retire, the program is not mentioned in the employee handbook nor any other employee communication. However, the letter was not sent to all plan participants, did not include a notice of the right to legally enforce payment of the benefit, and did not provide an irrevocable right to the benefit once participants had attained eligibility. In accordance with 9904.419–40(a)(2), the cost of this post-retirement health plan must be accounted for using the pay-as-you-go cost method because the criteria set forth at 9904.419–40(a)(1)(i) and (ii) were not met.

(4) Contractor D sponsors a retiree life insurance program that provides a death benefit equal to 35% of an employee's final earnings, subject to a minimum death benefit of $10,000. This defined-benefit post-retirement plan meets the criteria set forth in 9904.419–40(a)(1). The contractor pays an annual premium to an non-captive insurer to provide a $10,000 participating life insurance

policy for all employees at retirement. Pursuant to 9904.416–50(a)(1)(i) of Cost Accounting Standard 9904.416, the contractor's established practice is to adjust the annual insurance premium for any refunds, dividends, additional assessments, or other credits or charges, in the cost accounting period in which such credit or charge is received or receivable. The cost for the projected benefit that exceeds $10,000 must be accounted for as a defined-benefit plan using accrual accounting in accordance with 9904.419–40(b)(2)(iii). Pursuant to 9904.419–40(b)(2), the cost for a cost accounting period is the premium paid to provide the basic $10,000 death benefit, adjusted in accordance to 9904.416–50(a)(1)(i), plus the annual amount determined in accordance with the accrual accounting provisions of this Standard relating to defined-benefit post-retirement benefit plans. If the insurance had been obtained from a captive insurer as defined by 9904.419–30(a)(3), the entire cost of the plan would have been subject to this Standard in accordance with 9904.419–40(b)(2)(ii).

(5) Contractor E sponsors two post-retirement benefit plans which each have a separate plan document. One plan provides retiree health benefits for all employees of the contractor. The other plan provides retiree dental and vision benefits for the same employees. Neither plan meets the criteria specified at 9904.419–40(a)(1) and therefore, are required to be accounted for using the pay-as-you-go method in accordance with 9904.419–50(a)(2). Pursuant to 9904.419–50(a)(1)(i), the contractor may elect to determine the cost of the two plans on an aggregate basis.

(6) Contractor F sponsors two defined-benefit post-retirement plans which each have a separate plan document. One plan provides health benefits to all retired salaried employees. The other plan provides the same health benefits to all retired bargaining unit employees. Because both plans satisfy the criteria of 9904.419–50(a)(1), both are required to use accrual accounting. Pursuant to 9904.419–50(a)(1)(ii), the contractor may elect to determine the cost of the two plans on an aggregate basis.

(7) Contractor G sponsors a single post-retirement benefit plan that provides health benefits and life insurance benefits. The contractor has retained the right to terminate the health benefits for all but those employees who are retired or have attained eligibility for benefits. The contractor pays level annual premiums to an non-captive insurance carrier designed to provide paid-up participating life insurance contracts by the time an employee reaches retirement and the employees have an irrevocable right to the current value of the insurance contracts. The contractor's established practice is to adjust the annual participating insurance premium by the amount of estimated refunds and dividends in accordance with 9904.416–50(a)(1)(vi) of Cost Accounting Standard 9904.416, and therefore such adjusted level annual premiums satisfy the requirements of 9904.419–40(b)(2)(i). Because the plan satisfies the criteria set forth at 9904.419–40(a)(1), the contractor must account for the cost of the benefits not provided through insurance contracts using accrual accounting as required by 9904.419–50(b)(2)(iii). Alternatively, 9904.419–40(a)(2) permits the contractor to separately identify and account for the cost of the life insurance benefit as if it were a separate post-retirement benefit plan.

(8) Contractor H has a single defined-benefit post-retirement plan. The plan provides one set of benefits to retirees and employees who were eligible to retire on or before December 31, 1995 (the ''protected group''). Under the terms of the post-retirement benefit plan, the contractor has no right to reduce these benefits. Employees eligible for retirement on or after January 1, 1996 are provided a less generous set of benefits and the contractor retains the right to terminate the plan or reduce benefits even after eligibility is attained. Because the plan does not fully satisfy the criteria set forth at 9904.419–40(a)(1), the pay-as-you-go method must be used to account for the cost of the plan. Pursuant to 9904.419–50(a)(3), the contractor may identify the benefits provided to the two groups as being provided by separate post-retirement benefit plans. In that case, because the costs for the ''protected group'' plan meet the requirements of 9904.419–40(a)(1), the ''protected group'' plan must be actuarially determined and accounted for using accrual accounting. In accordance with 9904.419–40(a)(2), the contractor must account for the benefits of the plan for the post-1995 retirees using the pay-as-you-go cost method because that separately identified plan fails the criteria of 9904.419–40(a)(1).

(9) Contractor I sponsors a post-retirement benefit plan that provides a life insurance benefit of two-times final salary for all employees. The program also provides that the contractor will deposit 1% of each employee's pay into individual accounts held by a funding agency. At retirement, the accumulated value of the individual account is used to purchase a paid-up life insurance policy. If the funds in the individual account is insufficient to purchase the full life insurance benefit, the contractor pays the additional cost directly from general corporate resources. This program has features of both a defined-benefit and a defined-contribution post-retirement plan. Since the substance of the plan is to provide a defined-benefit life insurance of two-times final salary, then pursuant to 9904.419–50(a)(4), the annual cost must be determined in accordance with the provisions of this Standard relating to defined-benefit post-retirement plans.

(b) *Measurement and assignment of post-retirement benefit cost.*

(1) Contractor J uses the pay-as-you-go cost method to determine the cost of its retiree life insurance program. During the current period, the contractor paid $200,000 in death benefits directly to the named beneficiaries of deceased plan participants which is the pay-as-you-go cost for current benefits in accordance with 9904.419–40(b)(3)(i). On the first day of the current period, the contractor also paid $180,000 in premiums to purchase paid-up insurance policies from an non-captive insurer for certain employees as they retired during the current year. The prevailing rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 for the current period is 7.25%. Pursuant to 9904.419–40(b)(2)(iv) and 9904.419–40(b)(3)(ii) and 9904.419–50(b)(1), the contractor determines the current period cost of the paid-up insurance policies as $18,719, which is the annual amount required to amortize the $180,000 in fifteen (15) equal annual payments at 7.25%. The contractor determines the total cost for the current period as $218,719 ($200,000 + $18,719).

(2) Contractor K sponsors a defined-contribution post-retirement plan which satisfies the criteria set forth at 9904.419–40(a)(1). The plan is funded through a dedicated trust that qualifies as a funding agency. The plan document provides that each year the contractor will credit to the individual accounts of the plan participants an amount equal to 5% of each employee's base salary less that employee's share of any nonvested account balances forfeited by terminating employees. The annual contribution amount so determined constitutes the post-retirement benefit cost in accordance with 9904.419–40(b)(4). Any amount not funded by a deposit to the funding agency must be identified as an unfunded accrual in accordance with 9904.419–50(c)(6)(v).

(3) Conversely, assume that the plan sponsored by Contractor K in illustration 9904.419–60(b)(2) fails the

criteria set-forth at 9904.419–40(a)(1). Also assume that the contractor maintains memorandum records of the participants' account balances, rather than fund this defined-contribution plan. At retirement the contractor pays the employees the value of account balances recorded in these memorandum records as a lump sum settlement of the account balance. In this case the contractor shall use the pay-as-you-go cost method in accordance with 9904.419–40(a)(2). In accordance with 9904.419–40(b)(3), the cost shall be based upon the lump sum settlements paid to the plan participants and amortized in accordance with 9904.419–40(b)(3)(ii). If prior to becoming subject to this Standard, the contractor had accounted for the costs of its post-retirement benefit plan using terminal funding, the contractor could continue to use terminal funding as its cost accounting practice as permitted by 9904.419–64(d). In that case, no amortization would be required.

(4) Contractor L sponsors a post-retirement benefit plan for its collective bargaining employees which satisfy the requirements of 9904.419–40(a)(1). The contractor uses the projected unit credit actuarial cost method and a discount rate of 7.5% to determine the net periodic post-retirement benefit cost for SFAS 106 purposes, and therefore, 9904.419–50(a)(1)(i) requires that the contractor use the projected unit credit actuarial cost method and 7.5% discount rate assumption for contract cost accounting purposes. The contractor funds the plan through a combination of an Internal Revenue Code (IRC) section 401(h) account, whose assets are separately accounted for within a qualified defined-benefit pension trust, plus an IRC section 501(c)(9) voluntary employee benefit trust, otherwise known as a VEBA. The contractor determines the annual deposit for the IRC 401(h) account using the aggregate actuarial cost method, and for the VEBA using the projected unit credit actuarial cost method. Both of these deposit determinations are based on an assumption of 7% for the discount rate. The deposits to the IRC 401(h) account and the VEBA are used to determine the funded portion of the post-retirement benefit cost for purposes of 9904.419-50(c)(5), but not the contract cost. To the extent that the deposits in any cost accounting period differ from the post-retirement benefit cost determined pursuant to this Standard, the shortfall or excess shall be identified as either an unfunded accrual or a prepayment credit in accordance with 9904.419–50(c)(6)(v) and (vi), respectively.

(5)(i) The actuarial valuation report prepared for SFAS 106 purposes gives the following information reconciling the funded status of the defined-benefit post-retirement plan sponsored by Contractor M:

	Value as of 12/31
Accumulated post-retirement benefit obligation	($257,000)
Fair value of plan assets	69,000
Funded status	(188,000)
Unrecognized net gain	(44,000)
Unrecognized prior service cost	33,000
Unrecognized transition obligation	195,000
Net pre-paid (accrued) post-retirement benefit cost	(4,000)

(ii) The terms of the plans satisfy the requirements of 9904.419–40(a)(1). Three years ago the contractor did not fund all of its assigned post-retirement benefit cost for the period and has separately identified and maintained an accumulated value of unfunded accruals which is currently valued at $6,000 in accordance with definition 9904.419–30(a)(1) and 9904.419–50(c)(6)(v). Two years ago, the contractor funded an amount greater than its assigned post-retirement benefit cost for the period and has separately identified and accounted for the excess as the accumulated value of prepayment credits which is currently valued at $2,000 in accordance with definition 9904.419–30(b)(5) and 9904.419–50(c)(6)(vi). During all other years the contractor exactly funded its post-retirement benefit cost. In accordance with the definition at 9904.419–30(a)(15), the contractor determines the unfunded accumulated post-retirement benefit obligation for contract cost accounting purposes as $184,000, which is the $257,000 accumulated post-retirement benefit obligation less the sum of $69,000 of fair value of plan assets and $6,000 of accumulated unfunded accruals plus the $2,000 accumulated value of prepayment credits. The contractor determines that the sum of the unrecognized net gain, unrecognized prior service cost and unrecognized transition obligation is $184,000 ($(44,000) + $33,000 + $195,000). Pursuant to 9904.419–40(b)(5)(iv), the cost determined for the current period is assignable to the period because the unfunded accumulated post-retirement benefit obligation equals the sum of the unrecognized amounts as shown below:

	Value as of 12/31
Accumulated post-retirement benefit obligation:	
Retirees receiving benefits	$82,000
Actives—Currently eligible for benefits	19,000
Nonforfeitable post-retirement benefit obligation	101,000
Actives—Not yet eligible for benefits	156,000
Total	257,000
Valuation Assets:	
Fair value of plan assets	(69,000)

	Value as of 12/31
Accumulated value of unfunded accruals	(6,000)
Accumulated value of prepayment credits	2,000
Total	(73,000)
Unfunded accumulated post-retirement benefit obligation	184,000
Unrecognized net gain	(44,000)
Unrecognized prior service cost	33,000
Unrecognized transition obligation	195,000
Sum of unrecognized amounts	184,000
Result of 9904.419–40(b)(5)(iv) balance test	Passes

(6) Contractor M in illustration 9904.419–60(b)(5) determines that during the following year the actual return on the fair value of plan assets of $69,000 is $7,200 for SFAS 106 purposes. The current interest rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 is 9.5%. Pursuant to 9904.419–50(b)(2)(iv), the contractor increases the $7,200 actual return on the fair value of plan assets by the interest imputed on the accumulated value of unfunded accruals which is 9.5% of $6,000 or $570. Pursuant to 9904.419–50(b)(2)(v), the contractor reduces the actual return on the fair value of plan assets by the interest imputed on the accumulated value of prepayment credits which is 9.5% of $2,000 or $190. For contract cost purposes, the contractor determines the actual return on the fair value of plan assets as $7,580 ($7,200 + $570–$190).

(7) Assume that Contractor M in Illustration 9904.419–60(b)(5) determines that the sum of the components of post-retirement benefit cost, as described in 9904.419–40(b)(5), is $55,000. The contractor also pays $15,000 for benefits incurred by current retirees during the period which can be considered funding in accordance with 9904.419–50(c)(6)(vii). Furthermore, as shown in Illustration 9904.419–60(b)(5), the nonforfeitable post-retirement benefit obligation, as defined at 9904.419–30(a)(7), is $101,000. Therefore, the unfunded nonforfeitable post-retirement benefit obligation is $28,000 (nonforfeitable post-retirement benefit obligation of $101,000 minus valuation assets of $73,000.) In accordance with 9904.419–40(b)(5)(iii) the amount of post-retirement benefit cost assignable to the current period is limited to $43,000 ($15,000 benefit payments plus $28,000 unfunded post-retirement benefit obligation.) Furthermore, the $12,000 of post-retirement benefit cost that is not assignable to the current period ($55,000–43,000) shall be recognized in future periods as an experience loss.

(8) Assume that Contractor M in illustration 9904.419–60(b)(7) makes a deposit of $26,000 into a dedicated trust fund that satisfies the definition of a funding agency found at 9904.419–30(b)(2). Section 9904.419–50(c)(6)(vi) permits the $2,000 accumulated value of prepayment credits to be applied toward the $43,000 cost so that the full current period cost is funded for purposes of 9904.419–0(c)(6)(v). Therefore, the total amount available towards funding the cost assigned to the current period is $43,000 ($26,000 deposit + $15,000 benefit payments + $2,000 prepayment credit). The accumulated value of prepayment credits must be reduced by the amount applied towards the current year's cost in accordance with 9904.419–50(c)(6)(v) and definition 9904.419–30(b)(3).

(9) If in illustration 9904.419–60(b)(7), Contractor M had only deposited $23,000 into the dedicated trust fund, the total amount available towards funding the cost assigned to the current period would be $40,000 ($23,000 + $15,000 + $2,000). The accumulated value of unfunded accruals would increase by $3,000 to $9,000 in accordance with 9904.419–50(c)(6)(v) and definition 9904.419–30(a)(1).

(10) If in illustration 9904.419–60(b)(7), Contractor M had deposited $28,750 into the dedicated trust fund, the total amount available towards funding the cost assigned to the current period would be $45,750 ($28,750 + $15,000 + $2,000). The accumulated value of prepayment credits would increase by a net of $750 ($2,750 excess funding less $2,000 prepayment used) to $2,750 in accordance with 9904.419–50(c)(6)(vi)and definition 9904.419–30(b)(5).

(c) *Post-retirement benefit cost of segments.*

(1) Contractor N sponsors a retiree medical plan that covers employees who retired before January 1, 1997. All active employees and subsequent retirees are covered in a separate post-retirement benefit plan. The contractor determines the costs of the pre-1997 plan using the pay-as-you-go cost method. The plan covers retired participants from 12 segments. The contractor maintains a record of how many years each retiree worked in each segment which is used to allocate the total cost to segments. This method is acceptable under 9904.419–50(c)(1)(i).

(2) Contractor N in illustration 9904.419–60(c)(1) maintains a record of the segment where each retiree was last employed and, in accordance with 9904.419–50(c)(1)(i), uses these records to allocate the total post-retirement benefit cost to segments. Assume that two of the twelve segments associated with current retirees ceased to exist because the segments either discontinued operations or were abandoned. Pursuant to 9904.419–50(f)(1)(ii), the inactive participants of the two defunct segments have been moved to their immediate home office to which the segment had reported. The cost associated with these inactive participants must be allocated to the immediate home office for those segments and then allocated as a residual cost of that home office following the methodology of Cost Accounting Standard 9904.403.

(3) Assume Contractor N's in illustration 9904.419–60(c)(2) merges together two of the 12 segments. After the merger, the contractor uses the combined records of the two segments and treats the retirees as if they were last employed in the newly merged segment. And, in accordance with 9904.419–50(c)(1)(i), uses these records to allocate the total post-retirement benefit cost to segments. This method is acceptable under 9904.419–50(c)(1)(i).

(4) Contractor O sponsors a post-retirement benefit plan providing medical and life insurance benefits for its active employees. The accrual accounting cost of the medical benefit is actuarially determined by each participant's age and gender. The actuarially determined cost of the life insurance benefit is based upon the employee's expected final salary and age group. As permitted by 9904.419–50(a)(2), the contractor determines the costs of the medical and life benefits as if they were provided through two separate plans. Pursuant to 9904.419–40(c)(1), each home office that has plan participants is treated as a segment. None of the conditions set forth in 9904.419–50(c)(2) exists so the contractor calculates a composite post-retirement benefit cost for each benefit. In accordance with 9904.419–40(c)(2), the contractor indirectly allocates the costs of each benefit to segments. In accordance with 9904.419–50(c)(1)(ii), the cost of the medical benefit is allocated using the number of active plan participants in each segment, including home offices. The cost of the life insurance benefit, which is dependent upon each participant's final salary, is allocated to each segment, including home offices, using the salaries of active plan participants.

(5) Contractor P uses the pay-as-you-go cost method for its post-retirement medical program for employees of several segments each of which is in a different state. While the benefits are similar, the payments vary significantly by type of contract and geographical region. Pursuant to 9904.419–50(c)(1)(i) the contractor must allocate the post-retirement benefit cost for each segment based upon the benefit payments that are identifiable with each of the segments. Furthermore, any material gain or loss attributable to the plan participants of a particular segment, must also be directly allocated to that segment only in accordance with 9904.419–50(c)(1)(i).

(6) Contractor Q uses accrual accounting to calculate the composite costs for each of two different defined-benefit plans. Only one of the two plans covers the employees of any one segment. Pursuant to 9904.419–40(c)(1), the composite cost of each distinct plan is allocated only to those segments having participants in that plan. In the past Plan I has covered the employees of Segment G. As part of an internal reorganization, the post-retirement benefit plans were amended so that benefits for employees of Segment G will now be provided through Plan II. For government contract cost accounting purposes, the assets that move with Segment G from Plan I to Plan II are the assets initially allocated to Segment G in accordance with 9904.419–50(c)(6)(i). The ratio of accumulated post-retirement benefit obligation to the valuation assets, as defined at 9904.419–30(a)(16), for segment G is X%, which materially differs from such ratio for the other segments covered by Plan II. In accordance with 9904.419–50(c)(2)(v), the contractor will have to begin separately calculating post-retirement benefit costs for Segment G. The contractor may continue to determine post-retirement benefit costs for the original Plan II segments in the aggregate as long as none of the conditions of 9904.419–50(c)(2) exists for any of these segments.

(7) Assume Contractor R has five segments directed by one home office. One segment, Segment A, does a majority (85%) of its work under Government contracts. Segment B provides support services to the other four segments. The other three segments, Segments C, D, and E perform only commercial-type work. The post-retirement benefit plans meets the criteria set forth at 9904.419–40(a)(1) and the contractor uses accrual accounting to separately calculate post-retirement benefit costs for the home office and each of the five segments in accordance with 9904.419–40(c)(1) and 9904.419–50(c)(1)(ii). Pursuant to 9904.419–50(c)(6)(iii)(A), the contractor may ascribe funding to the costs allocated to the home office, Segment A, and Segment B before ascribing any funding to the three commercial segments. The separate accounting records of each segment which are maintained in accordance with 9904.419–50(c)(6)(iii) must reflect that the funding was first apportioned to the home office, Segment A and Segment B which allocate post-retirement benefit costs to contracts subject to this Standard.

(8)(i) Contractor R in Illustration 9904.419–60(c)(7) transfers 50 active plan participants in its defined-benefit plan from Segment A to Segment D as part of adjusting its staffing to match its workload. The accumulated post-retirement benefit obligation for these 50 participants is $250,000 of which $50,000 is attributable to active participants who are fully eligible for benefits and $200,000 is attributable to active participants who are not currently eligible for benefits. The segment accounting for Segments A and D immediately before the transfer is:

	Segment A	Segment D
Accumulated post-retirement benefit obligation:		
Retirees receiving benefits	$750,000	225,000
Actives—Currently eligible	250,000	175,000
Nonforfeitable post-retirement benefit obligation	1,000,000	400,000
Actives—Not yet eligible	2,000,000	1,600,000
Total	3,000,000	2,000,000
Valuation Assets:		
Fair value of plan assets [1]	(1,000,000)	
Accumulated value of unfunded accruals	(200,000)	(750,000)
Accumulated value of prepayment credits [2]		
Total	(1,200,000)	(750,000)
Unfunded accumulated post-retirement benefit obligation	1,800,000	1,250,000
Unrecognized transition obligation	2,000,000	1,400,000
Unrecognized prior service cost	100,000	50,000
Unrecognized (gain) or loss	(300,000)	(200,000)
Sum of unrecognized amounts	1,800,000	1,250,000

	Segment A	Segment D
Results of 9904.419–40(b)(5)(iv) balance test	Passes	Passes

[1] In accordance with 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments excludes the accumulated value of prepayment credits.

[2] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.

(ii) The contractor must first allocate fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits to the nonforfeitable post-retirement benefit obligation in accordance with 9904.419–50(c)(6)(viii)(A). The ratio of the nonforfeitable post-retirement benefit obligation to the sum of the fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits is 0.833333 ($1,000,000 divided by $1,200,000). Therefore the contractor allocates $833,333 (83.3333% of $1,000,000) of the fair value of plan assets, $166,667 (83.3333% of $200,000) of accumulated value of unfunded accruals. (In accordance 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.) The balance of the fair value of plan assets ($166,667) and accumulated value of unfunded accruals ($33,333) are allocated to the forfeitable post-retirement benefit obligation.

(iii) Then, because 5% ($50,000 of $1,000,000) of the nonforfeitable post-retirement benefit obligation was transferred to Segment D, the contractor transfers $41,667 (5% of $833,333) of the fair value of plan assets and $8,333 (5% of $166,667) of accumulated value of unfunded accruals allocated to the nonforfeitable post-retirement benefit obligation to Segment D in accordance with 9904.419–50(c)(6)(viii)(B).

(iv) Finally, because 10% ($200,000 of $2,000,000) of the forfeitable post-retirement benefit obligation was transferred to Segment D, $16,667 (10% of $166,667) of the fair value of plan assets and $3,333 (10% of $33,333) of accumulated value of unfunded accruals allocated to the forfeitable post-retirement benefit obligation is transferred to segment D in accordance with 9904.419–50(c)(6)(viii)(C).

(v) The unfunded nonforfeitable post-retirement benefit obligation transferred to Segment D is $180,000, which is 10% of the original unfunded accumulated post-retirement benefit obligation for Segment A. The contractor transfers 10% of the unrecognized transition obligation, unrecognized prior service cost, and unrecognized gains and losses from Segment A to Segment D in accordance with 9904.419–50(c)(6)(viii).

(vi) The segment accounting for Segment A for the transfer is shown below:

	Segment A		
	Before transfer	Transfer to segment D	After transfer
Accumulated post-retirement benefit obligation:			
Retirees receiving benefits	$750,000	.....	$750,000
Actives—Currently eligible	250,000	$(50,000)	200,000
Nonforfeitable post-retirement benefit obligation	1,000,000	(50,000)	950,000
Actives—Not yet eligible	2,000,000	(200,000)	1,800,000
Total	3,000,000	(250,000)	2,750,000
Valuation Assets:			
Fair value of plan assets	(1,000,000)	58,334	(941,666)
Accumulated value of unfunded accruals	(200,000)	11,666	(188,334)
Accumulated value prepayment credits	.....	.....	.....
Total	(1,200,000)	70,000	(1,130,000)
Unfunded accumulated post-retirement benefit obligation	1,800,000	(180,000)	1,620,000
Unrecognized transition obligation	2,000,000	(200,000)	1,800,000
Unrecognized prior service cost	100,000	(10,000)	90,000
Unrecognized (gain) or loss	(300,000)	30,000	(270,000)
Sum of unrecognized amounts	1,800,000	(180,000)	1,620,000
Results of 9904.419–40(b)(5)(iv) balance test	Passes	Passes	Passes

(vii) And the segment accounting for Segment D for the transfer is:

	Segment D		
	Before transfer	Transfer from segment A	After transfer
Accumulated post-retirement benefit obligation:			
Retirees receiving benefits	$225,000	.....	$225,000

	Segment D		
	Before transfer	Transfer from segment A	After transfer
Actives—Currently eligible	175,000	$50,000	225,000
Nonforfeitable post-retirement benefit obligation	400,000	50,000	450,000
Actives—Not yet eligible	1,600,000	200,000	1,800,000
Total	2,000,000	250,000	2,250,000
Valuation Assets:			
Fair value of plan assets	.....	(58,334)	(58,334)
Accumulated value of unfunded accruals	(750,000)	(11,666)	(761,666)
Accumulated value prepayment credits	.....	.....	.....
Total	(750,000)	(70,000)	(820,000)
Unfunded accumulated post-retirement benefit obligation	1,250,000	180,000	1,430,000
Unrecognized transition obligation	1,400,000	200,000	1,600,000
Unrecognized prior service cost	50,000	10,000	60,000
Unrecognized (gain) or loss	(200,000)	(30,000)	(230,000)
Sum of unrecognized amounts	1,250,000	180,000	1,430,000
Results of 9904.419–40(b)(5)(iv) balance test	Passes	Passes	Passes

(viii) The $180,000 increase in the unfunded accumulated post-retirement benefit obligation for Segment D will be reflected in future post-retirement benefits costs of Segment D through the increases in the unrecognized portions of transition obligation, prior to service costs, and gains and losses.

(9) Assume that the post-retirement benefit plan of Contractor R in illustration 9904.419–60(c)(8) that covers employees of Segment A and D provides more generous benefits to employees of Segment D. Accordingly, the contractor separately calculates post-retirement benefit costs for each segment pursuant to 9904.419–50(c)(2)(i) and 9904.419–40(c)(3)(ii). After the 50 plan participants are transferred from Segment A to Segment D, these employees are then eligible for the more generous benefits afforded to employees of Segment D. Based on the benefits of Segment A, the accumulated post-retirement benefit obligation for the 50 participants was $250,000. The accumulated post-retirement benefit obligation for these employees will be $283,000 based on the benefits for Segment D. After completing the transfer of accumulated post-retirement benefit obligation, fair value of plan assets and other values as shown in illustration 9904.419–60(c)(8) in accordance with 9904.419–50(c)(6)(viii), the contractor shall recognize the $33,000 increase in the accumulated post-retirement benefit obligation as an experience loss for Segment D. This experience loss shall be assigned to cost accounting periods in accordance with 9904.419–50(b)(2)(vii).

(10) Contractor S calculates a composite post-retirement benefit cost of $200,000 for its defined-benefit plan for the current cost accounting period, which the contractor then allocates to segments. The plan's benefit is not related to salary and the actuarial valuation of the post-retirement benefit liability is performed on a per-capita basis. Segment A contains 30% of all the active and inactive plan participants of the post-retirement benefit plan, and therefore Segment A is allocated $60,000 of the cost pursuant to 9904.419–50(c)(1)(ii). The $60,000 of post-retirement benefit cost allocated to Segment A is allocable to the intermediate and final cost objectives of Segment A pursuant to 9904.419–40(d). The allocation to segments is summarized as follows:

	Allocation of composite cost				
	Composite cost	Home office	Segment A	Segment B [1]	Commercial segments [2]
Plan Participants:					
Actives	1,794	90	535	181	988
	206	10	65	19	112
Inactives	2,000	100	600	200	1,100
Total.					
Allocation to Segments:					
Assigned post-retirement benefit cost	$200,000	$10,000	$60,000	$20,000	$110,000
Contribution	200,000	10,000	60,000	20,000	110,000
Unfunded Accrual	.....	.....	.....	.....	.....

(11) Assume that Contractor S in illustration 9904.419–60(c)(10) separately calculates post-retirement benefit costs for each segment which total $200,000 for plan as a whole for the current period. The separately calculated cost is $10,000 for the Home Office, $60,000 for Segment A, and $20,000 for Segment B. Pursuant to 9904.419–50(c)(6)(iii)(A), the contractor follows its established practice and funds $90,000 which is the total cost for

the home office and two segments that allocate costs to contracts subject to this Standard. The contractor funds none of the assigned post-retirement benefit cost separately computed for the commercial segments. In this case, the $90,000 of funded post-retirement benefit cost is allocated to the Home Office, Segment A, and Segment B. Because no funding was allocated to the commercial segments, an unfunded accrual of $110,000 shall be identified as the unfunded portion of post-retirement benefit costs allocated to the commercial segments in accordance with 9904.419–50(c)(6)(v). The allocation to segments is summarized as follows:

	Allocation separately calculated costs				
	Totals	Home office	Segment A	Segment B	Commercial segments
Allocation to Segments:					
Separately calculated post-retirement benefit cost	$200,000	$10,000	$60,000	$20,000	$110,000
less: Contribution	90,000	10,000	60,000	20,000	.....
	$110,000	.....	.....	.....	110,000
Unfunded accrual	.....	.....	.....	.....	.....

(12) Assume that Contractor S in illustration 9904.419–60(c)(11) funds only $81,000 which is less than the separately calculated post-retirement benefit costs for the Home Office, Segment A, and Segment B. Pursuant to 9904.419–50(c)(6)(iii)(A), the contractor follows its established practice and proportionately allocates the $81,000 to only these three segments that allocate costs to contracts subject to this Standard. No funding is allocated to the commercial segments. The $81,000 is identified as the funded portion of post-retirement benefit cost for the Home Office, Segment A, and Segment B. An unfunded accrual of $9,000 is established in accordance with 9904.419–50(c)(6)(v) and allocated to these three segments. The allocation to segments is summarized as follows:

	Allocation of separately calculated costs				
	Composite cost	Home office	Segment A	Segment B	Commercial segments
Allocation to Segments:					
Separately calculated post-retirement benefit cost	$200,000	10,000	60,000	20,000	110,000
	81,000	9,000	54,000	18,000	
less: Contribution	119,000	1,000	6,000	2,000	110,000
Unfunded accrual					

(13) Assume that Contractor S in illustration 9904.419–60(c)(11) funds $108,000, which is more than the separately calculated post-retirement benefit costs for the Home Office, Segment A, and Segment B. Pursuant to 9904.419–50(c)(6)(iii)(A), the contractor follows its established practice and first allocates $90,000 of the funding to the three segments that allocate costs to contracts subject to this Standard. The contractor then allocates the remaining $18,000 of funding to the commercial segments. The $92,000 unfunded portion of post-retirement benefit cost separately calculated for the commercial segments shall be identified as an unfunded accrual of $92,000 must be established in accordance with 9904.419–50(c)(6)(v). The allocation to segments is summarized as follows:

	Allocation of separately calculated costs				
	Composite cost	Home office	Segment A	Segment B	Commercial segments
Allocation to Segments:					
Net post-retirement benefit cost	$200,000	$10,000	$60,000	$20,000	$110,000
	108,000	10,000	60,000	20,000	18,000
less: Contribution	92,000	0	0	0	92,000
Unfunded accrual					

(d) *Allocation of post-retirement benefit cost to cost objectives.* [Reserved]

(e) *Adjustments for curtailments, settlements, and termination benefits.*

(1)(i) Assume that Contractor M in illustration 9904.419–60(b)(5) announces that it will reduce its

operations by terminating a significant number of employees at the end of the current period. Pursuant to SFAS 106, the contractor recognizes that a curtailment of benefits has occurred because the termination of the employees causes a reduction in the remaining years of expected service associated with those terminating employees. The termination of employees also causes a reduction in the accumulated post-retirement benefit obligation because some of the terminated plan participants will not accrue the future service necessary for benefits eligibility. Also assume that because of the work-force reduction, a certain class of the terminated employees becomes eligible for special termination benefits which increase the accumulated post-retirement benefit obligation by $14,000. For SFAS 106 purposes the contractor determines the special termination benefit loss and the curtailment gain as follows:

	SFAS 106 accounting as of December 31			
	Before curtailment	Special termination benefits	Curtailment gain	After curtailment
Accumulated post-retirement benefit obligation	$(257,000)	[1]$(14,000)	[2] $68,000	$(203,000)
Fair value of plan assets	69,000			69,000
Funded status	(188,000)	(14,000)	68,000	(134,000)
Unrecognized net gain	(44,000)			(44,000)
Unrecognized prior service cost	33,000		[3] (5,940)	27,060
Unrecognized transition obligation	195,000		[4] (42,900)	152,100
Pre-paid (accrued) post-retirement benefit cost	[5] (4,000)	(14,000)	19,160	1,160

[1] Increase in accumulated post-retirement benefit obligation attributable to the additional benefits granted under special termination provisions of the post-retirement benefit plan.
[2] Gain due to decrease in accumulated post-retirement benefit obligation because terminated participants will not become eligible for full benefits.
[3] Portion of unrecognized prior service cost associated with future years of service associated with terminated participants.
[4] Portion of unrecognized transition obligation associated with future years of service associated with terminated participants.
[5] The accrued post-retirement cost equals the net of an accumulated value of unfunded accruals of $(6,000) and an accumulated value of prepayment credits of $2,000.

Pursuant to SFAS 106, the $14,000 for granting special termination would be recognized as an expense of the current period. For contract costing purposes, the $14,000 must be amortized over a period of 10 years in accordance with 9904.419–50(e)(2)(i). The curtailment gain for contract costing purposes is $19,160, which is the remaining amount of the curtailment gain not offset against unrecognized prior service cost and unrecognized transition obligation using SFAS 106 methodology, in accordance with 9904.419–50(e)(2)(i). For SFAS 106 purposes, the $19,160 curtailment gain would be recognized as income for the current period. For contract cost purposes, the $19,160 curtailment gain must be amortized over a period of 10 years in accordance with 9904.419–50(e)(2)(i).

(iii) After considering the effects of the special termination benefit loss and the curtailment gain, the contractor demonstrates that its accounting for post-retirement benefit costs is still in balance as required by 9904.419–40(b)(5)(iv) as follows:

	Contract cost accounting as of December 31			
	Before curtailment	Special termination benefits	Curtailment gain	After curtailment
Accumulated post-retirement benefit obligation	$257,000	$14,000	$(68,000)	$203,000
Fair value of plan assets	(69,000)			(69,000)
Accumulated value of unfunded accruals	(6,000)			(6,000)
Accumulated value of prepayment credits	2,000			2,000
Unfunded accumulated post-retirement benefit obligation	184,000	14,000	(68,000)	130,000
Unrecognized net gain	(44,000)			(44,000)
Unrecognized prior service cost	33,000		(5,940)	27,060
Unrecognized transition obligation	195,000		(42,900)	152,100
Unrecognized special termination benefit loss		14,000		14,000
Unrecognized curtailment gain			(19,160)	(19,160)
Sum of unrecognized amounts	184,000	14,000	(68,000)	130,000
Results of 9904.419–40(b)(5)(iv) balance test	Passes	Passes	Passes	Passes

(2)(i) Assume that immediately after the curtailment of benefits, Contractor M in illustration 9904.419–60(e)(1) purchases insurance from an non-captive insurer at a price of $58,000 to unconditionally settle its obligation for certain post-retirement benefits. The purchase of this insurance reduces the accumulated post-retirement benefit obligation by $50,000 measured using the contractor's established methods and assumptions. Pursuant to SFAS 106, the contractor recognizes that a loss from the settlement of benefits has occurred. For SFAS 106 purposes the

contractor determines the settlement loss as follows:

	SFAS 106 accounting as of December 31		
	Before settlement	Settlement loss	After settlement
Accumulated post-retirement benefit obligation	$(203,000)	$50,000	$(153,000)
Fair value of plan assets	69,000	(58,000)	11,000
Funded Status	(134,000)	[1] (8,000)	(142,000)
Unrecognized net gain	(44,000)	[2] 10,837	(33,163)
Unrecognized prior service cost	27,060	.....	27,060
Unrecognized transition obligation	152,100	[3](10,837)	141,263
Pre-paid (accrued) post-retirement benefit cost	1,160	(8,000)	(6,840)

[1] Loss due to cost of settlement in excess of accumulated post-retirement benefit obligation.
[2] Portion of unrecognized transition obligation eliminated by settlement.
[3] Loss due to immediate recognition of a portion of the unrecognized transition obligation.

(ii) Pursuant to 9904.419–50(e)(2)(i), the settlement loss for contract costing purposes is $8,000 using SFAS 106 methodology. For SFAS 106 purposes, the contractor recognizes a current period expense of $8,000 for the settlement loss. For contract cost purposes, the $8,000 settlement loss must be amortized over the next 10 years in accordance with 9904.419–50(e)(2)(i).

(iii) After considering the effects of the settlement, the contractor demonstrates that its accounting for post-retirement benefit costs is still in balance as required by 9904.419–40(b)(5)(iv) as follows:

	Contract cost accounting as of December 31		
	Before settlement	Settlement loss	After settlement
Accumulated post-retirement benefit obligation	$203,000	$(50,000)	$153,000
Fair value of plan assets	(69,000)	58,000	(11,000)
Accumulated value of unfunded accruals	(6,000)	.....	(6,000)
Accumulated value of prepayment credits	2,000	.....	2,000
Unfunded accumulated post-retirement benefit obligation	130,000	8,000	138,000
Unrecognized prior net gain	(44,000)	10,837	(33,163)
Unrecognized prior service cost	27,060	.....	27,060
Unrecognized transition obligation	152,100	(10,837)	141,263
Unrecognized special termination benefit loss	14,000	.....	14,000
Unrecognized curtailment gain	(19,160)	.....	(19,160)
Unrecognized settlement loss	.....	8,000	8,000
Sum of unrecognized amounts	130,000	8,000	138,000
Results of 9904.419–40(b)(5)(iv) balance test	Passes	Passes	Passes

(3) Assume that as part of the work force reduction by Contractor M in illustration 9904.419–60(e)(1), a disproportionate share of the employee terminations is attributable to one of its segments. In that case, the contractor must determine the termination benefit loss separately for each segment in accordance with 9904.419–50(c)(2)(i) and 9904.419–50(c)(2)(ii). On the other hand, if the effect is evenly dispersed across some, but not all, of the segments, the contractor may determine the termination benefit loss for the affected segments in the aggregate and allocate the loss among the affected segments by use of an appropriate base such as the number of employees terminated in each segment as part of the workforce reduction.

(f) Adjustments for segment closings.

(1) (i) Contractor T has been performing Government contracts subject to this Standard. Upon completion of its current Government contracts, the contractor does not actively seek nor receive any new Government contracts subject to this Standard and therefore a segment closing, as defined by 9904.419–30(b)(6)(iii), has occurred. The accounting of the liabilities and assets for the post-retirement benefits of Segment A for government contract costing purposes immediately before the segment closing is summarized as follows:

	Value as of 12/31
Accumulated post-retirement benefit obligation:	
Retirees receiving benefits	$250,000
Actives—Currently eligible for benefits	100,00

	Value as of 12/31
Nonforfeitable post-retirement benefit obligation	350,000
Actives—Not yet eligible for benefits	400,000
Total	750,000
Valuation assets:	
Fair value of plan assets[1]	(270,000)
Accumulated value of unfunded accruals	(150,000)
Accumulated value of prepayment credits[2]	.....
Total	420,000
Unfunded accumulated post-retirement benefit obligation	330,000
Unfunded nonforfeitable post-retirement benefit obligation[3]	(70,000)
Unrecognized net gain	(150,000)
Unrecognized prior service cost	405,000
Unrecognized transition obligation	75,000
Sum of unrecognized amounts	330,000
Result of 9904.419–40(b)(5)(iv) balance test	Passes

[1] In accordance with 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments exclude the accumulated value of prepayment credits.
[2] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.
[3] Nonforfeitable post-retirement benefit obligation of $350,000 less valuation assets of $420,000.

(ii) The contractor must fully recognize a segment closing credit of $70,000, which is measured as the difference of the nonforfeitable post-retirement benefit obligation ($350,000) and the valuation assets ($420,000). The segment closing adjustment credit of $70,000 represents an adjustment to previously determined post-retirement benefit costs in accordance with 9904.419–50(f)(3)(i). The Government's share of the $70,000 must be effected by adjusting contract prices, target costs, or cost ceilings, or by any other suitable technique in accordance with 9904.419–50(f)(4). One way the adjustment could be effected is by a check or other funds transfer from the contractor to the Government.

(2) If Contractor T in illustration 9904.419–60(f)(1) discontinues its operations at Segment W and abandons the facility, a segment closing as defined by 9904.419–30(b)(6)(ii) has occurred. Alternatively, if the operations of Segment W continue but the facility is sold to a third party who is not a successor-in-interest, then a segment closing as defined by 9904.419–30(b)(6)(i) has occurred. In either case, the government's share of the $70,000 credit shall be determined, as outlined in illustration 9904.419–60(f)(1), and credited to the government in accordance with 9904.419–50(f)(4).

(3) Assume that Contractor T in Illustration 9904.419–60(f)(1) sells Segment A to Contractor U, who is a successor-in-interest in the segment's government contracts through a novation agreement of the segment's government contracts. A segment closing as defined by 9904.419–30(b)(6)(i) has occurred. The entire accumulated post-retirement benefit obligation of $750,000 for both active and retired plan participants and all other post-retirement benefit plan values are transferred to the successor-in-interest as part of a sales agreement. Pursuant to 9904.419–50(f)(3)(v)(A), no segment closing adjustment is required. The accounting of the liabilities and assets for the post-retirement benefits of Segment A for government contract costing purposes is summarized immediately before and after the sale as follows:

		After	
Before	Original contractor	Original contractor	Successor contractor
Accumulated post-retirement benefit obligation:			
Retirees receiving benefits	$250,000	.....	$250,000
Actives—Currently eligible	100,000	.....	100,000
Nonforfeitable post-retirement benefit obligation	350,000	.....	350,000
Actives—Not yet eligible	400,000	.....	400,000
Total	750,000	.....	750,000
Valuation assets:			
Fair value of plan assets[1]	(270,000)	.....	(270,000)
Accumulated value of unfunded accruals	(150,000)	.....	(150,000)
Accumulated value of prepayment credits[2]	.....	.....	.....
Total	(420,000)	.....	(420,000)
Unfunded accumulated post-retirement benefit obligation	330,000	.....	330,000

		After	
Before	Original contractor	Original contractor	Successor contractor
Unfunded Nonforfeitable post-retirement benefit obligation [3]	(70,000)	.....	(70,000)
Unrecognized transition obligation	(150,000)	.....	(150,000)
Unrecognized prior service cost	405,000	.....	405,000
Unrecognized (gain) or loss	75,000	.....	75,000
Sum of unrecognized amounts	330,000	.....	330,000
Results of 9904.419–40(b)(5)(iv) balance test	Passes	Passes	Passes

[1] In accordance with 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments exclude the accumulated value of prepayment credits.
[2] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.
[3] Nonforfeitable post-retirement benefit obligation of $350,000 less valuation assets of $420,000.

(4) (i) Assume that Contractor V transfers only the accumulated post-retirement benefit obligation of $500,000 attributable to active plan participants to Contractor W, the successor-in-interest. The contractor retains the accumulated post-retirement benefit obligation of $250,000 for the retired participants. Pursuant to 9904.419–50(f)(3)(iv) and 9904.419–50(f)(3)(v)(B), the contractor transfers a portion of the fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits to the successor contractor in accordance with 9904.419–50(c)(6)(viii).

(ii) Because the sum of the fair value of plan assets and accumulated value of unfunded accruals is less than the nonforfeitable post-retirement benefit obligation, the full amount of the fair value of plan assets and accumulated value of unfunded accruals is allocated to the nonforfeitable post-retirement benefit obligation. (Note that the accumulated value of prepayment credits is $0.) There is no remaining balance of fair value of plan assets and accumulated value of unfunded accruals to be allocated to the forfeitable post-retirement benefit obligation.

(iii) The contractor transferred 28.5714% ($100,000 ÷ $350,000) of the nonforfeitable post-retirement benefit obligation to the successor contractor and therefore transfers to the successor contractor 28.5714% of the fair value of plan assets ($25,714) and accumulated value of unfunded accruals ($35,714) allocated to the nonforfeitable post-retirement benefit obligation.

(iv) Although the entire forfeitable post-retirement benefit obligation was transferred to the successor contractor, no fair value of plan assets nor accumulated value of unfunded accruals were allocated to the forfeitable post-retirement benefit obligation. Therefore no additional fair value of plan assets nor accumulated value of unfunded accruals is transferred to the successor contractor.

(v) The unfunded accumulated post-retirement benefit obligation transferred to the successor contractor is $438,572, which is 81.9761% ($438,572 ÷$535,000) of the original unfunded accumulated post-retirement benefit obligation. According, the contractor transfers 81.9761% of the unrecognized transition obligation, unrecognized prior service cost, and unrecognized gains and losses to the successor contractor.

(vi)(A) The accounting of the obligations and assets for the post-retirement benefits of Segment A for government contract costing purposes is summarized immediately before and after the sale as follows:

	Before	After	
	Original contractor	Original contractor	Successor contractor
Accumulated post-retirement benefit obligation:			
Retirees receiving benefits	$250,000	$250,000	.....
Actives—Currently eligible	100,000	.....	$100,000
Nonforfeitable post-retirement benefit obligation	350,000	250,000	100,000
Actives—Not yet eligible	400,000	.....	400,000
Total	750,000	250,000	500,000
Valuation assets:			
Fair value of plan assets [1]	(90,000)	(64,286)	(25,714)
Accumulated value of unfunded accruals	(125,000)	89,286)	35,714)
Accumulated value of prepayment credits [2]	.....	.....	.....
Total	(215,000)	153,572	(61,428)
Unfunded accumulated post-retirement benefit obligation	535,000	96,428	438,572
Unfunded Nonforfeitable post-retirement benefit obligation [3]	135,000	96,428	38,572
Unrecognized transition obligation	(50,000)	(9,012)	(40,988)
Unrecognized prior service cost	410,000	73,898	336,102
Unrecognized (gain) or loss	175,000	31,542	143,458

	Before	After	
	Original contractor	Original contractor	Successor contractor
Sum of unrecognized amounts	535,000	96,428	438,572
Results of 9904.419–40(b)(5)(iv) balance test	Passes	Passes	Passes

[1] In accordance with 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments excludes the accumulated value of prepayment credits.
[2] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.
[3] In the ''Before'' column, this is the nonforfeitable post-retirement benefit obligation of $350,000 less valuation assets of $215,000. Amounts shown under ''After'' columns were similarly derived.

(B) The contractor then determines a segment closing adjustment charge of $96,428, which is measured as the difference of the nonforfeitable post-retirement benefit obligation of $250,000 and $153,572, which is the sum of the fair value of assets ($64,286) and the accumulated value of unfunded accruals ($89,286) less any accumulated value of prepayment credits ($0.) The segment closing adjustment charge of $96,428 represents an adjustment to previously determined post-retirement benefit costs in accordance with 9904.419–50(f)(3)(i). The Government's share of the $96,428 must be effected by adjusting contract prices, target costs, or cost ceilings, or by any other suitable technique in accordance with 9904.419–50(f)(4). One way the adjustment could be effected is by a check or other funds transfer from the Government to the contractor. The contractor must also reflect that segment closing adjustment has been effected by increasing the accumulated value of unfunded accruals by $96,428 in accordance with 9904.419–50(f)(3)(vi).

(5) Contractor W in illustration 9904.419–60(f)(4), after completing the transfer to the successor-in-interest, transfers the retained retired participants, and the retained accumulated post-retirement benefit obligation, fair value of plan assets, and all other values attributable to the retained retired participants, to the closed segment's former home office in accordance with 9904.419–50(f)(3)(iii). For government contract costing purposes, the accumulated post-retirement benefit obligation, fair value of plan assets, and all other values attributable to the retained inactive (retired) participants are combined with the records of the home office as follows:

	Home office		
	Retained retired participants	Home office participants	Totals
Accumulated post-retirement benefit obligation:			
Retirees receiving benefits	$250,000	$100,000	$350,000
Actives—Currently eligible	.....	235,000	235,000
Nonforfeitable post-retirement benefit obligation	250,000	335,000	585,000
Actives—Not yet eligible	.....	410,000	410,000
Total	250,000	745,000	995,000
Valuation assets:			
Fair value of plan assets [1]	(64,286)	(268,000)	(332,286)
Accumulated value of unfunded accruals [2]	(185,714)	(151,000)	(336,714)
Accumulated value of prepayment credits [3]	.....	.....	.....
Total	(250,000)	(419,000)	(669,000)
Unfunded accumulated post-retirement benefit obligation	.....	326,000	326,000
Unfunded Nonforfeitable post-retirement benefit obligation [4]	.....	(84,000)	(84,000)
Unrecognized transition obligation [5]	.....	(147,000)	(147,000)
Unrecognized prior service cost [6]	.....	396,000	396,000
Unrecognized (gain) or loss [7]	.....	77,000	77,000
Sum of unrecognized amounts	.....	326,000	326,000
Results of 9904.419–40(b)(5)(iv) balance test	Passes	Passes	Passes

[1] In accordance with subparagraph 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments excludes the accumulated value of prepayment credits.
[2] The segment closing adjustment charge is effected by increasing the accumulated value of unfunded accruals of $89,286 by the segment closing adjustment of $96,428 in accordance with subparagraph 9904.419-50(f)(3)(vi).
[3] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.
[4] In the ''Home Office Participants'' column, this is the nonforfeitable post-retirement benefit obligation of $335,000 less valuation assets of $419,000. Amounts shown under ''Retained Retired Participants'' and ''Total'' columns were similarly derived.
[5] Unrecognized gains and losses for the retained participants have already been fully recognized by the segment closing adjustment.
[6] Unrecognized transition obligation for the retained participants have already been fully recognized by the segment closing adjustment.
[7] Unrecognized past service cost for the retained participants have already been fully recognized by the segment closing adjustment.

(6) Contractor X, after acquiring Segment A as successor-in-interest to Contractor T in illustration 9904.419–60(f)(4), decreases the discount rate assumption from 8.5% to 8.0% to match the discount rate assumption used for its other post-retirement benefit plans. This decrease in the assumed discount rate causes the accumulated post-retirement benefit obligation to increase by $43,000 from $500,000 to $543,000. In accordance with 9904.419–50(f)(3)(v)(C), the $43,000 actuarial loss attributable to the change in the discount rate assumption is recognized by the successor contractor immediately after the acquisition of the segment. An annual gain or loss component of the successor-in-interest's post-retirement benefit cost shall be recognized in accordance with 9904.419–50(b)(2)(vi). There is no other adjustment in the values and records used by the original contractor for government contract costing purposes.

9904.419–61 Interpretation. [Reserved]

9904.419–62 Exemptions.

None for this Standard.

9904.419–63 Effective date.

(a) This Standard is effective as of [90 days after date of publication of the final rule in the **Federal Register**].

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

9904.419–64 Transition method.

(a) *General.* In complying with this Standard 9904.419, contractors must follow the equitable principle that post-retirement benefit costs which have been previously provided for, shall not be redundantly provided for under this Standard. Conversely, post-retirement benefit costs that have not previously been provided for, shall be provided for in accordance with this Standard. The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of this Standard and shall be approved by the cognizant Federal agency official.

(b) *Change to pay-as-you-go method.* If a contractor, who for Government contracting purposes had accounted for costs of a defined-benefit post-retirement plan on an accrual basis prior to the date this Standard becomes applicable, changes to the pay-as-you-go cost method, the contractor shall account for any unfunded post-retirement benefit costs of prior periods by establishing an accumulated value of unfunded accruals in accordance with 9904.419–50(c)(6)(v). Post-retirement benefit costs calculated under the pay-as-you-go cost method shall be charged against any fair value of plan assets and such accumulated value of unfunded accruals before any post-retirement benefit costs may be allocated to intermediate or final cost objectives.

(c) *Change to accrual accounting.* If a contractor, who for Government contracting purposes had accounted for the costs of a defined-benefit post-retirement plan using the pay-as-you-go cost method prior to the date this Standard becomes applicable, changes to accrual accounting, the contractor shall account for any portion of prior post-retirement benefit costs that are not included in the unrecognized prior service costs, unrecognized gains and losses, or unrecognized transition obligation when this Standard is first applicable to the contractor. Such prior post-retirement benefit costs shall be accounted for as either a supplemental transition obligation or as part of a ''fresh start'' transition obligation, and shall be amortized as specified in paragraph (c)(3) of this subsection:

(1) For each period subsequent to adoption of accrual accounting for SFAS 106, but prior to the date this Standard becomes applicable to the contractor, that the contractor used the pay-as-you-go cost method for Government contracting purposes, the contractor shall establish a supplemental transition obligation. This supplemental transition obligation shall be the accumulated value of such prior post-retirement benefit cost accruals minus the costs determined using the pay-as-you-go cost method. The net result shall be increased at the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 during such periods. The supplemental transition obligation shall be subject to the same accounting treatment under this Standard as the transition obligation; or,

(2) Alternatively, if for every period subsequent to adoption of accrual accounting for SFAS 106, but prior to the date this Standard becomes applicable to the contractor, the contractor had used the pay-as-you-go cost method for Government contracting purposes, the contractor may adopt a ''fresh start'' determination of the transition obligation as of the first valuation date after this Standard becomes applicable. In this case, the transition obligation shall equal the accumulated post-retirement benefit obligation less the fair value of plan assets. If the contractor elects to use the ''fresh start'' method, any unrecognized prior service costs or unrecognized gains and losses are subsumed into such redetermined transition obligation.

(3) The supplemental transition obligation or the ''fresh start'' redetermined transition obligation shall be amortized on a straight-line basis over the average remaining service period of active plan participants, except that if all or almost all of the plan participants are inactive, the employer shall use the average remaining life expectancy period of those plan participants.

(d) *Terminal funding.* If a contractor has established, disclosed, and consistently followed a practice of determining and accounting for post-retirement benefit costs in accordance with the terminal funding provisions of 9904.416–50(a)(1)(v)(C), the contractor may continue that practice. Terminal funding shall be treated in the same manner as the pay-as-you-go cost method except that the amortization provisions of 9904.419–40(b)(3)(ii) and 9904.419–50(b)(1) shall not apply.

(e) *Certain inactive participants.* If at the time the contractor first becomes subject to this Standard, the contractor cannot associate some of its inactive plan participants with existing segments (because the segment has been sold, the segment no longer exists, or the necessary data are not readily available), the contractor shall associate such inactive plan participants with the appropriate corporate home office, intermediate home office, or segment in accordance with the contractor's previous cost accounting practice used for Government contract accounting.

(f) *Prior segment accounting.* If prior to the time a contractor is required to use this Standard, the contractor has been calculating post-retirement benefit cost for contract cost purposes using the same accrual accounting methods used for SFAS 106, then:

(1) For a contractor that has been calculating post-retirement benefit cost separately for individual segments, the fair value of plan assets and all other values previously allocated to those segments shall not be changed, or

(2) For a contractor that has been determining the accrual for post-retirement benefit costs on a composite basis and allocating such costs to segments, if an initial allocation of the fair value of plan assets is required by 9904.419–50(c)(6)(i), such initial allocation shall reflect such prior cost determinations and allocations. If the necessary data are readily determinable, the fair value of plan assets to be allocated to each segment shall be the amount contributed by, or on behalf of, the segment, increased by income received on such assets, and decreased

by benefits and expenses paid from such assets. If the data are not readily determinable for certain prior periods, the contractor shall follow the initial asset allocation provisions of 9904.419–50(c)(6)(i)(C) as of the earliest date such data is available.

(g) *Transition illustrations.* Unless otherwise noted, paragraphs (g)(1) through (6) of this subsection address post-retirement benefit costs and transition amounts determined for the first cost accounting period beginning on or after the date this Standard becomes applicable to a contractor. For purposes of these illustrations an expected long-term rate of return of 8% is presumed to be in effect for all periods. The contractors identified for purposes of these illustrations are unrelated to the contractors identified for illustration purposes in 9904.419–60.

(1) Since December 31, 1993 Contractor A has calculated, assigned, and allocated post-retirement benefit costs to its cost-based negotiated Government contracts on an accrual basis. In determining the unfunded accruals for these prior periods pursuant to 9904.419–50(c)(6)(v), the only funding the contractor can recognize is for benefit payments in accordance with 9904.419–50(c)(6)(vii). The value of these past unfunded accruals, increased for interest and decreased for benefits paid by the contractor, is equal to $2 million as of the beginning of the current period. Assume that the contractor must begin using the pay-as-you-go cost method, because the plan fails to meet the criteria set forth at 9904.419–40(a)(1), to account for current and future post-retirement benefit costs. Plan participants receive $500,000 in benefits on the last day of the current period. Using the transition method of paragraph (b) of this section to ensure prior costs are not redundantly provided for, the contractor shall establish an accumulated value of unfunded accruals of $2 million. Since the $2 million is sufficient to provide for the current benefit payments, no post-retirement benefit costs can be allocated to this period. The accumulated value of unfunded accruals shall be carried forward to the next period by adding $160,000 (8% x $2 million) of imputed interest, and subtracting the $500,000 of benefit payments made by the contractor. The accumulated value of unfunded accruals for the next period equals $1,660,000 ($2 million + $160,000 − $500,000).

(2) Prior to becoming subject to this Standard, Contractor B has accounted for its defined-benefit post-retirement plan which meets the requirements of 9904.419–40(a)(1) using the pay-as-you-go cost method for government contract costing purposes. For the first period the contractor becomes subject to this Standard, the contractor must begin to accrue the costs of its post-retirement benefit plan as specified in this Standard. Pursuant to 9904.419–64(c)(1), the contractor may identify any post-retirement benefit cost accruals which have previously been unrecognized in the costs allocated to its cost-based negotiated Government contracts as a supplemental transition obligation.

(i) A comparison of the contractor's SFAS 106 accounting with its contract cost accounting as of the date the contractor first becomes subject to this Standard is as follows:

	SFAS 106 accounting	Contract cost accounting
Accumulated post-retirement benefit obligation	($2,000,000	($2,000,000)
Fair value of plan assets	.....	.....
Funded status	(2,000,000)	(2,000,000)
Unrecognized net gain	(196,000)	(196,000)
Unrecognized prior service cost	38,600	38,600
Unrecognized transition obligation	1,557,000	1,557,000
Unrecognized supplemental transition obligation	.....	[1] 600,000
Accrued post-retirement benefit cost	(600,000)	.....

[1] The supplemental transition obligation is amortized over 17 years which is the average remaining service period of active plan participants of this post-retirement benefit plan.

(ii) Note that if the contractor had cost-based negotiated Government contracts only for some of the prior periods since adopting SFAS 106 for financial statement purposes, only prior accruals for those periods when it did have such contracts can be used to establish the initial amount of the supplemental transition obligation in accordance with 9904.419–64(c)(1).

(3) Assume that Contractor B in illustration 9904.419–64(g)(2) had cost-based negotiated Government contracts for every period since adopting SFAS 106 and had used the pay-as-you-go cost method. The contractor could elect to redetermine the transition obligation using the so-called ''fresh start'' alternative in accordance with 9904.419–64(c)(2).

(i) In this case, a comparison of the contractor's SFAS 106 accounting with its contract cost accounting as of the date the contractor first becomes subject to this Standard is as follows:

	SFAS 106 accounting	Contract cost accounting
Accumulated post-retirement benefit obligation	($2,000,000	($2,000,000)
Fair value of plan assets	.....	.....
Funded status	(2,000,000)	(2,000,000)
Unrecognized net gain	(196,000)	n/a
Unrecognized prior service cost	38,600	n/a
Unrecognized transition obligation	1,557,000	[1] 2,000,000

	SFAS 106 accounting	Contract cost accounting
Accrued post-retirement benefit cost	(600,000)	

[1] The ''fresh-start'' transition obligation is amortized over 17 years which is the average remaining service period of active plan participants of this post-retirement benefit plan.

(ii) Note that if the contractor did not have cost-based negotiated Government contracts for all prior periods since adopting SFAS 106 for financial statement purposes, the contractor could not have elected to use the ''fresh start'' approach of 9904.419–64(c)(2). Also note that the $2 million fresh start transition obligation equals the sum of the SFAS 106 $38,600 unrecognized prior service cost, $1,557,400 unrecognized transition obligation, and the $600,000 accrued post-retirement benefit cost less the $196,000 unrecognized net gain.

(4) Since 1983, Contractor C has had an established practice of terminal funding for determining the costs of its post-retirement benefit plan in accordance with 9904.416–50(a)(1)(v)(C). During the first period the contractor is subject to this Standard, the contractor pays a $235,000 net single premium for non-participating insurance contracts to irrevocably settle its obligation to provide life insurance for its retiring plan participants. Pursuant to paragraph (d) of this section, the contractor may continue its established practice of terminal funding and assign the entire $235,000 lump sum settlement payment as the post-retirement benefit cost for the period. Conversely, if the contractor had not established terminal funding as its cost accounting practice prior to becoming subject to this Standard, the $235,000 single premium payment would have to be amortized over a period of 15 years for purposes of assigning the cost to periods in accordance with 9904.419–40(b)(3)(ii) and 9904.419–50(b)(1).

(5) When Contractor D became subject to this Standard, the contractor reviewed its personnel and benefits records to determine in which segment each inactive plan participant was last employed. Of the contractor's 600 inactive plan participants, 98 had been employed in and retired from a commercial segment under Division A that had been shut down and abandoned several years before. There were another 23 inactive plan participants who could not be associated with an existing segment because their employment and benefit records did not provide sufficient information. Pursuant to paragraph (e) of this section, after the contractor associated the remaining 479 inactive participants with existing segments, the 98 who were employed in the segment that had been discontinued were associated with the home office for Division A. Likewise, the contractor associated the other 23 inactives, who could not be associated with any segment, with the corporate home office. Alternatively, if the contractor had an established practice of associating the costs all inactive plan participants no longer associated with operational segments to the corporate home office, the contractor could continue that established practice in accordance with paragraph (e) of this section.

(6) Since 1993, Contractor E has measured and assigned post-retirement benefit costs in accordance with SFAS 106 for both financial accounting and contract cost accounting purposes. The contractor elected to amortize the transition obligation using the delayed recognition provisions of paragraphs 112 and 113 of SFAS 106. Since 1993, the contractor has funded its assigned post-retirement benefit costs in accordance with relevant Federal regulations. The post-retirement benefit cost was measured for the corporation as a whole and allocated to segments in accordance with Cost Accounting Standard 9904.403. Funding agency records and actuarial valuation reports are available for all years. However, reliable records of benefit payments by segment are available only for 1995 and later years. Pursuant to paragraph (f)(2) of this section, the contractor shall initially allocate a share of the undivided fair value of plan assets to each of its segments based on the accumulated post-retirement benefit obligation of each segment starting in 1995 in accordance with 9904.419–50(c)(6)(i)(C). The fair value of plan assets of each segment shall then be brought forward based on contributions, benefit payments, and investment earnings and expenses in accordance with 9904.419–50(c)(6)(i)(D).

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Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended (hereinafter referred to as EPCA or the Act), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE, Department, or we) to administer an energy conservation program for these products. We conducted several analyses regarding the energy savings, benefits and burdens of amended energy conservation standards for clothes washers and have shared the results of these analyses with all stakeholders. Based on these analyses, several of the major stakeholders, including clothes washer manufacturers and energy efficiency advocates, submitted to the Department a joint proposal for the highest standard level which they believed to be technically feasible and economically justified. Based on our review of this proposal, we found the proposed standards technically feasible and economically justified. Therefore, today we propose to amend the energy conservation standard for clothes washers for residential applications as recommended in the joint proposal and announce a public hearing.

As part of this rulemaking in response to the joint proposal by the clothes washer manufacturers and energy efficiency advocates, we have also included revisions to the test procedure based on issues found during this rulemaking dealing with the energy test cloth, remaining moisture content (RMC), extractor testing and the correction factor. In addition, we incorporated minor editorial changes to help clarify both Appendix J and J1 of the test procedure based on the joint proposal by stakeholders. These changes have been included in their entirety in this rulemaking pertaining to the test procedure.

DATES: If you wish to submit comments on the proposed rule, they must be received on or before December 4, 2000 to Ms. Brenda Edwards-Jones at the address listed below. We request 10 copies of the written comments and, if possible, a computer disk. Oral views, data, and arguments may be presented at the public hearing. We will hold a Public Hearing on November 15, 2000, beginning at 9:00 a.m.

If you wish to speak at the hearing, requests must be received by the Department no later than 4:00 p.m., November 6, 2000. Copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., November 6, 2000. We will read the statements in advance of the hearing and would appreciate the oral presentations to be limited to a summary of the statement. The length of each oral presentation is limited to 5 minutes.

ADDRESSES: The hearing will be at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue, SW., Washington, DC 20585. Written comments, oral statements, and requests to speak at the hearing are to be submitted to Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Clothes Washers Energy Conservation Standards, Docket No. EE–RM–94–403, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Copies of the public comments received, the Technical Support Document (TSD) and the transcript of the public hearing may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the TSD may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. (202) 586–9127. Copies of the analysis can also be found on the Codes and Standards Internet site at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/clwasher.html

For more information concerning public participation in this rulemaking proceeding see Section VII, ''Public Comment Procedures,'' of this Notice.

FOR FURTHER INFORMATION CONTACT: Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@EE.DOE.GOV, or Eugene Margolis, U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9526, E-mail: Eugene.Margolis@HQ.DOE.GOV.

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I. Summary of the Proposed Rule

The EPCA, as amended, specifies that any new or amended energy conservation standard the Department prescribes shall be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' Section 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A). Furthermore, the amended standard must ''result in significant conservation of energy.'' Section 325(o)(2(B)(3)(B), 42 U.S.C. 6295(o)(2)(B)(3)(B).

In accordance with the statutory criteria discussed in this notice, we are proposing to amend the clothes washer energy efficiency standards. The proposed standards are based on a Joint Stakeholders Comment recommendation submitted to the Department by clothes washer manufacturers and energy conservation advocates. (Joint Comment, No. 204). The Joint Stakeholders consist of the following: Alliance Laundry Systems LLC; Amana Appliances; Asko Incorporated; Frigidaire Home Products; General Electric Appliances (GEA), Maytag Corporation; Miele, Inc.; Fisher & Paykel Ltd; Whirlpool Corporation; Alliance to Save Energy; American Council for an Energy Efficient Economy (ACEEE); Appliance Standards Awareness Project; California Energy Commission (CEC); City of Austin, Texas; Natural Resources Defense Council (NRDC); Northwest Power Planning Council; and Pacific Gas and Electric (PG&E). The proposal as submitted in the Joint Stakeholders Comment consists of four parts as follows:

''Clothes Washer Energy Standard. The clothes washer energy standards for standard class clothes washers shall be 1.04 modified energy factor (MEF) in 1/1/2004 and 1.26 MEF in 1/1/2007. The energy test procedure will be revised to ensure that variability between test cloths will not significantly affect remaining moisture content (RMC) results. Additional clarifications will also be made to test procedure.

Energy Star Labeling Program. Energy Star levels shall be set as follows: Standard Class Clothes Washers—1.26 MEF in 2001; 1.42 MEF in 2004; Refrigerator/Freezers—10% better than the 2001 standard in 2001; change to 15% better than the 2001 in 2004.

Tax Credit for the Production of Energy Efficient Clothes Washers and Refrigerator-Freezers. The credit shall provide for two energy efficiency tiers, each with separately designated funds. There is $30 million in each designated fund per company per efficiency tier. Cap of $60 million per company for the two funds or yearly cap with carry forward. Annual total tax credit cannot exceed in any taxable year 2% of corporate gross revenues as determined by average of 3 prior years.

Standard Class Clothes Washers: Two tiers coterminous 2001–2006; $50 per unit for products manufactured with a 1.26 MEF and $100 per unit for products manufactured with a 1.42 MEF, increasing to 1.5 MEF in 2004. Includes residential-style ''coin-operated'' washers.

Refrigerators: First tier effective in 2001. $50 per unit for products manufactured 10% above 2001 minimum efficiency standard. Credit runs through 2004. Second tier also effective in 2001 and runs through 2006. It is $100 for products manufactured 15% above the 2001 minimum efficiency standard. Credits apply to automatic defrost refrigerator-freezers only, at 16.5 cubic feet internal volume and above.

Voluntary Industry Water Program. Water factor reporting shall be part of a voluntary industry sponsored program. AHAM members agree to publicly disclose through AHAM, water factors for each model that meets Energy Star/Tax Credit MEF levels, starting sometime in calendar year 2001. In calendar year 2002 and each year thereafter, industry-wide shipment weighted average water factors for units shipped in the previous year shall be reported by AHAM. Water factor calculations will use Appendix J water factor through 2003 and will use Appendix J1 thereafter. Starting in 2007, AHAM members agree to report water factor for all models. AHAM will sponsor water conference.'' (Joint Comment, No. 204).

This rulemaking only addresses the clothes washer energy standards of this agreement. The above proposed standard, based on this agreement would go into effect in stages, with the first level going into effect on January 1, 2004, and the second level going into effect on January 1, 2007. The initial standard is a 22 percent (%) reduction in energy consumption over the current standard or a MEF of 1.04, and can be attained with current vertical-axis (V-axis) clothes washer designs. The later, more stringent standard, is a 35 percent reduction in energy consumption over the current standard or a MEF of 1.26. While both vertical- and horizontal-axis (H-axis) design clothes washers are currently available in retail appliance stores at these levels, they represent less than nine percent of the washers sold per year.

The Department's analyses indicates that the proposed standards, trial standard level of a 1.04 MEF in 2004 and a 1.26 MEF in 2007 saves an estimated 5.52 quads of energy over 27 years (2004–2030), a significant amount. This amount is more than the primary energy used for heating water in all U.S. buildings (residential, commercial and industrial) in 1997 (3.82 quads). The economic impacts on consumers (*i.e.*, the average life-cycle cost (LCC) savings) are positive.

The national NPV of trial standard level of a 1.04 MEF in 2004 and a 1.26 MEF in 2007 is $15.3 billion from 2004–2030 in 1997 dollars. This is the estimated total value of future savings discounted to 1997 minus the estimated increased equipment costs also discounted to 1997. The clothes washer industry net present value (INPV) today is estimated to be $1,452 million. If we adopt trial standard level proposed, we expect manufacturers may lose between 28.6–36.0% of the INPV, which is approximately $411.0–$518.3 million. With the present value of future energy savings for the U.S. of $15.3 billion, this would exceed industry losses due to energy efficiency standards by about 30 times. Additionally, based on our interviews with the five major manufacturers, we do not expect any plant closings or loss of employment because the manufacturers stated that they would stay in business.

The proposed standard has significant environmental benefits, reducing greenhouse gas emissions and air pollution. This proposed standard level would result in cumulative greenhouse gas emission reductions of 95.1 million

metric tons (Mt) of carbon dioxide (CO_2 equivalent. Additionally, air pollution would be reduced by the elimination of 253.5 thousand metric tons of nitrous oxides (NO_X) and 28.1 thousand metric tons of sulfur dioxide (SO_2) from 2004–2030. The NO_X reduction are derived from the power sector and household emissions, whereas the SO_2 reductions are derived only from household emission.

The proposed standard also saves a significant quantity of water, which amounts to 11.59 trillion gallons through the period 2004–2030.

Therefore, DOE has determined that the benefits (energy and water savings, consumer life cycle cost savings, national net present value increase, job creation and emission reductions) to the nation outweigh the burdens (loss of manufacturer net present value and consumer life cycle cost increases for some users of clothes washers). We conclude that the proposed standard of a 1.04 MEF in 2004 and a 1.26 MEF in 2007 is economically justified. Furthermore, DOE has determined this standard level is technologically feasible. Clothes washers reaching this standard level already are commercially available in both V- and H-axis models.

II. Introduction

A. Consumer Overview

The Energy Policy and Conservation Act, as amended, specifies that the Department must consider, for amended standards, those standards that ''achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified'' and which will ''result in significant conservation of energy.'' Accordingly, today's proposed rule would be amending the energy conservation standard for residential clothes washers.

We are currently establishing a new energy efficiency standard for clothes washers that will amend the standard set in 1994. When today's proposed standards go into effect, they will essentially require more efficient Standard class clothes washers. The efficiency levels can be met by either top or front loading machines. The major stakeholders, including manufacturers and energy efficiency advocates, have jointly submitted a proposed clothes washer efficiency standard to the Department that they both feel is technically feasible and economically justified. The proposed standard would go into effect in two stages. The first stage would begin January 1, 2004, and require that all new residential clothes washers be 22 percent more efficient than today's baseline clothes washer. The second stage would begin January 1, 2007, and require that all new residential clothes washers be 35 percent more efficient than today's baseline clothes washer.

The Department has reviewed this proposal and its analyses, and agrees that the standard they proposed is technically feasible and economically justified. The Department therefore proposes to amend the energy conservation standard for Standard class clothes washers for residential applications as recommended in the joint stakeholders proposal and announce a public hearing.

As a result of today's proposed rule, clothes water efficiency standard will provide significant energy savings and water savings to the nation. The Department's analyses indicates that the proposed standards would save an estimated 5.52 quads of energy over 27 years (2004 to 2030). That is equivalent to saving enough electricity to light 16 million U.S. homes for 25 years, while cutting greenhouse gas emissions by an amount equal to that produced by three million cars every year. This proposed standard level would result in cumulative greenhouse gas emission reductions of 95.1 million metric tons (Mt) of carbon dioxide (CO_2) equivalent. Additionally, air pollution would be reduced by the elimination of 253.5 thousand metric tons of nitrous oxides (NO_X) and 28.1 thousand metric tons of sulfur dioxide (SO_2) from 2004 to 2030. The NO_X reductions are derived from the power sector and household emissions. The SO_2 reductions are derived only from household emissions and is a result of less home heating oil and LPG being used in oil-fired and LPG-fired water heaters for water heating.[1] DOE is seeking comment on what will be the likely impact of EPA rules, such as its proposed rule to reduce sulfur levels in highway diesel fuel, on home heating oil sulfur levels and household SO_2 emissions. In 2020, the standards will save the amount of electricity generated by 15 large, 400 megawatt, power plants.[2] The standards will save enough water to supply the needs of 6.6 million households for 25 years. The water savings will reach up to 11 trillion gallons, meaning less water needs to be pumped from America's aquifers and rivers, and less strain on many of the nation's overtaxed water and sewer systems. In total, we estimated the net present value (NPV) to the nation of this standard to be $15.3 billion from 2004 to 2030.

The proposed clothes washer energy efficiency standard will not impact clothes washer features valued by consumers. For instance, consumers will still be able to purchase either a top loading clothes washer or a front loading machine, whichever they prefer. The energy and water savings will result primarily from a variety of design changes, such as higher spin speeds, more efficient use of hot water, more sensitive clothes load technologies, more efficient motors, and the increased use of spray rinse cycles. The Department does not expect the cleaning ability or reliability of washing machines to be compromised by the design changes anticipated under the proposed clothes washer standard.

The Department expects the purchase price of the high efficiency clothes washers (*i.e.*, 35 percent efficiency increase) to be approximately $200 higher than the average price of clothes washers today. Although the purchase cost is expected to increase, the energy and water efficiency gains will result in lower washer-related energy costs and water costs, saving consumers $30 a year on their utility bills and 18 gallons of water for every load of wash. As such, the life cycle cost analysis estimates that the payback period for the high efficiency machines will be approximately 7 years. In other words, the energy and water cost savings will enable the average consumer to recoup the additional $200 he/she had to spend on the purchase of the high efficiency machine in 7 years through the energy and water cost savings. When these savings are summed over the lifetime of the high efficiency machine, consumers will save $260, on average, compared to today's baseline clothes washing machines.

B. Authority

Part B of Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, by the National Appliance Energy Conservation Act, Pub. L. 100–12, by the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, and the Energy Policy Act of 1992, Pub. L. 102–486[3] (the Act

[1] The Department recognizes that the Environmental Protection Agency is considering regulations which could affect the amount of sulfur in home heating oil.

[2] DOE estimates that standards will result in 5 coal-fired and 11 gas-fired power plants avoided.

[3] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the ''Act.'' Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III

or EPCA) created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as ''covered products'') include clothes washers.

Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology, amends or establishes new test procedures for each of the covered products. Section 323. The test procedures measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. They must not be unduly burdensome to conduct. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). Test procedures appear at 10 CFR Part 430, Subpart B.

A test procedure promulgated under Section 323 of the Act must be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of shower heads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. EPCA, Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. EPCA, Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may make representations with respect to energy use, efficiency or water use of such product, or the cost of energy consumed by such product, except as reflected in tests conducted according to the DOE procedure. EPCA, Section 323(c)(2). This 180-day period may be extended for up to an additional 180 days if the Secretary determines that the requirements of Section 323(c)(2) would impose undue burden. EPCA, Section 323(c)(3).

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency, measured energy use or measured water use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured use of a covered product, DOE is required to amend the applicable energy conservation standard accordingly. EPCA, Section 323(e)(2).

The Federal Trade Commission (FTC) prescribes rules governing the labeling of covered products after DOE publishes test procedures. Section 324(a). The FTC labels indicate the annual operating cost for the particular model and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions, or is not economically feasible. In such a case, the FTC must require a different useful measure of energy consumption. Section 324(c). At the present time, there are Federal Trade Commission rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, refrigerators, refrigerator-freezers and freezers, central air conditioners and central air conditioning heat pumps, and fluorescent lamp ballasts.

The National Appliance Energy Conservation Act of 1987 amended the Act to impose prescriptive standards (design feature requirements) for clothes washers as part of the energy conservation program for consumer products. EPCA, § 325(g), 42 U.S.C. 6295(g). The design feature requirement that clothes washers shall have an unheated rinse option was effective for appliances manufactured on or after January 1, 1988. The Act required the Department to conduct a rulemaking by January 1, 1990, to determine if the above mentioned standards should be amended. The Act provided that any amendment to the standards would apply to products manufactured three years after the rulemaking. The Final Rule was issued on May 14, 1991, and is effective for products manufactured on or after May 14, 1994, (hereinafter referred to as the May 1991 Final Rule) which required top loading compact clothes washers (less than 1.6 cubic feet capacity) to have an energy factor (EF) of 0.90 cubic feet/kilowatt-hours/cycle (cu.ft/Kwh/cycle) and top loading standard clothes washers (1.6 cu. ft. or greater capacity) to have an EF of 1.18 cu. ft./Kwh/cycle). 56 FR 22279. The Act also requires the Department to conduct a subsequent rulemaking no later than five years after the date of publication of the previous final rule.

Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(o)(2)(A).

Section 325(o)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses;

(3) The total projected amount of energy, or as applicable, water, savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

In addition, Section 325(o)(2)(B)(iii), 42 U.S.C. 6295(o)(2)(b)(iii), establishes a rebuttable presumption of economic justification in instances where the Secretary determines that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. * * *'' The rebuttable presumption test is an alternative path to establishing economic justification.

Section 327 of the Act addresses the effect of Federal rules on State laws or regulations concerning testing, labeling, and standards. Generally, all such State laws or regulations are superseded by the Act unless specifically exempted in Section 327. The Department can grant a waiver of preemption in accordance with the procedures and other provisions of Section 327(d) of the Act. 42 U.S.C. 6297(d).

of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

C. Background

1. Current Standards

The existing clothes washer efficiency standards have been in effect since 1994. Energy efficiency for a clothes washer is measured in terms of an energy factor (EF), which measures overall clothes washer efficiency, in terms of cubic feet per kilowatt-hour per cycle, and is determined by the DOE test procedure. 10 CFR Part 430, Subpart B, Appendix J. The current clothes washer efficiency standards are as follows:

- Top loading, compact (less than 1.6 cubic feet capacity), EF = 0.90.
- Top loading, standard (1.6 cubic feet or greater capacity), EF = 1.18.
- Top loading, semi-automatic, must have an unheated rinse option.
- Front loading, must have an unheated rinse option.
- Suds saving, must have an unheated rinse option.

2. History of Previous Rulemakings

On November 14, 1994 DOE published an Advance Notice of Proposed Rulemaking (ANOPR). 59 FR 56423. On November 19, 1998, DOE published a Supplemental ANOPR. (Hereafter referred to as the 1998 Supplemental ANOPR.) 63 FR 64344. In the 1998 Supplemental ANOPR, we provided interested persons an opportunity to comment on:

(1) The product classes that we propose to analyze;

(2) The analytical framework, models (*e.g.*, the Government Regulatory Impact Model (GRIM)), and tools (*e.g.*, a Monte Carlo sampling methodology, and life-cycle-cost (LCC) and national energy savings (NES) spreadsheets) that we plan to use in performing analyses of the impacts of standards; and

(3) The results of preliminary analyses for LCC, payback and national energy savings contained in the Preliminary Technical Support Document: Energy Efficiency Standards for Consumer Products: Clothes Washers (TSD) dated October 1998 and summarized in the 1998 Supplemental ANOPR.

3. Process Improvement

The fiscal year (FY) 1996 appropriations legislation imposed a moratorium on proposed or final rules for appliance efficiency standards for FY 1996. Public Law 104–134. During the moratorium, the Department examined the appliance standards program and how it was working. Congress advised DOE to correct the standards-setting process and to bring together stakeholders (such as manufacturers and environmentalists) for assistance. We consulted with energy efficiency groups, manufacturers, trade associations, state agencies, utilities and other interested parties to provide input to the process used to develop appliance efficiency standards. As a result, on July 15, 1996, the Department published a Final Rule: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (referred to as the Process Rule) (61 FR 36974), codified at 10 CFR Part 430, Subpart C, Appendix A. DOE completed this review and decided to use the Process Rule, to the extent possible, in the development of the revised clothes washer standards.

We developed an analytical framework for the clothes washer standards rulemaking for our stakeholders. The analytical framework described the different analyses (e.g., LCC, payback and manufacturing impact analyses (MIA)) to be conducted, the method for conducting them, the use of new LCC and national energy savings (NES) spreadsheets, and the relationship between the various analyses. We have conducted several meetings, workshops and discussions regarding energy efficiency standards for clothes washers. These workshops included discussions on proposed design options and a preliminary engineering analysis on November 15, 1996; development of an analytical framework for appliance standards rulemaking on July 23, 1997; and development of two new spreadsheet tools for LCC and NES on March 11, 1998. We conducted public hearings on December 15, 1998, to receive additional comments on the 1998 Supplemental ANOPR and on July 22, 1999, to discuss the process, analytical tools and uncertainties with the test procedures.

In this rulemaking we incorporated the recommendations made by the Advisory Committee on Appliance Energy Efficiency Standards on April 21, 1998. (Advisory Committee, No. 96). These recommendations relate to using the full range of consumer marginal energy prices (CMEP) in the LCC analysis (replacing the use of national average energy prices), defining a range of energy price futures for each fuel used in the economic analyses and defining a range of primary energy conversion factors and associated emission reductions, based on the generation displaced by energy efficiency standards for each rulemaking. We discuss how these recommendations have been incorporated in the discussions on methodology (Section IV). Marginal energy prices are used in the LCC, payback and NES analyses. Because the NES results are inputs to the analyses for utility, emissions and employment; these analyses are also impacted by using marginal rates.

4. Test Procedures

Federal test procedures for clothes washers were first established in 1977. Simultaneous with the rulemaking for clothes washer standards, the Department was also in the process of revising the clothes washer test procedure. The Department needed to address a number of innovative technologies for which there were no test procedures. A number of proposals were published, one on December 22, 1993, (58 FR 67710) and another on March 23, 1995. 60 FR 15330. In its comments to the March, 1995 proposed rule, AHAM requested that DOE adopt an additional new test procedure, based on current consumer habits, which would be used in considering the revision of the clothes washer energy conservation standards, and would go into effect upon issuance of standards.

On April 22, 1996, the Department issued a supplemental Notice of Proposed Rulemaking proposing such a new test procedure, Appendix J1, as well as certain additional revisions to the currently applicable test procedure in Appendix J to Subpart B of 10 CFR Part 430. 61 FR 17589. The supplemental notice was published to seek comments on whether DOE should adopt the AHAM recommended test procedure with certain changes. The Final Rule, published on August 27, 1997, adopted this recommendation. 62 FR 45484. Appendix J is the current applicable test procedure. Appendix J1 is informational and will not become mandatory until the energy conservation standards of this rule become effective. Appendix J1 includes a modified energy factor (MEF) which replaces the EF. Contrasting with the previous EF (energy factor) descriptor, the MEF descriptor incorporates clothes dryer energy by consideration of the remaining moisture content (RMC) of clothes leaving the clothes washer. Other substantive differences between the test procedures include using different water temperatures for testing and using cloth loads in J1 and not in J. The issuance of the Final Rule was a major step in accelerating the development of clothes washer standards because it provided the basis upon which the energy and water consumption, as well as the manufacturing costs would be submitted.

III. General Discussion

A. Test Procedure

As part of the July 15, 1996, Process Rule (61 FR 36974), we stated that a final modified *test procedure* would be issued prior to the notice of proposed rulemaking on standards. The process described in this rule provides for greatly enhanced opportunities for public input, improved analytical approaches, and encouragement of consensus-based standards. Section 7, *Test Procedures,* of the Process Rule provides that modifications in test procedures will be proposed before revised standards are proposed. Today's proposed revisions to the clothes washer test procedures follows the process in the Process Rule in that the Final Rule for test procedures was published on August 27, 1997, with the exception of today's proposed revisions to the test procedure language as recommended by clothes washer manufacturers and energy conservation advocates. (Joint Comment, No. 204)

During this standards rulemaking, it was discovered that the test cloth to be used for determining the RMC was giving inconsistent results. Over the approximately 20 year period that the original clothes washer and clothes dryer test procedures have been used, no variations or inconsistency of washer or dryer test results had been attributed to variations in the test cloths. A significant inconsistency in RMC test results under the new Appendix J1 procedure was noted by Alliance Laundry Systems LLC and was brought to the Department of Energy's attention in a letter dated June 7, 1999. (Alliance Laundry Systems, No. 179). In the tests referred to in this letter, which were run at Intertek Testing Services (ITS), the RMC values that were obtained in one machine with two different lots of energy test cloths differed by over 11 percentage points (67.9% versus 56.0%). When these two lots of energy test cloth were run through a second machine, a similar difference in RMC occurred.

The effect of RMC on MEF can be substantial, particularly for washers which are more efficient with respect to electrical consumption and use of hot water. The following scenario illustrates: For a high efficiency horizontal axis washer, an 18% increase in RMC (54.5%–64.5%) will result in a 13% decrease in MEF (1.52–1.33). For a lower efficiency washer, a 17% increase in RMC (57.7%–67.7%) will result in only a 6% decrease in MEF (0.82–0.77).

The Department investigated possible causes for the inconsistent test results, and results are summarized in the DOE report, ''Development of a Standardized Energy Test Cloth for Measuring Remaining Moisture Content in a Residential Clothes Washer,'' May 2000. (DOE, No. 200). As part of our investigation into the cause of these discrepancies, we found that various lots of test cloth will yield inconsistent RMC results. To understand the effects of operating variables and cloth specifications, it was necessary to conduct laboratory tests to determine RMC. To insure that test results would not be influenced or biased by any manufacturer's product (clothes washer), we used an extractor to remove moisture content. An extractor is a centrifuge—basically a rotating basket that has a controllable speed to produce a variety of centrifugal forces. The speed was varied to impose different centripetal accelerations on the test load. These accelerations are reported in terms of gravitational acceleration (g). We also soak the cloth in a tub at controlled temperature rather than use the agitated soak cycle provided by a typical washer. The RMC tests closely resembles those specified in the energy test procedure.

An extractor based test has been established to examine RMC values at different gravitational forces (g-forces). A correction factor is derived by which the deviation between a new production batch of test cloth and a standard reference test cloth is measured. This deviation is measured as the root mean square between the set of measured RMC values and the set of standard RMC values. If this absolute deviation is below 2%, then no correction factors are needed in MEF tests using that batch of cloth. If the absolute root-mean-square (RMS) difference between the cloth RMC values and standard RMC values is above 2%, then correction factors may be applied when using the cloth to test the MEF of a clothes washer.

As part of this rulemaking, we have included revisions to the test procedure based on our proposed language addressed in the May 2000 report dealing with the energy test cloth, RMC, extractor testing and the correction factor and Joint Stakeholders Comment. (Joint Comment No. 204). In addition, we incorporated AHAM's comments and Joint Stakeholders Comment requesting minor editorial changes to help clarify both Appendix J and J1. (AHAM , Nos. 197 and 199, and Joint Comment No. 204). These changes have been included in their entirety in this rulemaking pertaining to the test procedure.

B. Technological Feasibility

1. General

There are or have been clothes washers in the market at all of the efficiency levels analyzed in today's notice. Therefore, the Department believes all of the efficiency levels discussed in today's notice are technologically feasible.

2. Maximum Technologically Feasible Levels

Under the guidelines in the Process Rule, DOE will eliminate from consideration, early in the process, any design option which is not practicable to manufacture, install, or service, will eliminate product utility features or for which there are safety concerns that can not be resolved. In order to conduct the screening analysis, the Department gathers information regarding all current technology options and prototype designs. In consultation with interested parties, the Department develops a list of design options for consideration in the rulemaking. All technologically feasible design options are candidates in this initial assessment. We did not reject any design options from consideration in this rulemaking.

The Department considers design options technologically feasible if they are already in use by the respective industry or research has progressed to the development of a working prototype. The Process Rule sets forth a definition of technological feasibility as follows: ''Technologies incorporated in commercially available products or in working prototypes will be considered technologically feasible.'' 10 CFR 430, Subpart C, Appendix A(4)(a)(4)(I).

When we amend or consider new standards, we must consider those that ''shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.'' (Section 325 (l)(2)(A)). For this clothes washer rulemaking, the Department determined that a 50% reduction in the energy use of the baseline model (corresponding to an MEF of 1.634) is the maximum technologically feasible level for the Standard class (1.6 ft.^{3} or greater capacity). This determination was based on information relative to existing technology options and prototype designs. In consultation with interested parties, the Department developed a list of design options for consideration. All technologically feasible design options were candidates in this initial assessment. Furthermore, the clothes washer rulemaking analysis was originally performed using the design

option approach. Using this approach, information was gathered on all possible energy saving design options. The Department gathered design option information from previous clothes washer analyses, trade publications, industry research organizations, product brochures from domestic and foreign manufacturers, and appliance conferences, including the International Appliance Technical Conference (IATC). The ''Draft Report on Design Options for Clothes Washers'' and ''Draft Report on the Preliminary Engineering Analysis for Clothes Washers'' provide details on the potential technologies. (Clothes Washer Public Workshop, No. 55B and 55C).

3. Product Classes

DOE divides clothes washers into classes based on the size and features, *e.g.*, suds saving. For the existing standards, DOE defines residential clothes washers in the following classes:

- Top loading, compact (less than 1.6 cubic feet capacity);
- Top loading, standard (1.6 cubic feet or greater capacity);
- Top loading, semi-automatic;
- Front loading; and
- Suds saving.

The Department is proposing to maintain the current definitions for all these product classes. For this rulemaking, the Department is proposing to maintain the current requirements for the Semi-Automatic Top-Loading and Suds Saving classes. In the May 1991 Final Rule, these classes were not subject to minimum energy conservation standards because they represented a small portion of the market, and due to a lack of adequate information to analyze them. The standard for these classes will continue to be ''not applicable,'' except for the 1988 requirement of an unheated rinse water option.

C. Energy Savings

1. Determination of Savings

The Department forecasted energy savings through the use of a national energy savings (NES) spreadsheet, which forecasted energy savings over the period of analysis for candidate standards relative to the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards.

The NES spreadsheet model is described in Section IV.e of this notice, *infra*, and in Chapters 9 and 10 of the TSD. The NES spreadsheet model first calculates the energy savings in site energy. The energy savings to the nation is expressed in quads, that is, quadrillions of British thermal units (Btus).

2. Significance of Savings

Under Section 325(o)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in ''significant'' energy savings. While the term ''significant'' has never been defined in the Act, the U.S. Court of Appeals, in 768 F.2d 1355, 1373 (D.C. Cir. 1985), concluded that Congressional intent in using the word ''significant'' was to mean ''non-trivial.''

D. Rebuttable Presumption

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. Section 325(o)(2)(B)(iii) states:

> ''If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.''

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then we presume that such standard is economically justified.[4] This presumption of economic justification can be rebutted upon a proper showing.

E. Economic Justification

As noted earlier, Section 325(o)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

The July 1996 Process Improvement Rule established procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer products). 61 FR 36974 (July 15, 1996). Key objectives of the rule have direct bearing on the implementation of manufacturer impact analyses. First, the Department will utilize an annual cash flow approach in determining the quantitative impacts on manufacturers. This includes a short-term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect, and a long-term assessment. Impacts analyzed include industry net present value, cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, the Department will analyze and report the impacts on different types of manufacturers, with particular attention to impacts on small manufacturers. Third, the Department will consider the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures and loss of capital investment. Finally, the Department will take into account cumulative impacts of different DOE regulations on manufacturers.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and annual energy expense, i.e., life-cycle cost, of each standard level are presented in Chapter 7 of the TSD. Under Section 325 of the Act, the life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. Life-Cycle Cost (LCC)

One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in the LCC between the baseline and the more efficient technologies for the clothes washers analyzed. The LCC is the sum of the purchase price and the operating expense, including installation and maintenance expenditures, discounted over the lifetime of the appliance.

For each clothes washer, we calculated the life-cycle costs for six efficiency levels: 20, 25, 35, 40, and 50% reduction in the energy use of the baseline model. In addition, a two-step standard as proposed by the Joint Stakeholders Comment was analyzed. A distribution of discount rates averaging 6.1% was used in the calculations. The consumer is assumed to purchase a clothes washer in 2004 or 2007 (for step 2 of the Joint Stakeholders Comment).

[4] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures with assumed usage shown in Chapter 7 of the TSD. Consumers that use the clothes washer less will experience a longer payback while those that use them more will have a shorter payback.

Price forecasts are taken from the 1999 *Annual Energy Outlook* of the Energy Information Administration (DOE/EIA–0383). Chapter 7 of the TSD contains the details of the life-cycle cost calculations including those considered under factor seven below, *infra*.

3. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards. The Department used the NES spreadsheet results, discussed earlier, in its consideration of total projected savings. The savings are provided in Section V of today's notice.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products the Department tries to eliminate any degradation of utility or performance in the products under consideration in this rulemaking.

An issue of utility that was considered in this rule concerns the consumer utility of V-axis and H-axis machines. We conducted consumer focus groups and a conjoint analysis study to address this issue.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department will provide the Attorney General with copies of this notice and the Technical Support Document for review.

6. Need of the Nation To Conserve Energy

Most of the non-monetary benefits of the proposed standard are likely to be reflected in improvements to the environment, rather than in the security or reliability of the Nation's energy system. We report the environmental effects in Section V of today's notice.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. Section 325(o)(2)(B)(i)(VI), 42 U.S.C. 6295(o)(2)(B)(i)(VI).

Under this factor, we considered the water savings from each standard level. The Department received numerous comments asking for the inclusion of a water factor standard in addition to the MEF standard. (City of Austin, No. 105 at 1; City of Bellingham, Washington, Department of Public Works, No. 106 at 1; Lower Colorado River Authority (LRCA), No. 109 at 1; Amy Vicker and Associates, Inc., No. 110 at 1; City of San Diego, No. 123 at 1; City of Santa Barbara, Public Works Department, No. 125 at 1; City of Seattle, No. 126 at 2; Santa Clara Valley Water District, No. 127 at 1; American Water Works Association, No. 149 at 1; City of Redmond, Office of the Mayor, No. 153 at 1; Massachusetts Water Resources Authority, No. 152 at 4; State of New Mexico, Office of the State Engineer, No. 158 at 1). As stated previously, the Department is considering water savings as a factor in determining the economic justification of the clothes washer standard level. However, the Department does not have the authority to prescribe a minimum water factor standard.

Another factor that the Department considered is the life-cycle cost impacts on those subgroups of consumers who, if forced by standards to purchase more efficient washers, would choose to repair their existing machines.

IV. Methodology

The methodology to be used in this rulemaking was described in the 1998 Supplemental ANOPR and accompanying TSD. In this section we will discuss comments and changes in the methodology. These changes were performed because new data was obtained or in response to comments received after publication of the 1998 Supplemental ANOPR.

In general, when information is based on periodic forecasts and surveys such as the Annual Energy Outlook (AEO) forecasts of energy prices and the Residential Energy Consumption Survey, both from the Energy Information Administration (EIA), we try to use the latest available information. The analysis in support of this proposed rule was performed using RECS93 and AEO 1999 data. Just prior to publication of this proposed rule both RECS97 and AEO2000 data became available. Although we do not expect a significant difference in results by updating to RECS97 and AEO2000, we intend to use this updated information for the final rule. We seek comment on the use of the most current RECS and AEO data.

A. Product Classes

The Supplemental ANOPR contained three proposals regarding clothes washer product classes. The first proposal suggested eliminating the Semi-Automatic Top-Loading, Front-Loading and Suds Saving classes identified in the May 1991 Final Rule. In its second proposal, the Department proposed to increase the compact class to include all clothes washers with a volume less than 2.0 cubic feet. The third proposal was to not establish separate classes for Horizontal and Vertical-axis clothes washers.

The Department received no comments on its proposal to eliminate the Semi-Automatic Top-Loading and Suds Saving classes. In the May 1991 Final Rule, these classes were not subject to minimum energy conservation standards because they represented a small portion of the market, and due to a lack of adequate information to analyze them. However, the 1988 standard requiring an unheated rise option is still applicable to these classes. Given the continued absence of information available to analyze these classes and ensure that they could meet the proposed standard levels, the Department is proposing to maintain these product classes but not to subject them to minimum energy conservation standards. However, the unheated rise water option is still applicable to these classes.

DOE received several comments regarding changing the definition of the compact clothes washers class maximum capacity, from 1.6 cubic feet to 2.0 cubic feet. Whirlpool believes that this re-definition for the compact class would better reflect the actual product offerings that exist in the marketplace which range from 1.6 to 1.96 cubic feet. (Whirlpool, No. 141 at 3). Amana Appliances is not opposed to the change. (Amana, No. 146 at 1). ACEEE and American Water Works Association (AWWA) also find this proposal acceptable. (ACEEE, No. 150 at 4 and AWWA, No. 149 at 4). Maytag is concerned that a clothes washer at 2.0 cubic feet, if not subjected to the same standard as full size washers will become a relatively larger volume seller. This would result in a reduction in the potential national energy and water savings of the standard and may place some manufacturers that have complied with more stringent standards at a competitive disadvantage. Accordingly, Maytag recommends that the Department develops safeguards as retail market share or product sales volume limits which, if exceeded, would require the product to meet the

same energy standards as full-size washers. (Maytag, No. 137 at 4–5). PG&E supported changing the ''compact'' size to 2.0 cubic feet, up from 1.6 cubic feet under the condition that the ''compact'' washers are required to at least meet the 25 percent more efficient standard level. (PG&E, No. 189 at 1).

We received several comments in support of maintaining the current limit of 1.6 cubic feet for the compact class. (Northwest Energy Efficiency Alliance, No. 131 at 3; the Northwest Power Planning Council, No. 135 at 2; Bosch, No. 142 at 1; and Miele, No. 156 at 1). GEA opposed the change in definition because it believed there is substantial room for these products to increase their efficiency. (GEA, No. 143 at 11). The Oregon Office of Energy commented that the new 2.0 cu. ft. definition puts a significantly greater number of more efficient machines in the compact class. For this reason it will insist that the Department conduct enough of an analysis on this class of products to justify raising the standard for this class. (Oregon, No. 162 at 2).

Staber Industries proposed removing tub size as a factor in determining both capacity and energy efficiency and proposed instead classifying washers by loading capacity. (Staber, Nos. 185 and 187).

The Department agrees that the increasing the compact class size to 2.0 cu. ft. will increase the number of washers in this class and possibly incorporate products currently already more efficient than compact models of 1.6 cu. ft. The Department has not been provided any information in order to conduct such an analysis. For this notice the Department is maintaining the existing 1.6 cu. ft. definition of the compact product class and given the small size of this market (less than one percent) is proposing not to change the minimum efficiency levels. However given the new test procedure (Appendix J1) and the change in descriptor it is necessary to translate the current standard of EF of 0.9 into an MEF value. Since no mathematical translation is possible, we have estimated this value using engineering calculations and assumptions which are detailed in the TSD. This value is estimated to be an MEF of 0.65.

For the Final Rule, the Department will consider changes to the definition and efficiency standards for the top loading compact class. A new definition could have different capacity requirements (such as less than 2.0 cu. ft.) and additional requirements for the maximum external dimensions (such as a width not to exceed 22.5 inches). The Department will also consider any new information on the efficiency of current models under Appendix J1. The Department seeks comment on these issues.

The Department's ANOPR proposal to eliminate the Front-Loading product class also received no negative comments. NRDC commented that the existence of a top-loading horizontal-axis washer clearly dispels the notion that the location of a washer's port of access (Top or Front) is synonymous with axis of rotation (Vertical and Horizontal). Amana notes that because of technological differences it would be more appropriate to refer to the current ''Front-Loading'' and ''Top-Loading'' product classes as Horizontal-Axis and Vertical-Axis (Amana, No. 146 at 1). Elimination of the Front-Loader class is invariably linked by many comments with the need to establish separate classes for V- and H-axis washers.

The Department received numerous comments on the proposal not to establish separate classes for V- and H-axis clothes washers. Comments supportive of the Department's proposal were received from Maytag, Whirlpool, Bosch, Staber, Miele, NRDC, the Alliance to Save Energy, ACEEE, and approximately fifteen state or city agencies and utilities. (Maytag, No. 137 at 2; Whirlpool, No. 141 at 7; Bosch , No. 142 at 1; Staber, Nos. 185 and 187; Miele, No. 156 at 1; NRDC, No. 138 at 5; the Alliance to Save Energy, No. 148 at 2; and ACEEE, No. 150 at 5).

GEA, Alliance Laundry and Amana opposed the Department's proposal. GEA commented that the unique characteristic and energy performance of H- and V-axis washers require two-product classes with separate minimum energy efficiency standards for each. H-axis are less convenient and potentially less reliable with different systems or features for loading clothes and adding clothes during the wash cycle, longer cycle times, smaller capacities, more expensive detergents, and availability of deep pre-soak which are important to consumers. (GEA, No. 143 at 2). Alliance Laundry commented that the V- and H-axis product classifications would ignore relevant consumer utility differences and would combine two distinct products which do not compete in the market for energy comparison purposes. (Alliance Laundry, No. 145 at 3). Amana commented that the machines differ in cost/price, utility, energy efficiency, performance, and ergonomics. The integration of these two categories into one will increase rather than decrease confusion in the marketplace with consumers. (Amana, No. 146 at 2). These concerns, DOE believes, are superceded by the Joint Comment in which the same standard was agreed to for V- and H-axis products.

The Alliance to Save Energy commented that recent technology development shows that various axis types can meet relatively stringent performance criteria. (Alliance to Save Energy, No. 148 at 2). The Department agrees with this view. Recent product introductions by Whirlpool Corporation and Fisher & Paykel of high-efficiency V-axis washers have positively demonstrated that V-axis designs are available for the same range of efficiencies as H-axis washers. Since both H-axis and V-axis washers can achieve the same range of efficiency, there is no basis for separate efficiency standards based on axis of rotation or orientation of loading. Additionally the existence of a Top Loading horizontal-axis washers dispels the notion that orientation of loading is necessarily associated with efficiency. Therefore, in today's proposal the Department is maintaining the Front Loading product class but is proposing a single efficiency standard for both the Front Loading and the Top Loading, Standard class washers.

B. Engineering Analysis

The engineering analysis develops cost-efficiency relationships to show the manufacturer costs of achieving increased efficiency. Three methodologies can be used to generate the manufacturing costs needed for the engineering analysis. These methods include: (1) The design-option approach, reporting the incremental costs of adding design options to a baseline model; (2) the efficiency-level approach, reporting relative costs of achieving energy efficiency improvements; and/or (3) the cost-assessment approach which requires a ''bottoms-up'' manufacturing cost assessment based on a detailed bill of materials.

As summarized in the Supplemental ANOPR, the engineering analysis was conducted using the efficiency-level approach. The cost-assessment approach was also used to supplement the efficiency-level approach because of the existence of a proprietary technology for which no data was available. The objective of the manufacturing cost assessment was to quantify the differential manufacturing costs of producing high efficiency clothes washers based on (1) a Whirlpool proprietary V-axis design, and (2) commercially available V- and H-axis designs.

C. Life-Cycle Cost (LCC) Analysis

The effect of standards on individual consumers includes a change in operating expense (usually decreased) and a change in purchase price (usually increased). The life-cycle cost (LCC) spread sheet is used to analyze the economic impacts of possible standards on individual consumers. This section describes modifications to the LCC spreadsheet model and revisions to data inputs as a result to new data or recommendations from comments received after the publication of the 1998 Supplemental ANOPR. 63 FR 64353 (November 19, 1998).

Table 1 summarizes the assumptions used in the LCC analysis for the 1998 Supplemental ANOPR analysis and the changes made for this proposed rule analysis than followed by a written discussion of these changes.

TABLE 1.—ASSUMPTIONS IN THE LCC ANALYSIS [1]

Parameter	Supplemental ANOPR	Proposed rule
Energy Price	average prices	marginal prices.
Variation in Household Energy Prices, Energy Use, and Water Heater Shares.	1993 RECS data	Marginal prices derived from 1993 RECS data and adjusted to 1997 prices.
Energy Price Projections	AEO 1998 reference case to the year 2020, with extrapolations to the year 2030.	AEO 1999 reference, high & low cases to the year 2020, with extrapolations to the year 2030; used FEMP methodology for extrapolations.
Water and Sewer Prices	Urban ($0.00 to $7.84 per 1000 gallons) Ave. price = $3.18 per 1000 gals	Urban 0–$7.97. Rural 0–$7.97. Rural (no sewer) 0–$3.53. Individual well 2.61 kWh/1000 gals. Ave. price = $2.48 per 1000 gals.
Annual Real Change in Water and Sewer Cost (Water Price Projections).	0 percent	Urban = 3.01% (high 5.41%, low 0.53%). Rural = 3.01% (high 5.41%, low 0.53%). Rural with septic = 0.64% (high 2.93%, low −2.89%). Individual well (electricity price escalation).
Manufacturer Cost	AHAM	No change.
Manufacturer Mark-ups	Min. 1.000 Mean 1.175 Max. 1.350 Distribution: triangular	Range: varies with standard level. Distribution: uniform.
Retail Mark-up	1.4	No change.
Detergent Savings	not an input parameter	allowed as an input (detergent savings = zero).
Discount Rate	Distribution (0–15 percent)	No change.
Lifetime	Distribution (12–17 years)	No change.
Cycles Per Year	Distribution from RECS database (207–645)	No change.
Start Year (Effective Date of Standard)	2003	2004 (and 2007 if a second tier).

[1] All prices and costs are shown in 1997 dollars.

Energy Prices. For the Supplemental ANOPR the LCC spreadsheet model sampled the individual prices paid by households in the 1993 version of the Residential Energy Consumption Survey (RECS). These prices were updated (scaled up or down based on AEO 1998 national prices) and converted to 1997 dollars. The Advisory Committee recommended DOE use the full range of consumer marginal energy prices instead of national average energy prices. Marginal energy prices are those prices consumers pay (or save) for their last units of energy used (or saved). The Department agreed that marginal energy prices would improve the accuracy of the LCC analysis and estimated marginal rates for electricity and natural gas from the 1993 RECS database.

In accordance with the Advisory Committee's recommendation, the Department elected to substitute marginal energy prices for average prices for calculating LCC and NPV. EIA gathered monthly energy bills and energy consumption data for the RECS public use data. It did not gather information on rate schedules, fixed charges, or marginal prices. DOE estimated consumer marginal electricity and natural gas prices directly from household data in the 1993 RECS public use data survey as the change in household monthly energy bills divided by the change in monthly energy consumption for each fuel, referred to as the change in monthly bill method. This provides a precise marginal energy rate based on actual household bills.

Households for which marginal energy prices could not be calculated were eliminated, resulting in a reduction of approximately 10% of the households used from the RECS. Although electricity rates were calculated separately for four summer months (June–September) and, separately for winter (October–May) months, unlike other appliances, the usage of clothes washers for summer and winter months is on average, approximately constant.

In order to understand and characterize regional variations in pricing and distribution of fuel oil and LPG, we collected information relating to pricing and distribution of fuel oil and LPG. We learned that bills paid by residential consumers for both fuel oil and LPG are essentially volume-driven, with a single block rate. We interpreted the average prices inherent in those bills, as reported in the RECS public use data, as being equivalent to marginal prices for the purposes of the LCC price analysis. A detailed description of the methodology used to determine marginal energy rates is contained in the report entitled ''Marginal Energy Prices Final Report, July, 1999,'' which can be obtained at the website address: http://www.eren.doe.gov/buildings/codes_standards/applbrf/clwasher.html.

As an enhancement to the LCC analysis for the proposed rule, Liquid

Petroleum Gas (LPG or propane) was added as a water heater fuel type.

Variation in Household Energy Prices, Energy Use, and Water Heater Shares. In addition to determining energy prices RECS data is used to determine the market share, *i.e.,* percentage of water heaters and dryers, that are electric, gas, liquefied petroleum gas (LPG) or oil. The current analysis was based on Residential Energy Consumption Survey 1993 (RECS93) and Annual Energy Outlook 1999 (AEO99). Although demographic information, price and equipment types change from survey to survey, we do not expect that the differences are significant enough to change the outcome of this rulemaking.

Energy Price Projections. For the proposed rule, the Annual Energy Outlook 1999 (AEO99) forecasts replaced AEO98 energy price forecasts for electricity, gas and oil. Given the uncertainty of projections of future energy prices, DOE used scenario analysis to examine the robustness of proposed energy efficiency standards under different energy price conditions. The LCC calculations use these scenarios. Each scenario provides a self-consistent projection, integrating energy supply and demand. The scenarios differ from each other in the energy prices that result. The Advisory Committee suggested the use of three scenarios. While many scenarios can be envisioned, specification of three scenarios should be sufficient to bound the range of energy prices.

The AEO 1999 reference case provides a well-defined middle scenario. DOE also used AEO fuel price forecasts under assumptions of high and low economic growth. The future trend in energy prices assumed in each of the three scenarios is clearly labeled and accessible in the LCC spreadsheet. The Gas Research Institute (GRI) reference case fuel price forecast is another choice available in the LCC spreadsheet. Stakeholders can easily substitute alternative assumptions in the LCC spreadsheet to examine additional scenarios as needed.

Another modification for the proposed rule analysis concerns the extrapolation method used to project the AEO energy prices from 2020 to 2030. (The AEO contains energy prices projections to the year 2020.) For the ANOPR the price of electricity was extrapolated based on the trend of the last five years of the scenario used. For gas and oil, prices values were kept constant from the year at which the extrapolation was necessary.

For the proposed rule we are now using the approach EIA uses to forecast fuel prices for the Federal Energy Management Program (FEMP). This was done to be consistent with the rest of the energy forecasting also done by EIA.

Water and Sewer Prices. For the Supplemental ANOPR the main source of data on water and sewer prices was from a 1994 survey of water prices in major metropolitan areas by Ernst & Young. The Ernst and Young data was adjusted for service population, base utility charges and average household use by Al Dietemann of Seattle Water.

The Department received several comments on this issue. Denver Water suggested replacing the 1994 Rates Study done by Ernst and Young and using the 1998 Raftelis Study. (Denver Water, No. 107 at 20). The American Water Works Association (AWWA) commented that an average water price of $3.18 per thousand gallons as used was too high. (AWWA, No. 108 at 64360). Energy Market and Policy Analysis, Inc. observed that the data was limited to certain metropolitan areas and probably would overstate water and sewer costs in non-metropolitan areas. Therefore, use of the data would probably overstate potential water and sewer cost savings that might be achieved by using a washer that uses less water. (Energy Market and Policy Analysis, Inc., No. 144 at 8).

In response to comments received and for the proposed rule analysis, 1998 prices and projected escalation rates were added for rural water and wastewater to the previous estimates for urban customers. The revised analysis, based on the 1998 Raftelis Study, divided water use into categories of urban, rural with water and wastewater utilities, rural with water utility service and septic tank, and individual well with septic tank. The range of prices used for each category is: for urban areas 0–$7.97, rural areas 0–$7.97, rural areas (no sewer) 0–$3.53, individual well 2.61 kWh/1000 gals. The resulting average price is $2.48 per 1,000 gallons.

Water Price Projections. As of the time of publication of the Supplemental ANOPR, the Department had found no national level water price forecasts and thus the Supplemental ANOPR assumed that future water prices would remain constant. In the Supplemental ANOPR the Department agreed that future water prices should not be assumed to be constant and described an approach to establish marginal water prices and escalation rates. See Chapter 7 of the TSD for details on how these marginal water prices and escalation rates where determined.

At a workshop held on December 15, 1998, DOE detailed its proposal for water prices and escalation rates. Support for this proposal was given by ACEEE, the Oregon Office of Energy, NRDC, the Northwest Energy Efficiency Alliance, PG&E, and the City of Seattle, Seattle Public Utilities. (ACEEE, No. 150 at 1; Oregon Office of Energy, No. 162 at 7; NRDC, No. 138 at 14; Northwest Energy Efficiency Alliance, No. 131 at 2; PG&E, No. 130 at 2; and the City of Seattle, Seattle Public Utilities, No. 126 at 2). In contrast, the Edison Electric Institute (EEI) commented that the escalation rate of 3.1% real will probably overstate the change in water and wastewater prices. (EEI, No. 122 at 6).

For the proposed rule, escalation rates were specified for urban and rural water and wastewater customers. The average escalation rates used are: for urban areas, 3.01% (high 5.41%, low 0.53%), rural areas, 3.01% (high 5.41%, low 0.53%), rural areas with septic 0.64% (high 2.93%, low −2.89%). Finally for areas with individual wells, the electricity price escalation rates were used.

Manufacturing Cost. The cost data used was provided by manufacturers. It was then compiled and reported to the Department by AHAM as a range of costs at each efficiency level. NRDC observed that the Department's engineering analysis weights incremental costs submitted by AHAM manufacturers by their 1997 market shares. In its opinion the real impact on consumers will be weighted not by 1997 market shares but by the market shares following the introduction of the standards. The argument is based not on a lack of credibility of the AHAM data but on the assumption that the market share of the very expensive machines will go down. As a consequence, NRDC believes the Department should weight the outlier points at the high cost end of the cost distribution curve minimally, if at all, in doing its analysis. (NRDC, No. 138 at 6 and 14).

The Department agrees that a wide variation in costs exists in the AHAM data. This variation in incremental costs are driven in part by the variability in cost structures of the various manufacturers (production volume, current technology) and in part by the variability in designs. Additionally, given the lack of experience manufacturing some of these technologies, uncertainty contributes to the range in costs. The Department believes the mean values of the distribution are the most appropriate for consideration in the LCC analysis and will weight analysis results for values surrounding the mean more heavily. However it will continue to incorporate the full range of costs as it represents a probability-weighted distribution of

costs based on the full spectrum of possible costs.

Manufacturer Mark-ups. In the Preliminary TSD for the ANOPR, the Department used a manufacturer mark-up over the full production costs with a maximum value of 1.35, which maintains industry (manufacturer) cost structure, and a minimum value of 1.00, which represents a pass-through of full production costs. This was modeled as a triangular distribution with a minimum value of 1.00, a most likely value of 1.175, and a maximum value of 1.35. For the proposed rule, a uniform distribution was used. The range of the mark-up is dependent on the standard level and obtained from the GRIM model.

Alliance Laundry believes that the low end of 1.00 for the manufacturing mark-up should not be used at all. It commented that history suggests manufacturing mark-up is within the 1.27 to 1.35 range. (Alliance Laundry, No. 164 at 10). The Oregon Office of Energy commented that manufacturer mark-ups are not static over time. Nor are they typically the same for products at the lower end of the product line as they are for the upper end. It further recommended that DOE find a way to model a variable mark-up pattern for each manufacturer—a pattern that is appropriate for each and responsive to market conditions as they evolve. (Oregon Office of Energy, No. 162 at 8). As suggested, the Department worked with each manufacturer to forecast its future mark-ups at the various standards levels factoring anticipated market dynamics. These market dynamics include: the technology status of existing product offerings as it relates to the cost-efficiency relationship; the status of manufacturing technology, including an assessment of conversion and restructuring costs; likely product offerings at each efficiency level (*e.g.,* V-axis, H-axis), consumer demand for product features and its implications for trade-offs between manufacturing cost and consumer utility; patent restrictions on design options; brand equity; availability of technical and financial resources; manufacturing versus sourcing strategies; and company cost structure and ability to pass on fixed (and sometimes even variable) costs. Individual mark-up forecasts were aggregated to characterize the industry and the resulting range of mark-ups was used in both the industry GRIM and LCC analysis.

Retail Mark-up. In the Preliminary TSD for the ANOPR, the Department used a fixed retail mark-up of 1.40, and a fixed mark-up of 1.052 to cover the sales tax. There was no change made for the proposed rule. ACEEE commented that the retail mark-up of 40% is too high. It proposed that the Department use an average retail mark-up based on the last five years of available data. (ACEEE, No. 150 at 4). In response to this comment, the Department did examine more recent data from the same data sources originally used (Dealerscope Merchandising's Annual Statistics Surveys, Bureau of Census—Current Industrial Report (CIR), Bureau of Labor Statistics—Consumer Expenditure Survey (CES), INTELECT—Elrick & Lavidge Computerized Audit Program (ELCAP) price database, AHAM Fact Book) and found no significant cause to alter its earlier estimate.

Detergent Savings. In the Supplemental ANOPR we did not include any possible detergent savings into the LCC analysis. The Northwest Power Planning Council, Oregon Office of Energy, ACEEE, Northwest Energy Efficiency Alliance, and PG&E commented that the Department should consider detergent cost savings as a benefit of H-axis clothes washers. (Northwest Power Planning Council, No. 135 at 1; Oregon Office of Energy, No. 162 at 6; ACEEE, No. 150 at 4; Northwest Energy Efficiency Alliance, No. 131 at 2&3; and PG&E, No. 189 at 2). These comments did not have specific recommendations as to appropriate values to use for detergent cost savings in the LCC.

Alliance Laundry System LLC commented that detergent cost savings associated with horizontal axis machines are unlikely. In fact, detergent costs may even be higher due to the fact that higher priced specially formulated detergent may have to be used for optimal cleaning performance. (Alliance Laundry, No. 145 at 11). Maytag believes that the detergent and dosage recommended by the detergent manufacturer will produce the best washing performance and that detergent use will not be a significant factor in consumer operating cost savings. (Maytag, No. 137 at 7).

The Department believes there is no conclusive evidence that detergent costs will change due to new standards. We believe results of the Bern Study (Bern Clothes Washer Study Final Report; ORNL/M–6382; prepared by Oak Ridge National Laboratory for the U.S. DOE, dated March 1998) do not show any significant difference in cost savings related to detergent use. Patterns of detergent use will change as detergent specially formulated for H-axis machines become more available. In addition, comments by major detergent manufacturers state that savings based on less detergent use will not occur (Procter & Gamble, No. 9 at 1) and using a lessor amount of detergent produced inferior cleaning performance (Lever Brothers, No. 51 at 2). In consideration of the previous evidence detergent savings were not included in the analysis. However, the LCC spread sheet does include the capability to input detergent costs, at the users' option.

Cycles per year. The EEI commented that the number of washer cycles appeared to be on the high side, especially for one and two person households. (EEI, No. 122 at 3). The Department used the most current information available to estimate the cycles per year. The Department adjusted the number of cycles per year based on the number of occupants for each RECS household. The cycles per week are based on a Procter and Gamble survey and adjusted using the RECS data, so the overall average cycles per year agree with the test procedure assumption of an overall average of 392 cycles per year.

Discount Rate. The LCC spreadsheet uses a distribution for discount rates ranging from 0 to 15%. These represent the variability in financing methods consumers use in purchasing appliances. The average discount rate from this distribution is 6.1% real.

Four comments suggested that the discount rate used in the consumer analysis was likely too high. Comments stated that DOE should take into account such factors as: declining bank card rates, the substantial fraction of card users who pay off monthly credit card balances, the substantial number of buyers who use lower-cost credit such as home equity credit lines, and bank card default rates. Future interest rates on credit cards are not expected to rise, so future inflation will yield lower real interest rates. (Alliance to Save Energy, No. 148 at 3; ACEEE, No. 150 at 4; Oregon Office of Energy, No. 162 at 7; and NRDC, No. 138 at 6). Three comments suggested that the discount rate may be too low. (Energy Market and Policy Analysis, Inc., No. 144 at 8; Consumer Alert, No. 155 at 4; and EEI, No. 122 at 6). Opportunity costs are higher and EIA uses higher rates for forecasting residential purchase decisions. DOE policy is to base discount rates on average financing costs (or opportunity cost of reduced savings).

In the Process Rule, DOE committed to using real (adjusted for federal taxes) discount rates for residential consumers by considering a range of three different real discount rates: credit card financing rate, a rate based on consumers having substantial savings, and a mid-range

rate. The mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity cost of reduced savings) experienced by typical consumers.

Based on the guidelines from the Process Rule, we derived a distribution of discount rates to reflect the variability in financing methods consumers can use in purchasing clothes washers. The real interest rate associated with financing an appliance purchase is a good indicator of the additional costs incurred by consumers who pay a higher first cost, but enjoy future savings, although it is not the only indicator of such costs. While the method used to derive this distribution relies on a number of uncertain assumptions regarding the financing methods used by consumers, DOE believes the resulting distribution of discount rates encompasses the full range of discount rates that are appropriate to consider in evaluating the impacts of standards on consumers (*i.e.,* values represented by the mid-range financing cost, consumers with no savings, and consumers with substantial savings), as well as all the discount rates that fall between the high and low extreme values.

DOE assumes the method of purchase used by consumers is indicative of the source of the funds and the type of financing used, although DOE is not aware of detailed research into this relationship. Whirlpool Corporation indicated that approximately 40% of white goods are purchased in cash, 35% with credit cards, and 25% with retailer loans. (1994 Eight Product Notice of Proposed Rulemaking, 59 FR 10464, March 4, 1994.) Whirlpool also indicated that 25% of appliance purchases are for new homes. However, we know consumers purchase 20% of clothes washers with new homes, *i.e.,* in mortgages, and 80% as replacements for existing clothes washers in separate retail purchases. Consumers pay for retail purchases by cash, credit cards, or loans. In order to derive a full distribution of discount rates, DOE estimated a range of interest rates, based on historical data and judgments of future trends, for different types of consumer savings or financing.

For new housing, the estimated nominal mortgage rate ranges from 5–8%, the derived after-tax rate is based on a tax of 28%, and a 2% inflation rate is subtracted from the total. The result is a range of real mortgage rates from 1.60%–3.76%. Example: 5%*(100%–28%)–2%=1.6%.

For cash, the minimum interest rate is 0%. This rate applies to consumers making cash purchases without withdrawing from savings accounts or interest bearing checking accounts. For the maximum rate, the opportunity cost is the interest that could have been earned in a savings account or mutual fund. Historic savings rate ranged from 4.5–5.5% from 1970–1986 (real rates of −8.27 to +3.58%). We believe the current maximum is the opportunity cost represented by the interest earned in a typical mutual fund (assumed to be 6% real). DOE selected a real rate of 3% as the mean.

DOE assumed the interest rates for retail loans and credit cards have the same range. The minimum credit card rate is 6% real. Introductory rates on some credit cards today are 5.9% nominal, but after the introductory period (often six months), the rate can increase sharply. Maximum rates are more than 20% nominal. However, if the consumer pays with a credit card and the balance is paid in less than the life of the clothes washer, then the effective interest rate is lower than the nominal credit card rate. The current assumption is a range of 6–15% real.

Combining the assumed shares of each financing method, the above real interest rates result in a weighted-average (mean) value of 6% and a distribution that varies from 0–15%. Sensitivity studies show that while the LCC results are sensitive to the value chosen for the mean discount rate, the LCC results are not sensitive to the distribution of discount rates.

DOE believes the methods described above are valid for establishing a distribution of discount rates relevant to most purchasers of the products covered by this rulemaking. However, the Department acknowledges that different assumptions could be made about likely interest, inflation and marginal tax rates, or about consumer financing methods, and that different approaches to identifying consumer discount rates might also be valid. For example, it is possible to base consumer discount rates on the average real rates of return on consumer investment or other measures of the opportunity costs incurred by consumers who purchase the covered products. DOE does not believe, however, such alternative assumptions or alternative approaches would significantly alter the range of discount rates used by the Department or the conclusions drawn from the LCC analyses conducted using these discount rates.

The Department is seeking any information that would support significant alterations in the range or distribution of the discount rates derived from its analysis. Alternatively, DOE is soliciting comment on the possible use of a standardized distribution of discount rates ranging from approximately 4–12%, with a mean of 6%. The use of such a standardized distribution would explicitly recognize the many uncertainties associated with DOE's current analysis and, based on sensitivity analyses already performed by DOE, such a standardized distribution would not significantly alter the conclusions of DOE's life cycle cost analyses.

Lifetime. The ANOPR analysis assumes that the period of time a clothes washer will provide service ranges from 12 to 16 years with an average of 14.2 years. One comment asked the Department to explain the assumptions used to determine the lifetime of a clothes washer. Since few consumers who purchase a clothes washer own it for the full lifetime of the appliance, using this value in the LCC may overstate the benefits to the original purchaser. (Energy Market and Policy Analysis, Inc., No. 119 at 4). For the national energy savings, calculating the benefits requires consideration of the full lifetime of the product. In response, DOE believes that the requirements of the statute are to analyze the savings in operating costs throughout the estimated average life of the covered product even if there is more than one owner during this lifetime for the LCC analysis.

Start Year. This is the year the new standard is expected to become effective. The Joint Stakeholder Comment proposes a two-step standard in which the first standard level is effective in 2004 and the second high standard level becomes effective in 2007. (Joint Comment No. 204).

Maintenance and Repair Costs. The ANOPR analysis assumed no change in maintenance and repair costs as a result of new clothes washer standards. The Department received a comment expressing the need to account for maintenance, repair and warranty costs in the LCC analysis. (Energy Market and Policy Analysis, Inc., No. 119 at 3). Staber Industries also requested that the Department consider maintenance in the LCC analysis since H-axis have no transmissions and it is more reliable than V-axis. (Staber, Nos. 185 and 187). In response, the Department's analysis does not consider changes in the maintenance and repair cost as we do not have any data to indicate the costs to be different for more efficient products for the proposed rule.

Request for Comment. DOE requests comments on the LCC analysis, particularly the range of values used as input to the analysis. For example,

RECS does not measure usage so we used the Proctor & Gamble survey data for national average usage values and then adjusted those values based on RECS-reported household size. DOE would like comment both on the Proctor & Gamble and RECS data as well as the method DOE used to develop the range of usage.

D. Payback Period Analysis

The payback period measures the amount of time needed to recover the additional consumer investment in increased efficiency through lower operating costs. The payback period is the ratio of the increase in purchase price to the decrease in annual operating expenditures from replacing the baseline clothes washer with a more efficient washer. We express payback periods in years.

Rebuttable Payback. In accordance with EPCA, DOE calculated payback based on the values specified by the DOE test procedure, Appendix J1. This includes the Appendix J1 test procedure assumption of an electric water heater and an electric dryer. Today's amendments to Appendix J1 have no effect on these results. This payback, however, does take into account that a distribution of clothes washer efficiencies exists in the current and future stock. This distribution is approximated by assuming that the efficiency of the stock of washers is a combination of baseline and H-axis efficiency washers. Table 2 shows the changes in assumptions since the ANOPR for the base case.

TABLE 2.—CHANGES IN REBUTTABLE PAYBACK ASSUMPTIONS

Parameter	Supplemental ANOPR	Proposed rule
H-axis sales	3.0% in 1998	6.25% in 1998.
Escalation of H-axis sales	0.5% annual (linear)	0.5% of sales not already H-axis.

Changes in assumptions outlined in Table 1 that also apply to rebuttable payback include:

- Water price;
- Energy price;
- Energy and water price escalation only to the year 2004; and
- Manufacturer mark-up (average of range is used).

Basecase Assumptions. The Department received comments on the assumptions made concerning the existing saturation of higher efficiency washers and their expected increase in sales over time. We received comments stating that we had either overestimated or underestimated the penetration of H-axis washers, and we either overestimated or underestimated the future escalation of H-axis sales. EEI, Whirlpool, NRDC, City of Seattle, Seattle Public Utilities, Alliance Laundry System, Northwest Power Planning Council, ACEEE, and Amana believes that the projections for sale of high efficiency units is too low. (EEI, No. 122 at 3; Whirlpool, No. 141 at 12; NRDC, No. 138 at 8; City of Seattle, Seattle Public Utilities, No. 126 at 2; Alliance Laundry, No. 145 at 20; Northwest Power Planning Council, No. 135 at 1; ACEEE, No. 150 at 7; and Amana, No. 146 at 2). Northwest Energy Efficiency Alliance, Oregon Office of Energy and the Alliance to Save Energy believe DOE overestimated sales in the absence of standards because many incentive programs are ending. (Northwest Energy Efficiency Alliance, No. 131 at 4; Oregon Office of Energy, No. 162 at 2; and Alliance to Save Energy, No.148 at 3–4).

Based on additional updated data, we revised the estimated H-axis sales in 1998 from 3.0% to 6.25%. Previously the annual escalation rate of H-axis washer sales market were assumed to capture an additional 0.5% per year of all clothes washer sales but now the annual sales of H-axis clothes washers is determined by an amount equal to 0.5% of the previous year's V-axis sales. Additional sensitivity analyses were performed at escalation rates of 0.25% and 0.75% with minimal effect on rebuttable payback (less than half a year payback difference from the reference case). Base case assumptions are addressed in greater detail in the National Impact Analysis, *infra.*

E. National Impact Analyses

The national energy savings is determined in two steps using the integrated NES/Shipments spreadsheet model. First the shipments are determined before and after a new standard; and then the shipments are used to calculate energy savings and national economic benefits (net present value of the higher standards). Chapters 9 and 10 of the TSD contains a detail explanation of the NES/Shipments spreadsheet model.

The basic outputs from the National Impact Analysis are shipments forecasts, energy and water consumption, and the Net Present Value (NPV) for baseline and standards scenarios. The shipments forecasts are an input into the National Energy Savings model as well as an input for the Manufacturing Impact Analysis. The cumulative savings for energy and water are determined for the nation to the year 2030. Finally, the net present values (NPVs) are determined for each standard level based average data for the nation. See results in Section V of this notice.

1. National Energy Savings (NES) Spreadsheet Model

Historical Background. The development of the NES and shipments model consisted of three phases: (1) Supplemental ANOPR and preliminary TSD analysis, (2) analysis presented at the July 1999 Workshop, and (3) proposed rule and TSD analysis.

At the time of the supplemental ANOPR the shipment model was a work in progress. We asked for comment on a general accounting methodology that included price, operating cost and income elasticities. Since the shipments model was not fully developed at the time of the supplemental ANOPR, a placeholder set of shipments were used as input to the NES spreadsheet in order to produce a preliminary analysis on the national impacts.

At the July 1999 Workshop, we presented a fully developed shipment model that included a decision tree. The decision tree allows the consumer to choose between not buying a washer, buying a new washer, repairing a washer or buying a used washer. It also allows consumers to decide to replace a washer before it was necessary (see TSD Chapter 9 for details). This model also incorporated results from the consumer conjoint analysis along with fitting parameters to historical data.

After presenting this shipment model at the July 1999 Workshop, we received comments regarding specific parameters of the model, sources of data used in the model and whether or not the results forecasted seemed reasonable. We received comments agreeing that the general approach of the Shipment and NES models were appropriate, however, comments included suggestions to modify parts of the models. (Oregon Office of Energy, No. 162 at 8 and

ACEEE, No.188 at 3). Details of the Shipment and NES models are discussed in the sections on elasticity below. After the Workshop we carefully looked at the comments and began to make improvements to the model. These improvements included refinements that were not necessarily suggested by stakeholders but were based on using more data and detail. In addition, suggestions contributed by a renowned economist were carefully considered. (Assessment of DOE Shipments Model for Forecasting the Impacts of Clothes Washer Standards, Kenneth Train, Comment No. 194 at 13). After all of the revisions, the shipment model forecasted had significantly different results. The two changes made that had the greatest effect on results were using a longer historical time period to fit forecasting equations to and accounting for new appliance sales due to all changes in residence, not just purchases of new housing.

The following section describes the modifications to the NES and Shipment spreadsheets as recommended in comments received after the publication of the 1998 Supplemental ANOPR. 63 FR 64347, 64359 (November 19, 1998).

The modifications to the NES Model follows the three phase development from the Supplemental ANOPR analysis to the July 1999 Workshop analysis to the proposed rulemaking analysis. The changes to the Shipment Model as incorporated into the NES are summarized in Table 3. Discussions of these changes and of comments received which prompted these changes are also discussed after the table.

TABLE 3.—MODIFICATIONS TO THE NES MODEL, INCLUDING SHIPMENTS MODEL

Parameter	Supplemental ANOPR	July 1999 workshop	Proposed rule
Shipment Model	accounting model recommended—fixed shipment values were used as a placeholder.	accounting with decision tree	accounting with decision tree.
Shipment Elasticities	price operating cost income *(These were used in analysis prior to the Supplemental ANOPR.).*	price operating savings top/front access feature	price. operating savings. top/front access feature. price/income. income. interest rate elasticities.
Source of Elasticities	In previous analyses the three input variables below were used. *Price Elasticity (PE)*—from Oak Ridge equation. *Operating Cost (OC) elasticity*—derived from implicit discount rate. *Income Elasticity*—from Oak Ridge model. *(For the ANOPR, a shipment analysis had not been performed yet and shipments were kept constant as a placeholder pending future analysis.).*	*Operating savings*—derived from the WashWise Intercept Survey. *Features elasticity*—based on conjoint analysis. *Price elasticity*—with other parameters set, determined by calibrating to 1981–1996 historical data.	*Operating savings*—derived from the WashWise Intercept Survey. *Features elasticity*—based on conjoint analysis. *Price elasticity*—with other parameters set, determined by calibrating to 1970–1996 historical data.
Market Segments	new housing starts existing homes (replacement washers).	New housing starts early replacement market regular replacement market extra repair market homes without a clothes washer	New housing completions & moves. early replacement market. regular replacement market. extra repair market. homes without a clothes washer.
Houses that Drop Out of Washer Market.	not applicable	energy accounted for—assumes laundry done at Laundromat or elsewhere.	energy accounted for—assumes laundry done at Laundromat or elsewhere.
Cost of Repairs and Used Washers.	None	The model factored in the price of a new washer into the Replace or buy Used versus buy new decision without subtracting the cost of repairing or buying a used washer.	Allows input on the cost of repairs and used washers relative to buying a new washer. Changed the net washer price in the Used vs. New decision model and the Replace decision model. The net washer price is the price of a new washer minus the price of either the used washer or the repair, where the used washer and the repair are assumed to scale with new washer price.
Residence-Change-Induced Purchase.	None, however in prior analysis new housing starts were accounted for and this approach was recommended in the Supplemental ANOPR TSD.	Assumes New Housing Market is determined by net housing increase. Ignores AHAM data on the number of washers purchased due to a change of residence.	A small market of purchases induced by changes of residence is included. Assumed that new sales from changes in residence are correlated with new housing completions. The volume of sales induced by change of residence is calibrated with AHAM NFO data on washers purchased due to a move.
Implied Discount Rate Used in Historical Fit.	None—consumer discount rate had not been established at this point.	75%—from WashWise intercept survey.	75%—from WashWise intercept survey.

TABLE 3.—MODIFICATIONS TO THE NES MODEL, INCLUDING SHIPMENTS MODEL—Continued

Parameter	Supplemental ANOPR	July 1999 workshop	Proposed rule
Historical Fit	None	Historical fit made to 1981 to 1996 period.	Model projected back to 1951. Fit made to 1970 to 1996 data.
Operating Cost Scaling	None	Assumed operating cost scaled with electricity price changes.	Disaggregates operating cost and estimates operating cost back to 1951 using Electricity, Gas, Water, Oil, and LPG price indices.
Stock Accounting	Uses historical sales and saturation data as input to clothes washers household stock accounting due to lack of model estimates prior to 1980.	Uses historical sales and saturation data as input to clothes washers household stock accounting due to lack of model estimates prior to 1980.	Model is more independent of historical data inputs. It uses model estimates of annual sales as the input into stock accounting after 1951.
Housing Start Data	Recommended using AEO 1996 Housing Starts Projection.	Uses AEO 1996 Housing Starts Projection.	Uses AEO 1999 projections adjusted to reflect housing completions.
Initial Stock Assumption	Pre-1957 clothes washer stock initialized as zero.	Pre-1957 clothes washer stock initialized as zero.	1951 automatic washer stock initialized at 1.63 million (1950 sales) for one-year age washers decreasing linearly to 1.03 million at 13-year vintage and zero thereafter.
Operation Cost Comparison	None—no shipments model yet For NES incremental cost from the baseline washer.	Measured operating cost savings relative to the real operating cost in 1997 of a 1997 base case machine (MEF=0.817).	Measures savings in current year relative to a baseline machine (MEF=0.817) with current fuel costs.
Fuel Site-to-Source Conversion.	constant value	conversion varies yearly and is generated by EIA's NEMS–BRS [1] program.	conversion varies yearly and is generated by EIA's NEMS–BRS [1] program.
Fuel Prices	average from RECS 93	average of marginal prices determined from RECS93.	average of marginal prices determined from RECS93.
Escalation of Fuel Prices	AEO98	AEO98	AEO99.
Fuel Price Extrapolation from 2020 to 2030.	LBNL method	method used by EIA, consistent with new LCC methodology.	method used by EIA, consistent with new LCC methodology.
Water Heater Fuels	electricity, gas, oil	electricity, gas, oil	added LPG.
Water & Wastewater Prices	urban rates: $3.18 per 1000 gallons	average rates: $2.66 per 1000 gallons in 1998.	updated average for urban & rural: avg.=$2.48 per 1000 gals. (1998) (see LCC).
Water & Wastewater Price Escalation.	0%	2.96% an average from LCC—a weighting of 3.01% and 0.64% (see LCC).	2.96% an average from LCC—a weighting of 3.01% and 0.64% (see LCC).
Base Case: H-axis Escalation Rates.	0.5%	0.5%	0.5%.
Base Case: H-axis Sales	3% in 1998	6.25% in 1998	6.25% in 1998.
Discount Rate	7%	7%	7%.
Manufacturer Mark-ups	Min. 1.000 Mean 1.175 Max. 1.350 Distribution: triangular	Min. 1.000 Mean 1.175 Max. 1.350 Distribution: triangular	Range: varies with standard level. Distribution: uniform.

[1] EIA approves use of the names NEMS (National Energy Modeling System) only to describe an AEO version of the model with out any modification to code or data. Since, in this work, there will be some minor code modifications, DOE proposes use of the name NEMS–BRS for the model as used here.

Shipments Model. In the Supplemental ANOPR, we examined several different approaches to forecasting washer sales. The investigated models included an Auto-Regressive Moving Average Model (ARIMA), a Multi-Variate Time Series Fit, a Saturation/Lifetime Model, and an Accounting Model with elasticity. Of the different approaches, we selected the Accounting Model because it was the most full-featured model which included price and operating cost elasticities. At the July 1999 Workshop we described the revised accounting model for projecting annual clothes washer shipments. After stakeholder comment the Shipment model was further revised and integrated into a single spreadsheet called the NES/Shipment spreadsheet. It includes the following features:

- Combined effects of price, operating cost, and features on annual U.S. shipments
- Market segments (e.g., new housing, replacement decisions, non-owner adding a washer)
- Decisions to repair rather than replace
- Purchases of used washers
- Age categories of clothes washers

The NES/Shipment spreadsheet now incorporates information from the DOE Consumer Analysis. Since the Supplemental ANOPR, DOE has gathered additional information about features of clothes washers that influence consumers' purchase decisions, and analyzed consumer's stated preferences. This new information also has been calibrated with updated information about historical purchases. Details of the consumer analysis and shipment

spreadsheet are explained in Chapters 8 (Consumer Analysis) and 9 (Shipments) of the TSD.

Shipment Elasticities. The Department received many comments concerning which elasticities need to be considered in the shipments model. Whirlpool notes that combining the impacts of the purchase behavior of discretionary buyers with the postponement and repair decisions or ''forced purchase'' consumers, and assuming energy reduction regulation of 35% (a $250 retail price increase), it is reasonable to expect shipment decreases in excess of 10%. (Whirlpool, No. 141 at 10). Amana states that the elasticity of price and sales needs to be considered. (Amana, No. 146 at 3). Both ACEEE and the Alliance to Save Energy stated that the only market for which there is likely to be an elasticity of demand is the early replacement market, since homeowners expect to have access to a clothes washer and will continue to purchase them even if the cost is higher. (ACEEE, No. 150 at 6 and Alliance to Save Energy, No. 148 at 3). The Oregon Office of Energy and ACEEE recommended reconstructing the shipments model without a price-based elasticity variable but including variables for disposable income, credit availability, usable washer capacity, and average washer cleaning ability (Oregon Office of Energy, No. 190 at 11 and ACEEE, No. 188 at 5).

In consideration of the comments received, the Department elected to use elasticity values for the following factors: clothes washer price, operating savings, top/front access feature, clothes washer price/income. In addition, income elasticities, and interest rate elasticities were added as input options to the spreadsheet. Details of how elasticities were derived are explained in Chapter 9 (Shipments) of the TSD.

Source of Elasticities. After we presented the shipments model at the July 1999 Workshop, we received several comments relating to how the value of elasticities are determined. The Oregon Office of Energy took issue with the methodologies used to derive price elasticities, especially the use of the consumer conjoint analysis. (Oregon Office of Energy, Nos.162 at 8 and No. 190 at 4–9). Several comments also question whether price elasticities derived from past declining prices would apply in a future market of increased prices due to a standard. (ACEEE, No.188 at 3; Oregon Office of Energy, No.190 at 8; and PG&E, No. 189 at 2–3). PG&E also questions the use of the consumer research survey to calibrate elasticity variables. It states that instead of asking questions about a 10-year-old washer, the questions should have been posed for a series of washer ages. It also believes that the likely repair cost of a washer is likely to exceed the $150 value used in the questionnaire. (PG&E, No. 189 at 2).

Many enhancements were made to the shipment model to address the stakeholder comments listed above. The purpose of these model enhancements is to provide the best possible estimates of the impacts of standards, consistent with the recent history of washer shipments, clothes washer market structure and consumer preferences. These enhancements are: (1) Calibration of the model over a longer historical period. (2) more detailed and accurate calculation of operating costs and savings (3) inclusion of additional user specified explanatory macroeconomic variables (4) inclusion of consumer responsiveness to price and operating costs as calibrated to historical clothes washer shipments. (5) calibration of the relative size of the features response, and estimation of the rate at which clothes washer owners might drop out of the market using the results from the Clothes Washer Consumer Analysis. (6) use of NFO Research Incorporated data from a 1996 survey (prepared for AHAM) to estimate the proportion of early (discretionary) replacements, and the proportion of new versus used purchases. (7) consideration of AHAM historical shipments and statistics on the recent (post 1994 standard) changes in mean clothes washer efficiency. (8) inclusion of *Consumer Reports* data on repair rates during the first five years of the clothes washer lifetime. These enhancements are described in more detail below.

Market Segments. Shipment models used prior to the supplemental ANOPR accounted for the new clothes washer and the replacement markets which assumed that a washer was replaced by a new machine when it broke down. The new shipment model presented at the July 1999 Workshop provides a more detailed accounting of different market segments, washer ownership categories and accounts for a variety of other market dynamics including new versus used shipments, changes in repair behavior and life extension of machines through extra repairs.

Houses That Drop Out of Washer Market. Houses that drop out of the washer market are where the laundry is done at Laundromats or elsewhere and were not accounted for in analyses presented prior to the July 1999 Workshop. One stakeholder commented that the analysis will be incomplete and not useful without an assessment of the used appliance market, and participation in that market on the part of low income consumers. (Oregon Office of Energy, No. 162 at 11). Another comment emphasized that low income consumers will find it increasingly difficult to purchase clothes washers at more stringent standard levels, and may simply not be able to buy a new machine. Thus DOE should expect an increase in used/repaired clothes washer sales and a relative decrease in shipments of new high efficiency models. (Whirlpool, No. 141 at 15). In response to the previous comments, the revised shipments model takes in account the households that drop out of the washer market, and assumes that they wash their clothes at a Laundromat or elsewhere.

Cost of Repair and Used Washers. The shipment model presented at the July 1999 Workshop incorporated changes in the prices of new washers, but not changes in the prices of used washers or the price of repairing an existing washer. The Department received a comment which asked that the model incorporate the higher price of used washers and repair services resulting from increased demand as consumers delay the purchase of new washers in response to higher prices. (Assessment of DOE Shipments Model for Forecasting the Impacts of Clothes Washer Standards, Kenneth Train, Comment No. 194 at 13). The proposed rule Shipment/NES model now gives an input option for the cost ratios of repairing a washer and of buying a used washer instead of buying a new washer. This option is now an input in terms of the ratio between these options and buying a new washer. See TSD Chapter 9 on Shipments.

Residence-Change-Induced Purchase. The versions of the Shipment model presented at the July 22 Workshop only considered residence changes for those purchasing new housing. The model now includes purchases of washers for change of residences for new and existing housing. This improvement to the model has a significant effect on forecasted shipments.

Implied Discount Rate Used in Historical Fit. The implied discount rate is a value that describes how important energy cost savings are to consumers relative to increases in price. This is different from the 7% discount rate used in the analysis that describes the time value of money in order to convert dollar costs and savings (first price and operating savings) to the same year in order to determine the LCC. Ken Train commented that both a 20% implied discount rate which was derived from the conjoint analysis and a 75% implied discount rate which was derived from

the WashWise survey are consistent with historical shipments data. (Ken Train, Comment No. 194 at 4 and 13). A lower implied discount rate would place greater value on future operating cost savings and result in a lower drop in shipments as compared to the higher implied discount rate. We agree that several values for the implied discount rate can be used to fit a curve to historical data. We derived an implied discount rate by two methods: (1) The relationship of price and efficiency for current models (based on the engineering analysis) is consistent with an implied discount rate of 50–100%; (2) while stated preference surveys are often unreliable indicators of revealed preferences, we analyzed. We believe the WashWise intercept survey results are a more accurate measurement of the implied discount rate because its sole intent was specific to recent washer purchases, designed to measure price savings and interviewed consumers at the point of purchase. In contrast, the conjoint analysis provided a limited set of choices for implied discount rate and was conducted in a setting removed from purchase decision. See TSD Chapter 9. Both derivations (engineering analysis and WashWise) are consistent with an implied discount rate of 75%. This value is higher than found from studies of other appliances, perhaps in part because consumers are unaware of how much water costs contribute to operating expense. The Department is interested in comments.

Historical Fit; Operating Cost Scaling; Stock Accounting; Housing Start Data; Initial Stock Assumption; and Operation Cost Comparison. These parameters were refined, after the July 1999 Workshop, to reflect updated data or longer historical time periods. These changes were not prompted by any specific stakeholder comments.

Fuel Site-to-Source Conversion. The Appliance Energy Efficiency Standards Advisory Committee recommended (letter dated April 21, 1998) that we define a range of energy conversion factors and associated emission reductions based on generation displaced by standards. In the supplemental ANOPR, a constant conversion factor was used. EEI commented that the value shown for electric conversion (heat rates) on the NES spreadsheet is overstated by at least 11% because AEO 98 (authored by EIA) assigns the same factor for fossil fuel power plant heat rates to hydro-electric and other renewable forms of electric generation. This results in overstating primary energy savings from reductions in electricity usage. (EEI, No.122 at 7). We have addressed this issue by using a year-by-year conversion rate that is calculated based on displaced generation using NES.

Fuel Prices. As discussed in the LCC methodology section, after the supplemental ANOPR, marginal gas and electric prices were used, whereas previously average prices were used. The marginal price is the price paid for the last increment of fuel used. Refer to Section C. *Life-Cycle Cost (LCC) Analysis* for a description of these changes.

Escalation of Fuel Prices. The Alliance to Save Energy, ACEEE and the Oregon Office of Energy believe that assumptions of residential price declines are overstated. (Alliance to Save Energy, No. 148 at 1–2; ACEEE, No. 150 at 4; and Oregon Office of Energy, No. 162 at 6). The Alliance to Save Energy recommends that DOE analyze at least one case with flat residential energy prices. (Alliance to Save Energy, No. 148 at 1–2). ACEEE believes EIA estimates of residential energy price declines remain too high. It cites its April 1998 comments in which it referred to a survey by the Association of Energy Service Professionals of its members projected on average that residential bills will increase 4.9% with restructuring while commercial and industrial bills will decrease an average of 5.8 to 8.6%. Based on this information, ACEEE believes EIA's projections of future residential electricity prices are higher in the 1999 Annual Energy Outlook than in the 1998. ACEEE recommends that DOE conduct a sensitivity analysis with smaller price declines, such as the EIA high use forecast. (ACEEE, No. 150 at 4). Similarly, the Oregon Office of Energy believes residential rates will remain flat or rise somewhat. (Oregon Office of Energy, No.162 at 6).

While we generally agree that future energy prices are uncertain, we are relying on the EIA and its forecasts for the analysis. To account for the uncertainty, we have included the high and low fuel and electricity forecasts, i.e., AEO low & high economic growth scenarios in the analysis.

Fuel Price Extrapolation from 2020 to 2030. Refer to Section C. *Life-Cycle Cost (LCC) Analysis*for a description of this change.

Water Heater Fuels. LPG was added as a fuel type.

Water and Wastewater Prices; and Water and Wastewater Price Escalation. Refer to Section C. Life-Cycle Cost (LCC) Analysis for a description of these changes.

Base Case H-axis Escalation Rates; and Base Case H-axis Sales. These issues concern the estimated initial percentage of sales that are H-axis and the estimated escalation of H-axis sales. EEI, Whirlpool, NRDC, City of Seattle, Seattle Public Utilities, Alliance Laundry System LLC, Northwest Power Planning Council, ACEEE, and Amana believe that the projections for sale of high efficient units is too low. (EEI, No. 122 at 3; Whirlpool, No. 141 at 12; NRDC, No. 138 at 8; City of Seattle, Seattle Public Utilities, No. 126 at 2; Alliance Laundry, No. 145 at 20; Northwest Power Planning Council, No. 135 at 1; ACEEE, No. 150 at 7; and Amana, No. 146 at 2). Northwest Energy Efficiency Alliance, Oregon Office of Energy and the Alliance to Save Energy believe DOE overestimated sale in the absence of standards because many incentive programs are ending. (Northwest Energy Efficiency Alliance, No. 131 at 4; Oregon Office of Energy, No. 162 at 2; and Alliance to Save Energy, No. 148 at 3–4).

NRDC commented that the Supplemental ANOPR proposal to use a single basecase forecast with a known gradually increasing penetration of high efficiency clothes washers is incorrect. (NRDC, No. 138 at 8). Whirlpool, Amana, and Alliance Laundry System LLC provide estimates of the growth of H-axis clothes washers. Whirlpool commented that the forecasts presented in the TSD of 0.5% per year growth in market penetration is significantly low based on actual trends. (Whirlpool, No. 141 at 12). Amana commented that the assumption of 1.5% H-axis washers in 1995 with a 0.5% yearly increase has proved to be a conservative assumption and that its competitive information indicates a 6% market share of H-axis machines is a more appropriate number to use at this time. (Amana, No. 146 at 2). Alliance Laundry System LLC commented that it does not believe that front load washing penetration will actually shrink 20% in the next 24 months, as the DOE spreadsheet analysis presumes. (See TSD at page 8–16, Table 8.3). It believes that a more realistic projection would show front load washing machines gaining in acceptance for those consumers who choose energy and water savings over other features such as ergonomics or far lower purchase price. (Alliance Laundry, No. 145 at 20). With regard to the assumptions concerning sales in absence of standards, ACEEE believes the DOE forecast seems conservative in early years. Saturation are currently running higher than DOE's forecast. But, without a standard, we'd expect a leveling off at around 15% saturation (based on levels achieved in the North-

West, even with heavy promotion). (ACEEE, No. 150 at 7).

The Northwest Energy Efficiency Alliance believes that the baseline forecast of resource-efficient clothes washers (RECWs) should begin with a current (1998) market penetration rate of 5–6%. It should then assume an annual increase of .75% every year until 2030 (i.e., 28% market share by 2030). This forecast would place the market share of RECWs at approximately 10% in 2030. This value represents the conservative end of the range of estimates provided by manufacturers participating in the Northwest Energy Efficiency Alliance's interviews, (Market Progress Evaluation Report: WashWise No. 2, publication No. E98–012.). (Northwest Energy Efficiency Alliance, No. 131 at 4.) Oregon Office of Energy believes DOE has potentially overestimated the base case share of high efficiency clothes washers defined by DOE, based on AHAM data, to be 35% more efficient than the minimum efficiency required of today's machines in future shipments. There is not a lot of expectation that this share will grow significantly, now or in the near term, as organized efficiency programs are seriously on the wane. (Oregon Office of Energy, No. 162, at 2).

DOE agrees the market share of the more efficient clothes washers is greater than estimated. Based on the comments, DOE has updated the estimate of the H-axis sales to assume in 1998 that 6.25% of clothes washers are H-axis, escalating at 0.5% a year.

Discount Rate. The NES analysis assumes a fixed discount rate of 7%. This is used in determining the savings and costs due to a new standard and for calculating the NPV. This is unchanged from the ANOPR.

Manufacturer Mark-ups. For the Supplemental ANOPR the shipment weighted average was used for the manufacturing mark-up. One value was used for all standard levels. For the proposed rule, a range of manufacturer mark-ups were calculated for each standard level. The average of the range was used.

2. Net National Employment

The Process Rule includes national employment impacts among the factors DOE considers in selecting a proposed standard. The Department estimates the impacts of standards on employment for appliance manufacturers, relevant service industries, energy suppliers, and the economy in general. We estimate two employment impacts: total and direct impacts. Total impacts—or net national employment impacts—are impacts on the national economy, including the manufacturing sector being regulated. Direct employment impacts would result if standards led to a change in the number of employees at manufacturing plants and related supply and service firms. The MIA only discusses the direct employment impacts.

Net national employment impacts from clothes washer standards are defined as net jobs created or eliminated in the general economy as a consequence of: (1) reduced spending by end users on energy (electricity, gas including LPG, and oil) and water; (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new clothes washers; and (4) the associated indirect effects of those three factors throughout the national economy. The resulting net savings are expected to be redirected to other forms of economic activity. We expect these shifts in spending and economic activity to affect the demand for labor, but there is no generally accepted method for estimating these effects.

One method to assess the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. BLS data indicates that expenditures in the electric sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including the capital-intensity of the utility sector and wage differences. Based on the BLS data alone, we believe net national employment will increase due to shifts in economic activity resulting from the clothes washer standards.

In developing this proposed rule, the Department attempted a more precise analysis of national employment impacts using an input/output model of the U.S. economy. The model, ImBuild, was developed by the Office of Building Technology, State and Community Programs, DOE. ImBuild is a PC-based economic analysis model that characterizes the interconnections among 35 sectors as national input/output structural matrices. It can be applied to future time periods. ImBuild calculates the total effect on employment, including job creation or deletion in the manufacturing sector. Inputs to the ImBuild model are outputs of the NES/Shipment spreadsheet. Since the electric utility sector is more capital-intensive and less labor-intensive than other sectors (see Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, Washington, DC., U.S. Department of Commerce, 1992), a shift in spending away from energy bills into other sectors would be expected to increase overall employment. For more details on the net national employment analysis, please see Chapter 13 in the TSD.

Because this is a new analysis for an energy conservation standard rulemaking, we are requesting public comments on the validity of the analytical methods used and the appropriate interpretation and use of the results of this analysis.

F. Consumer Analysis

In determining whether a standard is economically justified, we consider any other factors that the Secretary deems to be relevant. Under this factor, the Department is considering the life-cycle cost impacts on those subgroups of consumers who, if forced by standards to purchase H-axis machines, would choose to repair their existing machines.

Consumer Sub-Groups

The consumer analysis evaluates impacts to any identifiable groups, such as consumers of different income levels, who may be disproportionately affected by any national energy efficiency standard level. The impact on consumer sub-groups is determined using the LCC spreadsheet model for low income households and for household where the head of the household was a senior.

G. Manufacturer Impact Analysis

The manufacturer analysis estimates the financial impact of standards on manufacturers and calculates impacts on employment and manufacturing capacity.

Prior to initiating the detailed MIA for the clothes washer rulemaking, the Department prepared a document titled ''Clothes Washer Manufacturer Impact Analysis'' which outlines procedural steps and identifies issues for consideration in the MIA. This document was presented at a public workshop held on December 14–15, 1998. It was based on the general framework for the MIA presented by the Department at a workshop in March 1997 and was modified for its application to the clothes washer rule.

As proposed in the approach document, the MIA was conducted in three phases. Phase 1, ''Industry Profile,'' consisted of the preparation of

an industry characterization. Phase 2, ''Preliminary Industry Cash Flow,'' had as its focus the larger industry. In this phase, the Government Regulatory Impact Model (GRIM) was used to prepare a preliminary industry cash flow analysis. Here, the Department used publicly available information developed in Phase 1 to adapt the GRIM structure to facilitate the analysis of new clothes washer standards. In Phase 3, ''Sub-Group Impact Analysis,'' the Department discussed fully the results of the Preliminary Industry Cash Flow analysis with each manufacturer and identified manufacturer-specific variances.

Phase 3 also entailed documenting additional impacts on employment and manufacturing capacity through a structured interview process.

Phase 1, Industry Profile. Phase 1 of the MIA consisted of preparing an Industry Profile. Prior to initiating the detailed impact studies, DOE received input on the present and past structure and market characteristics of the clothes washer industry. This activity involved both quantitative and qualitative efforts to assess the industry and products to be analyzed. Issues addressed included manufacturer market shares and characteristics, trends in the number of firms, the financial situation of manufacturers, and trends in clothes washer characteristics and markets.

The industry profile included a top-down cost analysis of the appliance industry that was used to estimate the disaggregated costs of a baseline clothes washer. The cost structure was used to derive cost and financial inputs for the GRIM—e.g., material, labor, overhead, depreciation, Sales General & Administration (SG&A), and Research & Development (R&D). The profile was also instrumental in estimating the manufacturer and retail mark-ups that were used in the Life-Cycle Cost Analysis.

Publicly-available quantitative data published by the U.S. Bureau of Census with regards to the clothes washer industry was included in Chapter 3 of the preliminary Technical Support Document (TSD) dated October 1998 accompanying the clothes washer Supplemental ANOPR dated November 19, 1998. These reports include such statistics as the number of companies, manufacturing establishments, employment, payroll, value added, cost of materials consumed, capital expenditures, product shipments, and concentration ratios.

The Department also utilized additional sources of information to further characterize the clothes washer industry. These included company Securities and Exchange Commission (SEC) 10K and annual reports, Moody's company data reports, Standard & Poor's (S&P) stock reports, value line industry composites, and Dow Jones Financial Services.

Phase 2, Preliminary Industry Cash Flow. Phase 2 of the MIA had as its focus the ''larger'' industry. The analytical tool used for calculating the financial impacts of standards on manufacturers is the GRIM. In Phase 2, the GRIM was used to perform a preliminary industry cash flow analysis.

For the Preliminary Industry Cash Flow Analysis, DOE prepared a list of financial values to be used in the GRIM industry analysis. These were calculated by studying publicly-available financial statements of clothes washer manufacturers. A detailed definition of financial inputs and their values for a ''prototypical'' clothes washer manufacturer was presented in Chapter 9 of the preliminary TSD. Values for currently sold ''Base Case'' prices were derived from the Bureau of Census's Current Industrial Reports (CIRs). The dollar value of clothes washer shipments from factories is divided by the quantity of clothes washers shipped to arrive at the per-unit manufacturer price. In order to estimate manufacturing costs—labor, materials, depreciation/tooling, etc.—from the average manufacturer prices obtained from the CIRs, a typical clothes washer industry cost structure was developed using publicly-available information from the Census of Manufacturers (CMs) and from industry statistics obtained from the SEC–10K reports. Finally, in preparing the Preliminary Industry Cash Flow Analysis, DOE used the same clothes washer shipment scenarios developed for the National Energy Savings (NES) spreadsheet.

The Department received a comment accurately signaling an error in the Preliminary Industry Cash Flow Analysis calculation of the cost of capital. (NRDC, No. 138, at 12–13). The suggested change was made and its impact is the reduction of the discount factor from 7.25% to 6.65%. Another comment received concerned DOE's assumption of a 10.5% working capital requirement. Given ValueLine's estimate of just under 7%, a more detailed explanation for the Department's assumption was requested. (Oregon Office of Energy, No. 162 at 8). The Department recognizes that there exists considerable variability in the working capital requirements of various firms based on information obtained from SEC 10–K reports. Discussions with appliance industry analysts indicated that working capital requirements are in the 7–14%, thus the ANOPR input assumption. This assumption was subsequently verified through interviews with six clothes washer manufacturers and found to be accurate.

Phase 3, Sub-Group Impact Analysis. DOE conducted detailed interviews with clothes washer manufacturers representing over 99% of domestic clothes washer sales to gain insight into the potential impacts of standards. During these interviews, the Department solicited the information necessary to validate industry cash flows and to assess employment and capacity impacts.

The interview process played a key role in the MIA, since it allowed manufacturers to privately express their views on important issues and provide confidential information needed to assess financial, employment, and other business impacts. To verify the assumptions used to derive the Preliminary Industry Cash Flow, an interview guide solicited information on the possible impacts of new standards on manufacturing costs, product prices, and sales.

Each manufacturer was provided a version of the GRIM that included discrete manufacturer costs for all percentiles reported by the AHAM. In preparation for the interview, each manufacturer could, if desired, input its own data and assumptions to develop its own expected cash flow. Alternatively, manufacturers could select the percentile values that best represented their costs at different efficiency levels.

The evaluation of the possible impacts on direct employment and manufacturing assets also drew heavily on the information gathered during the interviews. The interview guide solicited both qualitative and quantitative information. Supporting documentation was requested whenever applicable. Interview participants were asked to identify all confidential information provided in writing or orally as such. Approximately two weeks following the interview, an interview summary was provided to give manufacturers the opportunity to confirm the accuracy and protect the confidentiality of all collected information.

Small Manufacturer Sub-Group. We received a comment following the publication of the preliminary TSD indicating that smaller manufacturers of clothes washers could be negatively affected more than other manufacturers by any proposed standard. (Amana, No. 146 at 3). To assess the potential impacts of possible washer standards on

smaller manufacturers, Arthur D. Little (ADL) conducted preliminary interviews with the three smallest clothes washer manufacturers (by market share) and held discussions on possible approaches to performing the MIA for smaller manufacturers. ADL and the manufacturers discussed how a small-manufacturer GRIM could be constructed and contrasted with the industry cash flow analysis. Foremost in the discussions were issues surrounding data collection and aggregation and the ensuing confidentiality concerns given the small group of manufacturers and their unbalanced size.

All of the smaller manufacturers worked with ADL to develop a company-specific GRIM analysis for their firms. Even within the small manufacturer sub-group, ADL found significant differences in financial structure for the firms depending on their business models (*e.g.,* original equipment manufacturer (OEM) vs. retail emphasis, product market niche). ADL found that from a financial standpoint the common characteristic of this group, in contrast with the overall industry, was its need to spread fixed costs over smaller production volumes. During the interviews, small manufacturers demonstrated that several of the key costs necessary to meet any new regulation are largely independent of the product volume produced. The most apparent are the costs necessary to design a new product meeting the proposed energy standards. Other costs, such as plant engineering, some tooling, and other capital costs, have significant portions that are independent of final production volumes.

To assess the ''differential'' potential impacts of possible washer standards on smaller manufacturers without revealing individual manufacturers' proprietary information, ADL prepared a cash flow analysis of the potential effects on a ''prototypical'' smaller manufacturer. The basic approach to analyzing the economic effects on a smaller manufacturer involved determining the smaller company's fixed cost structure relative to the industry average and the likely ability of the smaller company to recover its full costs and investments after implementation of a new standard.

Dryer Analysis: An important consideration regarding new efficiency standards that came to light during the course of the manufacturer interviews, was the pull-through effect of clothes washers on the clothes dryer market. The majority of manufacturers indicated that stringent standards on clothes washers would have an effect on dryers since dryer sales are highly correlated to washer sales as people frequently buy these appliances as a set. A separate GRIM (referred to as the Dryer GRIM) was prepared in an effort to model the financial impact of these considerations on the dryer business.

Impact on Clothes Washer Repair Industry: Should an increase in energy efficiency standards result in higher prices for new clothes washers, consumers may be influenced to repair old units rather than purchase new ones at the higher price. The Oregon Office of Energy strongly believes the parts side of the manufacturers' businesses should be included in the manufacturer impact analysis and urges the Department to gather the data necessary. (Oregon Office of Energy, No. 190, at 10). The Department agrees that the repair business should be considered. Based on the forecast of clothes washer repairs in the LBNL shipments model, the Department estimated the impact of a change in clothes washer repair revenues on the NPV of the clothes washer manufacturers' repair parts business.

H. Utility Analysis

The utility analysis estimates the effects of the reduced energy consumption due to improved appliance efficiency on the utility industry. Because electric utility restructuring is well underway, it is no longer valid to assume a cost recovery mechanism under public utility regulation, which was the basis of previous utility impact analyses. Therefore, this utility analysis consists of a comparison between forecast results for a case comparable to the AEO99 Reference Case and forecasts for policy cases incorporating each of the clothes washer trial standard levels.

Table 4 lists the major assumptions DOE used in the clothes washer utility analysis. We discuss each of these assumptions briefly in this section. For more details on the utility analysis, see Chapter 12 in the TSD.

TABLE 4.—ASSUMPTIONS USED IN THE UTILITY IMPACT ANALYSIS

Description	Assumption
Energy Prices	AEO99.
Energy Savings	From the NES spreadsheet as site energy savings.
Interpolation of Scaling Factors.	Linear.

The Department uses a variant of EIA's widely recognized National Energy Modeling System (NEMS) called the National Energy Modeling System-Building Research and Standards (NEMS–BRS) for the utility analysis, together with some scaling and interpolation calculations.[5] EIA uses NEMS primarily for the purpose of preparing the Annual Energy Outlook. Using NEMS, EIA produces a baseline forecast for the U.S. energy economy through 2020. The NEMS–BRS model used for this analysis is based on the AEO99 version of NEMS with minor modifications.

NEMS–BRS has several advantages that have led to its adoption as the source for basic forecasting in the appliance energy efficiency analyses. NEMS–BRS relies on the AEO99 assumptions, which are well-known and accepted due to the exposure and scrutiny each AEO receives. In addition, the comprehensiveness of NEMS–BRS permits the modeling of interactions among the various energy supply and demand sectors and the economy as a whole, so it produces a sophisticated picture of the effects of appliance standards. Perhaps most importantly, because it explicitly simulates the impact on the industry, NEMS–BRS provides an accurate estimate of marginal effects, which yield better indicators of actual effects than estimates based on industry-wide average values. Marginal rates show only the effects of standards. Average rates show the effects of standards as well as what is happening in the market.

To analyze the effects of standards, we evaluate the trial standard levels by entering the changes in electricity, gas, LPG, and oil consumption values into the NEMS–BRS Residential Demand Module. We took the energy savings input from the NES spreadsheet, applied it to the clothes washer, water heater, and clothes dryer end uses, and allocated it appropriately among census divisions. In the TSD, we report results for several key industry parameters, notably residential energy sales, generation, and installed capacity, including the fuel mix that is used for generation. See Chapter 12 of the TSD for more details.

I. Environmental Analysis

The Department determines the environmental impacts of each standard level as required in Section

[5] For more information on NEMS, please refer to the National Energy Modeling System: An Overview 1998. DOE/EIA–0581 (98), February, 1998. DOE/EIA approves use of the name NEMS to describe only an official version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, the name NEMS–BRS refers to the model as used here. BRS is DOE's Building Research and Standards office.

325(o)(2)(B)(i)(VI), 42 U.S.C. 6295(o)(2)(B)(i)(VI). Specifically, DOE calculates the reduction in carbon from carbon dioxide (CO_2) and nitrogen oxides (NO_X) emissions with the NEMS–BRS computer model, together with external calculations. DOE also calculated the reduction in sulfur dioxide (SO_2) household emissions which are not covered by NEMS–BRS.

Table 5 lists the major assumptions DOE used in the clothes washer environmental analysis. We discuss each of these assumptions briefly in this section. For more details on the environmental analysis, please see the Environmental Assessment which is published with the TSD.

TABLE 5.—ASSUMPTIONS USED IN THE ENVIRONMENTAL ANALYSIS

Description	Assumption
Energy Prices	AEO99.
Energy Savings	From the NES spreadsheet as site energy savings.
Interpolation of Scaling Factors.	Linear.
Household Emissions	C, NO_X & SO_2 estimated from general factors.

We analyze the environmental effects of proposed clothes washer energy-efficiency standards using NEMS–BRS plus some scaling and interpolation calculations. Inputs to NEMS–BRS are similar to those used for the AEO99 reference case, except residential energy usage for clothes washer, water heaters, and clothes dryers is reduced by the amount of energy (gas, oil, LPG, and electricity) saved due to the clothes washer trial standard levels.

The environmental analysis considers two pollutants, SO_2 and NO_X, and one emission, carbon. NEMS–BRS has an algorithm for estimating NO_X emissions from power generation. Since we use the AEO99 version of NES, the May 25, 1999, EPA rule (64 FR 28249) on trading of NO_X is fully incorporated in our analysis. However, NEMS–BRS estimates of NO_X emissions are incomplete because NEMS–BRS does not estimate household emissions. Household emissions result from the combustion of fossil fuels, primarily natural gas, within individual homes. Because households that use natural gas, fuel oil, or LPG contribute to NO_X emissions, DOE's analysis includes a separate household NO_X emissions estimation, based on simple emissions factors derived from the general literature. NEMS–BRS tracks carbon emissions based on the total of fuels consumed. NEMS–BRS also produces comprehensive estimates of the benefits of the trial standard levels, so no additional analysis is necessary. Because SO_2 emissions from power plants are capped by clean air legislation, physical emissions of this pollutant from electricity generation will be only minimally affected by possible clothes washer standards. Therefore, we do not consider power plant SO_2 emissions here, although we report household emissions savings using a method similar to that described for NO_X. See Appendix EA–1 in the TSD for a description of the methodology used to derive emission factors for residential combustion.

The NES spreadsheet provides the input of energy savings for NEMS–BRS, which then produces the emissions forecast. We calculate the net benefits of the standard as the difference between emissions estimated by the reference case version of NEMS–BRS and the emissions estimated with the trial clothes washer standard in place. See the Environmental Assessment (EA) which is published with the TSD for details.

V. Analytical Results

A. Trial Standard Levels

In selecting trial standard levels, we followed the guidance set forth in the Process Rule. We identified and selected candidate standard levels at the lowest LCC (Trial Standard Levels 4 and 5), a three year or less payback period (Trial Standard Levels 1 and 2), and the most energy efficient achievable design (Trial Standard Level 6). Additionally, we selected as a trial standard level the efficiency levels proposed in the joint recommendation submitted to the Department by clothes washer manufacturers and energy conservation advocates (Trial Standard Level 3). The Joint Stakeholders Comment levels would go into effect in stages, with the first level going into effect on January 1, 2004, and the second level going into effect on January 1, 2007. The initial standard will achieve a modified energy factor (MEF) of 1.04 (approximately a 22 percent reduction in energy consumption over the current standard). The later standard will achieve a MEF of 1.26 (approximately 35 percent reduction in energy consumption over the current standard).

We have examined six trial standard levels. Table 6 presents the baseline and trial standard levels, the associated MEF values and the percentage reduction in energy use, from the baseline, achieved at the trial standard level. Trial Standard Level 3 is the combination of standards proposed in the Joint Stakeholders Comment. (Joint Comment No. 204). In addition, Table 6 presents the retail price and incremental price from the baseline. For the clothes washer rulemaking the method we used to generate the manufacturing costs needed for the engineering analysis was the efficiency level approach, reporting relative costs of achieving energy efficiency improvements (represented here as the percentage reduction in energy use).

TABLE 6.— TRIAL STANDARD LEVELS FOR CLOTHES WASHERS

Trial standard level	MEF	Percent reduction in energy use	Retail price	Incremental price from baseline
Baseline	0.817	0	$421	
1	1.021	20	450	$29
2	1.089	25	534	113
3	1.04 in 2004	22 in 2004	474	53
	1.26 in 2007	35 in 2007	661	240
4	1.257	35%	661	240
5	1.362	40%	664	243
6	1.634	50%	775	354

1. Economic Impact on Consumers

a. *Life-Cycle-Cost.* To evaluate the economic impact on consumers, we conducted a LCC analysis for each of the trial standard levels as well as the proposed standards. LCC results are presented as differences in the LCC relative to the baseline clothes washer design. Life-cycle cost was determined for three scenarios: low, reference and high growth. The reference growth scenario assumes the average fuel price forecast found in the Energy Information Administration's (EIA) Annual Energy Outlook 1999 (AEO99) and expected water price escalations based on earlier DOE analysis, which can be found in Section 7.2 of the TSD. The high growth scenario assumes high economic growth will increase the demand for fuel, and therefore increase the price of fuel. The high growth scenario also assumes a high water price and wastewater escalation rate. The reference case is assumed by AEO the most likely case and is bounded by the high and low growth scenarios. In Table 7 we present results for the reference case. Results for the high and low growth scenarios can be found in Section 7.2.3 of the TSD.

Table 7 shows the average LCC savings and the percentage of households benefitting for each of the trial standard levels. The average LCC savings for each of the trial standards and the joint comment proposed standards are positive. The convention is used whereby all values in parentheses are negative. A negative change in LCC means that the LCC after standards is lower than without standards, and implies positive LCC savings. Note that washers purchased under stage 1 and stage 2 of joint comment proposal have different LCC savings. The LCC analysis indicates that 89% of households purchasing a clothes washer at the 1.04 MEF level would benefit, in comparison to the LCC of a baseline clothes washer. Starting in 2007, the LCC analysis indicates that 80% of households will benefit from the joint comments standard level, in comparison to the LCC of a baseline clothes washer.

TABLE 7.—SUMMARY OF LCC RESULTS FOR THE REFERENCE CASE

Trial standard level	MEF	Mean change in LCC from baseline [1]	Percent with LCC less than baseline [2]
1	1.021	(61)	84
2	1.089	(211)	87
3	1.04 in 2004	(103)	89
	1.26 in 2007	(260)	80
4	1.257	(242)	79
5	1.362	(243)	80
6	1.634	(176)	69

[1] The baseline LCC, based on the shipment weighted average of the most likely costs, is $1633.
[2] For a sample of 10,000 households.

b. *Payback Period.* As part of the LCC analysis is the payback analysis. We report the median payback for the reference case from the distribution of paybacks for each trial standard level in Table 8. The median payback is the median number of years required to recover, in energy savings, the increased costs of the efficiency improvements. The mean or average payback period is also reported. Results for the high and low growth scenarios can be found in Section 7.2.3 of the TSD.

TABLE 8.—SUMMARY OF PAYBACK PERIOD RESULTS—AEO REFERENCE

Trial standard level	MEF	Median [1] payback	Mean [1] payback
1	1.021	0.6	4.4
2	1.089	4.0	5.0
3	1.04 in 2004	3.5	4.6
	1.26 in 2007	5.0	6.8
4	1.257	5.1	7.0
5	1.362	5.1	7.0
6	1.634	7.0	8.7

[1] For a sample of 10,000 households.

c. *Rebuttable Presumption Payback.* The Act states that if the Department determines that the payback period of a standard is less than three years as calculated under the test procedure, there shall be a rebuttable presumption that such trial standard level is economically justified. The Act further states that if this three year payback is not met, this determination shall not be taken into consideration in deciding whether a standard is economically justified. Section 325(o)(2)(B)(iii), 42 U.S.C. 6295(o)(2)(B)(iii). Rebuttable Presumption Paybacks (PBPs) are presented in order to provide the established rebuttable presumption that a energy efficiency standard is economically justified if the additional product costs attributed to the standard are less than three times the value of the first year energy cost savings. Rather than using distributions for input values, the Rebuttable PBP is based on discrete values and is based on the DOE clothes washer test procedure assumptions. These values (including cycles per year, electric fuel source, etc.) correspond to those outlined in the DOE test procedure, found in 10 CFR 10, Volume 3, Part 430, Subpart B, Appendix J1. The result is a single payback value and not a distribution of PBPs.

Payback periods are calculated at the new standard level for all efficiency levels of product sold in the basecase. For this analysis the Department has assumed two efficiency levels in the

basecase: baseline units (MEF=.817) and units at a 35% reduction in the energy use of the baseline model (MEF=1.26) to represent the H-axis market segment. With the presently available data, the baseline efficiency level is weighted with a market share of 91% and the horizontal axis market share is weighted at 9%.

The payback periods are calculated for the expected effective year of the standard (2004 or 2007) and are presented in Table 9.

TABLE 9.—REBUTTABLE PRESUMPTION PAYBACK IN YEARS

Trial standard level	MEF	Payback for baseline to standard level	Payback for 35% efficiency level to standard level	Market share weighted payback period
		Market share = 91%	Market share = 9%	
1	1.021	2.1	NA	2.1
2	1.089	2.9	NA	2.9
3	1.04 in 2004	2.5	NA	2.5.
	1.26 in 2007	4.1	19.8	5.5
4	1.257	4.2	NA	4.2
5	1.362	4.3	19.6	5.7
6	1.634	5.7	23.2	7.3

Note: NA = not applicable.

The results in Table 9 are based on an increase of H-axis sales per year of 0.5%. Previously the annual escalation rate of H-axis washer sales market were assumed to capture an additional 0.5% per year of all clothes washer sales but now the annual sales of H-axis clothes washers is determined by an amount equal to 0.5% of the previous year's V-axis sales. The negotiated scenario of a two-tier standard with MEF levels of 1.04 becoming effective in the year 2004 and a MEF level of 1.26 becoming effective in the year 2007 is also represented. The values shown for the second tier were calculated for the year 2007. All other calculations are based on the year 2004. The effective year does not have a great impact on the payback period because only the fuel and water price are different for different years.

As can be seen from Table 9, Trial Standard Levels 1, 2 and the first level of 3 satisfy the rebuttable presumption test.

d. Consumer Sub-Group Analysis. As part of the consumer analysis we evaluated the impact to any identifiable groups or consumers, such as households of different income levels, who may be disproportionately affected by any national energy efficiency standard level. This analysis examines the economic impacts on different groups of consumers by estimating the average change in LCC and by calculating the fraction of households that would benefit. We analyzed the potential effect of standards for households with low income levels and senior households, two consumer subgroups of interest identified by DOE and supported by stakeholders. Seniors is defined as having a head of household over 65. Low income is defined as at 100% of poverty level. (Inputs to the spreadsheet used in determining life-cycle-cost and payback periods are explained in detail in Chapter 7 of the TSD). We present the results of the analysis in Table 10.

TABLE 10.—CONSUMER SUBGROUP LCC SAVINGS AND PERCENT OF HOUSEHOLDS BENEFITTING

Trial std levels	MEF	Sample households benefitting (%)			Average LCC savings ($)		
		Total	Senior	Low income	Total	Senior	Low income
1	1.021	84	79	85	61	41	69
2	1.089	87	80	88	211	137	243
3	1.04 in 2004	90	84	90	103	68	118
	1.26 in 2007	81	72	81	260	147	310
4	1.257	79	71	81	242	132	289
5	1.362	80	70	80	243	130	287
6	1.634	69	55	71	176	61	227

The two consumer subgroups show the same trend in average LCC savings and percent of sample households benefitting as the total sample of households.

For the low-income subgroup the percentage of households benefitting from standards is either the same or greater than for the general population. This can be explained by looking at the cycles per year (i.e., washer loads) used in determining the LCC. This number is estimated from the number of occupants in a household. Our RECS sample of low income households showed a greater number of people per household and we calculated 410 cycles per year, greater than the 392 used for the general population.

The senior household subgroup had less people per household, and therefore had less wash loads per year (on average 299 wash loads per year or 24% less wash loads). Therefore, seniors benefitted from standards somewhat less.

Other differences that could explain changes in LCC and the percentage in a subgroup benefitting from standards are other factors that determine the amount spent on fuel. Fuel costs are higher if electric water heaters and dryers are used instead of gas. The geographic location of these populations and the price they pay for fuel also affect the number of households in a subgroup

benefitting. These differences were small when compared to the differences in LCC due to the cycles per year between the subgroups and the total sample population.

An analysis on the effects on payback period by subgroup are shown in Table 11. In agreement with the LCC results, the payback periods for the low income subgroup were somewhat shorter than that for the overall population, while the payback periods were somewhat longer for the senior subgroup. The primary reason for the differences in payback period is the same as for the LCC analysis; the differences in wash loads per year.

TABLE 11.—CONSUMER SUBGROUP PAYBACK PERIOD COMPARISONS

Trial Std levels	MEF	Average payback period in years		
		Total RECS sample	Senior	Low income
1	1.021	4.4	5.4	4.4
2	1.089	5.0	6.4	4.9
3	1.04 in 2004	4.6	5.7	4.5.
	1.26 in 2007	6.8	8.4	6.5
4	1.257	7.0	8.7	6.8
5	1.362	7.0	8.8	6.9
6	1.634	8.7	10.9	8.4

2. Economic Impact on Manufacturers

We performed a Manufacturer Impact Analysis (MIA) to determine the impact of standards on manufacturers. The complete analysis is Chapter 11 of the TSD. In conducting the analysis, we conducted detailed interviews with six clothes washer manufacturers that together supply more than 99% of the domestic clothes washer market. The interviews provided valuable information used to evaluate the impacts of a new standard on manufacturers' cash flows, manufacturing capacities and employment levels.

Definition of Shipments Scenarios. The Manufacturer Impact Analysis was conducted using three shipment scenarios: High Price Elasticity Scenario, Medium Price Elasticity Scenario, and Medium Price/Income Elasticity Scenario. The High Price Elasticity scenario most closely resembles the original shipments forecast which was presented at the July 1999 workshop and used during the interviews. The results presented in this notice are for the Medium Price Elasticity Scenario—the reference case—which forecasts a reduction in clothes washer shipments approximately half way between the other two scenarios. Additional parameters used in forecasting shipments are summarized in Table 17. Results for the High Price Elasticity and Medium Price/Income Elasticity Scenarios are shown in Chapter 11 of the TSD.

Definition of Business Scenarios. During the interviews, several manufacturers stated that they would possibly exit the clothes washer manufacturing business if the standard exceeded certain improvement levels. To capture this uncertainty in future industry dynamics, ADL evaluated the industry financial impacts using two different business scenarios. In the first scenario, the ''no consolidation scenario,'' it is assumed that all current manufacturers continue to manufacture clothes washers and maintain their market share, even if they believe they will be unable to recuperate their incremental costs. This could result in a negative Standard Case industry net present value (INPV) for some manufacturers. In the second scenario, the ''industry consolidation scenario,'' it is assumed that some manufacturers would exit the industry or lose significant market share. In this scenario, their volumes are redistributed among the remaining and more profitable players in the industry.

Industry Cash Flow Results. The Department used the interviews to understand each manufacturer's incremental costs and its ability to pass through these costs at the various standard levels. Some manufacturers provided their cash flow analysis using the GRIM spreadsheet while others provided information on mark-ups, cost pass-through assumptions, prices, and expected shipments which were used by DOE to develop individual company cashflows. Individual company cashflow results were aggregated to calculate standard induced changes in Industry NPV (INPV) at each of the potential standard levels.

The aggregated industry Standard Case INPV for the ''No Consolidation'' scenario and the Medium Price Elasticity Shipment Scenario is presented in Table 12. Results for both business scenarios and the three shipment scenarios are presented in Chapter 11 of the TSD. Not all manufacturers provided information at the 50% level (MEF=1.634) and hence the cash flows at this level were extrapolated from the available information. Similarly, the Department extrapolated data submitted at the 20% and 25% efficiency levels to estimate the impacts of a two step standard with a reduction in the energy use of the baseline model of approximately 22% (MEF=1.04) in 2004 followed by a second step at 35% in 2007.

TABLE 12.—INDUSTRY CASH FLOW RESULTS FOR THE ''NO CONSOLIDATION'' SCENARIO—MEDIUM PRICE ELASTICITY

Trial standard level	MEF	Base case INPV (million)	Standard case INPV ($million)	Change in INPV ($million)	% Change in INPV	Standard deviation % NPV
1	1.021	1,439.1	1,420.4–1,349.5	(18.7)–(89.6)	(1.3)–(6.2)	11.5
2	1.089	1,439.1	1,033.8–877.2	(405.2)–(561.9)	(28.2)–(39.0)	11.4
3	1.04 in 2004, 1.26 in 2007	1,439.1	1,028.0–920.8	(411.0)–(518.3)	(28.6)–(36.0)	15.8
4	1.257	1,439.1	944.7–842.3	(494.4)–(596.8)	(34.4)–(41.5)	17.7
5	1.362	1,439.1	1,002.1–929.9	(437.0)–(509.2)	(30.4)–(35.4)	27.7

TABLE 12.—INDUSTRY CASH FLOW RESULTS FOR THE ''NO CONSOLIDATION'' SCENARIO—MEDIUM PRICE ELASTICITY—Continued

Trial standard level	MEF	Base case INPV (million)	Standard case INPV ($million)	Change in INPV ($million)	% Change in INPV	Standard deviation % NPV
6	1.634	1,439.1	989.7–815.2	(449.4)–(623.8)	(31.2)–(43.3)	27.7

From Table 12, we note that energy efficiency standards could result in losses of INPV between $411.0 and $518.3 million (28.6–36%) for the consensus proposal (Trial Standard Level 3). Although the impacts of the consensus proposal approach those of Trial Standard Levels 5 and 6, the Department found the impacts of Trial Standard Levels 5 and 6 to be much more unevenly distributed between firms. This large variability of impacts is attributed to the presence of existing product at these levels (H-axis designs) for some firms which may gain a competitive advantage over firms that do not have product.

The standard deviation (SD)[6] values reported in Table 12 provide a measure of how widely individual companies' percentage NPV changes are dispersed from the industry percentage change in value (% change in INPV). Calculating the SD of individual company % value change at each efficiency level from the industry INPV % change yields the following results: at Trial Standard Level 1 the SD is 11.5%; at Trial Standard Level 2 the SD is 11.4%; at Trial Standard Level 3 the SD is 15.8%, at Trial Standard Level 4 the SD is 17.7%; and at Trial Standard Levels 5 and 6 the SD leaps to 27.7%. This is significant because the greater the difference in impacts between manufactures, the greater the risk of industry consolidation. Several manufacturers believe that setting the standard at Trial Standard Level 5 or more would result in industry consolidation and the exit of two or three firms.

Compared with Trial Standard Level 4 (MEF=1.26 in 2004), the industry impacts of the consensus proposal (Trial Standard Level 3) are lower and more evenly distributed among the manufacturers. A potential factor lessening the impact of the consensus proposal from the impacts shown is the possible effect of technological innovation. Delaying the standard implementation date to 2007 for the more stringent level (MEF=1.26) gives manufacturers more time to research and develop lower-cost solutions to achieving higher standards.

Impact on Clothes Dryer Business. The majority of manufacturers indicated that stringent standards on clothes washers would have a corresponding effect on clothes dryers. Dryer sales are highly correlated to washer sales as people frequently buy these appliances as a set. From the manufacturers' data, it is estimated that approximately 45% to 55% of washers are sold in pairs with dryers. Therefore, any change in washer volumes will impact a significant portion of the dryer business. A separate GRIM was run in an effort to model the financial impact of these considerations on the dryer business. Table 13 presents the Base and Standard Case INPV for the Medium Price Elasticity Shipment Scenario. The loss of value is significant for standard levels 2 and greater.

TABLE 13.—STANDARD CASE NPV FOR DRYER BUSINESS—MEDIUM PRICE ELASTICITY SCENARIO

Trial standard level	MEF	Base case INPV ($million)	Standard case INPV ($million)	Change in INPV ($million)	% Change in INPV
1	1.021	665.1	664.5	(0.6)	(0.1)
2	1.089	665.1	660.6	(4.48)	(0.7)
3	1.04 in 2004, 1.26 in 2007	665.1	654.1	(11.0)	(1.7)
4	1.257	665.1	648.3	(16.84)	(2.5)
5	1.362	665.1	647.9	(17.2)	(3.9)
6	1.634	665.1	638.3	(26.8)	(4.0)

At the more stringent standard levels, manufacturers expect that they will redesign and retool their clothes washer platforms and these changes will dictate a change to the dryer platform as well. Manufacturers estimate that, at the more stringent standard levels of 25% and above, total industry conversion costs for dryers could be in the range of $25 million to $75 million. The Dryer GRIM does not consider any conversion costs (capital and design) that might be required to upgrade the dryer platforms at the more stringent standard levels. Any such investments will increase the negative impact on the INPV of the dryer industry over and above those presented in Table 13.

In addition, based on data gained from manufacturers, a decline in washer-related dryer sales will result in a decline in employment related to dryer production. The greatest impact is at and above a 35 percent reduction in the energy use of the baseline model, when shipments are expected to decline substantially, resulting in a similar impact on related employment levels. Table 14 summarizes the potential impact of new clothes washer standards on dryer industry employment. As shown Trial Standard Level 3 and above will result in a loss of more than 200 jobs in the dryer industry.

[6] Refer to Chapter 11 of the TSD for details of how the standard deviation was calculated.

TABLE 14.—IMPACT OF STANDARDS ON DRYER SHIPMENTS ON DRYER INDUSTRY EMPLOYMENT—MEDIUM PRICE ELASTICITY SCENARIO

Trial standard level	MEF	1999 dryer employment	Forecast 2004 dryer employment	Impact relative to 2004 base case
Basecase	Base Case	2,544	2,594	
1	1.021	2,544	2,578	(16)
2	1.089	2,544	2,520	(74)
3	1.04 in 2004 1.26 in 2007	2,544	2,506/2,488	[1](88)/(147)
4	1.257	2,544	2,352	(241)
5	1.362	2,544	2,348	(245)
6	1.634	2,544	2,226	(368)

[1] Reduction on top of first standard reduction, not cumulative.

Impact on Clothes Washer Repair Industry. Should an increase in energy efficiency standards result in higher prices for new clothes washers, consumers may be influenced to repair old units rather than purchase new ones at the higher price. Based on the forecast of clothes washer repairs in the shipments model, we estimated the impact of a change in clothes washer repair revenues on the INPV of the clothes washer manufacturers' repair parts business. The INPV of the estimated additional profit stream is presented in Table 15. As may be observed the increase in NPV for the repair industry is one order of magnitude lower than the loss of value of the dryer industry. For instance for Trial Standard Level 3 the net present value of increases in OEM revenue is .9 million compared to a loss of 11 million for the dryer business.

TABLE 15.—NET PRESENT VALUE OF OEM REPAIR REVENUES

[$ millions]

Trial standard level	MEF	Medium price elasticity
1	1.021	0.1
2	1.089	0.2
3	1.04 in 2004 1.26 in 2007	0.9
4	1.257	1.1
5	1.362	1.1
6	1.634	1.7

Impacts on Small Manufacturers. Converting from a company's current basic product line involves creating a new design, testing it and moving it into production with associated capital investments. Small manufacturers of clothes washers, because of their need to spread fixed costs over smaller production volumes, could be affected more negatively than large manufacturers by a proposed standard. The Department conducted a separate GRIM analysis for small manufacturers which are presented in Table 16. The changes in value due to a standard for a small company compared to a large company illustrates the effects of capital and engineering costs that are fixed with respect to production volume.

As shown in Table 16, a small manufacturer (4.2% market share) producing 331,000 clothes washers absent standards in 2004 sees its value reduced by 78.9–89.9% for Trial Standard Level 2. A small manufacturer (2.1% market share) producing 165,000 clothes washers in 2004 will lose all of its value (143.1–153.9%) since it is above 100% for Trial Standard Level 2. This compares to the loss of 28.2–39.0% for a large manufacturer (20% market share) producing 1,578,000 clothes washers in 2004 for Trial Standard Level 2.

At the time of the manufacturer interviews, the U.S. washer industry had one manufacturer of washers with a production volume of approximately 300,000 units (Alliance Laundry Systems, LLC), most of whose production was supplied to another relatively small appliance company (Amana Appliances) under the terms of a private label supply agreement entered into when the two companies were sold by Raytheon. This agreement ended in September 1999, and Amana announced that it would produce its own vertical-axis washers instead of sourcing them from Alliance. Amana and Alliance both report that any standard that requires a 25 percent or higher improvement (for Trial Standard Level 2 and above) in energy efficiency would certainly require major investments and the development of a horizontal-axis machine. At this time, neither Amana nor Alliance believes they have a functioning horizontal-axis washer capable of cost-competitively participating in the mass consumer marketplace.

The decision by either of the smaller producers, or any other washer manufacturer, to exit washer production would require an assessment of the linkages with their dryer business and with other appliances. Manufacturers and their retail partners generally perceive some value in being a full-line producer and greater value in producing both washers and dryers. If a manufacturer perceived significant value in its dryer businesses and if the total product line generated acceptable rates of return, it might continue to produce washers, even in the face of declining company values due to investment in new washer technology. Based on the major loss in company value associated with meeting a more stringent standard above Trial Standard Level 2 as seen in Table 16, it is likely that one or both of the two smaller companies would cease to produce washers covered by the standard and might also cease to market them.

TABLE 16.—CHANGE IN VALUE OF SMALL MANUFACTURERS, RESULTS FOR THE ''NO CONSOLIDATION'' SCENARIO—MEDIUM PRICE ELASTICITY SCENARIO (%)

Trial standard level	MEF	Large manufacturer (20% market share)	Small manufacturer (4.2% market share)	Small manufacturer (2.1% market share)
1	1.021	(1.3)–(6.2)	(17.4)–(22.4)	(37.9)–(42.8).
2	1.089	(28.2)–(39.0)	(78.9)–(89.8)	(143.1)–(153.9).
3	1.04 in 2004 1.26 in 2007	(28.6)–(36.0)	(83.1)–(90.6)	(152.2)–(159.6).
4	1.257	(34.4)–(41.5)	(91.8)–(98.9)	(164.4)–(171.6).
5	1.362	(30.4)–(35.4)	(87.7)–(92.7)	(160.3)–(165.3).
6	1.634	(31.2)–(43.3)	(90.7)–(102.8)	(166.0)–(178.1).

Impacts on Employment. The weight of available evidence does not support a conclusive assessment of the impact that new energy efficiency standards would have on employment levels in the clothes washer industry. The data that is available is extremely variable and the true extent of the impact will be largely dependent on whether manufacturers choose to exit the industry or move to non-domestic production facilities.

Manufacturers stated that any decrease in shipments will have a similar effect on employment, as employment levels tend to track production levels. However, while reductions in shipments may lead to reductions in employment at various manufacturers due to plant closures, this could be matched by increased employment in United States plants at those firms picking up the additional market share and corresponding volumes. In addition, the manufacturers' data supplied to the AHAM indicates that incremental labor-related costs are expected to increase at the higher efficiency levels (by up to 50 percent at the 40 percent reduction in the energy use of the baseline model level), due to the increased complexity of production and assembly of more efficient machines. Tracking employment levels by shipments using this data actually indicates total industry employment could increase as the change in labor expense for higher efficiency machines is greater than the change in labor resulting from the decline in shipments.

B. Significance of Energy Savings

The Act requires a standard to result in ''significant'' energy savings. Section 325(o)(3)(B), 42 U.S.C. 6295(o)(3)(B). While the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), stated that Congress intended ''significant'' energy savings to be savings that were not ''genuinely trivial.'' The energy savings for all of the trial standard levels considered in this rulemaking are non-trivial and therefore we consider them ''significant'' within the meaning of Section 325 of the Act.

All efficiency levels for which we have engineering data were analyzed. Each efficiency level was analyzed for three scenarios. Some of the parameters that were varied are inputs to the shipment-model and some are inputs to the NES spreadsheet model. Since shipments have an effect on the national energy savings, changes to the shipment inputs have a direct effect on the national energy savings. Changes in the input parameter affect the base case results as well as the standards case results. Table 17 outlines the input parameters used to generate the high and low bound sensitivities. Three scenarios are run: (1) reference case, (2) lower bound and (3) upper bound. The lower bound is defined as having medium price/income elasticity. The upper bound is defined as the price elasticity being high. All other parameters are unchanged from the reference case.

TABLE 17.—NES SPREADSHEET MODEL SHIPMENTS SENSITIVITIES

Parameter	Reference case	Lower bound (least drop in shipments after standard)	Upper bound (greatest drop in shipments after standards)
AEO growth	AEO99 reference	AEO99 reference	AEO99 reference.
Water Escalation Rate	medium	medium	medium.
H-axis base case escalation	0.5%	0.5%	0.5%.
Price Elasticity	medium	none	high.
Price/Income Elasticity	none	medium	none.
Top-loading Elasticity	medium	medium	medium.
Manufacturer incremental price mark-up	medium	medium	medium.
Year of standard	2004	2004	2004.

The Lower Bound Scenario results in the greatest energy savings. This scenario used price/income data to fit an equation to historical data. This resulted in a greater number of shipments and greater savings in energy than the reference case forecasted. The Upper Bound Scenario resulted in the least energy savings. This scenario assumed a high price elasticity. This resulted in lower shipments and energy savings. The Reference Case Scenario used medium or average values as parameter inputs and is bounded on both sides by the other scenarios described above. This is considered the most likely scenario.

The national energy savings and net present value results from the NES spreadsheet for the reference case are shown in Tables 18 and 19, respectively. More detailed results are also available in Appendix N of the TSD. Results are cumulative to 2030 and are shown as absolute energy and water savings and as the discounted value of

these savings in dollar terms. Table 20 shows the water savings for different standard levels. It can be seen that while the two-tier standard is a combination or hybrid of Trial Standard Levels 1 and 4, it is estimated to attain nearly the same energy, water, and national cost savings as a pure Trial Standard Level 4.

All of the trial standard levels considered in this rulemaking have significant energy savings, ranging from 2.12 quads to 7.53 quads, depending on the trial standard level.

TABLE 18.—REFERENCE CASE—ALL PARAMETERS SET TO MEDIUM OR AVERAGE

Trial standard level	MEF	Energy savings quads
1	1.021	2.12
2	1.089	4.04
3	1.04 in 2004 1.26 in 2007	5.52
4	1.257	5.99
5	1.362	6.03
6	1.634	7.53

C. Lessening of Utility or Performance of Products

This section summarizes the results of the department's consumer utility analysis. Preferences of low-income and elder populations are also addressed.

The focus group and conjoint results indicate that price is the most important attribute when consumers are purchasing a new clothes washer, although in each case another attribute is virtually tied with price in terms of importance. In the focus groups, 83% of the respondents included price in their top ten list of important clothes washer attributes, while 81% included wash tub capacity in that same list. In the conjoint analysis, price had the highest relative importance score (26%), followed closely by the availability of a wash load size option on the control panel (25%). Of the six attributes included in the conjoint analysis survey, door placement was the fifth most important attribute with a relative importance score of 11% (for further information, see Chapter 8 and Appendix J of the TSD).

In the likelihood of purchase scenarios, the purchase probabilities were more sensitive to price than any of the other washer attributes.[7] While the shift from a standard to a high efficiency machine resulted in a drop in the estimated purchase probability, this was due to the change in price rather than to changes in the other attributes. When price was held constant at the standard efficiency level and the other attributes were allowed to change to reflect a high efficiency machine, the likelihood of purchase increased. This is due to the fact that consumers value energy savings more than top load door placement.

The purchase probability findings indicate that low-income consumers and elderly consumers were slightly more likely to purchase a high efficiency, front-load washing machine than the total group of consumers. When the analysis focused exclusively on the impacts of clothes washer prices increasing, the data indicated that a smaller percentage of low-income consumers would be willing or able to purchase machines in the $650 price level, when compared to the total group of consumers. There was no statistical difference between elderly consumers and the full sample at the $650 level. While the data from the price impact questions indicate that low-income consumers are more adversely affected by higher clothes washer prices than the sample as a whole, the Department is unable to determine the magnitude of the impact on future clothes washer purchases using the survey data. For instance, the consumer analysis survey found that approximately half of the low-income respondents currently do not own a clothes washer, while more than three-quarters of the respondents making more than $25,000 annually own a washing machine. The Department is unable to determine if this ratio would change with a price increase due to the proposed standards. The fact that the survey found low-income consumers are more likely to use store financing plans, such as no interest for one year, to purchase a clothes washing machine than the sample as a whole further clouds the magnitude of the new standards' impact on low-income consumers because store financing encourages consumers to purchase high price products by allowing payments to be paid over a number of months.

The Department concludes that none of the trial standard levels reduces the performance of clothes washers. The Department conducted extensive consumer research to understand the product features that consumers value in clothes washers. Generally the trial standard levels increase clothes washer price and reduce operating cost but do not affect other product offerings. A significant issue raised during the rulemaking concerns the relative consumer utility of V-axis and H-axis washers. Some stakeholders believed that higher standard levels would require H-axis designs and this would result in eliminating the top loading V-axis machines thereby reducing utility for some consumers who prefer that option. Recent product offerings of high efficiency V-axis washers show that the axis-efficiency relationship is untenable.

D. Impact of Lessening of Competition

The Act directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to determine the impact, if any, of competition likely to result from such standard and transmit such determination, not later than 60 days after the publication of a proposed rule to the Secretary, together with an analysis of the nature and extent of such impact. Section 325(o)(2)(B)(i)(V), 42 U.S.C. 6295(o)(2)(B)(i)(V).

In order to assist the Attorney General in making such a determination, the Department has provided the Department of Justice (DOJ) with copies of this notice and the TSD for review. At DOE's request, the DOJ reviewed the manufacturer impact analysis interview questionnaire to ensure that it would provide insight concerning any lessening of competition due to any proposed trial standard levels.

E. Need of the Nation To Save Energy and Net National Employment

1. National Net Present Value

Table 19 lists the National NPV for the trial standard levels. The NPV considers the combined discounted energy savings less the increased consumer costs of a particular trial standard level. We base this calculation on all expenses and savings occurring between 2004 and 2030.

The national NPV is positive for all the trial standard levels. In this analysis, a positive NPV means that the estimated energy savings are greater than the increased costs due to standards. It can be observed that the National NPV of Trial Standard Levels 2 through 5 are in the range of 14 to 17 billion dollars. Trial Standard Level 6 however has a lower NPV of 10 Billion due to the higher first cost of a clothes washer at this efficiency level.

[7] Purchase probabilities indicate the likelihood a consumer will purchase a particular clothes washer, assuming (s)he has made the decision to buy a new clothes washer.

TABLE 19.—REFERENCE CASE—ALL PARAMETERS SET TO MEDIUM OR AVERAGE

Trial standard level	MEF	Net present value (NPV) (billion 1997$) (discounted to 1999)
1	1.021	3.66
2	1.089	14.29
3	1.04 in 2004 1.26 in 2007	15.30
4	1.257	16.88
5	1.362	16.73
6	1.634	10.79

2. National Water Savings

Table 20 presents the estimated energy water savings. The savings is positive for all of the trial standard levels.

TABLE 20.—REFERENCE CASE—ALL PARAMETERS SET TO MEDIUM OR AVERAGE

Trial standard level	MEF	Water savings trillion gallons
1	1.021	0.53
2	1.089	9.09
3	1.04 in 2004 1.26 in 2007	11.59
4	1.257	12.94
5	1.362	12.94
6	1.634	10.85

3. Environmental Impacts

Enhanced energy efficiency improves the Nation's energy security, strengthens the economy and reduces the environmental impacts of energy production. The energy savings from clothes washer standards result in reduced emissions of CO_2, SO_2 and NO_X and aid in addressing global climate change and reducing air pollution. Depending on the standard level chosen, the cumulative emission reductions to 2030 range from 38–135 Mt for carbon equivalent, 115–364 thousand metric tons (kt) for NO_X, and 28–31 kt for SO_2. Cumulative emissions savings for the power and households sectors through the year 2030 are presented in Table 21.

TABLE 21.—CUMULATIVE EMISSIONS REDUCTIONS THROUGH 2030: HOUSEHOLD AND POWER SECTORS

Emission	Trial standard level emission reductions and MEF					
	1 0.817	2 1.089	3 1.04 in 2004, 1.26 in 2007	4 1.257	5 1.362	6 1.634
Carbon(Mt)	38.1	70.9	95.1	106.2	107.3	135
NO_X (kt)	115.6	193.6	253.5	280.6	283.1	364
SO_2 (kt)	[1] 31.4	[1] 30.3	[1] 28.1	[1] 30.3	[1] 30.3	[1] 31.4

[1] Results include only household emissions reductions because the power sector emissions cap implies that savings from electricity generation will be negligible.

4. Net National Employment

Net national employment impacts from clothes washer standards are defined as net jobs created or eliminated in the general economy as a consequence of: (1) Reduced spending by end users on energy (electricity, gas including LPG, and oil) and water; (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new clothes washers; and (4) the associated indirect effects of those three factors throughout the national economy. Jobs are created when a clothes washer standard results in operating cost savings that more than offset the greater capital required to buy a more efficient clothes washer. More information on how these impacts are estimated is presented in the Net National Employment in Chapter 13 of the TSD.

The model used to estimate net national employment impacts suggests that the greatest number of jobs would be created by the standard level calling for a 35% reduction in clothes washer energy use. For this standard level, the model estimates that there would be 142,800 more jobs in 2030 than if there were no new efficiency standard implemented. However, it is unlikely that net employment would increase to this extent if the economy was continuing to perform at levels comparable those experienced during 2000. Taking into consideration these legitimate concerns regarding the interpretation and use of the employment impacts analysis, the Department concludes only that the proposed clothes washer standards are likely to produce employment benefits that are sufficient to offset fully any

adverse impacts on employment in the clothes washer or energy industries.

F. Conclusion

The Act specifies that any new or amended energy conservation standard for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. Section 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A). In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. Section 325(o)(2)(B)(i), 42 U.S.C. 6295(o)(2)(B)(i). The amended standard must ''result in significant conservation of energy.'' Section 325(o)(2)(B)(3)(B), 42 U.S.C. 6295(o)(B)(3)(B).

We consider the impacts of standards at each of six trial standard levels, beginning with the most efficient level. We have included a summary of the analysis results in Table 22 to aid the reader in the discussion of the benefits and burdens for the different trial standard levels.

TABLE 22.—SUMMARY ANALYSIS RESULTS

Trial standard level	1	2	3	4	5	6
MEF	1.02	1.09	1.04 in 2004, 1.26 in 2007	1.26	1.36	1.63
Total Energy Saved (Quads)	2.12	4.04	5.52	5.99	6.03	7.53
Water Savings (trillion gallons)	0.53	9.09	11.59	12.94	12.94	10.85
NPV (Billion $)	3.66	14.29	15.3	16.88	16.73	10.79
Emissions						
Carbon Equivalent (Mt)	38.1	70.9	95.1	106.2	107.3	134.6
NO_X (kt)	115.6	193.6	253.5	280.6	283.1	364
SO_2 (kt) [1]	131.41	30.31	28.11	30.31	30.31	31.41
Manufacturer Impacts						
Cumulative Loss in Industry NPV ($ Million) [2]	19.2–90.1	409.9–566.2	421.1–528.4	510.1–612.5	453.1–524.9	474.5–648.9
% Change in INPV	(1.3)–(6.3)	(28.5)–(39.3)	(29.2)–(36.7)	(35.4)–(42.5)	(31.7–36.5)	(33.0)–(45.2)
Standard Deviation % NPV	11.5	11.4	15.8	17.7	27.7	27.7
Life Cycle Cost ($)						
Mean Savings ($)	61	211	103/260	242	243	176
Percent Households LCC Less than Baseline	84	87	89/80	79	80	69.
Payback (years)	4.4	5	4.6/6.8	7	7	8.7

[1] Results only include household SO_2 emissions reductions because SO_2 emissions from power plants are capped by clean air legislation. Thus, SO_2 emissions will only be negligibly affected by possible water heater standards.
[2] Includes impacts on dryer and repair business.

Trial Standard Level 6—MEF 1.63

First, we considered the most efficient level (max tech), MEF 1.63, which saves a total of 7.53 quads of energy through 2030. This is a significant amount of energy. The cumulative water savings through 2030 would be 10.85 trillion gallons. The emissions reductions through 2030 would total 134.6 Mt of carbon equivalent, 364 kt of NO_X, and 31.41 kt of SO_2, which are significant. At this level, consumers experience a considerable savings in life cycle cost of $176, with a payback of 8.7 years.

At Trial Standard Level 6, the clothes washer industry would experience a cumulative INPV loss of between $474.5–648.9 million which represents between 33.0 and 45.2% of the clothes washer industry value absent standards ($1,439.1 million—basecase). This impact is not evenly distributed among the six major manufactures.[8] This large variability of impacts is attributed to the presence of existing product for some manufacturers at this efficiency level which means that some firms may gain a competitive advantage. This variability is measured by the standard deviation of individual companies' changes in NPV.[9] At this level the standard deviation in individual companies' percentage change in NPV is 27.7%. Given the high industry impacts and the uneven burden on individual firms, there exists a significant risk of industry consolidation.

Based on the major loss in company value associated with meeting this trial standard level (90.7 to 102.8% assuming a 2.1% market share and 166 to 178.1% assuming a 4.2% market share) as shown in Table 16, it is likely that one or both of the two smaller manufacturers [10] would cease to produce clothes washers covered by the standard and might also cease to market commercial clothes washers.

The Department concludes that the burdens of Trial Standard Level 6 outweigh the benefits. Consequently, the Department concludes Trial Standard Level 6 is not economically justified.

Trial Standard Level 5—MEF 1.36

Next, we considered a 1.36 MEF, which saves a total of 6.03 quads of energy through 2030, also a significant amount. The cumulative water savings through 2030 for this trial standard level would be 12.94 trillion gallons. The emissions reductions through 2030 would total 107.3 Mt of carbon equivalent, 283.1 kt of NO_X, and 30.31 kt of SO_2, which are significant. At this level, consumer experience a

[8] Alliance Laundry Systems LLC, Amana Appliances, Frigidaire Home Products, General Electric Appliances (GEA), Maytag Corporation, and Whirlpool Corporation.

[9] The standard deviation is a measure of how widely individual companies' percentage NPV changes are dispersed from the industry percentage change in value. Refer to Chapter 11 of the TSD for a description of the calculation method.

[10] Alliance Laundry Systems LLC and Amana Appliances.

considerable savings in life cycle cost of $243, with a 7 year payback.

The clothes washer industry would experience a cumulative INPV loss of between $453.1–524.9 million. This represents between 31.7 and 36.5% of industry value absent standards ($1,439.1 million—basecase). For the same reason in Trial Standard Level 6, this impact is not evenly distributed among the six major manufactures. At this level the standard deviation in individual companies' percentage change in NPV is 27.7%. Refer to Chapter 11 of the TSD for a description of the calculation method for standard deviation. Given the high industry impacts and the uneven burden on individual firms, there exists a significant risk of industry consolidation.

Once again based on the major loss in company value associated with meeting this standard level (87.7 to 92.7% assuming a 2.1% market share and 160.3 to 165.3% assuming a 4.2% market share), as shown in Table 16, it is likely that one or both of the two smaller manufacturers would cease to produce washers covered by the standard and might also cease to market commercial clothes washers.

The Department concludes that the burdens of Trial Standard Level 5 outweigh the benefits. Consequently, the Department concludes Trial Standard Level 5 is not economically justified.

Trial Standard Level 4—MEF 1.26

Next, we considered a 1.26 MEF, which saves a total of 5.99 quads of energy through 2030, a significant amount. Just as in the case of the 1.36 MEF, the cumulative water savings through 2030 would equal 12.94 trillion gallons. The cumulative emissions reductions through 2030, however, are slightly lower for the 1.26 MEF because the cumulative energy savings is lower for this standard level than the 1.36 MEF. The 1.26 MEF level would save 106.2 Mt of carbon equivalent, 280.6 kt of NO_X, and 30.31 kt of SO_2, which are significant. At this level, consumers experience a considerable savings in life cycle cost of $242 with a payback of 7 years.

Under a 1.26 MEF standard, the clothes washer industry would experience a cumulative INPV loss of between $510.1–612.5 million. This represents between 35.4 and 42.5% of industry value absent standards ($1,439.1 million—basecase). Compared to Trial Standard Levels 5 and 6, this impact is more evenly distributed amongst the six major manufactures as represented by a standard deviation in individual companies' NPV of 17.7%, and thus there exists less risk of industry consolidation. Refer to Chapter 11 of the TSD for a description of the calculation method for standard deviation. This lower standard deviation reflects the greater diversity of designs, approaches and engineering flexibility to meet this efficiency level compared to Trial Standard Levels 5 and 6. However, given the high level of investment required to meet this efficiency level and an inability to spread fixed costs over large volumes, small manufacturers are particularly vulnerable. Based on the major loss in company value associated with meeting this standard level (91.8 to 98.9% assuming a 2.1% market share and 164.4 to 171.6% assuming a 4.2% market share), as shown in Table 16, it is likely that one or both of the two smaller manufacturers would cease to produce washers covered by the standard and might also cease to market commercial clothes washers.

The Department concludes that the burdens of Trial Standard Level 4 outweigh the benefits. Consequently, the Department concludes Trial Standard Level 4 is not economically justified.

Trial Standard Level 3—MEF 1.04/1.26

Next, we considered the two step 1.04/1.26 MEF efficiency level, which had been proposed in the Joint Stakeholders Comment. (Joint Comment, No. 204). This trial standard level, Trial Standard Level 3, had energy savings of 5.52 quads through 2030, a significant amount. The cumulative water savings through 2030 would equal 11.59 trillion gallons. The emissions reductions through 2030 would total 95.1 Mt of carbon equivalent, 253.5 kt of NO_X, and 28.11 kt of SO_2, which are significant. At the 1.04 MEF level, consumers would experience a savings in life cycle cost of $103, while they would experience a LCC savings of $260 at the 1.26 MEF level that would go into effect in 2007. The payback for the 1.04 MEF level is 4.6 years, and 6.8 years for the 1.26 MEF. The clothes washer industry would experience a cumulative NPV loss of between $421.1–528.4 million representing between 29.2 and 36.7% of basecase industry value.

Compared to a single step standard level of a 1.26 MEF implemented in 2004, the Joint Stakeholders Comment proposal reduces the impacts of the standards on manufacturers by delaying the effective date three years for the 1.26 MEF level. This allows clothes washer manufacturers more time to depreciate their current assets and plan a more orderly transition of their production facilities. Delaying the standard implementation date for the higher efficiency level gives manufacturers more time to research and develop lower-cost solutions to achieve higher standards.

Since the MIA shows that small manufacturers suffer the greatest impact, the Department takes into consideration that the consensus proposal was developed in consultation with, and supported by small manufacturers.

Furthermore, we consider that the Joint Stakeholders Comment specifically states that the proposal is not expected to eliminate any competitors. (Joint Comment No. 204).

Based on the manufacturers' statement in the Joint Stakeholders Comment, we believe that these impacts from the proposal are mitigated and is sufficient to conclude that, given the benefits, the standards submitted in the Joint Stakeholders Comment are economically justified. (Joint Comment No. 204).

After carefully considering the analysis and comments, the Department proposes to amend the energy conservation standards for clothes washers as proposed by the Joint Stakeholders Comment. (Joint Comment No. 204). The Department concludes this standard saves a significant amount of energy and is technologically feasible and economically justified. In determining economic justification, the Department finds that the benefits of energy and water savings, consumer life cycle cost savings, national net present value increase, job creation and emission reductions resulting from the standard outweigh the burdens of the loss of manufacturer net present value, and consumer life cycle cost increases for some users of clothes washers covered by today's notice. Therefore, the Department today proposes to adopt the energy conservation standards for clothes washers at Trial Standard Level 3.

VI. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act of 1969

The Department is preparing an Environmental Assessment of the impacts of the proposed rule and DOE anticipates completing a Finding of No Significant Impact (FONSI) before publishing the final rule on Energy Conservation Standards for Clothes Washers, pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on

Environmental Quality (40 CFR parts 1500–1508), and the Department's regulations for compliance with NEPA (10 CFR part 1021).

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's regulatory action has been determined to be an ''economically significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735, October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

The draft rule submitted to OIRA and other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room (1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, telephone (202) 586–3142.

The following summary of the Regulatory Impact Analysis (RIA) focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft ''Regulatory Impact Analysis,'' which is contained in the TSD, available as indicated at the beginning of this proposed rule. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed rule. These alternatives were analyzed with the NES/Shipments model modified to allow inputs for voluntary measures, as explained in the RIA attached to the TSD.

The RIA calculates the effects of feasible policy alternatives to clothes washer energy efficiency standards, and provides a quantitative comparison of the impacts of the alternatives. We evaluate each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and we compare it to the effectiveness of the proposed rule.

We created the RIA using a series of alternative scenarios (with various assumptions), which we used as input to the NES/Shipments model for clothes washers.

We identified the following seven major policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Enhanced Public Education & Information
- Financial Incentives
  - —Tax credits
  - —Rebates
  - —Low income and seniors subsidy
- Voluntary Energy Efficiency Targets (5 Years, 10 Years)
- Mass Government Purchases
- Early Replacement Program to existing standard levels
- Early Replacement Program to high-efficiency clothes washers (defined as having an MEF of 1.257, a 35% energy reduction level)
- The Proposed Approach (Performance Standards)

We have evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs (See Table 23), and have compared it to the effectiveness of the proposed rule.

TABLE 23.—ALTERNATIVES CONSIDERED

Policy alternatives	Energy savings quads	Water savings trillion gallons	NPV $ in billions
Enhanced Public Education & Information	0.026	0.054	0.074
Consumer Tax Credits	0.410	0.085	0.117
Consumer Rebates High Efficiency	0.072	0.150	0.205
Low Income and Seniors Subsidy	0.031	0.065	0.089
Manufacturer Tax Credits	0.153–0.330	0.299–0.666	0.203–0.707
Voluntary Efficiency Target (5 year delay)	4.550	9.970	11.570
Voluntary Efficiency Target (10 year delay)	3.090	6.810	7.980
Mass Government Purchases	.....	0.013	.....
Early Replacement Program (w/Current Eff.)	0.004	0.006	0.024
Early Replacement Program (w/H-axis)	0.078	0.161	0.223
Proposed Negotiated Performance Standard	5.520	11.590	14.330

NPV=Net Present Value (2004–2030, in billion 1997 $).
Savings=Energy Savings (Source Quads).

The Net Present Value amounts shown in Table 23 refer to the NPV for consumers. Rebates or tax credits are not included as an expense since on average consumers are both paying for and receiving benefits of the payments.

The case in which no regulatory action is taken with regard to clothes washer efficiency constitutes the ''base case'' (or ''No Action'') scenario. In this case, between the years 2004 and 2030, clothes washers are expected to use 21.76 Quads (22.94 Exajoules (EJ)) of primary energy. Since this is the base case, energy savings and NPV are zero by definition.

A short description of each alternative is provided below:

Enhanced Public Education and Information. This would make the public more aware of energy savings available for more efficient clothes washers (examples would be Energy Star labeling, web sites with efficiency information and advertising). To model this possibility, we assumed that the effective market discount rates change from 75% to 47% for purchasers of clothes washers. This would have the same effect as a $39 discount on high efficiency washer prices. This program is assumed to continue through 2030.

Consumer Tax Credits. We assume tax credits equal to 15% of the cost of high-efficiency models (MEF of 1.257) and that 60% of consumers buying a clothes washer would take advantage of the tax credit. We assume this program is in place for six years.

Manufacturer Tax Credits. We assume that a manufacturer tax credit of $50 or $100 per machine with a cap on the number of washers per manufacturer (based on the proposed tax credit). The

tax credits are capped at $30 million per manufacturer per Tier, or $60 million per manufacturer. This program is assumed to be in place in six years between 2004 to 2010.

Consumer Rebates. We assume a rebate of 15% of the retail price of high-efficiency models for a period of 6 years. This is modeled by reducing the price of a washer with a MEF of 1.257 (a 35% reduction in energy use from the baseline model) by 15%.

Low Income and Seniors Subsidy. Based on the RECS survey for households owning a clothes washer and dryer, 28% of households qualify as low-income or senior households. We assumed a subsidy program would provide an amount equivalent to 25% of the price of a high efficiency clothes washer. This program was assumed to be in effect for 6 years.

Voluntary efficiency target (5 & 10 year delays). Assume a 1.26 MEF washer efficiency level but taking place 5 and 10 years after 2007.

Mass Government Purchases. This alternative assumes a Government agency such as the U.S. Department of Housing and Urban Development (HUD) purchases high efficiency washers for low income housing. We assume a program in which 25% of the 1.3 million households in public housing would participate in the program. We also assume that only washers reaching the end of their lifetime of 14 years would be replaced. Over a 6 year program period, this would result in a replacement of 138,000 clothes washers.

Early Replacement Programs. The purpose of this program would be to remove older, presumably less efficient models from the clothes washer stock with either existing base case efficiency washers or with high efficiency (MEF of 1.257, 35% energy reduction) washers. We model this by assuming a 15% increase in the size of the early replacement market segment. This program like the others is assumed to have a duration of 6 years.

Performance Standards. The proposed standard (proposed standard level 3).

Lastly, all of these alternatives must be gauged against the performance standards we are proposing in this proposed rule. Such performance standards would result in energy savings of 5.52 Quads (5.82 EJ), and the NPV would be an expected $14.33 billion.

As indicated in the paragraphs above, none of the alternatives we examined would save as much energy as the proposed rule. Also, several of the alternative would require new enabling legislation, since authority to carry out those alternatives does not presently exist.

C. Review Under the Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

To be categorized as a ''small'' clothes washer manufacturer, a firm must employ no more than 1,000 employees. The clothes washer industry is characterized by six firms accounting for nearly 99% of sales. By this definition none of the six major U.S. manufacturers of clothes washers are considered ''small.'' The Department is aware of one small domestic manufacturer of clothes washer, Staber Industries, that produces a top loading horizontal-axis clothes washer. The energy efficiency of this product already exceeds the proposed standard level.

The Department prepared a manufacturing impact analysis which was made public and available to all the clothes washer manufacturers. This analysis considered the effects on small manufacturers with a minimum annual production of 165,000 units (representing a 2.1% market share). The Department did not receive any information or comments indicating that even smaller manufacturers of clothes washers would be impacted differentially from those included in the small manufacturer analysis performed.

In view of the foregoing, the Department has determined and hereby certifies pursuant to Section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the proposed standard levels in today's proposed rule will not ''have a significant economic impact on a substantial number of small entities,'' and it is not necessary to prepare a regulatory flexibility analysis.

D. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

E. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards.

F. ''Takings'' Assessment Review

It has been determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. Agencies also must provide State and local officials an opportunity for meaningful and timely input in the development of regulatory proposals that have federalism implications. DOE published a notice of

its intergovernmental consultation policy on March 14, 2000. (65 FR 13735).

DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State regulations that may have existed on the products that are the subject of today's proposed rule were preempted by the Federal standards established in the National Appliance Energy Conservation Amendments of 1988. States can petition the Department for exemption from such preemption based on criteria set forth in EPCA.

H. Review Under the Unfunded Mandates Reform Act of 1995

With respect to a proposed regulatory action that may result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation), Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a), (b). Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c).

The content requirements of Section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under Section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the Notice of Proposed Rulemaking and ''Regulatory Impact Analysis'' section of the TSD for this proposed rule responds to those requirements.

Under Section 205 of UMRA, we are obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under Section 202 is required. We are required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by Section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), this proposed rule would establish energy conservation standards for clothes washers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. DOE may not adopt an alternative that does not meet EPCA's substantive standard. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule.

I. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under the Plain Language Directives

Section 1(b)(12) of Executive Order 12866 requires that each agency draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Similarly, the Presidential memorandum of June 1, 1998 (63 FR 31883) directs the heads of executive departments and agencies to use plain language in all proposed and final rulemaking documents published in the **Federal Register**.

Today's proposed rule uses the following general techniques to abide by Section 1(b)(12) of Executive Order 12866 and the Presidential memorandum of June 1, 1998 (63 FR 31883):

- Organization of the material to serve the needs of the readers (stakeholders).
- Use of common, everyday words in short sentences.
- Shorter sentences and sections.

We invite your comments on how to make this proposed rule easier to understand.

VII. Public Comment Procedures

A. Written Comment Procedures

The Department invites interested persons to participate in the rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in today's proposed rule to Ms. Brenda Edwards-Jones, at the address indicated at the beginning of this notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Workshop (Hearing)

1. Procedures for Submitting Requests To Speak

You will find the time and place of the public workshop (hearing) listed at the beginning of this notice of proposed rulemaking. The Department invites any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact.

The Department requests each person wishing to speak to submit an advance copy of his or her statement at least ten days prior to the date of this workshop as indicated at the beginning of this notice. The Department, at its discretion, may permit any person wishing to speak who cannot meet this requirement to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The letter making a request to give an oral presentation must ask for such alternative arrangements.

2. Conduct of Workshop (Hearing)

The workshop (hearing) will be conducted in an informal, conference style. The Department may use a professional facilitator to facilitate discussion, and a court reporter will be present to record the transcript of the meeting. We will present summaries of major topics contained in the comments received before the workshop, allow time for presentations by workshop participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Following the workshop, there is provided an additional comment period, during which time interested parties will have an opportunity to comment on the proceedings at the workshop, as well as on any aspect of the rulemaking proceeding.

The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 5 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and Section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question other interested persons who made oral presentations, and employees of the United States who have made written or oral presentations with respect to disputed issues of material fact relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of such issues. If the time provided is insufficient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

The Department will arrange for a transcript of the workshop and will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter. You can also download the TSD and other analyses from the Internet at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/clwasher.html

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC., September 26, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Appendix J to subpart B of part 430 is amended by adding, in section 2, paragraphs 2.3.1, 2.3.2, and by revising paragraphs 2.10, 2.11 and 2.11.1 to read as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

* * * * *

2. TESTING CONDITIONS

* * * * *

2.3 *Supply water.* * * *

2.3.1 *Supply water requirements for water and energy consumption testing.* For nonwater-heating clothes washers not equipped with thermostatically controlled water valves, the temperature of the hot and cold water supply shall be maintained at 100° ±10°F (37.8°C ±5.5°C). For nonwater-heating clothes washers equipped with thermostatically controlled water valves, the temperature of the hot water supply shall be maintained at 140°F ±5°F (60.0°C ±2.8°C) and the cold water supply shall be maintained at 60°F ±5F° (15.6°C ±2.8°C). For water-heating clothes washers, the temperature of the hot water supply shall be maintained at 140°F ±5°F (60.0°C ±2.8°C) and the cold water supply shall not exceed 60°F (15.6°C). Water meters shall be installed in both the hot and cold water lines to measure water consumption.

2.3.2 *Supply water requirements for remaining moisture content testing.* For nonwater-heating clothes washers not equipped with thermostatically controlled water valves, the temperature of the hot water supply shall be maintained at 140°F ±5°F and the cold water supply shall be maintained at 60°F ±5°F. All other clothes washers shall be connected to water supply temperatures as stated in section 2.3.1.

* * * * *

2.10 *Wash time (period of agitation or tumble) setting.* If the maximum available wash time in the normal cycle is greater than 9.75 minutes, the wash time shall be not less than 9.75 minutes. If the maximum available wash time in the normal cycle is less than 9.75 minutes, the wash time shall be the maximum available wash time.

* * * * *

2.11 *Agitation speed and spin speed settings.* Where controls are provided for agitation speed and spin speed selections, set them as follows:

2.11.1 *For energy and water consumption tests, set at the normal cycle settings.* If settings at the normal cycle are not offered, set the control settings to the maximum speed permitted on the clothes washer.

3. Appendix J to subpart B of part 430 is amended, in section 3, by revising paragraph 3.3.1 to read as follows:

3. TEST MEASUREMENTS

* * * * *

3.3.1 The wash temperature shall be the same as the rinse temperature for all testing. Cold rinse is the coldest rinse temperature

available on the machine. Warm rinse is the hottest rinse temperature available on the machine.

* * * * *

4. Appendix J1 to Subpart B of part 430 is amended, in section 1, by adding paragraphs 1.22 and 1.23 to read as follows:

Appendix J1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

* * * * *

1. DEFINITIONS AND SYMBOLS

1.22 *Cold rinse* means the coldest rinse temperature available on the machine (and should be the same rinse temperature selection tested in section 3.7).

1.23 *Warm rinse* means the hottest rinse temperature available on the machine (and should be the same rinse temperature selection

5. Appendix J1 to subpart B of part 430 is amended in section 2 by revising paragraphs 2.6.1, 2.6.2, and adding paragraphs 2.6.3 through 2.6.7.2, to read as follows:

2. TESTING CONDITIONS

* * * * *

2.6.1 *Energy Test Cloth.* The energy test cloth shall be made from energy test cloth material, as specified in 2.6.4, that is 24 inches by 36 inches (61.0 cm by 91.4 cm) and has been hemmed to 22 inches by 34 inches (55.9 cm by 86.4 cm) before washing. The energy test cloth shall be clean and shall not be used for more than 60 test runs (after preconditioning as specified in section 2.6.3). Mixed lots of material shall not be used for testing the clothes washers.

* * * * *

2.6.2 *Energy Stuffer Cloth.* The energy stuffer cloth shall be made from energy test cloth material, as specified in 2.6.4, and shall consist of pieces of material that are 12 inches by 12 inches (30.5 cm by 30.5 cm) and have been hemmed to 10 inches by 10 inches (25.4 cm by 25.4 cm) before washing. The energy stuffer cloth shall be clean and shall not be used for more than 60 test runs (after preconditioning as specified in section 2.6.3). Mixed lots of material shall not be used for testing the clothes washers.

2.6.3 *Preconditioning of Test Cloths.* The new test cloths, including energy test cloths and energy stuffer cloths, shall be pre-conditioned in a clothes washer in the following manner:

2.6.3.1 Perform 5 complete normal wash-rinse-spin cycles, the first two with AHAM Standard detergent 2A and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 6.0 grams per gallon of water of AHAM Standard detergent 2A. The wash temperature is to be controlled to 135°F ±5°F (57.2°C ±2.8C) and the rinse temperature is to be controlled to 60°F ±5°F (15.6°C ±2.8°C). Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (total of five wash and rinse cycles).

2.6.4 *Energy test cloth material.* The energy test cloths and energy stuffer cloths shall be made from fabric meeting the following specifications. The material should come from a roll of material with a width of approximately 63 inches and approximately 500 yards per roll, however, other sizes maybe used if they fall within the specifications.

2.6.4.1 *Nominal fabric type.* Pure finished bleached cloth, made with a momie or granite weave, which is nominally 50 percent cotton and 50 percent polyester.

2.6.4.2 The fabric weight shall be 5.60 ounces per square yard (190.0 g/m^2), ±5 percent.

2.6.4.3 The thread count shall be 61 x 54 per inch (warp x fill), ±2 percent.

2.6.4.4 The warp yarn and filling yarn shall each have fiber content of 50 percent ±4 percent cotton, with the balance being polyester, and be open end spun, 15/1 ±5 percent cotton count blended yarn.

2.6.4.5 Water repellent finishes, such as fluoropolymer stain resistant finishes shall not be applied to the test cloth. The absence of such finishes shall be verified by:

2.6.4.5.1 AATCC–118 Oil Repellency Test (DuPont or 3M version) of each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard or other water repellent finish (required scores of ''D'' across the board).

2.6.4.5.2 AATCC–79 Drop Absorbency Test of each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard © or other water repellent finish (time to absorb one drop should be on the order of 1 second).

2.6.4.6 The moisture absorption and retention shall be evaluated for each new lot of test cloth by the Standard Extractor Remaining Moisture Content (RMC) Test specified in section 2.6.5.

2.6.4.6.1 Repeat the Standard Extractor RMC Test in section 2.6.5 three times.

2.6.4.6.2 An RMC correction curve shall be calculated as specified in section 2.6.6.

2.6.5 *Standard Extractor RMC Test Procedure.* The following procedure is used to evaluate the moisture absorption and retention characteristics of a lot of test cloth by measuring the RMC in a standard extractor at a specified set of conditions. Table 2.6.5 is the matrix of test conditions. The 500g requirement will only be used if a clothes washer design can achieve spin speeds in the 500g range. When this matrix is repeated 3 times, a total of 48 extractor RMC test runs are required. For the purpose of the extractor RMC test, the test cloths may be used for up to 60 test runs (after preconditioning as specified in section 2.6.3).

TABLE 2.6.5.—MATRIX OF EXTRACTOR RMC TEST CONDITIONS

''g'' Force	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
50				
200				
350				
500				

2.6.5.1 The standard extractor RMC tests shall be run in a Bock Model 215 extractor (having a basket diameter of 19.5 inches, length of 12 inches, and volume of 2.1 ft^3), with a variable speed drive [Bock Engineered Products, P.O. Box 5127, Toledo, OH 43611] or an equivalent extractor with same basket design (*i.e.* diameter, length, volume, and hole configuration) and variable speed drive.

2.6.5.2 *Test Load.* Test cloths shall be preconditioned in accordance with 2.6.3. The load size shall be 8.4 lbs., consistent with section 3.8.1.

2.6.5.3 *Procedure.*

2.6.5.3.1 Record the ''bone-dry'' weight of the test load (WI).

2.6.5.3.2 Soak the test load for 20 minutes in 10 gallons of soft (< 17 ppm) water. The entire test load shall be submerged. The water temperature shall be 100°F ±5°F.

2.6.5.3.3 Remove the test load and allow water to gravity drain off of the test cloths. Then manually place the test cloths in the basket of the extractor, distributing them evenly by eye. Spin the load at a fixed speed corresponding to the intended centripetal acceleration level (measured in units of the acceleration of gravity, g) ±1 g for the intended time period ±5 seconds.

2.6.5.3.4 Record the weight of the test load immediately after the completion of the extractor spin cycle (WC).

2.6.5.3.5 Calculate the RMC as (WC–WI)/WI.

2.6.5.3.6 The RMC of the test load shall be measured at three (3) g levels: 50g; 200g; and 350g, using two different spin times at each g level: 4 minutes; and 15 minutes. If a clothes washer design can achieve spin speeds in the 500g range than the RMC of the test load shall be measured at four (4) g levels: 50g; 200g; 350g; and 500g, using two different spin times at each g level: 4 minutes; and 15 minutes.

2.6.5.4 Repeat 2.6.5.3 using soft (<17 ppm) water at 60°F ±5°F.

2.6.6 *Calculation of RMC correction curve.*

2.6.6.1 Average the values of 3 test runs and fill in Table 2.6.5. Perform a linear least-squares fit to relate the standard RMC ($RMC_{standard}$) values (shown in Table 2.6.6.1) to the values measured in 2.6.5 (RMC_{cloth}): $RMC_{standard} \sim A * RMC_{cloth} + B$

Where A and B are coefficients of the linear least squares fit.

TABLE 2.6.6.1.—STANDARD RMC VALUES ($RMC_{standard}$)

G	RMC percent			
	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
50	50.4	55.7	52.8	59.0
200	35.6	40.4	37.9	43.1
350	29.6	33.1	30.6	35.8
500	24.2	28.7	25.5	30.0

2.6.6.2 Check accuracy of linear least squares fit using the following method:

The root mean square value of

$$\left(\sum_{i=1}^{12}\frac{\left(RMC_{standard_i} - RMC_{corr_i}\right)^2}{10}\right)^{1/2}$$

shall be less than 2 percent, where a sum is taken over all of the different tests, where $RMC_{standard_i}$ is the RMC standard value measured for the I-th test, and RMC_{corr3_i} is the corrected RMC value for the I-th cloth test. This equation is valid only for the use with three (3) g force values therefore when using the 500g requirement; replace the 500g value instead of the 350g value.

2.6.7 *Application of RMC correction curve.*

2.6.7.1 Using the coefficients, A and B calculated in section 2.6.6.1:

$RMC_{corr} = A * RMC + B$

2.6.7.2 Substitute RMC_{corr} values in calculations in section 3.8.

* * * * *

6. Appendix J1 to subpart B of part 430 is amended, in section 4.1.5, by revising the definition of ''ER_x, ER_a, ER_n'' to read as follows:

4. CALCULATION OF DERIVED RESULTS FROM TEST MEASUREMENTS

* * * * *

4.1.5 * * * ER_x, ER_a, ER_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the warm rinse cycle per definitions in section 3.7.2.

* * * * *

7. Section 430.32 of subpart C, 10 CFR part 430 is amended by revising paragraph (g) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(g) *Clothes washers.*

(1) Clothes washers manufactured before January 1, 2004, shall have an energy factor no less than:

Product class	Energy factor (cu.ft./Kwh/cycle) as of January 1, 1988	Energy factor (cu.ft./Kwh/cycle) as of May 14, 1988
i. Top Loading, Compact (less than 1.6 ft.^{3} capacity).	Not Applicable.[1]	0.9.
ii. Top Loading, Standard (1.6 ft.^{3} or greater capacity).	Not Applicable.[1]	1.18.
iii. Top Loading, Semi-Automatic	Not Applicable.[1]	Not Applicable.[1]
iv. Front Loading	Not Applicable.[1]	Not Applicable.[1]
v. Suds saving	Not Applicable.[1]	Not Applicable.[1]

[1] Must have an unheated rinse water option.

(2) Clothes washers manufactured after January 1, 2004, shall have amodified energy factor no less than:

Product Class	Modified Energy factor (cu.ft./Kwh/cycle) as of January 1, 2004	Modified Energy factor (cu.ft./Kwh/cycle) as of January 1, 2007
i. Top Loading, Compact (less than 1.6 $ft.^3$ capacity)..	0.65	0.65.
ii. Standard (1.6 $ft.^3$ or greater capacity.	1.04	1.26.
iii. Top Loading, Semi-Automatic	Not Applicable.[1]	Not Applicable.[1]
iv. Front Loading	1.04	1.26.
v. Suds saving	Not Applicable.[1]	Not Applicable.[1]

[1] Must have an unheated rinse water option.

* * * * *

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Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM–97–500]

RIN: 1904–AA77

Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: Pursuant to the Energy Policy and Conservation Act, as amended, the Department of Energy (DOE, Department, or we) is proposing to amend the energy conservation standards for residential central air conditioners and heat pumps to require them to be more energy efficient, and is announcing a public hearing on the proposal.

DATES: Comments must be received on or before December 4, 2000. DOE is requesting a signed original, a computer diskette (WordPerfect 8) and 10 copies of the written comments. The Department will also accept e-mailed comments, but you must send a signed original. Oral views, data, and arguments may be presented at the public hearing (workshop) in Washington, DC beginning at 9 a.m. on November 16, 2000.

The Department must receive requests to speak at the public hearing and a copy of your statements no later than 4 p.m., November 1, 2000, and we request that you provide a computer diskette (WordPerfect 8) of each statement at that time.

ADDRESSES: Please submit written comments, oral statements, and requests to speak at the public hearing to: Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps, Docket No. EE-RM/STD–97–500, 1000 Independence Avenue, SW., Washington, DC 20585–0121. You may send emails to: brenda.edwards-jones@ee.doe.gov.

The hearing will begin at 9 a.m., in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington DC. You can find more information concerning public participation in this rulemaking proceeding in Section VIII, ''Public Comment Procedures,'' of this notice of proposed rulemaking.

You may read copies of the public comments, the Technical Support Document for Energy Efficiency Standards for Consumer Products: Central Air Conditioners and Heat Pumps (TSD), the transcript of the public hearing, and previous workshop transcripts in this proceeding at the DOE Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586-3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may obtain copies of the TSD and analysis spreadsheets from the Office of Energy Efficiency and Renewable Energy's (EERE) web site at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/central_air_conditioner.html.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0854, e-mail: michael.e.mccabe@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: edward.levy@hq.doe.gov.

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I. Summary of Proposed Rule

The Department is proposing to raise the energy efficiency standards for residential air conditioners and central air conditioning heat pumps (heat pumps) to 12 SEER [1] for air conditioners and to 13 SEER/7.7 HSPF [2] for heat pumps. The proposed standards would apply to all covered products offered for sale in the United States, effective on January 1, 2006. The proposed standard for split system air conditioners, the most common type of residential air conditioning equipment represents a 20% improvement in energy efficiency. For split system heat pumps, the new standards would represent a 30% improvement in cooling efficiency and a 13% improvement in heating efficiency. The proposed standards would also increase the efficiency of packaged air conditioners and packaged heat pumps by 24% and 17%, respectively. Finally, the Department is proposing provisions for some special products to ensure that more efficient versions remain available for niche applications.

The proposed standards would save a significant amount of energy and, as a result of less electricity being produced, result in a cleaner environment. In the 25-year period after the new standards become effective, the nation would save over 3.4 Quads [3] of primary energy, equivalent to all the energy consumed by nearly 18 million American households in a single year. These energy savings would also significantly reduce the emissions of air pollutants and greenhouse gases associated with electricity production, by avoiding the emission of 56 million tons (Mt) of Carbon and 52 thousand tons (kt) nitrogen oxides (NO_X). Also, the standards are expected to eliminate the need for the construction of approximately 31 (4 coal-fired and 27 natural gas-fired) new large, 400 megaWatt (MW), power plants in 2020.

In addition to the increase proposed in SEER and HSPF, we are proposing and requesting public comments on a proposal to adopt a standard for steady-state cooling efficiency, EER.[4] A requirement on EER would ensure more efficient operation at high outdoor temperature, during periods when electricity use by air conditioners is at its peak. This would help to further alleviate the need for new electric power plants and reduce the demands placed on the electric transmission and distribution systems during periods of high usage, thereby, improving system reliability.

Finally, consumers would see benefits from the proposed standards. For example, while the initial cost of a typical central air conditioner would increase by $122 to $153 or about 10–12%, the higher efficiency equipment would save enough over its life to pay for the increase in the price of the equipment plus an extra $45. Many consumers, especially air conditioner owners in warmer parts of the country and heat pump owners, would save even more.

While the higher efficiency units are widely available today and promoted through the Department of Energy and the Environmental Protection Agency (EPA) Energy Star® program, as well as utility rebate programs, manufacturers would be redesigning their product line to meet the efficiency standards. At the same time they would be redesigning their products to respond to the phase-out hydrochloroflourocarbons (HCFC's) refrigerants required by EPA. By making both changes at once, *i.e.,* efficiency and HCFC refrigerants, manufacturers will be able to plan and apply their resources in a cost-effective manner, resulting in lower burdens and costs.

II. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended by the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, the National Appliance Energy Conservation Act, Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, and the Energy Policy Act of 1992, Pub. L. 102–486 [5] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as ''covered products'') include central air conditioners and heat pumps. EPCA section 322(a)(4), 42 U.S.C. 6292(a)(4).

Under the Act, the program consists essentially of four parts: testing, labeling, Federal energy conservation standards, and certification and enforcement procedures. The Federal Trade Commission is responsible for labeling, and DOE implements the remainder of the program. Section 323 of the Act authorizes the Department, with assistance from the National Institute of Standards and Technology (NIST) and subject to certain criteria and conditions, to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. 42 U.S.C. 6293. The central air conditioners and heat pump test procedures appear at title 10 Code of Federal Regulations (CFR) part 430, subpart B, Appendix M.

The Act prescribes initial Federal energy conservation standards for each of the listed covered products, except television sets. EPCA section 325 (b)–(k), 42 U.S.C. 6295 (b)–(k). For central air conditioners and heat pumps, EPCA section 325(d)(3)(A) specifies that the

[1] SEER, Seasonal Energy Efficiency Ratio, is the Department's measure of energy efficiency for the seasonal cooling performance of central air conditioners and heat pumps.

[2] HSPF, Heating Seasonal Performance Factor, is the Department's measure of energy efficiency for the seasonal heating performance of heat pumps.

[3] Quad, means quadrillion (10^{15} Btus).

[4] EER, Energy Efficiency Ratio, is a steady-state measure of energy efficiency which measures efficiency at a prescribed outdoor temperature (95°F), and is one of the test conditions in the Department's test procedure used to develop the SEER.

[5] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the ''Act,'' or ''EPCA.'' Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

standards are to be reviewed by the Department no later than January 1, 1994. 42 U.S.C. 6295(d)(3)(A).

Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. EPCA section 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A). Moreover, the Department may not prescribe a standard for: (1) Certain products, including central air conditioners and heat pumps, if no test procedure has been established for the product, or (2) any product, if DOE determines by rule that a standard for the product either would not result in significant conservation of energy, or is not technologically feasible or economically justified. EPCA section 325(o)(3), 42 U.S.C. 6295(o)(3).

Section 325(o)(2)(B)(i), 42 U.S.C. 6295(o)(2)(B)(i) provides that DOE must determine whether a standard is economically justified, after receiving comments on the proposed standard, and whether the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

''(1) The economic impact of the standard on the manufacturers and the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy * * * savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.''

In addition, Section 325(o)(2)(B)(iii) of the Act, 42 U.S.C. 6295(o)(2)(B)(iii), establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * * '' The rebuttable presumption test is an alternative path to establishing economic justification.

Section 327 of the Act, 42 U.S.C. 6297, provides that generally the Federal energy efficiency requirements supersede State laws or regulations concerning energy conservation testing, labeling, and standards, and specifies limited exceptions to this general rule. EPCA Section 327(a) through (c), 42 U.S.C. 6297 (a) through (c). The Department can grant a waiver of preemption in accordance with the procedures and other provisions of Section 327(d) of the Act. 42 U.S.C. 6297(d).

B. Background

1. Current Standards

The existing standards for residential central air conditioners and heat pumps have been in effect since 1992. Energy efficiency for air conditioner and heat pump cooling has been defined by the descriptor SEER. Energy efficiency for heat pumps has been defined by the descriptor, Heating Seasonal Performance Factor (HSPF) while operating during the heating season and by SEER while operating during the cooling season. The current central air conditioners and heat pumps efficiency standards are as follows:

—Split system air conditioners and heat pumps—10 SEER/6.8 HSPF

—Single package air conditioners and heat pumps—9.7 SEER/6.6 HSPF

2. History of Previous Rulemakings

On September 8, 1993, DOE published an Advance Notice of Proposed Rulemaking (ANOPR) announcing the Department's intention to revise the existing central air conditioner and heat pump efficiency standard. (58 FR 47326). On November 24, 1999, DOE published a Supplemental ANOPR (hereinafter referred to as the Supplemental ANOPR). 64 FR 66306. In the Supplemental ANOPR and during the December 9, 1999, public workshop, we provided interested persons an opportunity to comment on several issues, including:

(1) The product classes that the Department planned to analyze;

(2) The analytical framework, models (*e.g.,* the Government Regulatory Impact Model (GRIM)), and tools (*e.g.,* a Monte Carlo sampling methodology, and the life-cycle cost (LCC) and national energy savings (NES) spreadsheets) that the Department was using in performing analyses of the impacts of energy conservation standards;

(3) The results of preliminary analyses for the engineering, LCC, payback and NES; and

(4) The candidate energy conservation standard levels that the Department had developed from these analyses.

3. Process Improvement

The fiscal year (FY) 1996 appropriations legislation imposed a moratorium on proposed or final rules for appliance efficiency standards for FY 1996. Pub. L. 104–134. During the moratorium, the Department examined the appliance standards program and how it was working. Congress advised DOE to correct the standards-setting process and to bring together stakeholders (such as manufacturers and environmentalists) for assistance. Therefore, we consulted with energy efficiency groups, manufacturers, trade associations, state agencies, utilities and other interested parties to provide input to the process used to develop appliance efficiency standards. As a result, on July 15, 1996, the Department published a final rule: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (referred to as the Process Rule) (61 FR 36974), codified at 10 CFR part 430, subpart C, Appendix A.

The Process Rule states that for products, such as central air conditioners and heat pumps, for which DOE issued a proposed rule prior to August 14, 1996, DOE would conduct a review to decide whether any of the analytical or procedural steps already completed should be repeated. (61 FR 36982). DOE completed this review and decided to use the Process Rule, to the extent possible, in the development of the revised central air conditioners and heat pumps standards.

We developed an analytical framework for the central air conditioners and heat pumps standards rulemaking for our stakeholders, which we presented during a workshop on June 30, 1998. The analytical framework described the different analyses (*e.g.,* LCC, payback and manufacturing impact analyses (MIA)) to be conducted, the method for conducting them, the use of new LCC and NES spreadsheets, and the relationship of the various analyses.

III. General Discussion

A. Test Procedures

Section 7(b) of the Process Rule states that necessary modifications to test procedures concerning efficiency standards will be proposed before issuance of a proposed rule. Section 7(c) of the Process Rule states that a final modified test procedure will be issued

prior to issuing a proposed rule regarding energy conservation standards. The residential central air conditioner and heat pump test procedure is being revised to improve its organization and ease of use, with a proposed rule to be published. This revision of the test procedure is not expected to alter the measured efficiencies as determined under the existing test procedure. Therefore, the revised test procedure would not affect development of revised efficiency standards. For these reasons, revisions to the test procedure are not a ''necessary modification'' as that term is used in the Process Rule, but rather a routine update, and hence need not be finalized before issuance of the proposed rule for these standards.

B. Technological Feasibility

1. General

There are central air conditioners and heat pumps in the market at all of the efficiency levels analyzed in today's notice. The Department, therefore, believes all of the efficiency levels discussed in today's notice are technologically feasible.

2. Maximum Technologically Feasible Levels

The Act requires the Department, in a proposed rule that sets forth new or amended standards, to ''determine the maximum improvement in energy efficiency * * * that is technologically feasible for each type (or class) of covered products.'' EPCA section 325 (p)(2), 42 U.S.C. 6295(p)(2). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible (Max Tech) level was identified.

As previously stated in Section II.B, residential central air conditioner and heat pump cooling efficiency is expressed as a SEER. Heating efficiency is expressed as a HSPF. The most efficient technology presently available is a 3-ton 18 SEER central air conditioner. The Department has determined that at this time 18 SEER is the Max Tech level for cooling efficiency for all product classes and capacities in this analysis. The Max Tech level for heating efficiency, corresponding to the 18 SEER level, is 9.4 HSPF which is the highest HSPF rating currently available in residential heat pumps.

C. Energy Savings

1. Determination of Savings

The Department estimated energy savings through the use of the NES spreadsheet, which forecasted energy savings over the period of analysis for candidate standards relative to the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards.

The NES spreadsheet model is described in Section IV.B of this notice, Appendix of the Technical Support Document and also in the Supplemental ANOPR. (64 FR 66306). The NES spreadsheet model calculates the energy savings in site energy or kilowatt-hours (kWh). Site energy is the energy directly consumed at building sites by the central air conditioner or heat pump. National energy savings are expressed in terms of the source energy savings which is the savings in energy used to generate and transmit the electricity consumed at the site. Chapter 7 of the TSD contains a table of factors used to convert kWh to Btu. These conversion factors, which change with time, are derived from DOE's Energy Information Administration's (EIA) Annual Energy Outlook 2000 (AEO2000).

2. Significance of Savings

The Act prohibits the Department from adopting a standard for a product if that standard would not result in ''significant'' energy savings. EPCA section 325(o)(3)(B), 42 U.S.C. 6295(o)(3)(B). While the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in this context to be savings that were not ''genuinely trivial.'' The energy savings for all of the trial standard levels considered in this rulemaking are non-trivial and therefore we consider them ''significant'' within the meaning of section 325 of the Act.

D. Rebuttable Presumption

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. EPCA section 325(o)(2)(B)(iii) states:

''If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.''

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then we presume that such standard is economically justified.[6] This presumption of economic justification can be rebutted upon a proper showing.

E. Economic Justification

As noted earlier, section 325(o)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

The Process Rule established procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards. The provisions of the rule have direct bearing on the implementation of manufacturer impact analyses. First, the Department will use an annual cash flow approach in determining the quantitative impacts on manufacturers. This includes a short-term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect, and a long-term assessment. Impacts analyzed include industry net present value, cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, the Department will analyze and report the impacts on different types of manufacturers, with particular attention to impacts on small manufacturers. Third, the Department will consider the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures and loss of capital investment. Finally, the Department will take into account cumulative impacts of different DOE regulations on manufacturers.

For consumers, measures of economic impact are the changes in installed cost and annual operating costs, *i.e.*, LCC. The life-cycle cost of the product at each standard level are presented in Chapter

[6] For this calculation, the Department calculated cost-of-operation based on the DOE test procedure, with the test procedure assumed annual hours of operation. Consumers that use the central air conditioner or heat pump fewer hours will experience a longer payback while those that use them more will have a shorter payback.

5 of the TSD. Under section 325 of the Act, the life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. Life-Cycle Costs

The life-cycle cost is the sum of the purchase price, including the installation, and the operating expense, including operating energy, maintenance, and repair expenditures, discounted over the lifetime of the appliance.

For each central air conditioner and heat pump product class, we calculated both life-cycle costs and life cycle cost savings for the following space-cooling efficiency levels: 11, 12, 13, and 18 SEER. For heat pumps, the following space-heating efficiency levels correspond to the above SEER values: 7.1, 7.4, 7.7, and 8.8 HSPF, respectively. The calculated life-cycle cost savings is given as a distribution, with a mean value and a range. We used a distribution of real discount rates ranging from 0.1 to 18% for the calculations. The assumption is that the consumer purchases the central air conditioner and/or heat pump in 2006. For the probability-based LCC analysis, a building-by-building analysis is performed for purposes of generating a distribution of life-cycle costs for each efficiency level analyzed. The building stock is composed of both residential and commercial buildings under the assumption that 90% of single-phase central air conditioners and heat pumps are utilized in residential buildings with the remaining 10% in commercial buildings. The 1997 Residential Energy Consumption Survey (RECS) is used to represent the residential building stock while 77 commercial buildings are used to represent the commercial building stock based on assumptions consistent with those used in the process to update ASHRAE Standard 90.1–1999. Annual energy costs are based on marginal electricity prices which are developed for each residential and commercial building. Electricity price forecasts are taken from the AEO2000 (DOE/EIA–0383). The LCC calculations include markup structures developed for both the new construction and replacement/retrofit markets. Chapter 5 of the TSD contains the details of the LCC calculations including those considered under factor seven below.

3. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards. The Department used the NES spreadsheet results, discussed earlier, in its consideration of total projected savings. The savings are provided in section V of this notice.

4. Lessening, if Any, of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products, and in evaluating design options and the impact of potential standard levels, the Department tried to eliminate any degradation of utility or performance in the products under consideration in this rulemaking. None of the proposed trial standard levels reduces the performance of central air conditioners and heat pumps.

5. Impact of Any Lessening of Competition

The Act directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. Section 325(o)(2)(B)(i)(V) and (B)(ii), 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii).

In order to assist the Attorney General in making such a determination, the Department has provided the Attorney General with copies of this notice and the Technical Support Document for review.

6. Need of the Nation To Conserve Energy

We report the environmental effects from each standard level for each product under this factor in Section VI of this notice.

7. Other Factors

During the extreme periods of heat and humidity that took place in the summer of 1999, electric power outages and other system disturbances disrupted the lives of millions of people and thousands of businesses in various regions of our country. In response to public concerns about this problem, the Secretary of Energy formed a team of experts to investigate the problem and to recommend actions that the Federal government can take to help avoid future power outages by improving the reliability of the U.S. electric power system. One of the actions proposed by the Secretary at that time was to accelerate the rulemaking process and advance the publication of a final rule for central air conditioners by six months.

The Final Report [7] by the team of experts, issued in March, 2000, included the recommendation to increase the energy efficiency of central air conditioners as one means for enhancing reliability. The report stated, ''Technologies and practices that reduce loads during times of peak demand, such as high-efficiency air conditioning and lighting equipment, are especially valuable.'' This was based on the finding that in several of the affected regions ''Retail customers have limited mechanisms and incentives to conserve energy or resort to alternatives during electricity shortages.'' Included in the federal activities that promote energy efficiency recommended to the Secretary was to promulgate standards for more efficient technologies.

As an additional element to consider under this factor, the Secretary has decided to evaluate the life-cycle cost impacts on those subgroups of consumers who are at or below the poverty line (*e.g.*, for a family of four, this constitutes a household income of less than $16,036).

IV. Methodology

The Process Rule outlines the procedural improvements identified by the interested parties. 61 FR 36974. The process improvement effort also included a review of the: (1) Economic models; (2) analytical tools; (3) methodologies; (4) non-regulatory approaches; and (5) prioritization of future rules.

The Department continues to use two spreadsheet tools to meet the objectives of the Process Rule. The first spreadsheet calculates life-cycle-costs and payback periods of potential new energy conservation standards. The second conducts shipments forecasts and then calculates national energy savings and net present value impacts of potential new energy conservation standards. The Department also completely revised the methodology used in assessing manufacturer impacts including the adoption of the GRIM.

Additionally, DOE has estimated the impacts of central air conditioner and heat pump energy efficiency standards on electric utilities and the environment. The Department used a version of EIA's National Energy Modeling System (NEMS) for the utility

[7] ''Report of the U.S. Department of Energy's Power Outage Study Team: Findings and Recommendations to Enhance Reliability from the Summer of 1999'', March 2000.

and environmental analyses. NEMS simulates the energy economy of the U.S. and has been developed over several years by the EIA primarily for the purpose of preparing the AEO. NEMS produces a widely-known baseline forecast for the U.S. through 2020 that is available in the public domain. The version of NEMS used for appliance standards analysis is called NEMS–BRS,[8] and is based on the AEO2000 version with minor modifications. NEMS offers a sophisticated picture of the effect of standards since its scope allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Life-Cycle Cost and Payback Period Analysis

This section describes the LCC and payback period analysis and the spreadsheet model used for analyzing the economic impacts of possible standards on individual residential and commercial consumers. Details of the spreadsheet model can be found in Chapters 5 in the TSD. We conduct the LCC and payback period analysis with a spreadsheet model developed in Microsoft Excel for Windows 95 or above. When combined with Crystal Ball (a commercially available software program), the LCC and payback period generates a Monte Carlo simulation to perform the analysis by incorporating uncertainty and variability considerations.

The LCC is the total consumer expense over the life of the appliance, including purchase expense and operating costs (including energy expenditures). Future operating costs are discounted to the time of purchase and summed over the lifetime of the appliance. The payback period is the change in purchase expense due to an increased efficiency standard divided by the change in annual operating cost that results from the standard. For today's proposed rule, both the LCC and payback period are based on a building-by-building analysis of a nationally representative set of residential and commercial buildings.

The set of residential buildings are taken from those households in the 1997 RECS equipped with either a central air conditioner or heat pump. Of the 5,900 households surveyed in the 1997 RECS, 2,003 households representing 37.6% of the housing population have a central air conditioner while 579 households representing 11.1% of the housing population have heat pumps.[9] RECS specifies the annual space-cooling energy consumption and, in the case of heat pumps, the annual space-heating energy consumption associated with the space-conditioning equipment. Also provided is the age of the space-conditioning equipment which, when coupled with historical equipment efficiency data provided by the Air-Conditioning and Refrigeration Institute (ARI), allows for the imputation of the household's space-conditioning equipment efficiency (*i.e.*, the SEER and, in the case of heat pumps, the HSPF). With both the annual energy use and the efficiency of the central air conditioner or heat pump specified, the annual energy use associated with equipment at higher efficiency levels is simply determined by multiplying the household's existing annual energy use by the ratio of the existing equipment efficiency divided by the efficiency of the more efficient equipment. Household utility billing data in RECS allows for the determination of average and marginal electricity prices. The electricity price data along with the annual energy use data allows for the determination of annual electricity cost savings for any efficiency level.

The set of commercial buildings are based on assumptions consistent with those used to develop the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE) Standard 90.1–1999. The commercial building data set consists of seven building types located in eleven different geographic regions yielding a total of 77 buildings. An hourly simulation program is used to calculate the annual full-load equivalent operating hours (FLEOH) of the space-cooling and space-heating equipment in each building. The FLEOHs are used with the Department of Energy's test procedure equations for central air conditioners and heat pumps to obtain each building's annual space-cooling and space-heating energy consumption. Similar to the analysis for residential buildings, the energy use associated with equipment at higher efficiency levels is simply determined by multiplying the building's simulated annual energy use by the ratio of the building's assumed equipment efficiency (*i.e.*, 10 SEER) divided by the efficiency of the more efficient equipment. Average and marginal electricity prices for each commercial building are determined by applying a national sample of electric utility tariffs to the simulated load and demand. The electricity price data along with the annual energy use data allows for the determination of annual electricity cost savings for any efficiency level for each commercial building.

The probability-based LCC and payback period analysis samples buildings from the residential and commercial building data set in order to produce a distribution of LCC results for a given standard level. The LCC and payback period analysis takes 10,000 samples to create a distribution of results based on the assumption that 90% of the single-phase central air conditioning and heat pump equipment stock are in residential buildings with the remaining 10% in commercial buildings.

The spreadsheet model is organized so that ranges or distributions can be entered for each input variable needed to perform the calculations. The LCC and payback period output can be either a point value when we use the average value of the inputs or a distribution when we use distributions for some or all of the inputs. Inputs for determining the total installed cost include: Baseline manufacturer costs, manufacturer cost multipliers for each efficiency level, manufacturer markups, distributor or wholesaler markups, dealer or contractor markups, builder markups, sales taxes, and installation costs. Of the above total installed cost inputs, the manufacturer, dealer, distributor, and builder markups, as well as the sales tax and installation price are described with distributions. Inputs for determining operating expenses include: Annual energy consumption, average electricity prices, marginal electricity prices, electricity price projections, repair costs, maintenance costs, equipment lifetime, discount rates, and the year standards take effect. Of the above operating expense inputs, the discount rate and equipment lifetime are described with distributions (note that neither the discount rate nor lifetime are needed to determine the payback period). Operating expense, annual

[8] EIA approves use of the name NEMS to describe only an AEO version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that deviate from AEO assumptions, the name NEMS–BRS refers to the model as used here. For more information on NEMS, please refer to the National Energy Modeling System: An Overview 1998. DOE/EIA–0581 (98), February, 1998. BRS is DOE's Office of Building Research and Standards.

[9] The number of households actually used in the central air conditioner and heat pump LCC and Payback period analyses were 1218 and 308, respectively. Some central air-conditioned households were dropped from the analysis for one or more of the following reasons: (1) The central air conditioner was not used, (2) a room air conditioner was present and used, or (3) marginal energy prices could not be determined for the household. With regard to households with heat pumps, they were dropped from the analysis for one or more of the following reasons: (1) The heat pump was not used or (2) marginal energy prices could not be determined for the household.

energy use and electricity prices, although represented by point-values for each residential and commercial building, are highly variable when looking at the entire building data set. Chapter 5 of the TSD contains the details of all the inputs to the LCC and payback period analysis.

In addition to determining payback periods with the spreadsheet model, the Act requires us to determine a rebuttable payback period. The Act requires the Department to examine payback periods to determine if the three year rebuttable presumption of economic justification applies. As prescribed by the Act, the rebuttable payback period is ''calculated under the applicable test procedure, * * * .''

The annual space-cooling and space-heating energy consumption calculated based on the Department's test procedure are on the order of 50% greater than the weighted-average values from the LCC analysis (*i.e.*, analyses based on the 1997 RECS for residential buildings and hourly simulations for commercial buildings). As will be shown in Section VI (Analytical Results), the payback value calculated from the Department's test procedure equations will be significantly lower than the average payback value calculated from the LCC analysis, for any standard level.

B. National Energy Savings and Net Present Value Analysis

In order to make the analysis more accessible and transparent to all stakeholders, we continue to use an Excel spreadsheet model to calculate the energy savings and the national economic costs and savings from new standards. Various input quantities within the spreadsheet can be changed. Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. We conduct sensitivities by running different scenarios.

DOE uses the NES spreadsheet to perform calculations of energy savings and net present value (NPV) based on user inputs similar to those for the LCC spreadsheet. The energy savings, energy cost savings, equipment costs, and NPV of benefits for several product classes are forecast from the chosen start year through 2030. The forecasts provide annual and cumulative values for all four output parameters.

The Department calculates the national energy savings by subtracting energy use under a standards scenario from energy use in a base case (no new standards scenario). Energy use is reduced when the baseline central air conditioner or heat pump (*i.e*, 10 SEER) is replaced by a more efficient piece of equipment. Unit energy savings for each product class are the same weighted-average values as calculated in the LCC and Payback period spreadsheet. Additional information about the NES spreadsheet can be found in Chapter 7 of the TSD.

User inputs include: (1) A choice from among several electricity price projections: (2) effective date of the central air conditioners and heat pumps standard; (3) discount rate and discount year; (4) a standards case efficiency level; (5) an equipment price; (6) an equipment price and housing projection; and (7) an efficiency scenario. Additionally, we use a time series of conversion factors to change from site to source energy.

The efficiency scenario specifies the equipment efficiency distribution after new standards would take effect. Three efficiency scenarios were used to forecast the impact new standards would have after they take effect: (1) National Appliance Energy Conservation Act (NAECA) scenario,[10] (2) Roll-up scenario,[11] and (3) Shift scenario.[12] As opposed to the Supplemental ANOPR where weighted-average equipment efficiencies were forecasted, an actual distribution of efficiencies (*i.e.*, the percentage of shipments which occur in incremental SEER bins over the range from the minimum standard to 18 SEER) were used in the analysis for the proposed rule.

One of the more important components of any estimate of future impact is shipments. Forecasts of shipments for the base case and standards case are determined within the NES spreadsheet. The shipments portion of the spreadsheet forecasts central air conditioner and heat pump shipments from 2000 to 2030. Shipments forecasts are developed by accounting for: (1) The combined effects of equipment price, operating cost, and household income; (2) different market segments (*e.g.*, new housing, replacement decisions, and non-owners adding a central air conditioner or heat pump); (3) decisions to repair rather than replace; and (4) different equipment age categories. Additional details on the various shipments forecasts are provided in Chapter 6 of the TSD.

C. Manufacturer Impact Analysis

The MIA estimates the financial impact of standards on manufacturers and calculates impacts on employment and manufacturing capacity.

The Department published the proposed MIA approach as part of the **Federal Register** publication of the Supplemental ANOPR, and received no comments suggesting substantive changes in the methodology. As proposed, the MIA was conducted in three phases. Phase 1, ''Industry Profile,'' consisted of the preparation of an industry characterization. Phase 2, ''Industry Cash Flow,'' focused on the industry as a whole, including both major and niche-product manufacturers. The GRIM was used to prepare an industry cash flow analysis. The Department used publicly available information developed in Phase 1 to adapt the GRIM structure to facilitate the analysis of new central air conditioner and central air conditioning heat pump standards.

In Phase 3, ''Sub-Group Impact Analysis,'' the Department conducted interviews with several niche-product manufacturers to determine the financial impacts of revised standards. Phase 3 also entailed documenting additional impacts on employment and manufacturing capacity through a structured interview process.

1. Phase 1, Industry Profile

Phase 1 of the MIA consisted of preparing an Industry Profile. Prior to initiating the detailed impact studies, DOE collected information on the present and past structure and market characteristics of the central air conditioning industry. This activity involved both quantitative and qualitative efforts to assess the industry and products to be analyzed. The information collected included manufacturer market shares and characteristics and financial information, market trends, and product characteristics.

[10] Under the NAECA scenario, equipment efficiencies after the adoption of new standards are forecasted to change in the same pattern as the efficiency changes that occurred in 1992 when minimum efficiency standards first took effect. This results in weighted average equipment efficiencies, based on minimum efficiency standards of 11, 12, and 13 SEER, of 11.6 SEER, 12.4 SEER, and 13.4 SEER, respectively.

[11] Under the Roll-up scenario, equipment that in the base case were forecast to be less efficient than the trial standard level are assumed to move up to the standard level, and equipment forecasted in the base case to be at or above the trial standard level are assumed not to increase in efficiency. This results in weighted-average equipment efficiencies, based on minimum efficiency standards of 11, 12, and 13 SEER, of 11.5 SEER, 12.3 SEER, and 13.3 SEER, respectively.

[12] Under the Shift scenario, equipment efficiencies after the adoption of new standards are forecast to have the same pattern, at and above the standard levels, as the current distribution of efficiencies. This results in weighted-average equipment efficiencies, based on minimum efficiency standards of 11, 12, and 13 SEER, of 11.7 SEER, 12.7 SEER, and 13.7 SEER, respectively.

The industry profile included a top-down cost analysis of the central air conditioner manufacturing industry that was used to derive cost and financial inputs for the GRIM, *e.g.,* revenues, and material, labor, overhead, depreciation, Sales General & Administration (SG&A), and Research & Development (R&D) expenses. The Department also utilized additional sources of information to further characterize the industry. These included company Securities and Exchange Commission (SEC) 10–K reports, Moody's company data reports, Standard & Poor's (S&P) stock reports, Value Line industry composites, and Dow Jones Financial Services.

2. Phase 2, Industry Cash Flow Analysis

Phase 2 of the MIA focused on the financial impacts of new standards on the industry as a whole. The analytical tool used for calculating the financial impacts of standards on manufacturers is the GRIM. As part of the analysis, DOE interviewed several of the major manufacturers. For the Industry Cash Flow Analysis, DOE used the financial values determined during Phase 1 and the shipment scenarios used in the LCC and NES analyses.

3. Phase 3, Sub-Group Impact Analysis

The Department has received many comments during workshops and interviews, and in writing, suggesting that manufacturers of niche products, representing less than 3% of industry shipments, could be more negatively impacted by new standards than major manufacturers. To assess the differential impacts, the Department interviewed two manufacturers of niche products, in addition to those conducted during the Engineering Analysis. The focus of the interviews was to determine which GRIM parameters differed for niche manufacturers by virtue of their smaller revenue base and more limited markets.

From a financial standpoint, the common distinguishing characteristic of niche product manufacturers was their need to spread the costs of converting to new standards over smaller production volumes, as well as the product size constraints identified during the Engineering Analysis which make their shipments more sensitive to increases in product size. During the interviews, small manufacturers demonstrated that several of the costs necessary to meet any new regulation are largely independent of the product volume produced. The most apparent are the costs necessary to design a new product meeting the proposed energy standards. Other costs, such as plant engineering, some tooling, and other capital costs, have significant portions that are independent of final production volumes.

4. GRIM Analysis

An increase in standards affects a manufacturer's cash flow in three distinct ways: (1) Increased investment; (2) higher production costs per unit; and (3) altered revenue by virtue of higher per unit prices and changes in sales volumes. As mentioned, the Department uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value.

The GRIM analysis uses a number of inputs—annual shipments; prices; manufacturer costs such as materials and labor, selling and general administration costs, taxes, and capital expenditures—to arrive at a series of annual net cash flows beginning today and continuing ten years past the implementation of new standards. This information was collected from a number of sources, including publically available data, as well as interviews with of the major manufacturers and two specialty manufacturers. Industry net present values are calculated by discounting and summing the annual net cash flows. Additional information about the GRIM spreadsheet can be found in Chapter 8 of the TSD.

D. NEMS Environmental Analysis

The environmental analysis provides estimates of changes in emissions of nitrogen oxides (NO_X) and carbon from carbon dioxide (CO_2). The Department used NEMS–BRS for central air conditioner and heat pump analyses (as well as the utility analyses). NEMS–BRS is run similar to the AEO2000 NEMS except that central air conditioner and heat pump energy usages are reduced by the amount of energy (electricity) saved due to the proposed trial standard levels. The input of energy savings are obtained from the NES spreadsheet. For the environmental analysis, the output is the forecasted physical emissions. The net benefits of the standard is the difference between emissions estimated by NEM–BRS and the AEO2000 Reference Case.

The environmental analysis is relatively straightforward from NEMS–BRS. Carbon emissions are tracked in NEMS–BRS using a detailed carbon module that provides robust results because of its broad coverage of all sectors and inclusion of interactive effects. The only form of carbon tracked by NEMS–BRS is CO_2. However, in this report the carbon savings are reported as elemental carbon.

The two airborne pollutant emissions that have been reported in past analyses, sulfur dioxide (SO_2) and NO_X, are reported by NEMS–BRS. NO_X results are based on forecasts of compliance with existing legislation. In the case of SO_2, the Clean Air Act Amendments of 1990 set an emissions cap on all power generation. The attainment of this target, however, is flexible among generators and is enforced by applying market forces, through the use of emissions allowances and tradable permits. As a result, accurate simulation of SO_2 trading tends to imply that physical emissions effects will be zero because emissions will always be at, or near, the ceiling. This fact has caused considerable confusion in the past. There is virtually no real possible SO_2 environmental benefit from electricity savings as long as there is enforcement of the emission ceilings. See the TSD, Environmental Assessment, for a discussion of this issue.

Alternative price forecasts corresponding to the high and low economic growth side cases found in AEO 2000 have also been generated for use by NEMS–BRS, and were used as alternative scenarios, and are presented in the TSD. (See TSD, Environmental Assessment.)

V. Discussion of Comments

As noted above, DOE published the Supplemental ANOPR regarding central air conditioners and heat pumps on November 24, 1999, and conducted a public workshop to present the analyses and to solicit comments on December 9, 1999. The Department requested comments on the following twelve issues:

1. Differences between the industry and the reverse engineering cost data:
2. The incorporation of emerging technologies into the Engineering Analysis;
3. The assessment of the impacts on steady-state efficiency, *i.e.* EER, due to increases in the SEER;
4. For heat pump systems, the relationship between SEER and HSPF;
5. Additional product classes based on system capacity;
6. Niche product classes
   (a) Ductless split
   (b) High-velocity, small-duct
   (c) Vertical-package, wall-mounted
   (d) Split, through-the-wall-condenser;
7. The impact of alternative refrigerants for HCFC–22;
8. Data on retail mark-up assumptions;
9. Information relating to the determination of price and operating cost elasticities in conducting shipment forecasts;
10. Data on the possible adverse affects of standards on identifiable groups of consumers that experience below-average utility or usage rates;

11. Information on what non-regulatory alternatives to standards need to be reviewed; and

12. Comments on the candidate standard levels and the alternative standard scenarios.

Based on responses and comments received since that workshop, we provide the following discussion.

A. Engineering Cost Data

1. Reverse Engineering Cost Estimates

The Department's reverse engineering analysis prepared as a basis for the Supplemental ANOPR received a broad range of comments, both supportive and critical. ARI and the Natural Resources Defense Council (NRDC) commented on the apparent accuracy of the split air conditioner cost estimates and the ease with which the results are able to be scrutinized by outside parties. (Wethje, ARI, Transcript, p. 42; ARI, No. 11 at 1; Goldstein, NRDC, Transcript, p. 94).

The Department also received comments criticizing the reverse engineering results for split heat pumps and for packaged air conditioners and heat pumps, noting the lack of design detail and the aggregation of the results into an efficiency level-based analysis. (Hodges, ARI, Transcript, p. 85; Madera, York International (York), Transcript, pp. 90, 91, 93; Goldstein, NRDC, Transcript p. 96 and California Energy Commission (CEC) No. 47 at 7). The comments observed that the relative cost results for split heat pumps and packaged equipment differed significantly from those of split air conditioners, and that those analyses were less rigorous than the split air conditioner analysis. They also noted that the split heat pump and packaged equipment analysis was based on fewer equipment samples; did not include a detailed tear-down of a 10 SEER split heat pump or packaged air conditioner; and was based on questionable production volume assumptions.

The Department agreed that those deficiencies were likely to cause some of the differences between the ARI cost and the reverse engineering cost estimates, and revised its analysis of split heat pumps and packaged equipment.

In responding to the comment on sample size for split heat pumps and packaged equipment, the Department took guidance from a review of the engineering analysis performed by DOE consultant, Joseph Pietsch. Mr. Pietsch presented five guidelines for comparing the production cost of equipment for different product classes. (Pietsch, No 36 at 2–5).

- At each cooling capacity and SEER level, the same outside unit will likely be used for split air conditioners (fancoil) and split air conditioners (cased coil);
- At each cooling capacity and SEER level, the same fancoil will likely be used for split air conditioners (fancoil) and split heat pumps;
- At each cooling capacity and SEER level, the same cabinet will likely be used for packaged air conditioners and packaged heat pumps;
- There should be some degree of consistency in the cost to ''convert'' an air conditioner into a heat pump; and
- Split systems with fan coils and single package units at the same cooling capacity and SEER level should have nearly identical costs for the major functional components.

Based on the above guidelines, DOE revised the analysis of split heat pumps and packaged equipment. Table V.1 provides the original and the revised production dollar cost estimates resulting from this new approach. Table V.2 provides the same information, but in terms of relative costs. Revised production costs are generally lower than the original costs, particularly at the baseline 10 SEER level. The most significant change is that the new analysis includes nine additional estimates that were not presented originally.

TABLE V.1.—ENGINEERING PRODUCTION COST ESTIMATES FOR 3-TON UNITARY EQUIPMENT

Efficiency level (SEER)	Split air conditioner (cased coil)		Split air conditioner (fancoil)		Split heat pump		Packaged air conditioner		Packaged heat pump	
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	Original	Revised
10	$367	$367	$456	$449	$622	$572	$552	$511	$643	$593
11	412	412	550	519	.....	602	.....	555	.....	638
12	468	468	.....	563	690	648	627	595	708	668
13	529	529	756	637	840	743	809	730	.....	820
14	588	588	802	815	1,011	1,023	.....	889	.....	1,029
15	.....	.....	893	893	1,147	1,107	.....	955	.....	1,100

The only significant departures are found in split air conditioners with fancoils, where the new estimates are lower, and in 14 SEER and 15 SEER equipment where the new results are higher.

TABLE V.2.—REVISED REVERSE ENGINEERING PRODUCTION

Efficiency leval (SEER)	Split air conditioner (cased coil)		Split air conditioner (fancoil)		Split heat pump		Packaged air conditioner		Packaged heat pump	
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	Original	Revised
10	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
11	1.12	1.12	1.21	1.16	.....	1.05	.....	1.09	.....	1.08
12	1.28	1.28	.....	1.25	1.11	1.13	1.14	1.16	1.10	1.13
13	1.44	1.44	1.66	1.42	1.35	1.30	1.47	1.43	.....	1.38
14	1.60	1.60	1.76	1.82	1.63	1.79	.....	1.74	.....	1.74
15	.....	.....	1.96	1.99	1.84	1.94	.....	1.87	.....	1.86

In response to comments on its production volume assumptions prior to the publication of the Supplemental ANOPR, the Department had reduced its heat pump production volume from 125,000 units per year to 25,000 units per year. However, since heat pumps and air conditioners are typically produced with the same plant

equipment, reducing the production volume significantly increases the overhead allocated to each heat pump produced. The higher overhead allocation raises the cost of the baseline heat pump, lowering the relative cost of producing equipment at higher efficiency levels. To compensate for this overestimate of overhead allocation, we set the split heat pump overhead allocation equal to that of the split air conditioner at each efficiency level.

The Department believes that the revisions to the split heat pump and packaged equipment production costs have improved the cost estimates for those product classes and that no additional equipment samples need to be subjected to tear-down or reverse engineering analysis. The revised reverse engineering cost estimates were used in the analysis for today's proposed rule.

2. Productivity Efficiency Improvements

According to the American Council for an Energy Efficient Economy (ACEEE), Census Bureau Current Industrial Report (CIR) data suggest that the unit price of equipment shipments below 65,000 Btu/hr fell in real terms between 1992 and 1997. (ACEEE, No. 43 at 4). ACEEE suggested that the Department apply an annual deflator of 1.7% to projected prices to account for this apparent productivity improvement.

For other rulemakings, the Department has used production input costs and production technologies based on the best information available at the time. DOE has not made any assumptions about productivity improvements and material cost changes over time. The Department does not believe historical price trends for unitary air conditioners, or other products, can be applied to forecast equipment costs where there are no data to indicate the trends will continue. Therefore, without specific data on the likely costs to manufacture a product, the Department will not apply a productivity improvement factor in this rulemaking or other rulemakings.

3. Emerging Technologies

Emerging technologies that are not established in the residential central air conditioning market have the potential to lower the cost of achieving higher efficiency. In the Supplemental ANOPR, we considered advances in variable speed and variable capacity compressors, and reductions in the cost of variable speed fan motors and parallel-flow, microchannel heat exchangers to be potentially viable methods for increasing the efficiency of equipment at a lower cost than currently established methods.

Bard Manufacturing (Bard), Unico, Inc. (Unico) and NRDC disagreed with this approach, questioning whether some of the technologies considered were commercially and technically viable, but proposed no other technologies for consideration. (Bard Manufacturing, No. 28 at 4; Unico, No. 34 at 1; NRDC No. 35 at 11–12). ARI stated that they considered some compressor and motor advances but not microchannel heat exchangers in their relative production cost data. (ARI No. 48 at 3). The Trane Company (Trane) and Edison Electric Institute (EEI) also expressed concern over some apparent inconsistencies in the emerging technologies analysis presented in Table 4.16 and the use and calculation of the Carnot efficiency on page 4–27 of the Supplemental ANOPR TSD. (Trane, No. 23 at 2; and EEI No. 20 at 3).

Pacific Gas and Electric (PG&E) voiced concern that new technologies, such as the Bristol modulating compressor, could reduce costs to the point that manufacturers may use them at lower SEER levels resulting in a negative impact on peak loads and electrical system reliability. (PG&E, No. 31 at 3).

The emerging technology analysis based on reverse engineering information seems to confirm that, of the technologies considered, only variable capacity compressors and variable speed fan motors have the potential to be cost options for providing additional efficiency compared to today's established technologies. This provides evidence that ARI is justified in not considering the potential benefits of microchannel heat exchangers as part of its relative cost data submission. Therefore, we will apply emerging technologies only to the reverse engineering results and consider the ARI relative cost multipliers to already include the effects of emerging technologies.

We do not believe our original emerging technology analysis was inconsistent, as expressed by Trane and EEI above, although we do recognize that combining the effects of component efficiency improvements does not necessarily lead to a cumulative improvement in the system. The intent of the analysis is not to provide a definitive estimate of the impact of any or all emerging technologies on system cost. It is to provide evidence as to the extent to which reverse engineering overestimates the cost of higher efficiency equipment by neglecting emerging technologies. Therefore, the method used previously for portraying and combining the potential effects of emerging technologies on system costs is carried forward into today's rule. Chapter 2 of the TSD provides the details of the revised emerging technologies analysis.

4. HFC-Based Engineering Analysis

ARI and Trane supported the Department's decision not to explicitly examine the effects of the HCFC phaseout on equipment cost and efficiency. (Wethje, ARI, Transcript p. 145; Crawford, Trane, Transcript p. 143). The Oregon Energy Office (OEO) and NRDC urged the Department to reconsider, given that a large fraction of the equipment sold under the new efficiency standard will likely use a refrigerant other than HCFC–22, even prior to the 2010 phaseout date. (Stevens, OEO, Transcript, p. 144; NRDC, No. 35 at 11–12).

To date, no data presented to the Department indicate that the incremental cost for increasing the efficiency of equipment using either HFC–407c or HFC–410a refrigerants will differ significantly from the incremental cost of increasing efficiency using HCFC–22 equipment. Although the base cost may differ somewhat, the incremental cost determines the life-cycle-cost savings. Furthermore, the Department continues to receive information that much of the market is changing to HFC–410a and that HFC–410a offers little, if any, efficiency benefit over HCFC–22 at the same equipment cost.

For these reasons, the Department will not perform additional engineering analysis related to alternate refrigerants. The costs to manufacturers related to their conversion to the new refrigerant will be considered in the Manufacturer Impact Analysis.

B. Life-Cycle-Cost Parameters

1. Extended Warranty and Service Costs

Energy Market and Policy Analysis, Inc. (EMPA) noted that the Life Cycle Cost analysis did not explicitly address extended warranty and service costs and asserted that they should be taken into account. (Schleede, EMPA, Transcript, p. 221). The Alliance to Save Energy (ASE) stated that the inclusion of extended warranty and service costs would have the impact of reducing repair and maintenance costs. (Prindle, ASE, Transcript, p. 222). Industry consultant Joseph Pietsch stated that manufacturers may provide longer-term warranties for high efficiency systems that cover a wider range of components, to alleviate customer concerns regarding possible future repair cost of the more

complex systems. (Pietsch, No. 36 at 22).

Air conditioner manufacturers warranty their equipment against defects, and contractors typically guarantee performance and installation. Manufacturer warranties typically cover parts and labor for one year, with longer warranties applying to the compressor. Mr. Pietsch noted that compared to low-SEER products, high-SEER products have more components, many of which have a relatively short history. Reliability patterns of these new components are less known, so warranty accruals may be significantly higher for these products. (Pietsch, No. 36 at 22). Dealers also may offer extended warranties which are usually underwritten by the manufacturer or a third party.

A product that is less reliable or contains more expensive components will have a higher cost of repair over its lifetime. Either the consumer or the warranty provider will bear that added cost directly through more frequent service calls or higher repair costs. If the cost is covered by warranty, however, the warranty provider passes it back to future warranty holders in the form of slightly higher warranty prices. DOE believes the incremental increase in the price of the warranty is equal to, or just slightly higher, than the discounted present value of the incremental repair costs over the life of the warranty. Over the long term then, the average consumer always incurs the cost of higher repair costs, either directly or through higher warranty prices. Since our analysis considers the present value of consumer life cycle costs on the average consumer, incremental repair costs and incremental warranty costs are the same, and interchangeable.

Since consideration of repair costs is satisfied by considering either repair costs or extended warranties, we limited our consideration to repair costs, which are slightly easier to estimate, communicate, and incorporate into the analysis. Considering them both would require a much more rigorous analysis of service costs since we would have to estimate the service cost incurred on a year-by-year basis. That additional analysis would likely not produce significantly different results. Comments are welcome as to whether explicit consideration of extended warranties would produce significantly different results from those based on service costs alone which we have assumed rise in proportion to the price of the equipment. Since more efficient equipment is also more expensive, we have included the higher cost of repair, or equivalently, the higher warranty cost associated with more efficient equipment, as part of the lifecycle cost analysis.

2. Residential Energy Consumption Survey (RECS)

Both NRDC and EMPA asserted that RECS'' method for estimating end-use energy consumption (*i.e.,* conditional demand analysis) yields unreliable and flawed results. NRDC added that conditional demand analysis methods inherently underestimate central air conditioner energy use due to its treatment of internal loads. EMPA stated that the RECS household sample size is too small to be used in the manner in which it is being treated in the life-cycle cost analysis. (NRDC, No. 35 at 6–7; EMPA, No. 33 at 4–6; Schleede, EMPA, Transcript, pp. 160–161). Virginia Power, EEI, and EMPA all requested that the analysis be updated to use RECS 1997 data rather than RECS 1993 data. EEI added that actual submetered end-use data should be used if possible rather than the end-use data in RECS. (Virgina Power, No. 27 at 2; EEI, No. 20 at 5, Schleede, EMPA, Transcript, pp. 160–161).

As part of the process to improve the new energy efficiency standards analysis, we are committed to use sensitivity analysis tools to evaluate the potential distribution of impacts among different subgroups of consumers. The Department believes that RECS provides a nationally representative household data set which is suited for conducting the type of sensitivity analyses suggested by the Process Rule. Limiting the RECS households to those equipped with either central air conditioners or heat pumps, the LCC analysis performs a household-by-household analysis that predicts the percentage of households that will incur net life-cycle cost savings or costs from an increased efficiency standard.

End-use energy consumption data from past RECS surveys have been compared to submetered end-use data for purposes of validating their conditional demand analysis estimates. Central air conditioning and space-heating energy data from the 1990 RECS were shown to differ by 5% to 22% compared to submetered end-use data from five utility service areas. The Department believes that this range of difference is acceptable considering that the conditional demand analysis utilized by RECS is fully capable of estimating the energy consumption of equipment throughout the nation. Because RECS is a very well suited source of data for performing the analyses suggested by the Process Rule and RECS has been shown to provide reasonable estimates of end-use energy consumption, we will continue to rely on RECS for providing the annual energy consumption data necessary for conducting the life-cycle cost analysis.

The analysis conducted in support of this proposed rule has been revised based on data from the 1997 RECS rather than the 1993 RECS.

3. Equipment Lifetime

Virginia Power, EEI, ARI, Unico, Rheem Co., and Trane commented that the average equipment lifetime of 18.4 years assumed in the Supplemental ANOPR was incorrect, and suggested an actual lifetime between 12 and 15 years. (Virginia Power, No. 27 at 2; EEI, No. 20 at 10; ARI, No. 48 at 3; Unico, No. 34 at 3; Lux, Rheem Co., Transcript, p. 165; Foster, EEI, Transcript, p. 170; Crawford, Trane, Transcript, p. 191; Wethje, ARI, Transcript, p. 193). EMPA asserted that the length of first ownership should be used as the basis for equipment lifetime. (EMPA, No. 33 at 3, Schleede, EMPA, Transcript, p. 162).

NRDC, ACEEE, and the Vermont Energy Investment Corporation (VEIC) all believed that the 18.4 year equipment lifetime was reasonable. They reasoned that a shorter or longer average equipment lifetime would result in less accurate estimates of historical shipments. ACEEE added that unless manufacturers can provide new data, the 18.4 year average lifetime should be retained. (NRDC, No. 35 at 7–8; ACEEE, No. 43 at 6–7; VEIC, No. 32 at 7).

The Department notes that the basis of the 18.4 year equipment lifetime was a survey conducted on more than 2,100 heat pumps in a seven state region of the U.S.[13] The survey determined not only the lifetime of a complete heat pump system, but the life of the original compressor as well. Although the system lifetime is on average over 18 years, the survey also showed that the original compressor lifetime was, on average, 14 years. Thus, the survey indicated that essentially all heat pump owners replaced their original compressor once in the lifetime of system.

In the LCC analysis conducted for the Supplemental ANOPR, we did not include any repair costs associated with replacing the compressor. But since the heat pump survey clearly indicates that the original compressor is replaced once in a system's life, the analysis was revised to include a repair cost for the

[13] ''Bucher, M.E., Grastataro, C.M., and Coleman, W.R., ''Heat Pump Life and Compressor Longevity in Diverse Climates.'' ASHRAE Transactions, 1990. 96(1): p. 1567–1571.

compressor. Conducting the analysis in this manner retains the average system lifetime of 18.4 years but explicitly addresses the replacement cost of the compressor, which is the most expensive component of a system. As indicated by the survey data, the compressor was assumed to be replaced in the 14th year of the system's life. In addition, because more efficient systems tend to use more efficient and, thus, more expensive compressors, the compressor replacement cost was assumed to vary with system efficiency.

Although the revised LCC analysis assumed an 18.4 year average equipment life and one compressor replacement, a shorter equipment lifetime was investigated as an alternative scenario. In this alternative scenario, a retirement function yielding an average lifetime of 14 years was used and compressor replacement costs were not considered. The shorter equipment lifetime is plausible assuming that most, if not all, consumers when faced with replacing a failed compressor would choose to replace the entire system rather than replace the compressor in a relatively old system. LCC results based on both the 18.4 year and 14 year average equipment lifetimes are provided in Section VI as well as Chapter 5 of the TSD.

4. Commercial Applications

NRDC, ACEEE, VEIC, CEC, and the Northwest Power Planning Council (NPPC) commented that DOE should analyze the application of residential central air conditioners and heat pumps (*i.e.,* single-phase equipment) in commercial buildings. All stated that there is a significant portion of this type equipment being used in small commercial buildings. They argued that since the energy use patterns in commercial buildings are distinctly different than those in households, the analysis should include residential equipment use in commercial applications. (NRDC, No. 35 at 12–13; ACEEE, No. 43 at 2; VEIC, No. 32 at 6–7; CEC, No. 47 at 8; Tom Eckman, NPPC, Transcript, p. 166).

EEI requested clarification as to how the commercial application analysis was conducted for the Department's January 14, 2000, LCC Sensitivity Analysis. (EEI, No. 20 at 10).

For today's proposed rule, the use of residential equipment in commercial buildings was analyzed assuming that 10% of all central air conditioners and heat pumps are used in commercial applications. This figure is based on ARI's estimate that approximately 10% of single-phase air conditioning and heat pump shipments are used in commercial buildings. The annual energy consumption of commercially applied air-conditioning and heat pump equipment was based on the simulation of 77 nationally representative commercial buildings consistent with the approach and assumptions utilized to develop the American Society of Heating, Refrigerating and Air-Conditioning Engineers' (ASHRAE) Standard 90.1–1999. Both average and marginal electricity rates were developed by matching a set of commercial electric utility tariffs to the above simulated building loads and demands.

The LCC spreadsheet models were modified so that commercial buildings with their corresponding annual energy consumption and marginal and average electricity costs represent 10% of the entire residential and commercial building population. Complete details on the procedure to incorporate commercial applications are included in Chapter 5 of the TSD.

5. Marginal Electricity Prices

NRDC, ACEEE, CEC, PG&E, NPCC, and ASE commented that the Supplemental ANOPR analysis underestimated future marginal electricity prices. Several of the comments stated the belief that deregulation of the electric utility industry would result in greater volatility of electricity pricing that eventually would translate into higher electricity prices during peak power periods. (Goldstein, NRDC, Transcript, p. 175; ACEEE, No. 43 at 6; CEC, No. 47 at 8; PG&E, No. 31 at 6–7; Eckman, NPPC, Transcript, pp. 167–168; Prindle, ASE, Transcript, p. 168).

ARI and EEI were not convinced that a deregulated electric utility industry would result in higher electricity prices in the future. ARI noted that under a peak pricing scenario consumers may decline to operate their air-conditioning equipment to avoid incurring high electricity bills. EEI added that currently, there is no mechanism to capture utility capital costs for providing peak power in residential pricing. (Wethje, ARI, Transcript, pp. 168–169; Foster, EEI, Transcript, pp. 169, 175–176).

The current method for establishing marginal electricity prices only allows for defining marginal prices for those years in which data are available. In the case of residential pricing, the data for establishing marginal prices (the 1997 RECS) was taken from the year 1997. The same can be said for commercial buildings. The utility tariffs used to establish marginal prices (as described earlier) were collected in the year 1997. On average, residential marginal prices for households with central air conditioners are 3% lower than average rates while for households with heat pumps marginal prices are 7% lower. Space-cooling marginal prices in commercial buildings are on average 2% greater than average commercial rates. Future marginal prices were in turn based upon the Reference Case electricity price forecast from the AEO2000. The Reference Case forecasts declining electricity rates through the year 2020. Although it is certainly possible that future electricity rates may increase in a deregulated climate, the evidence to date (i.e., residential marginal prices are actually lower than average rates and AEO 2000 forecasts project declining electricity rates) convinces us that our current methods for establishing marginal prices are reasonable. To state that future prices may decrease or increase is speculative. Even in the case of commercial buildings where demand pricing already exists, marginal prices are only 2% greater than average electricity rates. This reenforces our conviction to keep our current methodology for establishing marginal prices. However, the Department seeks comments on its methodology and data for determining the appropriate marginal energy costs to use in future analysis.

6. Forecast of Future Electricity Prices

EMPA asserted that the EIA's forecast of electricity prices as found in the Annual Energy Outlook underestimates the future drop in electricity rates. (EMPA, No. 33 at 2–3; Schleede, EMPA, Transcript, p. 185). Don Dasher stated that any forecast of electricity prices should capture the future use of renewable energy and emerging technologies for generating power. (Dasher, Transcript, pp. 192–193).

Future marginal prices are based upon the Reference Case electricity price forecast from the AEO 2000. The Reference Case forecasts declining electricity rates through the year 2020. Although it is certainly possible that future electricity rates may increase in a deregulated climate, the evidence to date (*i.e.,* residential marginal prices are actually lower than average rates and current AEO forecasts project declining electricity rates) leads us to believe that our current methods for establishing future marginal prices are reasonable.

In addition to the Reference Case, DOE analyzed the effects of two other energy price forecasts, the AEO 2000 High Growth and Low Growth cases. (See TSD, Chapter 5.)

7. Discount Rates

NRDC, ACEEE, VEIC, PG&E, and CEC believe that the discount rate used in the Supplemental ANOPR analysis was too high. Their primary criticism pertained to the breakdown of finance methods which were assumed for establishing the discount rate. The Supplemental ANOPR analysis assumed that 35% of consumers purchasing a central air conditioner or heat pump used a credit card to finance their purchase. The comments argued for a much lower percentage and cited a recent PG&E survey that demonstrated that only 5% of consumers used credit cards. VEIC also cited a survey by Potomac Electric Power Company (PEPCO) that reported lower purchases with credit cards. (NRDC, No. 35 at 10–11; ACEEE, No. 43 at 3; VEIC, No. 32 at 3–4; Neme, VEIC, Transcript, pp. 186–187; PG&E, No. 31 at 7; CEC, No. 47 at 7). Counter to the above assertion, Trane maintained that the Supplemental ANOPR's assumption regarding the percentage of consumers using credit cards to purchase equipment was correct, based on the number of consumers in the U.S. that carry credit card debt. (Crawford, Trane, Transcript, p. 191–192). EEI commented that the interest rates associated with credit card and cash purchases needed to be revisited. (EEI, No. 20 at 6). EMPA asserted that with higher cost air conditioners, consumers' after tax income would be reduced, requiring them to forego the purchase of various household necessities such as food, clothing, and shelter. (EMPA, No. 33 at 3).

The Department performed an extensive review and revision to the methodology that determines consumer discount rate. The Supplemental ANOPR established the share of various finance methods used for purchasing air-conditioning equipment and determined the associated interest rates for each of the finance methods. For equipment obtained through the purchase of a new home, second mortgage, or home equity lines of credit, this approach is reasonable. But for purchases made to replace old or failed equipment where cash or some form of credit is used to finance the acquisition, we determined it more appropriate to establish how the purchase affects a consumer's overall household financial situation. For example, even though the purchase might be financed through a dealer loan or some other low interest financing vehicle, the more probable effect of the purchase is to either cause the consumer to incur additional credit card debt or forego their investment in some type of savings-related asset. Cash that was once available to either pay for household necessities or to invest in an asset like the stock market or a simple savings account now must be earmarked to pay off the equipment purchase loan, thus, either causing the consumer to incur additional credit card debt or to lose the opportunity to earn income from their assets. For today's proposed rule, we have decided to use the above methodology for defining the discount rate for central air conditioner and heat pump purchases. The 1998 Survey of Consumer Finances (SCF) was used to estimate the percentage of households that used second mortgages to finance their equipment purchase as well as those households that either would incur more credit card debt or be forced to forgo their normal course of investing. Data from the Air Conditioning, Heating, and Refrigeration News (December 12, 1998) established the percentage of shipment going to new homes.

After establishing the share captured by each finance method, the range of interest rates due to each method were developed. The 1998 SCF established the range of interest rates for new home mortgages, second mortgages, and credit cards. Rates of return on certificates of deposit, savings bonds, and bonds were based on historical interest rates. A weighted-average discount rate of 5.6% is calculated from the mean interest rates for each finance method. A more detailed discussion of the data sources and how the interest rates were derived is found in Chapter 5 of the TSD.

8. Percentage of Households With LCC Savings

For the Supplemental ANOPR, all consumers having an LCC increase resulting from the standard were considered to be adversely impacted. Several comments expressed concern on how we would use this information on adverse consumer impacts in selecting minimum efficiency standards. ARI, Unico and EMPA asserted that a majority of households would need to benefit from the standard in order to justify its selection. (ARI, No. 48 at 5; Unico, No. 34 at 3; EMPA, No. 33 at 2). NRDC stated that the percentage of households with LCC savings or costs relative to the baseline level should not be a criterion in basing a standard's economic justification. NRDC stated that variations in electricity pricing make it nearly impossible to determine consumer costs on a disaggregated level. (NRDC, No. 35 at 12–15). PG&E commented that the percentage of households at any particular standard level with net LCC costs actually overstates the significance of the negative LCC impacts. Most consumers experience LCC increases of only a few dollars over the life of the equipment. (PG&E, No. 31 at 8).

The Department agrees with PG&E's comment and in formulating today's proposed rule, DOE has redefined the criteria for determining negative impacts. Noting that the baseline LCC is approximately $5,000 for central air conditioners and $10,000 for heat pumps, previously all consumers incurring an LCC increase as small as $10 were considered to be adversely impacted by an increase in the standard. In the revised LCC analysis, the Department defines consumers impacts as follows: consumers who achieve significant net LCC savings (*i.e.,* LCC savings greater than 2% of the baseline LCC), consumers who are impacted in an insignificant manner by having either a small reduction or small increase in LCC (*i.e.,* within ±2% of the baseline LCC), or consumers who achieve a significant net LCC increase (*i.e.,* an LCC increase exceeding 2% of the baseline LCC). Consequently, only consumers (both residential and commercial) having an LCC increase greater than 2% of the baseline are considered to be negatively impacted.

9. Regional Analysis

At the December 9, 1999, public workshop, NRDC and CEC requested further information on regional distributions of households with net LCC savings or costs relative to the regional baseline level. (Goldstein, NRDC, Transcript, pp. 188–189; Martin, CEC, Transcript, p. 274). The Department responded by conducting additional analysis, which was posted to our web site on January 14, 2000, and included LCC analysis disaggregated by region into census divisions. From this regional analysis it could be determined how different parts of the country would be impacted by an increase in the minimum efficiency standard.

10. Rebuttable Payback

EEI asked why the rebuttable payback period is not determined with annual energy use data from RECS. They also requested clarification as to how rebuttable payback periods will factor into the decision to select a new minimum efficiency standard. (EEI, No. 20 at 7–8).

As prescribed by section 325(o)(2)(B)(iii) of EPCA, the rebuttable payback period is calculated under the applicable test procedure. Thus, all rebuttable payback periods are based on an annual energy consumption that is determined through the current

Department of Energy test procedure for central air conditioners and heat pumps. The resulting annual energy use as determined by the test procedure is significantly greater than what is indicated by RECS. Thus, the rebuttable payback periods are significantly shorter than those based on the RECS annual energy consumption data.

The rebuttable presumption test does not consider the full range of impacts of standards, including manufacturer impacts and energy savings. Therefore, the Department bases its decision primarily on the seven factors specified in section 325(o) of the Act.

11. Sensitivity Analyses

ACEEE recommended that several sensitivity analyses be conducted to determine how the LCC varies with changes in certain input variables. (Nadel, ACEEE, Transcript, pp. 233–236; ACEEE, No. 43 at 10). NRDC also requested some of the sensitivity analyses described by ACEEE. (NRDC, No. 35 at 12–13). Trane went on the record as not endorsing all of ACEEE's requested sensitivities. (Crawford, Trane, Transcript, p. 237).

We conducted several of the requested LCC sensitivity analyses, as well as the previously described regional analyses, and posted the results to our web site on January 14, 2000. The sensitivities examined how the LCCs for central air conditioners and heat pumps were impacted by changes in the following: dealer markups, builder markups, repair costs, lifetime, emerging technologies, and the use of single-phase central air conditioning and heat pump equipment in commercial applications. Of the sensitivities examined, the assumption of fixed margins (*i.e.,* no variation in the difference between the equipment price to the consumer and the cost to manufacture with increased efficiency) had the largest impact on the LCC results. Changes in the lifetime had a noticeable affect but not the same order of magnitude as the fixed margin assumption. All other sensitivities had only minor impacts on the LCC results.

In preparing the sensitivity analyses, we found reason to revise our assumptions regarding markups, compressor replacement, and commercial applications. Those revisions are incorporated into the analysis that supports today's proposed rule and are discussed elsewhere in this Section.

C. Shipments Analysis

1. Forecasted Housing Shifts

Both the OEO and NPPC stated that there will likely be significant shifts in regional housing populations. For example, future housing shifts may result in more housing in warmer weather climates where central air conditioning is more prevalent and used more often, thus, impacting the nation's future space-conditioning energy use. Since the Shipment Analysis does not account for regional housing shifts, OEO and NPPC request that it be accounted for in the analysis. (Stephens, OEO, Transcript, pp. 171–172; and Eckman, NPPC, Transcript, pp. 216–217).

Preliminary analysis of regional housing shifts has been examined and determined to have a relatively small effect (*i.e.*, a maximum change of 2% in the cumulative amount of monetary energy savings). This is primarily due to the large size of the housing stock and the fact that changes in the housing stock occur over a long time scale resulting in slow changes in regional housing shifts. A preliminary analysis of historical housing data coupled with worst case forecasts of regional housing and air-conditioning market share shifts demonstrated the small impact on national NPV due to changes in regional housing.

New housing starts are only about 2% of existing housing stock and this is forecast to decrease to about 1% of housing stock by 2030. Historical data over the period from 1980 to 1990 showed the shift in regional shares of housing stock changed by less than 2% (decreased by 1.2% and 1.7% in the Northeast and Midwest, respectively, and increased by 1.7% and 1.2% in the South and West, respectively). If these changes continue at a steady rate, the housing share of the Northeast will decrease another 3.6% over three decades. This translates to a relative decrease of 17% in the Northeast's air-conditioning market share. If the entire loss in the Northeast's market share goes to that portion of the South with the highest annual energy use (Census Region 7), the absolute market share of this region would increase from 15.7% to 17.7%. The result of this change is that the dollar value of energy savings at a 12 SEER standard level would increase from $5.73 billion to $5.85 billion, or about a 2% increase in the dollar energy savings. The actual impact on dollar savings would likely be less than half of this because the above housing shift was assumed to be immediate and to the highest energy use area of the South. As a result, the actual impact would likely be less than 1% on the dollar value of the energy savings. For these reasons, the Department has not revised its Shipments Analysis to account for shifts in regional housing populations.

2. Elasticities

Both ACEEE and NRDC note that the purchase price elasticities are based on data from the 1970s and are likely no longer applicable to current market conditions. Both stated that price elasticities should be developed from more recent data. (ACEEE, No. 43 at 10; Nadel, ACEEE, Transcript, p. 211; Goldstein, NRDC, Transcript, pp.211–212).

This has been corrected for in the analysis underlying today's proposed rule. We have calibrated elasticity for price relative to household income, with historical data from 1970 to 1996. It is worth noting that for forecasting future shipments, consumer purchase decisions are based upon sensitivities to changes in product life-cycle cost relative to income. Life-cycle cost changes are dependent on the purchase price and the present worth of operating cost savings. Operating cost savings are in turn dependent on electricity prices. As electricity prices are forecasted to decrease over time (based on the Annual Energy Outlook 2000), operating cost savings due to a particular increase in equipment efficiency will in turn decrease over time and have less of an impact on consumer purchase decisions.

Usage elasticity expresses how changes in equipment efficiency resulting from higher standards changes consumer behavior regarding air conditioners and heat pumps usage. Because of lower operating costs, consumers may change thermostat settings and/or operate the systems for longer hours to achieve greater comfort. Direct evidence of the magnitude of this effect is limited and the Department is interested in receiving comments. One study [14] indicated that in summer months consumers may take 1–2% of the cooling energy savings back in increased usage, and 9–13% in winter months. Usage elasticity has not been considered in the current analysis but will be considered in the Final Rule.

3. Equipment Efficiency

Several comments received questioned the use of a weighted-average equipment efficiency equaling the SEER of the standard level for

[14] Jeffrey A. Dubin, Allen K. Miedema, and Ram V. Chandran, 1986. ''Price effects of energy-efficient technologies: a study of residential demand for heating and cooling,'' Rand Journal of Economics, Vol 17, No. 3, Autumn, pp 310–324.

forecasting shipments and national energy savings. All asserted that in the event of an increase in the minimum efficiency standard, the actual weighted-average efficiency of equipment in the marketplace would be greater than the minimum efficiency standard. For example, if a 12 SEER standard was set as the new minimum, the weighted-average efficiency would be equal to a value which was greater than 12 SEER. (Neme, VEIC, Transcript, pp. 214, 226–227; Nadel, ACEEE, Transcript, p. 228; NRDC, No. 35 at 8–9; PG&E, No. 31 at 6–7).

The Department has modified several assumptions with regard to future equipment efficiencies. The Shipments Model no longer simply forecasts a weighted-average equipment efficiency, but rather, an actual distribution of efficiencies *i.e.,* the percentage of shipments which occur in incremental SEER bins over the range of the minimum standard 10 to 18 SEER). Also, as discussed in Section IV, three efficiency scenarios are provided to model future equipment efficiencies. The impact of the three different scenarios on national energy savings and national net present values are discussed in Section VI.

EEI asked the reason for assuming the weighted-average efficiency remains fixed at the same SEER level from the year 1997 to the assumed effective date of standard (2006). (EEI, No. 20 at 7–8). Historical data from the years 1994 through 1997 indicate that shipment-weighted efficiencies have remained essentially flat. As a result, weighted-average efficiencies were assumed to remain constant from 1997 through 2006.

4. Fuel Switching

EEI, York, Virginia Power and Southern Company stated that shipment forecasts must account for any fuel switching that might occur as a result of increased heat pump prices to the consumer. The concern is that an increase in the total installed price of a heat pump would cause some consumers to choose a gas-space heating appliance rather than an electric heat pump. (Foster, EEI, Transcript, p.263; Madera, York, Transcript, p.264; Virginia Power, No.27 at 2–3; Southern Company, No. 29 at 1–2). ACEEE stated that any incorporation of fuel switching into the Shipments Model must account for future changes in gas-fired space-heating minimum efficiency standards. (Nadel, ACEEE, Transcript, p.266).

Our examination of the historical data tends to indicate that the relative installed price of heat pumps is not the primary driver in heat pump vs. gas furnace purchase decisions. The more important factor in these decisions seems to be the availability of gas service. In the middle 1980's, there was a large peak in gas prices relative to electricity, but only a small, delayed increase in the relative market share of heat pumps. Besides this one historical event, the relative market share of heat pumps has been relatively constant from 1977 to the present.

D. National Energy Savings Analysis

Changes to the LCC assumptions impact the NES and the National Net Present Value (NPV) analyses directly as the NES analysis uses the same basic data as the LCC analysis for the energy use and cost of the central air-conditioning and heat pump equipment.

As previously mentioned, estimates of NES and NPV also depend on the distribution of product efficiencies among units sold after a standard takes effect in the marketplace. For the Supplemental ANOPR, the assumed product efficiency distribution was based on a weighted-average equipment efficiency equal to the SEER of the new standard level.

1. Uncertainty in NES Results

EEI believes that due to the uncertainty in the electric utility industry and its impact on future electricity prices it is more appropriate to represent the NES results with some degree of uncertainty. (EEI, No. 20 at 8).

Although NES results presented in the Supplemental ANOPR were based only on electricity price estimates from the Reference Case forecast from the 1999 Annual Energy Outlook, our NES spreadsheets have provided users with five different options for estimating future electricity prices; 1999 AEO Reference Case forecast, 1999 AEO High Growth Case forecast, 1999 AEO Low Growth Case forecast, 1998 Gas Research Institute (GRI) forecasts, and constant electricity prices. Providing a number of options for forecasting future prices recognizes the uncertainty in the electric utility industry and how that uncertainty can impact the NES results. The NES uses single point values rather than ranges as used in LCC; consequently, NES provided single point results rather than a range. However, in order to account for the uncertainty in electricity price forecasts, DOE evaluated three energy price scenarios in the NES. The NES Spreadsheets have been made available to all interested parties via our web site to facilitate analysis of sensitivities for assumptions different than those for the Supplemental ANOPR. For today's proposed rule, we continue to provide the same options for forecasting future electricity prices with the exception that AEO 1999 forecasts have been replaced with those from the AEO 2000 as well as the five options for energy prices as described above.

2. Site-to-Source Conversion

Both the Southern Company and EEI questioned the validity of the site-to-source conversions used in the NES spreadsheet model. The Southern Company and EEI asserted that hydroelectric power and renewable forms of electric energy are assigned fossil fuel-fired power plant heat rates. (Southern Company, No. 29 at 4–5; EEI, No. 20 at 7).

We estimated the effects of proposed central air conditioner and heat pump standard levels on both the gas and electric utility industries using a variant of DOE/EIA's NEMS–BRS, together with some exogenous calculations.[15] NEMS–BRS is used to determine site-to-source conversion factors and does not assign fossil-fuel-fired power plant heat rates to hydroelectric or renewable power plants. The site-to-source conversion factors used in the Supplemental ANOPR are average annual values for the residential sector. The average conversion factors are based on all forms of electricity generation with their corresponding heat rates (*e.g.*, heat rates are assigned to fossil-fuel fired power plants which are much different than those assigned to other types of power plants). As a result, the site-to-source conversion factors are significantly lower than if all power plants were assigned the heat rates associated with fossil fuel-fired power plants. For today's proposed rule, site-to-source conversion factors are based on recommendations of the Advisory Committee on Appliance Energy Efficiency Standards. In this analysis, heat rates are based on determining how a deviation in national energy consumption due to standards impacts the type of electricity generation. In other words, heat rates are based on those power plants which are avoided as a result of the standard.

[15] For more information on NEMS, please refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is National Energy Modeling System: An Overview 1998, DOE/EIA–0581(98), February, 1998. DOE/EIA approves use of the name NEMS to describe only an official version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, the name NEMS-BRS refers to the model as used here (BRS is DOE's Building Research and Standards office, under whose aegis this work has been performed).

E. Consumer Sub-Group Analysis-Low Income Renters

NRDC stated that impacts on low-income renters should be investigated, because such renters do not purchase their space-conditioning equipment and they have no choice as to the efficiency of the equipment which is used to space-condition their home. (NRDC, No. 35 at 9).

We have investigated the economic impact of standards on low-income households, and have included such impacts in section VI.D.7 of today's proposed rule and in Chapter 10 of the TSD. But we have not investigated the impacts on low-income renters separately. Renters at each income level are considered to have the same choice in efficiency as new home purchasers at the same level. Regardless of whether a household is occupied by an owner or a renter, we implicitly assume that the occupant incurs all costs of ownership, either directly or through rent payments. Therefore, we believe that our consideration of low income households generally applies to renters as well as owners.

F. Utility and Environmental Analysis

1. Peak Power Impacts—Reliability

The CEC raised concerns over peak power by stating that the western region of the U.S. will soon face a capacity shortfall which will necessitate reductions in peak demand (CEC, No. 47 at 2–4). Leon Neal, Advanced Energy Corporation (AEC), stated that because of a relationship between SEER, EER, and equipment capacity which is not captured by using only the ''nominal 3 ton'' unit and SEER analyses, there were important factors not addressed in the DOE analysis. They argued that with larger capacity units at higher SEER, it is economic for manufacturers to use multi-compressor units and multi-speed compressor units, which results in a penalty in EER. They noted major national trends, *i.e.*, increasing average size of residential dwellings, the tendency to sell bigger systems to increase profits and compensate for poor installations, and the distrust of contractors for higher efficiency equipment. (AEC, No. 17 at 1). EEI stated that the consideration of peak power impacts in setting new efficiency standards departs from the Department's statutory mandate. (Foster, EEI, Transcript, p. 176).

With regard to AEC's concern that an increase in the efficiency standard would be accompanied by an increased air-conditioning power demand, we are not convinced that this situation would occur. Over the last 20 years, while shipment-weighted efficiency has continually increased, usage has remained relatively constant. Therefore, we see no reason that a significant jump in system usage would occur in conjunction with higher efficiency standards.

Regarding EEI's claim that the consideration of peak power impacts departs from the Department's statutory mandate, section 325(o)(2)(B)(i)(VII) of the Act, 42 U.S.C. 6295(o)(2)(B)(i)(VII), allows the Secretary to consider other factors deemed relevant for updating minimum efficiency standards, including peak power impacts.

2. Quantitative Assessment of Impacts on Peak Demand

For purposes of estimating peak demand impacts from an increase in the central air conditioner and heat pump energy efficiency standard, we are using a version of the NEMS, called NEMS–BRS. NEMS–BRS is run similar to the AEO2000 NEMS except that central air conditioner and heat pump energy usages are reduced by the amount of energy (electricity) saved due to the proposed trial standard levels. The input of energy savings are obtained from the NES spreadsheet.

NEMS estimates peak power impacts by determining the reduction in installed generation capacity due to an increase in the minimum efficiency standard. For central air conditioners and heat pumps, NEMS uses a single nationally representative end-use load shape to estimate peak power impacts. The overall end-use load shape is reduced in proportion to the amount of energy savings achieved through an increase in the standard. The reduction in power demand achieved by shaving the end-use load shape is extrapolated to a national scale to come up with nationally representative peak power impacts. Thus, NEMS does not use the equipment's EER performance, per se, to estimate peak power impacts. Rather, because the load shape is shaved in proportion to the energy savings, the EER is implicitly assumed to increase in proportion to the SEER.

The forecasted peak impacts using NEMS–BRS are presented in Section VI of today's proposed rule.

3. Qualitative Assessment of Air Conditioning Standards Impact on Power System Reliability

We also recognize that reducing growth in electricity demand during peak periods may improve the reliability of the U.S. electric power system. But there are number of factors with the electric power system itself that may overwhelm any effect that an improvement in residential air conditioning efficiency might offer. First, investment in system expansion has fallen behind demand growth, and future development may be limited by siting constraints. Second, industry restructuring requires the development of new technologies, operating procedures, and regulatory structures to meet peak demands. And third, the strong demand expansion of recent years may well continue into the future. Within this environment, the potential benefits of a central air conditioner and heat pump standard that could lower growth in peak demand could be desirable. But, due to the existing problems with the electric power system described above, it is difficult to assess, in quantitative terms, the impact of an air conditioner standard on system reliability. Thus, in addition to the planned activities to improve NEMS to forecast more credible peak demand impacts, we plan to assess the reliability of the U.S. electric system to determine what connection exists between end-use peak demand reductions and system reliability. The assessment will focus on three areas: (1) Defining reliability, (2) historic performance of the utility system, and (3) analyzing near- and long-term utility changes and how they might impact reliability. In defining reliability, we will use typical threats (*e.g.*, weather, tree falls, excess load, and inaccurate demand forecasts) to put system reliability into context. In addition, industry indices for the frequency of failures and the number of customers affected will be used. With regard to historic performance, we will attempt to analyze the history of system disturbances and estimate their economic consequences. Finally, we will look at the changes occurring in the utility industry such as restructuring and increasing demand growth to determine to try and assess how these future changes might impact reliability.

4. Competitive Residential Market

EEI asked whether NEMS, the model which is used for forecasting utility and environmental impacts, will be adapted to model more accurately the deregulated electric utility industry. As part of the deregulated industry, EEI stated that consumers will have choice of electricity providers. In addition, the industry will likely build more merchant power plants. (EEI, No. 20 at 9).

Although we recognize that NEMS may not be entirely accurate in its modeling of the changing electric utility industry, we believe it is still the best tool for forecasting the impacts due to increased central air conditioner and

heat pump standards. We also recognize the difficulty for any model or tool to forecast changes in the utility industry. Thus, the results from NEMS are used to provide a gross picture of the impacts that can be expected from the imposition of new efficiency standards for central air conditioners and heat pumps. Sensitivities are conducted with the AEO High Growth and Low Growth cases to capture the variability that could arise from changes in the electric utility industry.

G. Manufacturer Impact Analysis—Low Volume Manufacturers

First Company (First Co.) and National Comfort Products commented that the assumptions used in the engineering analysis were not applicable for low volume manufacturers and urged the Department to consider the situations of all firms in the industry. (First Co., No. 40 at 10; National Comfort Products, No. 30 at 1).

Since the engineering analysis is used to assess the impacts on consumers and the nation, it is more appropriate to rely on assumptions reflective of larger manufacturers who control more than 95% of the market. However, we did consider the special circumstances of lower volume manufacturers as part of the manufacturer impact analysis. We interviewed the major manufacturers as well as two smaller manufacturers, and based on this information, estimated the impact of standards on both large and small manufacturers separately.

H. Markups

The Supplemental ANOPR's engineering analysis estimated the cost of producing baseline air conditioners and heat pumps and also estimated the series of markups on that product cost that yield the price of the equipment to the consumer. Four markups were applied: Manufacturer markup (1.18), distributor/wholesaler markup (1.37), dealer/contractor markup (1.54), and sales tax (1.07). In general, these were based on financial reports for each group on a national basis.

NRDC, ACEEE and VEIC commented that instead of applying average markups to the incremental increase in costs resulting from new standards, it was more reasonable to apply a lower markup to those incremental costs. Otherwise, companies would receive a windfall from the new standard, which would surely not be the case in a competitive industry such as heating, ventilation, and air conditioning. (NRDC, No. 35 at 6, ACEEE, No. 43 at 2, VEIC, No. 32 at 2). NRDC also advocated the use of a fixed gross margin in dollars rather than a fixed percentage (NRDC, No. 35 at 6), while EEI stated that the fixed percentage assumption is unreasonable. (EEI, No. 20 at 10). ARI supported the markups the Department used. (ARI, No. 48 at 4).

Department consultant Joseph Pietsch stated that at the distributor level, since no labor is involved to modify the product, the markup is applied to a well-documented material cost. However, the distributor's markup percentage may vary by product type. If the distributor's mark-up prices to the installing trade are not competitive in the market served, the distributor might have to seek price adjustments from the manufacturer. Further, installing contractors typically use a markup procedure for labor that is most likely be at a different percentage than a markup for materials. (Pietsch, No. 36 at 23). Finally, prompted by comments we received, we now distinguish markups based on whether products are sold into new homes or as replacements or retrofits. (Nadel, ACEEE, Transcript pp. 122–123; and Eckman, NPPC, Transcript p. 152–153; CEC, No. 47 at 7).

After reviewing the comments and publishing an interim analysis with fixed dollar margin, the Department undertook a thorough review of its markup assumptions and made one minor and one major revision.

First, at the manufacturer level, the markups were raised slightly (from 1.18 to 1.24) partially to reflect new financial data for a manufacturer who recently completed an initial public offering, and partially to incorporate results from the MIA. The MIA suggests that firms accrue a higher profit margin on baseline equipment than the conservative 1% assumed for the Supplemental ANOPR's Engineering Analysis.

Second, at the distributor and dealer levels, analysis of U.S. Census Bureau data and recent industry financial reports suggest that markups on changes in the unit price of equipment are less than the average markups for those industries. In light of these new findings, the markups for the distributors and dealers on the incremental increase in equipment cost were lowered from 1.37 to 1.09 and 1.54 to 1.27, respectively. For the distributor, the markup on the portion of equipment cost equal to the cost of the baseline equipment remains at 1.37. For the dealer, the 1.27 markup is applied to the total cost. The original 1.54 assumption included the markup on the labor portion of installation, which is not appropriately applied to equipment. We increased our estimate of the markup on installation labor slightly to compensate for the lower markup on equipment price, keeping the overall installed price the same. The Department's pricing information indicates that the total installed price of baseline equipment is accurate as published in the Supplemental ANOPR. The overall effect of these changes is to slightly decrease distributor and dealer equipment markups as the standard level rises.

We introduced a new builder markup of 1.27 for new construction markets only and applied the sales tax rate of 1.07 in only replacement/retrofit markets.

Table V.3 summarizes the changes in markups. The Technical Support Document (Chapter 5) provides more details on the derivation of these new estimates.

TABLE V.3.—COMPARISON OF REVISED MARKUPS AND SUPPLEMENTAL ANOPR MARKUPS

Type	Revised analysis markup	Supplemental ANOPR markup
Manufacturer Markup	1.23	1.18
Wholesaler/Distributor Markups:		
10 SEER	1.37	1.37
11 SEER	1.33	
12 SEER	1.30	
13 SEER	1.26	
Dealer/Contractor:		
Equipment Markup	1.27	1.55
Installation Labor: [a]		
Air Conditioner	$1,279/$1,367	$1,190
Heat Pump	$2,280/$2,160	$2,035

TABLE V.3.—COMPARISON OF REVISED MARKUPS AND SUPPLEMENTAL ANOPR MARKUPS—Continued

Type	Revised analysis markup	Supplemental ANOPR markup
Builder Markup	[b] 1.09	[c] 1.00
Sales Tax	[b] 1.04	[d] 1.07
Overall Markup:		
10 SEER	2.42	2.68
11 SEER	2.35	2.68
12 SEER	2.30	2.68
13 SEER	2.23	2.68

[a] For revised analysis, first value pertains to split systems and second value pertains to single package systems.
[b] Weighted-average markups representing both the new construction and replacement markets.
[c] For the SANOPR, builder markups were not considered.
[d] For the Supplemental ANOPR, sales taxes representing only the replacement market were used.

I. EER-Based Efficiency Standard

The Department received numerous comments on the relationship of steady state efficiency (EER) to increases in SEER. NRDC, ACEEE, VEIC, PG&E, CEC, OEO, Unico and Southern Company support the establishment of minimum efficiency standards based on EER at an outdoor temperature of 95°F, (EER(95°F)) in lieu of, or in addition to, SEER, which is based largely on an outdoor temperature of 82°F. (NRDC, No. 35 at 15–16; ACEEE, No. 43 at 8–9; VEIC, No. 32 at 5; PG&E, No. 31 at 1–4; CEC, No. 47 at 5; OEO, No. 46 at 10–12; Unico, No. 34 at 2; Southern Company, No. 29 at 3).

Their concern is that an increase in SEER does not necessarily correspond to an increase in EER, and that a 95°F rating condition better represents the performance of an air conditioner on hot days when electricity demand is at its highest. They believe that residential air conditioners contribute significantly to this peak demand, particularly in warmer regions of the country. Since electricity generation, transmission, and distribution capacity is determined by the electrical load served during these peak demand times, products that demonstrate improved efficiency under peak conditions can reduce the need for added electrical system capacity. They also believe that reducing peak demand is an important component of any integrated plan to improve the reliability of the nation's electrical system. Recently there have been several well-publicized blackouts and brownouts following, or in the midst of, hot periods. Advocates of an EER-based standard believe that a SEER-only standard does not guarantee the desired improvement in peak-period performance.

1. Current Relationship Between SEER and EER

It is certainly true that SEER is not an ideal indicator of system efficiency in very hot weather, and SEER may not be the best indicator of the seasonal efficiency for equipment operating in the warmest regions of the country. However, the relationship between efficiency at 82°F and at 95°F is fairly close for single-speed, single-capacity equipment, which represents the vast majority of unitary equipment in the marketplace. For other equipment, including variable or multi-speed equipment or equipment with modulating capacity, the 82°F test point is given a great deal of weight in determining the SEER rating. In these cases, the relationship between SEER and EER(95°F) is less certain, and manufacturers have some flexibility and incentive to improve SEER without improving EER(95°F).

The SEER test, representing equipment performance over the entire cooling season, encourages manufacturers to design equipment that consumes less energy throughout the cooling season for the average user. The EER(95°F) test, which is a measure of steady-state performance under only one set of climatic conditions, cannot provide insight into cyclical performance or cooling efficiency at cooler temperatures which represent the bulk of the cooling season nationwide. The Department, therefore, maintains that a SEER-based standard is essential to its effort to reduce national energy consumption. Further, we assume that peak demand savings would accompany any seasonal energy savings resulting from an increase in the required SEER level, because of the relationship between SEER and EER(95°F), and the costs of increasing EER(95°F) are already incorporated into the analysis.

However, the Department is particularly interested in ensuring that the current relationship between EER(95°F) and SEER will remain intact under new efficiency standards, resulting in reduction in growth of peak demand. This additional reduction in peak demand growth would benefit utilities through an eventual and incremental reduction in the need for new capacity. Maintaining higher EER(95°F) would also benefit consumers. Since the cost of electricity is highest during periods of peak demand, any decrease in electricity consumption during peak-periods, could reduce the user's annual electricity bill, particularly if the user pays time-of-day or seasonal rates.

2. Options for Possible EER Standards

The Department has at least four options for ensuring that EER(95°F) performance is maintained under new SEER standards. First, the Department could rely on the physical relationship between EER(95°F) and SEER to ensure that an increase in SEER would result in a corresponding increase in EER. The Department is not aware of any modulating, multi-speed, or variable speed air conditioners (hereafter referred to collectively as modulating equipment) being offered below 13 SEER, and very few of the available 13 SEER products are modulating equipment. Therefore, SEER and EER are closely related in equipment currently available at the efficiency levels that, as discussed below, the Department is proposing today to adopt as minimum levels—12 SEER for air conditioners and 13 SEER for heat pumps. Assuming that relationship holds under such new standards, EER would increase as SEER increases.

The second option would be to establish an EER(95°F) floor that must be met by modulating equipment only or, alternately, all equipment.

The third option would be to establish a minimum EER requirement at each SEER level, even for products exceeding the minimum SEER level. Again, this could be established for modulating equipment only or for all equipment.

The fourth option would be to alter the SEER test procedure to rely more on 95°F performance and less on performance at cooler temperatures. This would provide incentive for

manufacturers to optimize their designs to favor the warmer part of the cooling season and warmer regions of the country.

We consider the second and third options to be the most attractive. While we believe that the first option, relying on the current relationship between EER and SEER, would satisfy our concerns in the foreseeable future, this option provides no assurance that manufacturers would not develop and promote equipment in the long term that would seriously reduce EER ratings. The fourth option, altering the SEER test procedure to favor higher temperatures, would require us to embark on a new rulemaking to establish those new procedures and then to redo this rule to incorporate the new SEER values. We would prefer to avoid those delays and the design uncertainty associated with altering the procedures.

Both the second and third options, mandating minimum EER ratings, would guarantee that products under new standards would achieve the same EER ratings as they do today without altering the test procedures. The third option is more aggressive since it would require that products of higher SEER ratings must also meet increasingly stringent EER ratings.

Within the second and third options, we could establish EER requirements of varying degrees of stringency. For example, we could select EER levels equivalent to the ratings of the minimum EER rating of available equipment today at the proposed standard level, the median EER rating, anywhere in between, or even higher.

We prefer the second option, establishing an EER floor equal to the median EER ratings of equipment currently available at each standard level. That would result in a substantial improvement in the EER ratings of the typical product sold while still providing manufacturers with the flexibility to raise SEER ratings through modulation rather than EER improvements in higher efficiency products.

The concern that prevents us from fully endorsing the third option is that it would discourage the development and sale of modulating capacity and variable speed equipment. Modulating equipment realizes a benefit in the SEER test, allowing manufacturers to reduce the cost of the core components compared to non-modulating equipment. This cost reduction partially offsets the cost of the modulation, making modulating equipment more affordable for consumers. Being required to meet the same EER standards as non-modulating equipment would negate this cost benefit.

The Department wishes to encourage, not discourage, the development and sale of modulating equipment. Consumers value the added benefits of modulation, and manufacturers realize this value in the form of higher revenues. For consumers and the nation, modulation mitigates the inefficiencies caused by oversizing the system during installation. Oversizing is a widespread problem that causes frequent equipment cycling, increasing energy consumption. Furthermore, oversizing arguably contributes more to peak power demand than does any reduction in EER associated with modulating equipment.

For DOE to require products to meet median EER values rather than less stringent EER values would also raise some concerns. First, the cost-efficiency relationships used in our analysis may underestimate costs of manufacturing such products, since we did not include the costs of a minimum EER. Second, if an EER standard increases product cost, it would discourage the development and sale of modulating equipment at the baseline levels. We expect any cost increases required to meet median EER levels, however, would be slight and would not significantly alter our analysis.

To determine what the appropriate EER(95°F) requirement might be, the Department assessed ARI performance data on residential unitary equipment certified as of February 1998. The median EERs available for each product class at the minimum SEER levels DOE proposes today, are identified in Table V.4 as the ''Median Available EER at Proposed Minimum SEER.'' In addition to the minimum SEER proposal contained in this notice, the Department is inclined to adopt in the Final Rule minimum EER(95°F) requirements equal to these values. However, since there are very few packaged heat pumps available from which to draw a conclusion concerning EER, DOE believes the minimum EER requirement for packaged heat pumps should be the same as split heat pumps less the 0.3 EER offset seen between packaged and split air conditioners.

TABLE V.4.—MEDIAN AVAILABLE ENERGY EFFICIENCY RATINGS (EER) AND PROPOSED MINIMUM EERS IN RESIDENTIAL UNITARY EQUIPMENT (1998)

Product class	Proposed minimum SEER	Lowest available EER at proposed minimum SEER	10th percentile available EER at proposed minimum SEER	Median available EER at proposed minimum SEER	Proposed minimum EER
Split Air Conditioners	12.0	10.1	10.5	10.8	10.8
Packaged Air Conditioners	12.0	10.1	10.3	10.5	10.5
Split Heat Pumps	13.0	10.8	11.1	11.9	11.9
Packaged Heat Pumps	13.0	11.0	11.0	11.0	11.6

We encourage comments regarding the burdens and benefits that would result from including an EER requirement in the final rule. Of particular interest are comments regarding burdens on manufacturers and benefits regarding reduction in peak electricity demand, including the effect of an EER minimum on costs, on availability and sales of modulating equipment, and on electrical system reliability. In addition, comments are welcome to discuss the pros and cons of any of the other options described above.

J. Niche Products

Several types of central air conditioners and heat pumps are used in particular or unusual applications and have features that differ from those of the vast majority of products available in the marketplace. We refer to these as ''niche products.'' Included are single package units that are designed to be mounted within or immediately adjacent to a fixed-size opening in an outside wall of the structure and split systems where the outdoor unit is designed to be mounted in the same

manner. This would be comparable to the classes that have been established for room air conditioners that are defined as ''without louvered sides.'' Also included are non-ducted mini-split air conditioners and heat pumps, and high-velocity, small-duct systems. Typical applications for of niche products may include: existing single family buildings without air ducts and multi-family buildings with fixed-area wall openings and both new and existing manufactured homes.

Several manufacturers have claimed that certain niche products would not be viable if required to meet higher efficiency standards, and have asked the Department to establish new classes for these products, with efficiency standards maintained at current levels. All these products serve relatively small niche markets and as such, the efficiency standards established for these products will have little effect on national energy savings. Further, each is a product with some unique utility. Earlier in this rulemaking the Department sought information on whether higher standards would eliminate these products from the marketplace because of the severity of their constraints.

1. Ductless Split Air Conditioners and Heat Pumps

Ductless split systems, or mini-splits as they are commonly known, consist of a single outdoor unit and one or more indoor fan coil units, each located in the conditioned space. Since consumers may consider the interior units to be more intrusive than a ducted system, manufacturers strive to make them as compact as possible. This cabinet size constraint combined with efficiency losses due to heat transfer between refrigerant lines puts pressure on equipment efficiency.

Mitsubishi and EnviroMaster International (EMI), manufacturers of ductless split systems, commented that ductless products should be assigned a separate product class with a lower standard. (Mitsubishi, No. 18 at 1 and EMI, No. 26 at 1). Their arguments for a separate class are:

• Ductless units are operated like room air conditioners, because the ''compressor delivering air conditioning to a particular room operates only when necessary rather than when a central thermostat calls for cooling in another area;'

• Ductless units do not have the duct losses of a central air conditioning system, and so have greater installed system efficiency. Mitsubishi claims that: ''a 10 SEER ductless unit may be virtually equivalent or even higher in efficiency than a 12 SEER ducted unit';

• The overwhelming portion of the market of ductless mini-splits is in capacities of 18,000 Btu/hr and less. Making significant increases in the efficiency of motors and compressors used in these small units is difficult;

• Ductless air conditioners frequently employ variable speed control of the compressor motors. Mitsubishi claims: ''Controlling the speed of the compressor by inverter will not benefit the 100% capacity rating but it has a tremendous benefit when the compressor begins slowing down. During 50% capacity operation the SEER level would be several points above the 100% capacity SEER. This results in more energy savings, quieter operation, less peak load demands.'' Mitsubishi also argued that an EER rating, like a room air conditioner, would be more appropriate because of the inverter driven system's low cyclic losses; and

• Per ton, (of cooling capacity) a ductless air conditioning system is one of the most expensive HVAC systems in the U.S. today. Some of the reasons for high production costs are: low volumes in the United States, the indoor unit is a ''finished'' product fully visible to the customer so it requires additional cosmetic expenses, and the unit must be small, so complex design of coils is necessary.

After review of the available information, the Department does not believe a separate class is warranted for these products. The evidence presented in the comments does not convince us that these products would not be able to meet the proposed standard level. The constraints on increasing the size of the indoor fan coil units are primarily esthetic, and the Department is unaware of technological limitations to increasing minimum efficiency standards for these products. The esthetic disadvantage of larger cabinet size would be compensated by higher efficiency and lower cost of operation. While the claim that the small capacities make increased efficiencies difficult is a reasonable one, the Department is aware that systems with capacities of up to 44,000 Btu/h are available and believes that providing an exemption for all systems because of difficulty with smaller systems is not justified.

2. Small Duct High Velocity Air Conditioners

Small-duct, high-velocity (SDHV) systems target primarily the retrofit market, where they are installed in attic or closet spaces and distribute conditioned pressurized air through round ducts small enough to fit inside stud walls. Compared with conventional air conditioners and heat pumps that use large ducts, the indoor coil section of an SDHV system is compactly designed to facilitate retrofit installation in tight spaces, resulting in smaller face area and more rows of tubing than conventional systems. The compact fan coil design and small ducts contribute to high static pressure loss that must be overcome by the blower, requiring greater fan power. Manufacturers claim the greater energy consumption of these blower motors and the limited space for installing the fan coils makes it more difficult for SDHV systems to increase energy efficiency. To mitigate the burden on the blowers, designers reduce the required air volume by cooling it more than a conventional air conditioner, which offers an associated benefit of enhanced humidity removal but increases cost. In order to meet the current 10 SEER standard, manufacturers of SDHV systems typically pair the fan coil with high efficiency condensing units (typically 13—14 SEER).

Unico described a number of alternatives to increase system efficiency for their product, including a larger heat exchanger, an improved blower design and a more efficient blower motor, and concluded that the burden of increased initial cost would outweigh the benefits of increased system efficiency. (Unico, No.60 at 5). Unico asked the Department to either: (1) Exempt them from any increase in standards; (2) allow a 15% SEER credit for reduced duct losses associated with their type of system; or (3) allow their system to be tested as a coil only (without a blower) at a conventional airflow, using the test procedure's default fan power to establish a SEER rating but allow them to install systems with a high pressure blower. (Unico, No. 61 at 3).

SpacePak, another major manufacturer of this type of product, commented that they have made the investment to produce more efficient systems. (SpacePak, No. 39 at 1). SpacePak also provided ARI directory data indicating the higher efficiency of their designs. SpacePak claimed to offer many equipment combinations in the 11 to 12 SEER range, with only 17% of their ARI listings at the 10 SEER minimum. (Space Pak, No. 52 at 1).

After review of the available information, the Department does not believe a separate class with an efficiency standard below 12 SEER or a 15% SEER credit, is warranted for these products. Regarding Unico's third

alternative, i.e., revise the DOE test procedure to allow SDHV systems to be tested as coil-only products, the Department believes that such a change would recognize the improvements in delivered efficiency of the SDHV system because of reduced duct losses. We are therefore proposing to modify the DOE test procedure to allow small-duct high velocity system manufacturers to test their products as coil only products. We estimate that the impact of this allowance will be 1 to 2.5 SEER points; *i.e.,* a 10 SEER system would become an 11 to 12.5 SEER system. The Department seeks comments on whether the test procedure revision or other proposed changes are needed to maintain the viability of the small-duct, high-velocity systems in the market place.

3. Vertical Packaged, Wall Mounted

These products are factory-assembled single packaged vertical air-conditioners and heat pumps using single phase power but intended for use in commercial and industrial heating and cooling applications. The difficult air flow configuration (each of the condenser and evaporator compartments takes air in and exhausts it through the same face) combined with the attempt to minimize size constrains the ability of these units to attain higher SEERs.

The Department understands that single-package vertical air-conditioners and heat pumps are not distributed for personal use or consumption by individuals, and therefore believes that at present they are commercial products covered by EPACT and not by residential energy efficiency standards. Accordingly, vertical packaged, wall mounted equipment would not be covered by today's proposed rule for residential products.

4. Through-the-Wall Condensers

Through-the-wall (TTW) condensers were popular in new multistory residential construction in the 1960s and 1970s. Major manufacturers have since abandoned the replacement market, providing an opportunity for lower volume manufacturers. Most equipment is in the 1½ to 2½ ton capacity range. These systems take in air through only one face and exhaust air through the same face resulting in reduced efficiency because of increased fan power consumption. Some short-circuiting of exhaust air into the intake may also occur.

Replacements for through-the-wall condensers must fit within the same wall opening as the original units, even though original units may be half as efficient as the new units. Residents or building owners are particularly sensitive to any increase in price or to the cost of enlarging the wall opening to accommodate a larger condenser. Since repair is the only other cost effective alternative to replacement, a new standard that increases cabinet size or results in a significant price increase could be counterproductive, preventing the turnover of old, inefficient equipment.

According to submitted data, 10 SEER TTW split condensing air-conditioners with fan coils (when scaled up to 3-tons) are $206 more expensive (manufacturer price) than 10 SEER pad-mounted split systems. Under a 12 SEER standard for pad-mounted split air conditioners, the $206 differential would be maintained if TTW Condenser systems had to meet an 11 SEER rating (also based on submitted data). This differential increases when wall modifications are necessary. DOE believes 11 SEER is technologically feasible at this time for most configurations of TTW split equipment. TTW condensers come in three sizes (height × weight exterior to the building): 32″ × 24″ (768 sq. in.); 28″ × 26″ (721 sq. in.); and 23″ × 30″ (679 sq. in.). First Co. commented that imposing higher efficiency standards would eliminate through-the-wall products from the marketplace because of the significant increase in the price with a correspondingly small operating cost savings. (First Co., No. 40 at 1).

TTW packaged systems are intended for both new construction and retrofit. First Co's dimensions (new construction) are 43″ × 28″ (1,204 sq. in.). Skymark's retrofit unit is 15″ × 55″ (825 sq. in.). TTW packaged equipment for new construction, which is not severely size-constrained, should be able to reach 12 SEER in its current configuration with component upgrades. The current manufacturer price differential (First Co.) between TTW packaged and conventional packaged equipment (scaled to 3-tons) is $430. According to First Co. data, that differential would be maintained under an 11 SEER standard for TTW packaged with a 12 SEER for conventional packaged.

The Department proposes to establish a separate class for TTW equipment (including packaged and split, cooling only and heat pump) based on a maximum combined surface area of the air inlet and outlet of the condenser of 830 square inches, and a maximum capacity of 30,000 Btu/hr. The purpose of the maximum capacity requirement is to ensure that if new technology reduces the size of the condenser, manufacturers will not offer 3-ton equipment that fits the definition but is intended for use in conventional applications. To maintain the price differential between this new class and conventional equipment, we propose a standard of 11 SEER. Because electric strip heat is popular in TTW equipment, the 11 SEER standard would also apply to TTW heat pumps.

5. Non-Weatherized Single-Package Unit, Mounted Entirely Within the Structure

Another niche product, which was not discussed in the Supplemental ANOPR, is a non-weatherized single-package unit, mounted entirely within the structure (in an attic, basement, or closet), with outdoor air ducted to and from the unit. This unit is used in high-rise and garden apartments, manufactured homes, and other residential applications where locations for placement of outdoor units may be unavailable or too remote, where architectural aesthetics may be compromised by visible outdoor units, where vandalism or theft of outdoor units is a potential problem, or where compliance with local sound ordinances restricts the placement of outdoor air conditioning equipment.

Consolidated Technologies, Inc., manufacturer of the INSIDER, commented, ''For the INSIDER to be used in Manufactured Housing and Modular housing it is important to have the smallest footprint possible.'' (Consolidated Technologies, Inc., No. 42 at 2).

The Department recognizes that this product has space constraints, albeit not as severe as products that must fit a wall opening. Products at the 12 SEER level (the proposed air conditioning standard level) are currently on the market. A very difficult obstacle to establishing a separate class for this product is a definition that could not be used as a loophole to use its lower standard for conventional products. Its salient feature is its indoor location; product class definitions should be based on physical characteristics, and it is nearly impossible to define physical characteristics that would ensure products be installed in a particular location. No separate class is proposed for this product.

6. Request for Comments Regarding Niche Product Standards

The Department encourages comments regarding whether the proposed standards concerning high-velocity, vertically-packaged wall-mounted equipment, and through-the-wall equipment provide a significant advantage to those products versus

competing products, whether they are sufficient to preserve the unique features of those products, and whether improvements in the definitions are needed to prevent loopholes. For ductless split equipment and non-weatherized vertical packaged equipment, additional comment is welcome on the impacts that meeting the new standards would have on the availability of those products.

K. Thermostatic Expansion Valves

VEIC, NRDC, ACEEE, and CEC requested that a design standard requiring the use of thermostatic expansion valves (TXVs) be adopted to ensure that energy savings expected from an increase in the minimum efficiency standard are realized in the field. Several of the comments cited studies which demonstrate that TXVs can mitigate adverse effects on efficiency due to field installation problems such as inadequate evaporator airflow and improper refrigerant charge. CEC suggested that separate classes be established for systems with and without TXVs and that more stringent minimum efficiency standards be established for classes not utilizing TXVs, and VEIC suggested mandating the use of TXVs in all new equipment. (VEIC, No. 32 at 4–5; Neme, VEIC, Transcript, pp. 187–189; NRDC, No. 35 at 11–12; ACEEE, No. 43 at 5–6; CEC, No. 47 at 5–6).

At least two regulatory options exist for encouraging the use of TXVs. The first is to require that all equipment contain TXVs, hereafter called TXV requirement. The second is to establish a separate product class for TXV-bearing equipment and to reduce the minimum SEER requirements for those classes from the levels in today's proposed rule.

The EPCA allows the Department to issue a requirement such as mandating the use of TXVs if the Secretary determines that such a requirement is necessary to ensure that the product meets its performance-based standard. In the case of TXVs, the Department's current opinion is that products can meet the proposed SEER requirements without TXVs. This is certainly true in the laboratory. In the field, although many installations could undoubtedly benefit from TXVs, it is unclear whether we could find that TXVs are needed for those systems to perform at their rated efficiencies.

Regarding the second option, EPCA requires the Department to establish separate product classes for products based on a performance related feature (such as a TXV) if the Secretary determines that a higher or lower efficiency standard is justified for those products. Evidence indicates that TXVs maintain system efficiency better than do fixed orifices or capillary tube expansion devices in cases where split system equipment is over- or under-charged with refrigerant. This apparently includes most installations. To encourage the use of TXVs we could consider establishing lower SEER standards for products containing TXVs.

While the evidence of the potential energy-saving benefits of TXVs is certainly persuasive, the current SEER test procedures already encourage their use. For rating a manufacturer's condenser with the evaporator of a different manufacturer, the SEER determination procedures provide a credit for systems that incorporate TXVs. For matched systems, the use of TXVs typically lowers the degradation coefficient, resulting in higher SEER results.

We hesitate to provide stronger support for TXV-bearing equipment than that which is already granted through the test procedures. Unlike fixed orifices, TXVs are mechanical components. Some manufacturers avoid their usage because of reliability concerns, and the additional repair costs incurred by consumers could outweigh their energy-saving benefits. Furthermore, contractors are able to adjust the factory-set TXV in the field, and it is possible that alleviating problems due to over- or under-charging by encouraging the use of TXVs could create another problem—improperly set TXVs. Also, it is not clear that TXVs are the only, or even the best, option for maintaining equipment efficiency in the field. For example, technologies that could mitigate dirty coils or prevent improper charging and airflow may be more attractive options, and we would not want to discourage their development or use by mandating the use of TXVs.

In any case, manufacturers may well find that the SEER benefits offered by TXVs are compelling enough under the new efficiency standards that they would offer TXVs in a substantial amount of baseline equipment without further encouragement by the Department. The Engineering Analysis suggests that manufacturers are currently more likely to incorporate TXVs into their 12 SEER and 13 SEER products than in their 10 SEER products. We would expect, therefore, that TXV use would be much more prevalent under higher efficiency standards.

For these reasons, the Department feels that the current test procedure provides the proper encouragement for manufacturers to incorporate TXVs into their products, and that neither a TXV requirement nor a lower standard for TXV-bearing products are justified at this time. We welcome additional comments on this issue, particularly regarding whether our concerns regarding the perceived reliability problems and potential misuses associated with widespread use of TXVs are valid.

L. Other Comments

1. Latent Heat Removal

The Southern Company, Virginia Power, and R.B. Stotz insisted that increased equipment efficiency impacts the equipment's ability to properly dehumidify (i.e., remove latent heat). Virginia Power specifically wants assurances that any increase in the standard will maintain current humidity control capabilities. In addition, it asserts that the costs of maintaining humidity control should be included in the analysis. (Virginia Power, No. 27 at 2). The Southern Company claims that higher SEER values will lead to larger indoor coils which in turn will result in higher air temperatures leaving the indoor coil. The higher the air temperature, the less dehumidification occurs. They also claim that while more efficient systems may dehumidify properly at rated test conditions, their ability to dehumidify under high indoor humidity conditions are worse than less efficient equipment. (Southern Company, No. 29 at 3–4; R.B. Stotz, No. 24 at 1). Trane counters the claims made by the Southern Company and Virginia Power by stating that there is absolutely no evidence to support the claim that more efficient equipment has less latent heat removal capability. (Crawford, Trane, Transcript, pp. 272–273).

Trane's claim that there is no relationship between equipment efficiency and its ability to dehumidify is substantiated by research conducted by ARI. From this research, ARI demonstrated for hundreds of systems that latent heat removal is not obviously impacted by increases in equipment efficiency at rated conditions (*i.e.,* 95°F outdoor temperature).[16] Not to dismiss the concerns of Virginia Power and the Southern Company, we recognize the humidity control problems that exist in the southern region of the U.S. For the excessive humidity conditions commonly experienced in the South, the equipment may very likely not provide adequate dehumidification. But rather than focusing on the equipment efficiency as the source of the problem,

[16] D. Godwin. 1998. ''Latent Capacity of Unitary Equipment.'' ASHRAE Transactions 98(2).

proper installation and maintenance practices also likely play a large role in the equipment's performance. Other factors to consider are the duct system as well as the building shell characteristics. All these factors play a role in how a system dehumidifies. To lay blame only on the efficiency of the equipment ignores how other factors contribute to the system's ability to properly dehumidify.

2. 3-Phase Equipment

ACEEE asserted that if an identical standard is to be set for both single-phase and 3-phase central air conditioners and heat pumps under 65,000 Btu/hr, then 3-phase equipment should be incorporated into the rulemaking analysis. Alternatively, if 3-phase equipment is excluded from the analysis, it should be made clear that a new standard on 3-phase equipment will be set based on a new analysis covering 3-phase equipment.

EPACT provides for DOE to amend the standards for these products when ASHRAE amends the standards found in ASHRAE Standard 90.1. When ASHRAE has completed its consideration of standards for these products, DOE will analyze 3-phase equipment under a separate rulemaking pertaining to commercial air-conditioning and heat pump equipment.

3. SEER–HSPF Relationship

ARI supported the Department's HSPF–SEER standard pairings proposed in the Supplemental ANOPR. (ARI No. 48 at 4). Pietsch proposed maintaining the current minimum requirements for HSPF at 6.8 for future levels of minimum SEER, which would allow manufacturers to continue to place more emphasis on improving SEER. He based this recommendation on the strong competition that heat pumps face in the market place with electric resistance heat, noting that the increased first-cost of heat pumps that have higher minimum HSPFs makes it more difficult for heat pumps to compete against the much lower first-cost of electric resistance heating systems. (Pietsch No. 36 at 41). ACEEE, VEIC, and PG&E noted that the Department's definition of HSPF–SEER pairing for the standard levels it analyzed seemed arbitrary or too lenient and preferred that the Department establish higher HSPF levels. (ACEEE, No. 43 at 5; VEIC, No. 32 at 6; PG&E, No. 31 at 4).

The Department plotted the relationship between HSPF and SEER for all 3-ton split heat pumps listed in the Spring 1998 ARI Directory of Certified Unitary Equipment. At 10 SEER, the difference between the minimum HSPF (6.8) and the median (7.1) was 0.3 HSPF. The Department then determined the equation of the line that ran generally parallel with the median HSPF at each SEER level, while passing through the 10 SEER, 6.8 HSPF point. Table V.5 reviews the derivation of the SEER–HSPF pairings.

TABLE V.5.—COMPARISON OF PROPOSED HSPF STANDARD LEVELS WITH MEDIAN HSPFS OF EQUIPMENT LISTED IN THE ARI UNITARY DIRECTORY

Cooling efficiency (SEER)	10	11	12	13	14	15	16	17
Median Heating Efficiency (HSPF)	7.1	7.4	7.9	7.9	7.9	8.9	8.2	8.4
Recommended Heating Efficiency Standard (HSPF)	6.8	7.1	7.4	7.7	8.0	8.2	8.4	8.6
Offset from Median (HSPF)	−0.3	−0.3	−0.5	−0.2	+0.1	−0.7	+0.2	+0.2

Even though the Department does not have information on the distribution of heat pump sales by HSPF at each SEER level, it is apparent that the market currently favors products that exceed the minimum allowable HSPF level. This is due both to the natural relationship between HSPF and SEER and the preference in the market for high HSPF heat pumps in cooler climates. The Department believes that establishing an HSPF standard equal to the current median at a given SEER level would impose an undue design constraint on manufacturers, adding to the cost and burden of designing, producing, testing, and qualifying the product without resulting in a significant increase in the average HSPF of equipment sold. Also, the Department does not want to encourage substitution of electric resistance heating systems for heat pumps. Without further information on the cost of attaining higher HSPFs or the shipments of heat pumps by HSPF level, the Department has no basis for modifying its current HSPF–SEER standard combinations.

4. Max Tech

The Supplemental ANOPR analysis proposed a Max Tech level of 20 SEER. ARI, Trane, and York commented that a prototype hasn't been built that has exceeded 18 SEER. (Wethje, ARI, Transcript p. 66; Crawford, Trane, Transcript p. 69; and Madera, York, Transcript p. 71). The Department also understands that 18 SEER is the highest efficiency level currently available for sale.

While the Department believes improvements to the 18 SEER design are certainly possible, it agrees with the industry that any analysis based on a design higher than 18 SEER would be pure speculation. Therefore, the Department considers 18 SEER to be the Max Tech at this time for cooling performance. The Max Tech level for heating efficiency is 9.4 HSPF, which is the highest HSPF rating currently available in residential heat pumps. Any parties possessing knowledge of prototype central air conditioners or heat pumps that exceed 18 SEER or 9.4 HSPF levels are encourage to provide such information in comment on today's proposed rule.

DOE does not have relative cost data for 18 SEER units as ARI did not provide the Department data for equipment exceeding 15 SEER. In lieu of performing a reverse engineering analysis on an 18 SEER design, the Department is proceeding as if the 18 SEER equipment cost and price were equal to those of the 15 SEER equipment. DOE believes the 18 SEER cost would be higher because the product is more complex.

VI. Analytical Results

A. Trial Standard Levels

Table VI.1 presents the trial standards levels analyzed for today's proposed rule and the corresponding efficiency level for each class of product. Trial standard level 5 is the max tech level for each class of product.

TABLE VI.1.—TRIAL STANDARDS LEVELS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS (SEER)

Trial standard level	Split air conditioners	Packaged air conditioners	Split heat pumps	Packaged heat pumps
1	11	11	11	11
2	12	12	12	12
3	12	12	13	13
4	13	13	13	13
5	18	18	18	18

B. Significance of Energy Savings

To estimate the energy savings through 2030 due to revised standards, we compared the energy consumption of central air conditioners and heat pumps under the base case to energy consumption of central air conditioners and heat pumps under the revised standard. We examined five standard levels. For each trial standard examined, several different scenarios were analyzed consisting of variations on: (1) Electricity price and housing projections; (2) equipment efficiency distributions; (3) manufacturer cost estimates; (4) equipment lifetime; and (5) societal discount rate. Electricity price and housing projections were based on three different AEO 2000 forecasts: (1) Reference Case, (2) High Growth Case, and (3) Low Growth Case. We analyzed three efficiency scenarios, each of which assumed a different efficiency distribution after new standards would take effect: (1) NAECA scenario, (2) Roll-up scenario, and (3) Shift scenario. Manufacturer costs were based on ARI-provided mean cost data. Since several comments suggested that the industry-provided cost estimates were overstated, cost data from the reverse engineering analysis were analyzed as an alternative scenario. Equipment lifetime was based on a retirement function with an 18.4 year average lifetime coupled with the inclusion of compressor replacement costs. However, since several comments suggested that the equipment life is actually shorter, a retirement function yielding an average lifetime of 14 years without the inclusion of compressor replacement costs was analyzed as an alternative scenario.

For calculating NPV, a societal discount rate of 7% was assumed. However, a 3% value was investigated as an alternative scenario in accordance with the Office of Management and Budget's (OMB) Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements.

Table VI.2 shows the range of energy savings for each of the three shipments scenarios for each trial standard level based on varying electricity and housing projections. The energy savings assume the ARI mean manufacturer cost estimate, an 18.4-year average lifetime with compressor replacement and a 7% societal discount rate. The electricity scenarios are the AEO 2000 Reference, High Growth, and Low Growth cases.

TABLE VI.2.—ENERGY SAVINGS BASED ON ARI MEAN MANUFACTURER COSTS, 18.4 YEAR RETIREMENT FUNCTION WITH COMPRESSOR REPLACEMENT, AND A 7% DISCOUNT RATE

[Energy savings for units sold from 2006 to 2030]

Trial standard level	Energy savings (quads)		
	NAECA	Roll-up	Shift
1	1.7 to 1.8	1.5 to 1.6	1.9 to 2.0
2	2.9 to 3.2	2.8 to 3.0	3.4 to 3.6
3	3.4 to 3.6	3.3 to 3.5	3.8 to 4.1
4	4.2 to 4.5	4.1 to 4.4	4.6 to 4.9
5	8.1 to 8.7	8.1 to 8.7	8.1 to 8.7

Table VI.3 shows how each of the three scenarios described above (reverse engineering costs, 14 year average life, and 3% discount rate) impact the energy savings. The three scenarios were investigated only for the NAECA efficiency scenario and the AEO 2000 Reference Case electricity price and housing projection.

TABLE VI.3.—ENERGY SAVINGS BASED ON THE NAECA EFFICIENCY SCENARIO AND AEO REFERENCE CASE

[Energy savings for units sold from 2006 to 2030]

Trial standard level	Energy savings (quads)		
	Reverse engineering manufac-turing cost	14 year lifetime	3% discount rate
1	1.7	1.7	1.7
2	3.0	2.9	3.0
3	3.5	3.4	3.5
4	4.3	4.2	4.3
5	8.7	8.2	8.3

C. Payback Period

As discussed above, the Act requires the Department to examine payback periods to determine if the three year rebuttable presumption of economic justification applies. As prescribed by the Act, the rebuttable payback period is ''calculated under the applicable test procedure, * * *''.

The annual space-cooling and space-heating energy consumption calculated based on the hours of use in the test procedure are on the order of 50% greater than the weighted-average values from the LCC analysis (*i.e.,* analyses based on the 1997 RECS for residential buildings and hourly simulations for commercial buildings). This means that, for any given standard level, the payback period calculated from the test procedure will be significantly shorter than the average payback value calculated from the LCC analysis which was based on the 1997 RECS data.

In Table VI.4a, we list the median payback periods for product classes and efficiency levels according to the methods employed by the LCC analysis. Table VI.4b is the rebuttable presumption payback period based on the Department of Energy's test procedure.

TABLE VI.4A.—SUMMARY OF LCC PAYBACK MEDIAN PERIOD

Product class	Efficiency level	ARI mean manufacturing cost [1]	Reverse engineering manufacturing cost scenario [1]	14-year lifetime scenario/ARI mean manufacturing cost
Split System Central Air Conditioner	11	10.6	7.8	10.5
	12	12.6	9.8	12.8
	13	16.0	11.3	16.2
	18	36.0	19.6	50.4
Split System Heat Pump	11	5.5	2.7	5.5
	12	7.2	3.9	7.3
	13	9.3	6.4	9.5
	18	17.3	14.0	19.9
Single Package Air Conditioner	11	6.1	7.7	16.6
	12	14.0	7.5	14.2
	13	21.8	14.5	21.8
	18	48.8	25.1	88.1
Single Package Heat Pump	11	8.1	4.6	8.1
	12	8.7	4.0	8.7
	13	13.2	8.4	13.4
	18	19.4	12.8	23.1

[1] Assumes a 18.4-year lifetime with a compressor replacement at 14 years.

TABLE VI.4B.—SUMMARY OF REBUTTABLE PAYBACK PERIOD

Product class	Efficiency level	ARI mean manufacturing cost [1]
Split System Central Air Conditioner	11	4.7
	12	5.8
	13	7.6
	18	11.3
Split System Heat Pump	11	2.5
	12	3.3
	13	4.5
	18	6.8
Single Package Air Conditioner	11	7.3
	12	6.2
	13	9.8
	18	13.3
Single Package Heat Pump	11	3.7
	12	4.0
	13	6.5
	18	7.2

[1] Assumes a 18.4-year lifetime with a compressor replacement at 14 years.

D. Economic Justification

1. Economic Impact on Manufacturers

a. Background. We performed a Manufacturer Impact Analysis (MIA) to estimate the impact of higher efficiency standards on air conditioner manufacturers. The TSD explains the analysis in further detail. As part of the MIA, we discussed potential impacts with six major manufacturers responsible for approximately 90% of the residential air conditioner and heat pump sales. We also interviewed two niche manufacturers to understand how their financial situation differs from that of their larger counterparts. These interviews are in addition to those we conducted as part of the Supplemental ANOPR. The interviews provided valuable information used to evaluate the impacts of a new standard on manufacturers' cash flows, manufacturing capacities and employment levels.

The MIA has both quantitative and qualitative aspects. Quantitative analysis primarily relies on the GRIM, an industry cash flow model customized for this rulemaking. The GRIM inputs

are assumptions regarding the industry cost structure, shipments, and revenues. The key output is the industry net present value (INPV). Different sets of assumptions (scenarios) produce different results as described below.

In the GRIM we evaluated each of the shipment scenarios, *i.e.,* ''NAECA'', ''Rollup'', and ''Shift''. Changes in efficiency mix by efficiency standard level are a key driver of manufacturer finances since costs and revenues are both tied to shipments.

Two cost scenarios, ''Industry Relative Cost'' and ''Reverse-Engineering Relative Cost'', were also examined. These relative costs are also used as the basis for deriving the production costs of equipment above the minimum efficiency level. The ''Reverse-Engineering Relative Cost'' scenario was applied only to the ''NAECA'' product mix scenario in order to determine the effects of lower production costs on the MIA results.

The equipment lifetime scenarios assumptions, ''18-year life'' and ''14-year life'', were considered. The ''14-year life'' assumption applied only to the ''NAECA'' and ''Industry Relative Cost'' scenarios to isolate the effects of a shorter product life on the results.

The interviews revealed that manufacturers use different pricing strategies and place different levels of emphasis on the sale of higher efficiency products. Manufacturers fall into two basic groups in this regard. The first group has lower operating and production costs than its competitors and targets such price-sensitive consumers as new home builders. This focus on low price limits the ability and desire of these manufacturers to sell premium equipment. Because they have a cost advantage over their competitors, the lower cost manufacturers can achieve a higher operating profit margin on their baseline equipment and still maintain a price advantage. They then apply a fairly consistent markup across efficiency levels.

The higher cost manufacturers typically place more of an emphasis on marketing, service, and research than do their lower cost competitors. Faced with stiff price competition from the lower cost manufacturers in price-sensitive markets, the higher cost manufacturers are forced to reduce their price (and markup) on their baseline equipment to the minimum level sustainable. They then target less price sensitive customers by offering products with premium features and higher efficiency. These products carry higher markups.

Since higher efficiency standards will affect each group of manufacturers differently, we set up two versions of the GRIM to model each group independently. To represent the lower cost manufacturers, we reduced the operating expense ratio and research and development expense ratio to below the industry averages. We also assumed that a single markup applies to products across all efficiency levels. To model higher cost manufacturers, we raised the operating expense ratio and research and development ratios to above the industry average. We then assumed that markups increase roughly linearly as the efficiency level increases. This represents two effects: selling a greater fraction of higher margin premium product as efficiency level rises, and being able to secure a higher profit margin on products by virtue of the higher efficiency.

To represent the industry in aggregate, we combined the results of the two GRIM versions, giving 25% weight to the results of the lower-operating-cost group and 75% weight to the results of the higher-operating-cost group. This ratio reflects the prevalence of each strategy in the marketplace. Many companies may pursue both strategies simultaneously through different brands and divisions.

b. Industry Cash Flow Analysis Results. Tables VI.5 through VI.7 present the GRIM results for the unitary air conditioning industry for the three shipment scenarios based on the industry provided mean cost multipliers and an 18-year product life. The corporate discount rate used in the analysis is 6.2% based on an estimate of the weighted average cost of capital for the industry over a five-year period. Results assume that manufacturers with lower operating costs control 25% of the market and those with higher operating costs control 75%. Since we did not collect information regarding the cost or investments involved in manufacturing product at 18 SEER, we did not assess impacts under Max Tech.

TABLE VI.5.—CHANGES IN INDUSTRY NET PRESENT VALUE—INDUSTRY RELATIVE COST, 18 YEAR LIFE, NAECA EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	1,603	.....	.....
1	1,566	(37)	−2
2	1,417	(186)	−12
3	1,406	(197)	−12
4	1,420	(183)	−11

TABLE VI.6.—CHANGES IN INDUSTRY NET PRESENT VALUE—INDUSTRY RELATIVE COST, 18 YEAR LIFE, ROLL-UP EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	1,603	.....	.....
1	1,422	(181)	−11
2	1,241	(362)	−23
3	1,236	(367)	−23
4	1,268	(335)	−21

TABLE VI.7.—CHANGES IN INDUSTRY NET PRESENT VALUE—INDUSTRY RELATIVE COST, 18 YEAR LIFE, SHIFT EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	$1,603	.....	.....
1	1,740	$137	9
2	1,825	222	14
3	1,854	251	16
4	1,914	311	19

The NAECA and Roll-up scenarios reduce INPV while the Shift scenario increases INPV. This result occurs because we assume the higher-operating cost manufacturers accrue much of their profits from the sale of higher efficiency equipment. As the standard level increases, they earn lower profit margins on that equipment. The loss in profits can be offset by the combination of more sales and more expensive equipment. The Shift scenario provides a much more favorable projection of high-efficiency equipment sales than do the NAECA and Rollup scenarios.

Tables VI.8 and VI.9 present the results for the 14-year life assumption and the Reverse Engineering Relative Cost scenario with the NAECA Efficiency Mix scenario.

TABLE VI.8.—CHANGES IN INDUSTRY NET PRESENT VALUE—INDUSTRY RELATIVE COST, 14 YEAR LIFE, NAECA EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	$1,726	.....	.....
1	1,701	$ (25)	−1
2	1,558	(168)	−10
3	1,555	(171)	−10
4	1,598	(128)	−7

TABLE VI.9.—CHANGES IN INDUSTRY NET PRESENT VALUE—REVERSE ENGINEERING RELATIVE COST, 18 YEAR LIFE, NAECA EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	$1,539	.....	.....
1	1,509	$ (30)	−2
2	1,380	(159)	−10
3	1,368	(171)	−11
4	1,370	(169)	−11

Table VI.10 presents the differential impacts between the groups of manufacturers with lower and higher operating costs. The lower operating cost manufacturers benefit under all scenarios and trial standard levels, and the higher operating cost manufacturers benefit only under the Shift scenario. The reason, again, is that we assume that lower operating cost manufacturers accrue the same profit margin regardless of the efficiency level, so as the cost of the product increases, profits also increase. The higher operating cost manufacturers, on the other hand, lose profits as the standard level rises and the products face pricing pressure from the lower cost manufacturers.

TABLE VI.10.—CHANGE IN INDUSTRY NET PRESENT VALUE (%) RELATIVE TO BASE—COMPARISON BETWEEN LOWER AND HIGHER COST MANUFACTURERS

Standard level	Industry relative cost [1]								Reverse engineering relative cost	
	NAECA		NAECA—14 year life		Roll-up		Shift		NAECA	
	Lower cost	Higher cost	Lower cost	Higher cost	Lower cost	Higher cost	Lower cost	Higher cost	Lower cost	Higher cost
1	5	−5	6	−4	3	−16	7	9	5	−4
2	7	−17	9	−16	5	−31	12	14	7	−16

TABLE VI.10.—CHANGE IN INDUSTRY NET PRESENT VALUE (%) RELATIVE TO BASE—COMPARISON BETWEEN LOWER AND HIGHER COST MANUFACTURERS—Continued

Standard level	Industry relative cost [1]								Reverse engineering relative cost	
	NAECA		NAECA—14 year life		Roll-up		Shift		NAECA	
	Lower cost	Higher cost	Lower cost	Higher cost	Lower cost	Higher cost	Lower cost	Higher cost	Lower cost	Higher cost
3	9	−19	11	−16	6	−32	14	16	8	−17
4	15	−19	19	−16	13	−31	21	19	12	−18

[1] 18-year lifetime unless otherwise noted.

For the group most negatively impacted, *i.e.,* the higher cost group, Table VI.11 presents the Return on Invested Capital (ROIC) associated with the base case, and with each new standard level for the NAECA and Roll-up efficiency mix scenarios, for industry relative costs and an 18-year lifetime. A reduction in ROIC increases the likelihood that the company will choose to exit the market or sell its assets rather than to make the investments required to move to the new efficiency level.

TABLE VI.11.—RETURN ON INVESTED CAPITAL (ROIC) IN 2011 FOR HIGHER COST MANUFACTURERS

Standard level	NAECA (in percent)	Roll-up (in percent)
Base	13.3	13.3
1	12.3	10.7
2	10.2	8.4
3	10.0	8.3
4	9.6	8.3

Table VI.12 provides a summary of the total investment required for each trial standard level. Product conversion expenses include mostly product development and testing costs. Capital investments include new equipment, tooling, and floor space. Since these investments occur in the years leading up to the effective date of the new standard, larger investments equate to a more serious strain on cash flows in the near-term.

TABLE VI.12.—MANUFACTURER EXPENDITURES RELATED TO NEW EFFICIENCY STANDARDS (MILLION 1999 $)

Trial standard level	Product conversion expenses	Capital investments	Total investment
Base	.....	.....	.....
1	$ 31	$ 54	$ 85
2	93	109	202
3	110	138	248
4	157	167	324

The TSD which accompanies today's proposed rule provides more details on the MIA assumptions, methodology, results, and conclusions, including the assessments of impacts on lower volume equipment manufacturers and compressor manufacturers, which we estimate to be similar in proportion to the impacts described above.

c. Impacts on Employment. Manufacturers stated uniformly that labor requirements track materials costs. Since a new standard will increase the amount and cost of material in each product, labor requirements are expected to rise proportionally. However, the industry has recently been experiencing rapid growth in sales volume and is now faced with production capacity constraints. Since new efficiency standards will increase the product's size and complexity, many manufacturers will need to add additional capacity to accommodate the new products and retain their sales volumes. It is possible that those companies will choose to add the new capacity outside of the United States. This effect could keep domestic employment levels flat or result in employment loss if companies choose to shift current production to new facilities in other countries.

d. Impacts on Manufacturing Capacity. It is likely that a central air conditioner and heat pump standard would increase central air conditioner and heat pump production capacity in the United States. Since more efficient conventional heat exchangers are also larger, plants that now face capacity constraints will be unable to produce as many heat exchangers as they can under existing standards. Five of the six manufacturers we interviewed identified capacity constraints during peak production periods.

e. Impact on Lower Volume Manufacturers. Converting from a company's current basic product line involves creating, testing, and moving a new design into production. These tasks have associated capital investments. Manufacturers of niche products and those who produce only coils and fancoils, because of their need to spread these investments over smaller

production volumes, may be affected more negatively than major manufacturers by an increase in efficiency standards. This is particularly true for those manufacturers that compete head-to-head with major manufacturers in some product lines, and less true for coil-only manufacturers. These results occur separately from any technical considerations related to the manufacturer's ability to modify its products to bring them into compliance with a new standard. Technical considerations are typically more important for niche manufacturers than for major manufacturers and have more severe consequences related to increased production costs or loss of sales volume due to increased price. Overall, if provisions are made in the standard for niche products that face severe technological constraints, we would not expect the impacts on lower-volume manufacturers as a group to be disproportionate with those of the industry as a whole.

2. Life-Cycle Cost

More efficient central air conditioners and heat pumps would affect consumers in two ways: Annual operating expense would decrease and purchase price would increase. We analyzed the net effect by calculating the LCC. Inputs required for calculating LCC include total installed costs (*i.e.*, equipment price plus installation costs), annual energy savings, average and marginal electricity rates, electricity price trends, repair costs, maintenance costs, equipment lifetime, and discount rates.

The output of the LCC model is a mean LCC savings for each product class as well as a probability distribution or likelihood of LCC reduction or increase. The LCC analysis for today's proposed rule introduces a new concept with regard to the percentage of consumers (both residential and commercial) that are negatively impacted by an increase in the minimum efficiency standard. (For the Supplemental ANOPR, all consumers that would incur an LCC increase were considered to be adversely impacted by an increase in the standard. This included even consumers that would incur a relatively small LCC increase *e.g.*, as small as $10, as compared to a relatively large baseline level total LCC. Note that the baseline LCC is approximately $5,000 for central air conditioners and $10,000 for heat pumps.)

The revised analysis defines negative impacts by including in this category only those consumers which incur LCC increases greater than 2% of the baseline LCC. For central air conditioners, this translates to an LCC increase of approximately $100 or an annual expense of approximately $5 over the lifetime of the system. Table VI.13 summarizes the baseline LCCs for split system and single package central air conditioners and heat pumps and also provides the 2% threshold at which consumers are considered to be adversely impacted.

TABLE VI.13.—BASELINE LIFE-CYCLE COSTS AND THRESHOLD FOR ADVERSE IMPACTS

Product class	Baseline life-cycle cost	Threshold for adverse impacts: 2% of Baseline LCC
Split Air Conditioners	$5,170	$103
Split Heat Pumps	9,679	194
Single Package Air Conditioners	5,629	113
Single Package Heat Pumps	9,626	193

Table VI.14 depicts the LCC results for split system and single package central air conditioners and heat pumps. The table shows the average LCC values for the baseline and each Trial Standard Level. Since manufacturer cost data were not available for the 18 SEER efficiency levels, 15 SEER cost data were used for all 18 SEER calculations resulting in 18 SEER LCC results which underestimate their true cost level.

Table VI.14 also provides for each product class the difference in LCC at each efficiency level relative to the baseline. The differences represent either an LCC savings or an LCC cost increase. In addition, the table shows the subset of consumers (both residential and commercial) at each efficiency level who are impacted in one of three ways: Consumers who achieve significant net LCC savings (*i.e.,* LCC savings greater than 2% of the baseline LCC), consumers who are impacted in an insignificant manner by having either a small reduction or small increase in LCC (*i.e.,* within ±2% of the baseline LCC), or consumers who achieve a significant net LCC increase (*i.e.,* an LCC increase exceeding 2% of the baseline LCC).

TABLE VI.14.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURER COSTS AND A 18.4 YEAR AVERAGE LIFETIME

Product class	Efficiency level	Average LCC	Average LCC (savings) costs	Percent of consumers with		
				Net savings (>2%)	No significant impact	Net costs (>2%)
Split System Central Air Conditioner	10	$5,170	.....	.....	.....	.....
	11	5,126	($44)	23	68	9
	12	5,125	(45)	27	34	39
	13	5,199	29	25	17	58
	18	5,725	555	15	4	81
Split System Heat Pump	10	9,679	.....	.....	.....	.....
	11	9,529	(150)	30	70	0
	12	9,437	(242)	42	55	3
	13	9,464	(215)	39	39	22
	18	9,955	276	23	11	66

TABLE VI.14.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURER COSTS AND A 18.4 YEAR AVERAGE LIFETIME—Continued

Product class	Efficiency level	Average LCC	Average LCC (savings) costs	Percent of consumers with		
				Net savings (>2%)	No significant impact	Net costs (>2%)
Single Package Air Conditioner	10	5,629	.....	.....	.....	.....
	11	5,649	20	16	47	37
	12	5,600	(29)	26	30	44
	13	5,804	175	18	11	71
	18	6,370	741	12	4	84
Single Package Heat Pump	10	9,626	.....	.....	.....	.....
	11	9,492	(134)	28	72	0
	12	9,372	(254)	44	49	7
	13	9,514	(112)	33	31	36
	18	9,922	296	24	10	66

As discussed previously for the presentation of energy savings and payback period results, we have investigated two scenarios where lower estimates of the manufacturer costs (reverse engineering) and system lifetime (retirement function with 14 year average lifetime without compressor replacement costs) were analyzed. Table VI.15 presents the results for the manufacturer cost scenario while Table VI.16 presents the results for the lifetime scenario.

TABLE VI.15.—SUMMARY OF LCC RESULTS BASED ON REVERSE ENGINEERING MANUFACTURER COSTS

Product class	Efficiency level	Average LCC	Average LCC (savings) costs	Percent of consumers with		
				Net savings (>2%)	No significant impact	Net costs (>2%)
Split System Central Air Conditioner	10	$5,170	.....	.....	.....	.....
	11	5,095	($75)	28	70	2
	12	5,057	(113)	35	40	25
	13	5,057	(113)	34	27	39
	18	5,307	137	25	7	68
Split System Heat Pump	10	9,679	.....	.....	.....	.....
	11	9,470	(209)	40	60	0
	12	9,314	(365)	58	42	0
	13	9,307	(372)	52	42	6
	18	9,720	41	28	15	57
Single Package Air Conditioner	10	5,629	.....	.....	.....	.....
	11	5,551	(78)	27	72	1
	12	5,466	(163)	40	51	9
	13	5,600	(29)	28	20	52
	18	5,905	276	21	6	73
Single Package Heat Pump	10	9,626	.....	.....	.....	.....
	11	9,419	(207)	39	61	0
	12	9,205	(421)	66	34	0
	13	9,273	(353)	50	38	12
	18	9,460	(166)	37	15	48

TABLE VI.16.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURER COST AND 14-YEAR AVERAGE LIFETIME

Product class	Efficiency level	Average LCC	Average LCC (savings) costs (in dollars)	Percent of consumers with		
				Net savings (>2%)	No significant impact	Net costs (>2%)
Split System Central Air Conditioner	10	$4,682	.....	.....	.....	.....
	11	4,650	$(32)	22	69	9
	12	4,672	(10)	24	31	45
	13	4,769	87	21	15	64
	18	5,336	654	12	3	85
Split System Heat Pump	10	8,747	.....	.....	.....	.....
	11	8,623	(124)	27	73	0
	12	8,587	(160)	35	58	7
	13	8,630	(117)	33	37	30
	18	9,184	437	18	9	73
Single Package Air Conditioner	10	5,150	.....	.....	.....	.....
	11	5,182	32	14	46	40

TABLE VI.16.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURER COST AND 14-YEAR AVERAGE LIFETIME

Product class	Efficiency level	Average LCC	Average LCC (savings) costs (in dollars)	Percent of consumers with		
				Net savings (>2%)	No significant impact	Net costs (>2%)
	12	5,157	7	22	29	49
	13	5,378	228	14	10	76
	18	6,011	861	9	3	88
Single Package Heat Pump	10	8,747	.....	.....	.....	.....
	11	8,623	(124)	27	73	0
	12	8,587	(160)	35	58	7
	13	8,630	(117)	33	37	30
	18	9,184	437	18	9	73

3. Net Present Value and Net National Employment

The net present value analysis is a measure of the cumulative benefit or cost to the Nation of standards. As with the determination of national energy savings, five different scenarios were analyzed for each trial standard level consisting of variations on: (1) Electricity price and housing projections; (2) equipment efficiency distributions; (3) manufacturer cost estimates; (4) equipment lifetime; and (5) societal discount rate. Electricity price and housing projections were based on three different AEO 2000 forecasts: (1) Reference Case, (2) High Growth Case, and (3) Low Growth Case. Three efficiency scenarios were analyzed which forecast the equipment efficiency distribution after new standards were assumed to take effect: (1) NAECA scenario, (2) Roll-up scenario, and (3) Shift scenario. Manufacturer costs were based on ARI mean cost estimates. Equipment lifetime was assumed to be 18.4 years, coupled with the inclusion of compressor replacement costs. A societal discount rate of 7 was assumed. The range of NPVs are reported in Table VI.17.

TABLE VI.17.—NET PRESENT VALUE VARIATION WITH ELECTRICITY PRICE AND HOUSING PROJECTIONS

Trial standard level	Net present value for units sold from 2006 to 2030 (billion 98$) [1]		
	NAECA	Roll-up	Shift
1	0	1	0 to –1.
2	–1	0 to 1	–3 to –4.
3	–1 to –2	0 to –1	–5.
4	–5 to –6	–4	–10.
5	–22	–22	–22.

[1] Based on ARI mean manufacturer costs, 18.4-year retirement function with compressor replacement, and a 7% discount rate.

In order to show the significance of the NPVs in Table V.17 to the various input assumptions, Tables VI.18 through VI.21 report the range of NPV results for a range of assumptions and scenarios relative to the total national equipment and operating costs for all central air-conditioning and heat pump equipment under the base case (i.e., in the absence of new efficiency standards). The results in Table VI.18 are based on the AEO 2000 Reference Case forecast of electricity prices and housing. The total costs are presented for the base case and each Trial Standard Level. In addition, the NPV (the difference in total costs between the base case and trial standard level), as well as the NPV as a percentage of the ''Base Case Total Costs,'' are calculated for each trial standard level.

TABLE VI.18.—NET PRESENT VALUES RELATIVE TO BASE CASE TOTAL EQUIPMENT AND OPERATING COSTS [1]

TSL	Base case total costs (billion 98$)	Efficiency scenario								
		NAECA			Roll-up			Shift		
		Total costs (billion 98$)	NPV		Total costs (billion 98$)	NPV		Total costs (billion 98$)	NPV	
			(billion 98$)	as percent of base case total		(billion 98$)	as percent of base case total		(billion 98$)	as percent of base case total
1	381	381	0	0.0	381	1	0.2	385	0	–0.1
2	381	382	–1	–0.3	381	0	0.0	388	–3	–0.9
3	381	383	–2	–0.5	382	–1	–0.2	390	–5	–1.4
4	381	387	–5	–1.4	386	–4	–1.1	395	–10	–2.5
5	381	403	–22	–5.8	403	–22	–5.8	407	–22	–5.8

[1] Based on AEO 2000 Reference Case, ARI mean manufacturer costs, 18.4-year retirement function with compressor replacement, and a 7% discount rate. Values rounded to the nearest $1 billion.

Tables VI.19 through VI.21 show how the three scenarios, *i.e.,* reverse engineering costs, 14-year average life, and 3% discount rate,[17] impact the net present value. The three scenarios were investigated only for the NAECA efficiency scenario and the AEO Reference Case electricity price and housing projection.

TABLE V.19.—NET PRESENT VALUES RESULTS BASED ON REVERSE ENGINEERING MANUFACTURER COSTS [1]

Trial standard level	Base case total costs (billion 98$)	Trial standard level		
		Total cost (billion 98$)	Net present value (billion 98$)	As percent of base case total costs
1	379	378	2	0.4
2	379	377	2	0.5
3	379	378	1	0.4
4	379	379	0	0.0
5	379	390	–10	–2.7

[1] Based on AEO 2000 Reference Case, NAECA efficiency scenario, 18.4-year retirement function with compressor replacement, and a 7% discount rate. Values rounded to the nearest $1 billion.

TABLE V1.20.—NET PRESENT VALUES RESULTS BASED ON 14-YEAR AVERAGE LIFETIME [1]

Trial standard level	Base case total costs (billion 98$)	Trial standard level		
		Total cost (billion 98$)	Net present value (billion 98$)	As percent of base case total costs
1	363	364	0	0.0
2	363	365	–2	–0.5
3	363	366	–3	–0.8
4	363	370	–7	–1.9
5	363	389	–25	–6.9

[1] Based on AEO 2000 Reference Case, NAECA efficiency scenrio, ARI mean manufacturer costs, and a 7% discount rate. Values rounded to the nearest $1 billion.

TABLE VI.21.—NET PRESENT VALUES RESULTS BASED ON 3% DISCOUNT RATE [1]

Trial standard level	Base case total costs (billion 98$)	Trial standard level		
		Total cost (billion 98$)	Net present value (billion 98$)	As percent of base case total costs
1	712	708	3	0.5
2	712	708	4	0.5
3	712	708	3	0.4
4	712	714	–3	–0.4
5	712	746	–35	–4.9

[1] Based on AEO 2000 Reference Case, NAECA efficiency scenario, ARI mean manufacturer costs, and 18.4-year retirement function with compressor replacement. Values rounded to the nearest $1 billion.

The Department committed in its 1996 Process Improvement Rule to develop estimates of the employment impacts of proposed standards in the economy in general. 61 FR 36983.

As discussed above, energy efficiency standards for central air conditioners and heat pumps are expected to reduce electricity bills for residential and commercial consumers. The resulting net savings are expected to be redirected to other forms of economic activity. These shifts in spending and economic activity are expected to affect the demand for labor, but there is no generally accepted method for estimating these effects.

One method to assess the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. BLS data indicate that expenditures in the electric sector generally are associated with fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including the capital-intensity of the utility sector and wage differences.

In developing this proposed rule, the Department attempted a more precise analysis of the impacts on national labor demand using an input/output model of the U.S. economy. The model characterizes the interconnections among 35 economic sectors using the data from the Bureau of Labor Statistics. Since the electric utility sector is more capital-intensive and less labor-intensive than other sectors (see Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the

[17] A societal discount rate of 3% value was investigated as a scenario in accordance with the Office of Management and Budget's (OMB) Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements.

Regional Input-Output Modeling System (RIMS II), Washington, D.C., U.S. Department of Commerce, 1992), a shift in spending away from energy bills into other sectors would be expected to increase overall employment. But for this analysis, since the increased manufacturing costs to the nation of meeting a new efficiency standard are relatively large, there is an overall decrease in national employment. The results of the Department's analysis are shown in Chapter 12 of the TSD.

While this input/output model suggests the proposed central air conditioner and heat pump standards are likely to decrease the net demand for labor in the economy, the losses would most likely be very small relative to total national employment. For several reasons, however, even these modest losses are in doubt:

- Unemployment is now at the lowest rate in 30 years. If unemployment remains very low during the period when the proposed standards are put into effect, it is unlikely that the standards alone could result in any net decrease in national employment levels.
- Neither the BLS data nor the input-output model used by DOE include the quality or wage level of the jobs. One reason that the demand for labor decreases in the model may be that the jobs expected to be created pay more than the jobs being lost. The losses from any potential employment reduction would be offset if job quality and pay are increased.
- The net benefits from potential employment changes are a result of the estimated net present value of benefits or losses likely to result from the proposed standards. It may not be appropriate to separately identify and consider any employment impacts beyond the calculation of net present value.

Taking into consideration these concerns regarding the interpretation and use of the employment impacts analysis, the Department concludes only that the proposed central air conditioner and heat pump standards are likely to result in no appreciable job losses to the nation.

Public comments are solicited on the validity of the analytical methods used and the appropriate interpretation and use of the results of this analysis.

4. Impact on Utility or Performance of Products

As detailed in Section V, in establishing classes of products we have tried to eliminate any degradation of utility or performance in the products under consideration in this rulemaking.

5. Impact of Any Lessening of Competition

The Act directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. EPCA section 325(o)(2)(B)(i)(V) and (B)(ii), 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii).

In order to assist the Attorney General in making such a determination, the Department has provided the Department of Justice (DOJ) with copies of this notice and the TSD for review. At DOE's request, the DOJ reviewed the manufacturer impact analysis interview questionnaire to ensure that it would provide insight concerning any lessening of competition due to any proposed trial standard levels.

6. Need of the Nation to Save Energy

Enhanced energy efficiency improves the nation's energy security, and reduces the environmental impacts of energy production. Improved efficiency of central air conditioners and heat pumps is also likely to improve the reliability of the nation's electric system. The energy savings from central air conditioner and heat pump standards result in reduced emissions of carbon and NO_X. Cumulative emissions savings over the 16-year period modeled are shown in Table VI.22. Emission savings are based on the use of: (1) The ARI mean manufacturer cost data and (2) an 18.4–year average lifetime. The results presented in Table VI.22 are based only on the AEO 2000 Reference Case for electricity price and housing projections and the NAECA efficiency scenario.

TABLE VI.22.—CUMULATIVE EMISSIONS REDUCTIONS BASED ON AEO 2000 REFERENCE CASE AND NAECA EFFICIENCY SCENARIO (2006–2020)

Trial standard level	Emissions reductions	
	Carbon (Mt)	NO_X (kt)
1	13.4	37.2
2	23.7	67.9
3	27.4	78.8
4	33.6	102.5
5	63.7	193.7

The impact of varying electricity price and housing projections (*i.e.,* different AEO cases) as well as different efficiency scenarios were considered only for the Trial Standard Level 3. Table VI.23 shows how carbon and NO_X emissions are impacted by the different projections and scenarios.

TABLE VI.23.—CUMULATIVE EMISSIONS REDUCTIONS FOR PROPOSED STANDARD (2006–2020) AND THE IMPACT OF DIFFERENT ELECTRICITY PRICE/HOUSING PROJECTIONS AND EFFICIENCY SCENARIOS

Electricity price and housing projection	Efficiency scenario	Emission	
		Carbon (Mt)	NO_X (kt)
AEO Reference Case	NAECA	27.4	78.8
AEO Reference Case	Roll-up	26.2	77.8
AEO Reference Case	Shift	30.2	89.3
AEO Low Growth Case	NAECA	23.4	80.8
AEO High Growth Case	NAECA	34.1	75.8

The annual carbon emission reductions range up to 6.6 Mt in 2020 and the NO_X emissions reductions up to 24.5 kt in 2015.;[18] [19] Total carbon and NO_X emissions for each trial standard level are reported in the Environmental Assessment, in the TSD.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. EPCA Section 325(o)(2)(B)(i)(VI), 42 U.S.C. 6295(o)(2)(B)(i)(VI). The Secretary has decided that the impacts of the proposed standards on peak power requirements and electric utility system reliability, the impacts of proposed standards on those subgroups of consumers who are at or below the poverty line, and the impacts of proposed standards on consumers and manufacturers which might be required by proposed environmental regulations to incorporate ozone reduction technologies in air conditioning and heat pump equipment, are relevant to the economic justification of the standards, and has decided to consider such impacts in this rulemaking.

Peak power impacts are determined as part of the analysis to estimate impacts on electric utilities from increases in the central air conditioner and heat pump standard. NEMS–BRS is used to estimate peak power impacts by calculating the reduction in installed generation capacity due to an increase in the minimum efficiency standard. Table VI.24 shows the estimated reductions in installed generation capacity, in giga-watts (GW), in the year 2020 due to each of the trial standard levels. Of the installed generating capacity avoided, 13% would have been provided by coal power plants. The remaining percentage (87%) would have been supplied by either gas-fired, oil-fired, or dual-fired power plants. The results presented in Table VI.24 are based only on the AEO 2000 Reference Case for electricity price and housing projections and the NAECA efficiency scenario.

TABLE VI.24.—INSTALLED GENERATION CAPACITY REDUCTIONS IN THE YEAR 2020 BASED ON AEO 2000 REFERENCE CASE AND NAECA EFFICIENCY SCENARIO

Trial standard level	Installed generating capacity reduction (GW)
1	6.4
2	10.6
3	12.3
4	15.4
5	28.6

The impact of varying electricity price and housing projections (*i.e.,* different AEO cases) as well as different efficiency scenarios were considered only for the proposed standard (trial standard level 3). Table VI.25 shows how installed generation capacity is impacted by the different projections and scenarios.

TABLE VI.25.—INSTALLED GENERATION CAPACITY REDUCTIONS IN THE YEAR 2020 FOR TRIAL STANDARD LEVEL 3 AND THE IMPACT OF DIFFERENT ELECTRICITY PRICE/HOUSING PROJECTIONS AND EFFICIENCY SCENARIOS

Electricity price and housing projection	Efficiency scenario	Installed generating capacity reduction (GW)
AEO Reference Case	NAECA	12.3
AEO Reference Case	Roll-up	11.9
AEO Reference Case	Shift	13.6
AEO Low Growth Case	NAECA	11.4
AEO High Growth Case	NAECA	12.5

As discussed above, the impact of the peak power requirements of any single end-use on electric utility system reliability is highly uncertain. Thus, we plan on conducting further research to determine what connection, if any, exists between end-use peak demand reductions and system reliability. If such research is completed and applicable to this rulemaking, we will make it available for public review during the comment period on today's proposed rule.

Consumer subgroup impacts have been estimated by determining the LCC impacts of the trial standard levels on those consumers who are at or below the poverty line (*e.g.,* for a family of four, this constitutes a household income of less than $16,036). To perform this calculation, we used the subset of RECS 97 data for households that are considered low-income.[20] Table VI.26 summarizes the LCC impacts on those low-income consumers who utilize central air conditioners and heat pumps. The results in Table VI.26 are based on ARI mean manufacturer costs and an 18.4-year average lifetime.

TABLE VI.26.—SUMMARY OF LCC RESULTS ON LOW-INCOME CONSUMERS BASED ON ARI MEAN MANUFACTURER COSTS AND AN 18.4-YEAR AVERAGE LIFETIME

Product class	Efficiency level	Average LCC	Average LCC (savings) costs	Percent of consumers with		
				Net savings (>2 %)	No significant impact	Net costs (>2 %)
Split System Central Air Conditioner	10	$4,906				
	11	4,887	(19)	17	66	17
	12	4,903	(3)	20	29	51
	13	5,007	101	17	14	69
	18	5,598	692	10	2	88
Split System Heat Pump	10	8,965				

[18] Million metric tons (Mt).

[19] Thousand metric tons (kt).

[20] Approximately 7% of the RECS 97 households with central air conditioners and 9% of the households with heat pumps met this criteria.

TABLE VI.26.—SUMMARY OF LCC RESULTS ON LOW-INCOME CONSUMERS BASED ON ARI MEAN MANUFACTURER COSTS AND AN 18.4-YEAR AVERAGE LIFETIME—Continued

Product class	Efficiency level	Average LCC	Average LCC (savings) costs	Percent of consumers with		
				Net savings (>2 %)	No significant impact	Net costs (>2 %)
	11	8,890	(75)	16	84	0
	12	8,862	(103)	27	64	9
	13	8,948	(17)	25	40	35
	18	9,610	645	11	8	81
Single Package Air Conditioner	10	5,327				
	11	5,283	(44)	11	42	47
	12	5,313	(14)	20	27	53
	13	5,568	241	12	9	79
	18	6,158	831	10	2	88
Single Package Heat Pump	10	9,149				
	11	9,057	(92)	21	78	1
	12	8,973	(176)	35	53	12
	13	9,145	(4)	25	27	48
	18	9,619	470	18	8	74

In comparing the LCC results on the subgroup of consumers who are low-income (Table V.26) versus all central air conditioner and heat pump consumers (Table V.14), it appears that low-income consumers have lower savings at the different trial standard levels than the general population of central air conditioner and heat pump consumers. Table V.27 directly compares the LCC impacts of the proposed standard on low-income and all consumers.

TABLE VI.27.—COMPARISON OF LCC IMPACTS OF THE PROPOSED STANDARD ON ALL CONSUMERS VS. LOW-INCOME CONSUMERS

Product class	Efficiency level	Average LCC (savings) costs		Percent of consumers with net costs (>2 % of baseline LCC)	
		All consumers	Low-income	All consumers	Low-income
Split System Central Air Conditioner	12	($45)	($3)	39	51
Split System Heat Pump	13	(215)	(17)	22	35
Single Package Air Conditioner	12	(29)	(14)	44	53
Single Package Heat Pump	13	(112)	(4)	36	48

The U.S. Environmental Protection Agency (EPA) requires states to develop a state implementation plan (SIP) for most areas that are not in compliance with the National Ambient Air Quality Standards (NAAQS), or classified as nonattainment. In Texas, four areas are in nonattainment of the EPA's one-hour NAAQS for ozone: Beaumont-Port Arthur, El Paso, Dallas-Fort Worth, and Houston-Galveston. On August 9, 2000, The Texas Natural Resource Conservation Commission (TNRCC), the lead environmental agency for the state of Texas, approved for publication and public hearing proposed revisions to the state implementation plan (SIP), in order to reduce ground-level ozone in the Houston/Galveston (HGA), Dallas/Fort Worth (DFW), and Beaumont/Port Arthur (BPA) ozone nonattainment areas, as well as in the 95-county central and eastern Texas. The proposed rules consist of 23 separate requirements applying to various regions of the state. One of the proposals mandates the use of a technology in the affected areas that will reduce ozone from ambient air that is drawn across the external heat exchanger units of air-cooled air conditioning units, including heat pumps. The proposed rule would require, after January 1, 2002, that all central air conditioners sold in the specified areas of Texas have ozone reduction technology installed.

The ozone reduction technology is a proprietary catalyst called PremAir, manufactured by the Engelhard Corporation. The catalyst is incorporated in air conditioners in two ways: by coating the condenser coils, or by installing an insert next to the condenser coil. The Department is required, by the Process Rule, to understand the costs and benefits of standards, and the distribution of those costs among consumers, manufacturers and others, and the uncertainty associated with these costs and benefits. Any adverse impacts on significant subgroups and uncertainty concerning adverse impacts must be fully considered in selecting a standard. If the introduction of this technology in Texas, and possibly other jurisdictions, would create new consumer subgroups or would significantly change the ability of equipment manufacturers to meet the new efficiency standard or the cost required to do so, the Department would factor that information into its decision making for this rule.

This technology has the potential for affecting the price and efficiency of central air conditioners. For example, DOE is aware of a range of estimates of what this technology would add to the cost of central air conditioners. The costs of this technology are estimated to range between $42 and $446 per 12,000 Btu/hr of air conditioner capacity. As to possible effects of the technology on the efficiency of central air conditioners, DOE understands several designs of catalyst-treated air conditioners have been tested by Intertek Testing Services (ITS). DOE understands the test results show no impact on efficiency for coated condenser coils, and a roughly 2%

reduction in efficiency for the catalyst insert.

Manufacturers could also be affected by the ozone reduction requirement. The higher purchase costs of new air conditioners could alter consumers' decisions on repairing or replacing equipment, which would affect air conditioner sales and impact manufacturers. If the effect applies to a significant fraction of units sold each year, the Department's current manufacturer impact analysis may underestimate the impact on manufacturers.

After reviewing the available information, DOE is not certain as to the impacts of any ozone reduction requirements that the TNRCC may adopt. The proposal is one of 23 requirements TNRCC may adopt and it is uncertain whether this requirement will be included in their final rule. Even if the requirement is adopted, it is unclear what, if any, effect the requirement would have on efficiency. Finally, DOE believes such a requirement may have an impact on manufacturers. DOE estimates a potential impact on 800,000 central air conditioner shipments per year covered by the TNRCC proposal, or approximately 13% of total shipments. This potential requirement was not included in today's proposed rule because of uncertainty about whether the TNRCC will include the catalyst requirement in their SIP. DOE invites comments on the status of the TNRCC deliberations and whether this potential requirement should be considered.

E. Conclusion

Section 325(o)(2)(A) of the Act, 42 U.S.C. 6295(o)(2)(A), specifies that any new or amended energy conservation standard for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. EPCA section 325(o)(2)(B)(i), 42 U.S.C. 6295(o)(2)(B)(i). The amended standard must ''result in significant conservation of energy.'' EPCA section 325(o)(3)(B), 42 U.S.C. 6295(o)(3)(B).

We consider the impacts of standards at each of five trial standards levels, beginning with the Max Tech Level, *i.e.*, Trial Standard Level 5. We then consider less efficient levels. Trial Standard Level 3 is a combination of different efficiency levels for the different classes. It combines the SEER values for air conditioners from Trial Standard Level 2 (12 SEER) with the SEER values for heat pumps from Trial Standard Level 4 (13 SEER). By combining efficiency levels in this way, the Department is able to evaluate the impacts of different combinations of standard levels to make an informed decision on the merits of different efficiency combinations.

To aid the reader as we discuss the benefits or burdens of the trial levels, we have included a summary of the analysis results in Tables VI.28 and VI.29.[21] Table VI.28 presents a summary of analysis results based on ARI mean manufacturing costs, NAECA and Roll-up efficiency scenarios and 7% and 3% societal discount rate scenarios. Table VI.29 presents a summary of analysis results based on manufacturing costs obtained from the reverse engineering analysis for the NAECA efficiency scenario and 7% and 3% societal discount rate scenario. Both tables assume an 18.4-year equipment lifetime, including one compressor replacement. The reverse engineering scenario results in Table VI.29 are limited to single scenarios which highlight the impact of manufacturing costs on the consumer, manufacturers, national energy savings, and NPV.

TABLE VI.28.—SUMMARY OF ANALYSIS RESULTS BASED ON ARI MEAN MANUFACTURER COSTS [1]

	Trial std 1	Trial std 2	Trial std 3	Trial std 4	Trial std 5
Total Quads Saved [2]	1.7–1.8	2.9–3.2	3.4–3.6	4.2–4.5	8.1–8.7
Generation Capacity Offset (GW) [3]	6.4	10.6	12.3	15.4	28.6
NPV ($billion): [4]					
7% Discount Rate	0	−1	−1 to −2	−5 to −6	−22
3% Discount Rate	3	4	3	−3	−35
Emissions: [5]					
Carbon Equivalent (Mt)	13.4	23.7	27.4	33.6	63.7
NO_X (kt)	37.2	67.9	78.8	102.5	193.7
Cumulative Change in INPV ($ million): [6]					
NAECA	(37)	(186)	(197)	(183)	
Roll-up	(181)	(362)	(367)	(335)	
Life Cycle Cost ($):					
Split AC	($44)	($45)	($45)	$29	$555
Packaged AC	$20	($29)	($29)	$175	$741
Split HP	($150)	($242)	($215)	($215)	$276
Packaged HP	($134)	($254)	($112)	($112)	$296
Payback (years):					
Split AC	10.6	12.6	12.6	16	36
Packaged AC	16.1	14	14	21.8	48.8
Split HP	5.5	7.2	9.3	9.3	17.3
Packaged Heat Pump	8.1	8.7	13.2	13.2	19.4

[1] Estimates are based on 18.4-year lifetime.
[2] Based on AEO 2000 reference, high and low growth cases, and NAECA efficiency distributions.
[3] Reductions in installed generation capacity in the year 2020, based on AEO 2000 reference case, NAECA efficiency scenario.
[4] Based on NAECA efficiency distribution and 7 % discount rate. Range reflects AEO 2000 reference, high and low growth cases.
[5] Based on AEO 2000 reference case, NAECA efficiency scenario, and ARI mean manufacturing costs.
[6] Not calculated at Trial Standard Level 5.

[21] All cumulative effects that are not monetary are not discounted. Monetary effects are discounted to 1998 dollars.

TABLE VI.29.—SUMMARY OF ANALYSIS RESULTS BASED ON REVERSE ENGINEERING MANUFACTURING COSTS) [1]

	Trial std 1	Trial std 2	Trial std 3	Trial std 4	Trial std 5
Total Quads Saved [2]	1.7–1.8	2.9–3.2	3.4–3.7	4.3–4.6	8.4–9.0
Generation Capacity Offset (GW) [3]	6.4	10.6	12.3	15.4	28.6
NPV ($billion):					
7% Discount Rate [2]	1 to 2	2	1 to 2	0 to 1	−10 to −11
3% Discount Rate	6	10	10	9	−8
Emissions: [3]					
Carbon Equivalent (Mt)	13.4	23.7	27.4	33.6	63.7
NO_X (kt)	37.2	67.9	78.8	102.5	193.7
Cumulative Change in INPV ($ million):					
NAECA	(30)	(159)	(171)	(169)	
Roll-up [3]	(181)	(362)	(367)	(335)	
Life Cycle Cost ($):					
Split AC	($75)	($113)	($113)	($113)	$137
Packaged AC	($78)	($163)	($163)	($29)	$276
Split HP	($209)	($365)	($372)	($372)	$41
Packaged HP	($207)	($421)	($353)	($353)	($166)
Payback (years):					
Split AC	7.8	9.8	11.3	11.3	19.6
Packaged AC	7.7	7.5	7.5	14.5	25.1
Split HP	2.7	3.9	6.4	6.4	14.0
Packaged Heat Pump	4.6	4.0	8.4	8.4	12.81

[1] Based on 18 year lifetime, NAECA efficiency scenario and AEO 2000 reference case.
[2] Variation based on AEO 2000 reference, low and high growth case.
[3] Based on ARI mean manufacturer costs as reported in Table VI.28.

First we considered Trial Standard Level 5, the most efficient level for each of four classes, representing uniform 18 SEER requirements. Trial Standard Level 5 saves between 8.1 and 8.7 Quads of energy, a significant amount. The estimated reduction in installed generating capacity is 28.6 GW, or roughly 73 large, 400 megawatt, power plants.[22] The forecasted reduction in generating capacity is approximately 3.7% of current installed generating capacity and more than 13% of the anticipated growth in capacity needed by 2020. The emissions reductions of 63.7 Mt of carbon equivalent and 193.7 kt of NO_X are also significant. However, at this level, the vast majority of consumers would experience an increase in LCC costs. Purchasers of split central air-conditioners, the predominate class of central air conditioner with 65% of the sales of central air conditioners and heat pumps, would lose $555 over the life of their appliance.[23] Purchasers of split heat pumps, the predominate class of heat pump, would lose $276.[24] Moreover, the Department believes these LCC results overstate the benefits of this trial standard level. Because we did not have equipment cost estimates at this level, we used instead the costs of 15 SEER equipment. DOE believes the costs of 18 SEER equipment would be higher than the 15 SEER costs and that, as a result, the increase in life-cycle-costs would actually be greater than our LCC analysis indicates. For the nation as a whole Trial Standard Level 5 would have a net cost 22 billion dollars in NPV.[25] The Department did not calculate manufacturer impacts at this trial standard level. The Department concludes that at this trial standard level, the benefits of energy savings, generating capacity reductions and emission reductions would be outweighed by the negative economic impacts to the nation, to the vast majority of consumers and to the manufacturers. Consequently, the Department concludes Trial Standard Level 5, the Max Tech Level, is not economically justified.

Next, we considered Trial Standard Level 4. This level specifies 13 SEER equipment for all product classes and would save between 4.2 and 4.5 Quads of energy, a significant amount. The estimated reduction in installed generating capacity is 15.4 GW, or roughly 39 large, 400 megawatt, power plants.[26] The forecasted reduction in generating capacity is approximately 2% of current installed generating capacity and more than 7% of the anticipated growth in capacity needed in 2020. The emissions reductions would also be significant: 33.6 Mt of carbon equivalent and 102.5 kt of NO_X. The NPV of Trial Standard Level 4 would have a net cost of between 5 and 6 billion dollars.[27] The average LCC savings for consumers with split heat pumps would be $215, based on ARI equipment costs.[28] Owners of split air conditioners could see their LCC increase by $29, based on ARI costs.[29]

Under Trial Standard Level 4, the air conditioning industry would experience a NPV loss of between 169 and 335 million dollars. The range of impacts is driven primarily by the assumption regarding the distribution of air conditioner and heat pump efficiencies in the market after implementation of the standard (NAECA or Roll-up). The Department recognizes that the ability to maintain a full product line is more difficult at higher standard levels and therefore places more weight on the Roll-up scenario at Trial Standard Level 4. The Department concludes that at Trial Standard Level 4 the benefits of energy savings, generating capacity

[22] DOE estimates 9 coal-fired power plants and 64 gas-fired power plants can be avoided. See TSD, Chapter 11 and Appendix H.

[23] Consumers would experience a $137 increase in life-cycle-costs based on the Department's reverse engineering manufacturing costs.

[24] Consumers would experience a $41 increase in life-cycle-costs based on the Department's reverse engineering manufacturing costs.

[25] At the 3% societal discount rate scenario, the nation would have a net cost of 35 billion dollars. With the reverse engineering equipment cost, the NPV is a net cost of 10 to 11 billion dollars at the 7% discount rate and 8 billion dollars at 3%.

[26] DOE estimates 5 coal-fired power plants and 34 gas-fired power plants can be avoided. See TSD, Chapter 11 and Appendix H.

[27] At the 3% societal discount rate scenario, the nation would have a net cost of 3 billion dollars. With the reverse engineering equipment cost, the NPV has a no net cost at the 7% discount rate and a savings of 9 billion dollars at 3%.

[28] Consumers would experience a $372 savings in life-cycle-costs based on the Department's reverse engineering costs.

[29] Consumers would experience a $133 savings in life-cycle-costs based on the Department's reverse engineering manufacturing costs.

reductions and emission reductions and the reduction in LCC for some consumers are outweighed by the negative economic impacts on the nation, increase in LCC for most consumers and manufacturer loss in NPV. Consequently, the Department concludes Trial Standard Level 4 is not economically justified.

Next, we considered Trial Standard Level 3. This level specifies 12 SEER for air conditioners and 13 SEER for heat pumps. The energy savings are estimated to be between 3.4 and 3.6 quads, a significant amount. The estimated reduction in installed generating capacity is 12.3 GW, or roughly 31 large, 400 megawatt, power plants.[30] The forecasted reduction in generating capacity is approximately 1.6% of current installed generating capacity and more than 5% of the anticipated growth in capacity needed in 2020. The emissions reductions would also be significant: 27.4 Mt of carbon equivalent and 78.8 kt of NO_X. The national NPV of this trial standard level has a range of net costs from 1 to 2 billion dollars, using ARI costs.[31] [32] All classes of product would have mean LCC savings. The average LCC savings for consumers with split air conditioners would be $45, using ARI costs.[33] The average LCC savings for consumers with split heat pumps would be $215, using ARI costs.[34] As an additional LCC analysis, DOE considered the effect of standards on low-income consumers. DOE expects low-income consumers will experience less savings than the population as a whole. (See TSD, Chapter 10). Under this trial standard level, the air conditioning industry would experience a NPV loss of between 171 and 367 million dollars depending on whether the Roll-up or NAECA efficiency distribution scenario is considered.

Given the benefits and burdens of Trial Standard Level 3 as discussed above, and observing the reduction in NPV compared to Trial Standard Level 2, the Department compared the benefits and burdens of the two trial standard levels. Adopting Trial Standard Level 3, instead of Trial Level 2, would save the nation an additional 0.5 Quads of energy, and further reduce installed generating capacity by 1.7 GW, or roughly 5 large, 400 megawatt, power plants.[35] The incremental emission reductions of carbon equivalent and NO_X are 3.7 Mt and 10.9 kt, respectively. Trial Standard Level 3 would, however, reduce the national NPV by up to 1 billion dollars, depending on the cost estimates used.[36] [37] The consumer LCC savings are not changed for central air conditioners, but are reduced by $27 for split heat pumps using ARI costs.[38]

In determining the economic justification of Trial Standard Level 3, the Department has weighed the benefits of energy savings, generating capacity reductions, reduced average consumer LCC, and emissions reductions against the burdens of a loss in manufacturer net present value, consumer LCC increases for some households and the potential loss in national NPV. We find the benefits to be substantial. Although the loss in manufacturer net present value is also substantial, the projected LCC increases and loss in national NPV are relatively small, and these burdens of Trial Standard Level 3 would be outweighed by its benefits. Moreover, in light of the reverse engineering analysis, we believe the equipment costs will be lower than the ARI estimates on which we have relied and that the loss in national NPV would be less than estimated.

Comparing Trial Standard Level 3 to Trial Standard Level 2, DOE found the potential decrease in national NPV is outweighed by other factors not included in the national NPV calculations. For example, the national NPV calculation does not include quantitative estimates for the value of emission reductions.[39] Furthermore, as an added benefit, the standard may improve the reliability of the electric distribution system. The Department finds that, compared with Trial Standard Level 2, the incremental benefits of generating capacity reductions and emission reductions of Trial Standard Level 3 to be greater than the potential loss in national NPV and increase in life-cycle-costs to some consumers, including a relatively small number of low-income consumers.

After considering the benefits and burdens of Trial Standard Level 3 and comparing the impacts of Trial Standard Levels 2 and 3, the Department finds Trial Standard Level 3 to be maximum improvement in efficiency that is technologically feasible and economically justified. Therefore, the Department today proposes to adopt the energy conservation standards for air conditioners and heat pumps at Trial Standard Level 3.

VII. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act

The Department is preparing an Environmental Assessment of the impacts of the proposed rule and DOE anticipates completing a Finding of No Significant Impact (FONSI) before publishing the final rule on Energy Conservation Standards for central air conditioners and heat pumps, pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and the Department's regulations for compliance with NEPA (10 CFR Part 1021).

B. Review under Executive Order 12866, ''Regulatory Planning and Review''

The Department has determined today's regulatory action is a significant regulatory action within the scope of section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735, October 4, 1993). Therefore, this proposal requires a regulatory analysis. Such an analysis presents major alternatives to the proposed regulation that could achieve substantially the same goal, as well as a description of the cost and benefits

[30] DOE estimates 4 coal-fired power plants and 27 gas-fired power plants can be avoided. *See* TSD, Chapter 11 and Appendix H.

[31] At the 3% societal discount rate scenario, the nation would have a net savings of 3 billion dollars. With the reverse engineering equipment cost, the NPV has a net savings of 1 billion dollars at the 7% discount rate and 10 billion dollars at 3%.

[32] DOE observes that the average LCC savings for all classes at this trial standard level are positive and at the same time the NPV is negative. This is a counterintuitive result since the NPV can be described as a sum of individual consumer LCCs. The negative NPV is caused by a number of factors, including the assumption in the NES that some consumers will purchase more efficient products than is required by the standard, *e.g.,* 14 SEER. Since the NES uses average usage rates and average marginal energy prices for these consumers, it may overstate the life-cycle-costs for consumers that voluntarily purchase products which, based on average values, would seem not to be cost-effective. Furthermore, the NES does not consider factors such as utility rebate programs which would have a effect on total discounted costs.

[33] Consumers would experience a $113 savings in life-cycle-costs based on the Department's reverse engineering costs.

[34] Consumers would experience a $372 increase in life-cycle-costs based on the Department's reverse engineering costs.

[35] DOE estimates one coal-fired power plants and four gas-fired power plants can be avoided.

[36] At the 3% societal discount rate, the national NPV is reduced by 1 billion dollars. With the reverse engineering equipment cost, the NPV is not changed.

[37] The total national discounted cost of owning and operating central air conditioners and heat pumps at this Trial Standard Level 3 is 382 billion dollars.

[38] Using the reverse engineering costs the savings are increased by $7.

[39] It is possible the NPV does not include the value of avoided power plants. It should be

[36] At the 3% societal discount rate, the national NPV is reduced by 1 billion dollars. With the reverse engineering equipment cost, the NPV is not changed.

(including potential net benefits) of the proposed rule. Accordingly, the Office of Information and Regulatory Affairs (OIRA) reviewed today's action under the Executive Order.

There were no substantive changes between the draft we submitted to OIRA and today's action. The draft and other documents we submitted to OIRA for review are a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, telephone (202) 586–3142.

The following summary of the Regulatory Impact Analysis (RIA) focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete RIA, which is contained in the TSD, available as indicated at the beginning of today's proposed rule. The RIA consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

The RIA calculates the effects of feasible policy alternatives to central air conditioner and heat pump energy efficiency standards, and provides a quantitative comparison of the impacts of the alternatives. We evaluate each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and we compare it to the effectiveness of the proposed rule.

We created the RIA using a series of regulatory scenarios (with various assumptions), which we used as input to the shipments model for central air conditioners and heat pumps. We used the results from the shipments model as inputs to the NES spreadsheet calculations.

DOE identified the following seven major policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action
  —Product Labeling
  —Consumer Education
- Prescriptive Standards
- Financial Incentives
  —Tax credits
  —Rebates
  —Low income and seniors subsidy
- Voluntary Energy Efficiency Targets (5 Years, 10 Years)
- Mass Government Purchases
- The Proposed Approach (Performance Standards)

We have evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs (Table VII.1), and have compared it to the effectiveness of the proposed rule. All of the results below have been determined with the AEO Reference Case and the NAECA efficiency scenario.

TABLE VII.1.—ALTERNATIVES CONSIDERED

Policy alternatives	NPV (billions 98$)	Energy Savings (Quads)
Consumer Product Labeling	0	0.1
Consumer Education	0	0.1
Prescriptive Standards	0	1.1
Consumer Tax Credits	0	0.1
Consumer Rebates	0	0.2
Manufacturer Tax Credits	0	0.0
Voluntary Efficiency Target (5 year delay)	−1	3.1
Voluntary Efficiency Target (10 year delay)	−1	1.9
Low Income Subsidy	0	0.1
Mass Government Purchases	0	0
Performance Standards	−2	4.4

NPV = Net Present Value (2006–2030, in billion 1998$) (does not include government expenses).
Savings = Energy Savings (Source Quads).

If we imposed no new regulatory action, then we would implement no new standards for this product. This is essentially the ''base case'' for central air conditioners and heat pumps. In this case, between the years 2006 and 2030, there would be an expected energy use of 39 Quads of primary energy, with no energy savings and a zero NPV.

We grouped several alternatives to the base case under the heading of informational action. They include consumer product labeling and DOE public education and information programs. Both of these alternatives are already mandated by, and are being implemented under EPCA sections 324 and 337, 42 U.S.C. 6294, 6297. One base case alternative would be to estimate the energy conservation potential of enhancing consumer product labeling. To model this possibility, the Department estimated that 5% of the consumers purchasing 10 SEER equipment and 5% of the consumers purchasing 12 SEER equipment would change their decisions and purchase 12 SEER and 13 SEER systems, respectively. It is assumed that the program would last six years and upon its expiration consumers would revert back to their prior purchase decisions. The consumer product labeling alternative resulted in 0.1 Quad of energy savings with no impact on the NPV.

Another approach, called consumer education, is to consider an Energy Star® program for 12 SEER and 13 SEER central air conditioners and heat pumps. We assume, under this program, there would be a 20% increase in the sales of both 12 SEER and 13 SEER systems. As with the consumer product labeling program, it is assumed that the education program would last six years and upon its expiration sales would drop back to their market share levels prior to the program's implementation. This consumer education program results in energy savings equal to 0.1 Quad with no impact on the NPV.

Another method of setting standards would entail requiring that certain design options be used on each product, *i.e.,* for DOE to impose prescriptive standards. For this approach, we assume that a prescriptive standard is implemented to ensure that all central air conditioners and heat pumps are equipped with thermostatic expansion valves (TXVs). The resulting efficiency increase is 0.5 SEER. That is, the

baseline efficiency of 10 SEER is assumed to increase to 10.5 SEER as a result of the prescriptive standard. Manufacturer costs associated with this standard were arrived by linearly interpolating between those costs associated with the baseline (*i.e.,* 10 SEER) and 11 SEER efficiency levels. This resulted in energy savings of 1.1 Quad and no impact on the NPV.

We tested various financial incentive alternatives. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. We assumed the tax credits to consumers were 50% of the incremental purchase price for higher energy-efficiency equipment. The incremental price is based on the difference between the 2006 baseline price and the price of 12 SEER equipment. We estimate the impact of this policy would be to move 5% of the market share from the 2006 baseline to 12 SEER models. These tax credits would start in 2006 and run for six years. We assume people stop buying these more efficient and more expensive central air conditioners and heat pumps when the tax credits stop. The tax credits to consumers showed a change from the base case, saving 0.1 Quad with no impact to the NPV.

To estimate the impact of consumer rebates, we assumed rebates of 35% of the incremental retail prices for higher energy-efficiency equipment. The incremental cost is based on the difference between the 2006 baseline cost and the cost of 12 SEER equipment. We estimate the impact of this policy would be to move 10% of market share from the 2006 baseline to the 12 SEER models. These rebates would start in 2006 and run for six years. We assume people stop buying these more efficient and more expensive central air conditioners and heat pumps when the rebates stop. The rebates to consumers showed a change from the base case, would save 0.2 Quad with no impact to the NPV.

Another financial incentive we considered was a tax credit to manufacturers for the production of energy-efficient models of central air conditioners and heat pumps. We assumed an investment tax credit of 20%, applicable to the tooling and machinery costs of the manufacturers. These are tooling costs as they relate to producing 12 SEER central air conditioners and heat pumps. We estimate the impact of this policy would be to move 1% of the market share from the 2006 baseline to the 12 SEER models. These tax credits would start in 2006 and run for six years. We assume no persistence in the market once they stop. Tax credits to manufacturers would save no energy and have no impact on the NPV. The impact of this scenario would be negligible because the investment tax credit was applicable only to the tooling and machinery costs of the firms. The firms' fixed costs and some of the design improvements that would likely be adopted to manufacture more efficient versions of this product would involve purchased parts. Expenses for purchased parts would not be eligible for an investment tax credit.

We examined two scenarios of voluntary energy efficiency targets. In the first one, we assumed all the relevant manufacturers voluntarily adopted the proposed energy conservation standards in five years. In the second scenario, we assumed the proposed standards were adopted in 10 years. In these scenarios, voluntary improvements having a five-year delay, compared to implementation of mandatory standards, would result in energy savings of 3.1 Quads and −$1 billion NPV; voluntary improvements having a 10-year delay would result in 1.9 Quads being saved and −$1 billion NPV. These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no assurance.

One of the market barriers to higher efficiency central air conditioners and heat pumps is the expense to upgrading to a more efficient system. Since these expenses can be a particular burden on low income households, we considered a low income subsidy of $500 to make higher efficiency central air-conditioning and heat pump equipment available and cost effective for these households. We determined the number of low income households with central air-conditioning from the RECS public use data. We assumed that half of these households would take advantage of the program. The program would start in 2006 and run for six years. This subsidy would save 0.1 Quad with no impact to the NPV.

Another policy alternative we reviewed was that of large purchases of high efficiency central air conditioners and heat pumps by Federal, State, and local governments. We modeled this policy by assuming these governmental entities (*e.g.,* U.S. Department of Housing and Urban Development at the Federal level) purchased 12 SEER equipment for 5% of the low income, rented housing stock utilizing central air-conditioning and heat pump equipment. This policy alternative resulted in no energy savings with no impact to the NPV.

Lastly, all of these alternatives must be gauged against the performance standards we are proposing in today's proposed rule. Such performance standards would result in energy savings under the AEO Reference Case and NAECA efficiency scenario of 3.5 Quads, and the NPV estimates range from an increase of $3 billion to a cost of $2 billion.

As indicated in the paragraphs above, none of the alternatives we examined for these products would save as much energy as today's proposed rule. Also, several of the alternatives would require new enabling legislation, since authority to carry out those alternatives does not presently exist.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of regulations on small businesses. For air conditioning and warm air heating equipment manufacturing, a ''firm'' is defined by the Small Business Administration as a small business if it (including affliates) has 750 or fewer employees.

The residential air-conditioner industry is characterized by seven firms accounting for nearly 95% of sales. DOE understands that each of these firms, including its affiliates, has more than 750 employees. Smaller businesses and firms, which make specialty air-conditioning products and supply niche markets, share 5% of the market.

In this industry, average production cost is inversely related to firm size. The industry displays economies of scale, and large firms (to the extent that their facilities are modernized) have lower average production costs than small firms. This fact, coupled with increasing competitiveness of the national market, probably accounts for the consolidation that has occurred for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the firms will be, on average, more vulnerable to the financial impacts of higher efficiency standards. Any decrease in average profitability is more likely to mean the difference between success and failure for a smaller firm.

The impact of higher efficiency standards on small firms is likely to be mixed. Those firms that face a large technological challenge in meeting the new standards may face a disproportionate burden, because smaller firms have more limited research and development capabilities

than their larger competitors. Some smaller manufacturers indicated the potential for a negative economic impact of any higher standard level on their firms. However, since these concerns apply primarily to small manufacturers of niche products, they benefit from the provisions proposed by the Department to somewhat protect those products from the new standards. For example, a separate product class is being proposed for through-the-wall equipment, many of which are manufactured by small manufacturers. Also, the Department has acknowledged that small manufacturers of high velocity distribution systems may potentially be adversely affected by the proposed standard level. The Department is considering modifications to the SEER test procedure, which would grant these manufacturers some relief. Vertical-packaged, wall-mounted equipment is another product manufactured by small firms, and, as stated in Section V.J.3 of this notice, the Department intends to consider those to be commercial products under EPACT. These provisions should eliminate any potential for significant economic impact on small manufacturers related to the proposed standard level.

Many small manufacturers produce coils only. Since there are no intensive incremental technological or capital requirements for these companies to increase the efficiency of their products, we do not expect them to face any incremental burden as a result of the new standards.

In view of these conclusions, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the proposed standard levels in today's proposed rule will not ''have a significant economic impact on a substantial number of small entities,'' and it is not necessary to prepare a regulatory flexibility analysis.

D. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are proposed in this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

E. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, the regulations meet the relevant standards.

F. ''Takings'' Assessment Review

The Department has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications.'' Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State regulations that may have existed on the products that are the subject of today's proposed rule were preempted by the Federal standards established in NAECA 1987. States can petition the Department for exemption from such preemption based on criteria set forth in EPCA. No further action is required by Executive Order 13132.

H. Review Under the Unfunded Mandates Reform Act

With respect to a proposed regulatory action that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, section 202(a) of the Unfunded Mandates Reform Action of 1995 (UMRA), 2 U.S.C. 1531 *et seq.* requires a Federal agency to publish a written statement concerning estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a),(b). DOE estimates that the proposed standards, if adopted, would not result in the expenditure by the private sector of $100 million or more in a year, with the possible exception of one year in which industry expenditures could total approximately $110 million.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of the Notice of Proposed Rulemaking and ''Regulatory Impact Analysis'' section of the TSD for today's proposed rule responds to those requirements.

DOE is obligated by Section 205 of UMRA, 2 U.S.C. 1535, to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. From those alternatives, DOE must select the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule, unless DOE publishes an explanation of why a different alternative is selected. As required by section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), this proposed rule would establish energy conservation standards for central air conditioners and heat pumps that are designed to

achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for this notice.

I. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under the Plain Language Directives

Section 1(b)(12) of Executive Order 12866 requires that each agency draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Similarly, the Presidential memorandum of June 1, 1998 (63 FR 31883) directs the heads of executive departments and agencies to use, by January 1, 1999, plain language in all proposed and final rulemaking documents published in the **Federal Register**, unless the rule was proposed before that date.

Today's proposed rule uses the following general techniques to abide by section 1(b)(12) of Executive Order 12866 and the Presidential memorandum of June 1, 1998 (63 FR 31883):

- Organization of the material to serve the needs of the readers (stakeholders).
- Use of common, everyday words in short sentences.
- Shorter sentences and sections.

We invite your comments on how to make this proposed rule easier to understand.

VIII. Public Comment

A. Written Comment Procedures

The Department invites interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in today's proposed rule to Ms. Brenda Edwards-Jones, at the address indicated at the beginning of this notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be contrary to the public interest.

B. Public Workshop/Hearing

1. Procedure for Submitting Requests To Speak

You will find the time and place of the public hearing listed at the beginning of this notice. We invite any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, to request an opportunity to make an oral presentation. If you would like to attend the public hearing, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send them by mail or E-mail to brenda.edwards-jones@ee.doe.gov.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least two weeks prior to the date of this hearing as indicated at the beginning of this notice. At our discretion, we may permit any person who cannot do this to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The request to give an oral presentation should ask for such alternative arrangements.

2. Conduct of Hearing

The Department will designate a Department official to preside at the workshop and we may also use a professional facilitator to facilitate discussion. The workshop will not be a judicial or evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act and a court reporter will be present to record the transcript of the workshop. We reserve the right to schedule the presentations by workshop participants, and to establish the procedures governing the conduct of the workshop.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. We will divide the remainder of the hearing into segments, with each segment consisting of one or more of the following specific topics covered by this notice:

- Engineering analysis, including mark-up;
- Life-Cycle-Cost and payback analysis;
- National Energy Savings and Net Present Value;
- Manufacturer impacts;
- Utility impacts;
- Proposed standards, including an EER-based standard and TXV considerations; and
- Other issues.

The Department will introduce each topic with a brief summary of the relevant parts of our analysis and of the proposed rule, and the significant issues involved. We will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, the Department will permit each participant to briefly clarify his or her statement and comment on statements made by

others. Participants should be prepared to answer questions by us and by other participants concerning these issues. Our representatives may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements will be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues for Which DOE Seeks Comment

The Department is particularly interested in receiving comments and views of interested parties concerning:

(1) Whether explicit consideration of extended warranties would produce significantly different results from those based on service costs alone;

(2) The Department's methodology and data for determining the appropriate marginal energy costs;

(3) The burdens and benefits that would result from including an EER requirement in the final rule. Of particular interest are comments regarding burdens on manufacturers, benefits regarding reduction in peak electricity demand, the effect of more stringent standards on the cost and availability of modulating equipment, and the effect that an EER floor would have on electrical system reliability. In addition, comments are welcome to discuss the pros and cons of any of the options described in Section V.I.2 above, as well as other approaches;

(4) Whether the proposed standards concerning high-velocity, vertically-packaged wall-mounted equipment, and through-the-wall equipment provide a significant advantage to those products versus competing products and are sufficient to preserve the unique features of those products, and whether improvements in the definitions are needed to prevent loopholes. For ductless split equipment and non-weatherized vertical packaged equipment, additional comment is welcome on the impacts that meeting the new standards would have on the availability of those products;

(5) The issue of thermal expansion valves (TXV), particularly whether our concerns regarding the perceived reliability problems and potential misuses associated with widespread use of TXVs are valid;

(6) The validity of the analytical methods used and the appropriate interpretation and use of the results of this analysis;

(7) The Draft Environmental Assessment, which is printed within the TSD prepared for today's proposed rule; and

(8) The impacts on manufacturers and consumers if the levels in today's proposed rule were applied to commercial three-phase unitary air conditioners less than 65K Btu/hr as well.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on September 27, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by adding a definition for ''through-the-wall air conditioner and heat pump'' in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

Through-the-wall air conditioner and heat pump means a central air conditioner or heat pump, having a rated capacity between 18,000 Btu/hr and 30,000 Btu/hr that is:

(1) Designed to be installed partially within, or mounted against, a fixed-size opening in an exterior wall; and

(2) Designed so that air for the outdoor coil is taken in and discharged at the same surface.

* * * * *

3. Section 430.32 of Subpart C is amended by revising paragraph (c) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(c) *Central air conditioners and central air conditioning heat pumps.* (1) Split system central air conditioners and central air conditioning heat pumps manufactured after January 1, 1992, and before January 1, 2006, and single package central air conditioners and central air conditioning heat pumps manufactured after January 1, 1993, and before January 1, 2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

Product class	Seasonal energy efficiency ratio	Heating seasonal performance factor
1. Split systems	10.0	6.8
2. Single package systems ..	9.7	6.6

(2) Central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

Product class	Seasonal energy efficiency ratio (SEER)	Heating seasonal performance factor (HSPF)
1. Split system air conditioners	12	.....
2. Split system heat pumps ...	13	7.7
3. Single package air conditioners	12	.....
4. Single package heat pumps	13	7.7
5. Through the wall air conditioners and heat pumps ...	11	7.1

* * * * *

[FR Doc. 00–25336 Filed 9–29–00; 9:42 am]

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Federal Register

Thursday,
October 5, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Noise Certification Regulations for Helicopters; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–2000–7958; Notice No. 00–11]

RIN 2120–AH10

Noise Certification Regulations for Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) is proposing changes to the noise certification regulations for helicopters. These proposed changes are based on a joint effort by the FAA, the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for helicopters. These proposed changes would provide nearly uniform noise certification standards for helicopters certificated in the United States, the JAA countries, and other countries that have adopted as their national regulation either the United States regulations, the JAA regulations, or the International Civil Aviation Organization (ICAO) standards. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

DATES: Comments must be received on or before January 4, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–7958 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Sandy Liu, AEE–100, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–4864; facsimile (202) 267–5594; or email at sandy.liu@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written comments, data, views, or arguments. Comments on the possible environmental, economic, federalism, or energy-related impact of the adoption of this proposal are welcomed. Comments concerning the proposed implementation and effective date of the rule are also specifically requested.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of comments if commenters include a self-addressed, stamped postcard with the comments. The postcards should be marked ''Comments to Docket No. FAA–2000-7958.'' When the comments are received by the FAA, the postcards will be dated, time stamped, and returned to the commenters.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

Statement of the Problem

Various governmental bodies have developed noise certification regulations to control noise emissions from helicopters. The International Civil Aviation Organization (ICAO) issues on-going prototypical sets of aircraft noise standards which member States, including the United States, are encouraged to adopt into their respective national regulations. Many ICAO member States have adopted the ICAO standards verbatim. The United States has adopted into 14 CFR part 36 noise certification regulations that, although similar to the ICAO standard, differ substantively with the ICAO version. A third body, the Joint Aviation Authorities (JAA), is developing its own version of the ICAO standards with JAA member States in Europe. Thus, from a practical standpoint, three sets of helicopter noise certification requirements exist, each controlled by an independent political entity.

Helicopter manufacturers must demonstrate compliance with at least one, and often all three, of the sets of noise certification regulations when a helicopter is exported beyond its country of manufacture and certification. It has become apparent to the manufacturers that the differences among the three versions of the helicopter noise standards are an undesirable burden. The manufacturers have requested that the regulating agencies harmonize the three sets of regulations in order to minimize the costs for demonstrating compliance.

These same aviation certification authorities, United States, JAA and ICAO, have previously recognized the value of harmonizing civil aircraft certification and operating regulations. The Administrator of the FAA supports harmonization and has committed the FAA to support the harmonization of the FAA regulations with those of the JAA and ICAO.

Current United States Helicopter Noise Certification Regulations

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribe ''standards to measure aircraft noise and sonic boom * * * and regulations to control and abate aircraft noise and sonic boom.'' Part 36 of title 14 of the Code of Federal Regulations (14 CFR) contains the FAA's noise standards and regulations that apply to the issuance of type certificates, changes in type design, and airworthiness certificates for specified classes and categories of aircraft. Subpart H and appendices H and J of part 36 contain the requirements and standards that apply to helicopters. Appendices H and J of part 36 specify the test conditions, procedures, and noise levels required to demonstrate compliance with certification requirements for helicopters. The original helicopter noise certification standards and regulations, including appendix H, were issued on February 5, 1988 (53 FR 3534). On September 16, 1992 (57 FR 42846), the FAA published an alternative noise certification procedure, appendix J, for helicopters that do not exceed 6,000 pounds maximum takeoff weight.

ICAO Helicopter Noise Certification Standards

The International Civil Aviation Organization (ICAO) has also adopted a set of Standards and Recommended Practices for aircraft noise certification. These ICAO standards are similar to the United States regulations. The ICAO Annex 16 standards, which have no legal standing of their own, are intended to be prototypical regulations upon which the Contracting States to ICAO may base their own national regulations. For helicopters, Chapter 8 of Annex 16 is the approximate equivalent of part 36, appendix H; Chapter 11 of Annex 16 is the approximate ICAO equivalent to part 36, appendix J. The ICAO standards are issued as International Standards and Recommended Practices, Environmental Protection, Annex 16 to the Convention on International Civil Aviation, Volume 1, Aircraft Noise.

Joint Aviation Authorities Helicopter Noise Certification Standards

The civil aviation authorities of certain European countries have agreed to common comprehensive and detailed airworthiness and operating requirements; these are known as the Joint Aviation Requirements (JARs). The JARs are intended to minimize type certification differences on multi-national European ventures and to facilitate the export and import of aviation products between European nations. Aviation authorities of participating countries recognize the JARs as an acceptable basis for showing compliance with their national aviation codes. The JAA added aircraft noise certification (JAR 36), including the helicopter requirements of Subsection D to the JARs effective May 23, 1997. The JAA's JAR 36 study group is tasked with the technical responsibilities for overseeing the noise certification standards. Another group, Abatement of Nuisances Caused by Air Transport (ANCAT), created under the auspices of the European Civil Aviation Conference (ECAC), oversees the policy interests for the JAA. The ANCAT previously decided that the JAR aircraft noise certification standards does mirror the standards adopted by ICAO.

Aviation Rulemaking Advisory Committee (ARAC)

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee (ARAC) to serve as a forum for the FAA to obtain input from outside the government on major regulatory issues. The FAA has tasked ARAC with several noise certification issues. These issues involve the harmonization of part 36 with JAR 36, the harmonization of associated guidance material including equivalent procedures, and interpretations of the regulations. On May 3, 1994, the ARAC established the FAR/JAR Harmonization Working Group for Helicopters (59 FR 22883). The Helicopter Harmonization Working Group (HHWG) is comprised of helicopter noise certification experts, and is responsible for addressing tasks assigned by ARAC. The United States and European interests are represented in the HHWG, which includes representatives of the helicopter manufacturers and aviation authority representatives from the FAA and the JAA/ANCAT. The HHWG is co-chaired by industry representatives from the United States and Europe, and meetings are held alternately in the United States and Europe.

The HHWG reviewed the helicopter noise certification provisions of 14 CFR part 36, subparts A and H, and appendices H and J, and the corresponding applicable provisions of JAR 36 and ICAO Annex 16. Differences between the regulations were identified and discussed. The goal of the HHWG is to harmonize the regulations by modifying or deleting conflicting requirements. The HHWG is not authorized to make recommendations for the creation of new requirements or the removal of existing requirements that are common among the different sets of regulations. Methods for resolving the differences were agreed to and forwarded to each regulatory body for approval. A recommendation for amending part 36 was forwarded to the ARAC. After due consideration including a meeting open to the public on August 23, 2000, ARAC agreed to this recommendation and forwarded, in the form of a draft NPRM, to the FAA for consideration.

The overall structure for harmonizing the Federal Aviation Regulations and the Joint Aviation Regulations is described in the JAA/FAA Harmonization Work Program.

Under the Harmonization Work Program, the FAA and JAA agreed to form a Harmonization Working Group to harmonize the aircraft noise certification requirements of 14 CFR part 36 and JAR 36. The Working Group serves under the auspices of both ARAC and the JAA's JAR 36 Study Group. The JAA has adopted the ICAO noise certification standards; any recommended changes to the JARs resulting from a harmonization process, must first be acted on and approved by ICAO before they are considered by the JAA.

Synopsis of the Proposal

Part 36 of the Federal Aviation Regulations (14 CFR) contains noise standards for aircraft type and airworthiness certification. Subpart H of part 36 and its related appendices H, and J prescribe noise levels and test procedures used for certification of civil helicopters in the normal, transport, restricted, or primary category, including rules governing the issuance of original, amended, or supplemental type certificates for helicopters for which application is made on or after March 6, 1986.

The FAA is proposing to amend some of the technical specifications included in appendices H and J, and proposes a new definition under § 36.1. No changes to the applicability of part 36 are proposed. The proposed changes would not substantively alter the prescribed noise limits nor change the relative stringency of the regulations, i.e., the relationship between the noise level limits and the measured noise level of a given helicopter. These proposed changes may be categorized as (a) replacing an existing specification with a similar ICAO specification; (b) adding an existing ICAO specification to part 36 where a corresponding part 36 specification does not presently exist; or (c) removing an existing part 36

specification where there is no corresponding ICAO specification.

The FAA has examined the helicopter noise certification process and analyzed how the proposed changes would have affected previous helicopter noise certification projects. The cumulative effect of the proposed changes on a single certification would not typically exceed ± 0.1 decibels and would not be expected to exceed ± 0.3 decibels under a worst-case combination of conditions. The FAA has determined that the proposed changes would not substantively alter the noise certification levels or the finding of compliance of helicopters currently certificated under either appendix H or appendix J. Accordingly, the FAA has determined that these proposed changes are consistent with the statutory criteria for amending aircraft noise abatement regulations.

Section-by-Section Discussion

The following is a section-by-section discussion of the proposed amendment.

Section 36.1 Applicability and Definitions.

The FAA is proposing the addition of a new definition to § 36.1(h)(5) for ''maximum normal operating RPM.'' This would be defined as ''the highest rotor speed for each reference procedure corresponding to the airworthiness limit imposed by the manufacturer and approved by the FAA.'' This term would cover instances where a tolerance on the highest rotor speed is specified and where the rotor speed is automatically linked with flight condition or can be changed by pilot action. As shown to apply to reference section H36.107(b)(5) and J36.105(c)(2).

Section 36.11 Acoustical Change: Helicopters.

The proposed change would increase the maximum takeoff weight limit for appendix J applicability from 6,000 pounds to 7,000 pounds. The proposed change reflects a new requirement in the 14 CFR part 27 airworthiness standards for normal category rotorcraft. The part 27 revision, adopted in Amendment 27–37 and effective on October 18, 1999, increases the passenger seat limitation to nine, update of safety standards and consequential weight growth.

Subpart H—Helicopters

The proposed change to Subpart H regarding compliance with appendix J, is being made to conform to the weight change described above in the discussion of § 36.11. The same reasons for adoption apply to this change.

Subpart O—Operating Limitations and Information

Subpart O of part 36 specifies requirements for documentation of noise levels in an airplane flight manual or rotorcraft flight manual. The FAA is proposing to add the word ''Documentation'' as the first word of the subpart title to more specifically identify the subject matter of subpart O.

Proposed section 36.1581(a)(2) would be amended by changing the reference from appendix F to appendix G. The noise certification requirement for propeller-driven small airplanes were moved to appendix G in Amendment 36–16 (53 FR 47394, November 22, 1988), and this reference was overlooked.

A new proposed section 36.1581(a)(3) would be added to require that helicopter noise levels be included in the rotorcraft flight manual. This change specifies the noise certification documentation requirements; these would be similar to requirements for other types of aircraft. This would provide uniform noise level documentation requirements for each aircraft category and would standardize documentation procedures. This amendment is intended to improve certification tracking and documentation referencing.

Section H36.3 Reference Test Conditions

Proposed section H36.3(a)(1) would add sea level pressure in metric units in addition to English units already specified. This would prevent possible variations in measured data that could result from differing conversion factors by applicants using metric units.

Proposed section H36.3(c)(2) would remove a redundant designation regarding FAA approval. No substantive change in the approval process is intended.

Proposed section H36.3(d) would delete the reference to rotor speed because it is an unnecessary parameter in describing a flight profile. This reference was included in error.

Proposed section H36.3(d) would add two new criteria for reference airspeeds: $0.9V_{NE}$ and $0.45V_{NE}$+65 knots. Currently, the reference airspeeds specified are limited to either $0.9V_H$ or $0.45V_H$+65 knots, whichever is less.

[**Note:** V_{NE} is the never-exceed airspeed, an airworthiness limitation, imposed by the manufacturer and approved by the FAA.] The advent of more powerful engines and improved gearboxes have resulted in helicopters that can have a V_H airspeed in excess of the power-on V_{NE} airspeed. Therefore, new noise certification airspeed criteria are necessary to be consistent with technological advances and still accommodate the airworthiness limitations imposed for safety. These two new reference airspeed criteria would serve to satisfy these advances.

Section H36.3(d) would be amended as follows:

1. Specifically, change the symbol ''D'' to be replaced by ''Dr'' and the symbol ''J'' to be replaced by ''Jr''.

1. Deleting the reference to rotor speed; it is unnecessary for definition of flight profile.

2. Adding the word ''reference'' prior to the words ''airspeed'' and ''rotor speed'' to indicate that the specifications are for reference flight conditions.

Proposed section H36.3(f)(1)(i) would be amended by changing the approach profile reference from ''EK'' to ''ErKr'', and changing the angle measure ''6° ± 0.5 °'' to ''6°,'' respectively. For a reference situation, no such tolerances are necessary.

Proposed section H36.3(f)(1)(ii) would add test approach angle tolerance limits between 5.5° and 6.5° that were removed from section H36.3(f)(1)(i). This is the appropriate paragraph for these tolerances.

Section H36.5 Symbols and Units

Proposed section H36.5 would remove the symbols S, S_r, T, and T_r and their descriptions in the Flight Profile Identification-Positions table and remove the symbols AS_r, AT, and AT_r and their meanings in the Flight Profile Distances table. The typographical errors; Alr and Anr would be corrected to AL_r and AN_r. In addition, the three new symbols and their descriptions would be added to the Flight Profile Identification-Positions table of this section as follows:

F_r—Position on reference takeoff path directly above noise measuring Station A.
G_r—Position on reference flyover path directly above noise measuring Station A.
H_r—Position on reference approach path directly above noise measuring Station A.

These changes and corrections will make these tables consistent with amended Figures H1 and H3 (reference section H36.205 for proposed changes.

Section H36.101 Noise Certification Test and Measurement Conditions

Proposed section H36.101(b)(6)(iii) would remove the paragraph for additional flight test data to determine the variation of EPNL with weight for the takeoff condition. In takeoff, noise generation is a function of torque (power) to the rotor systems, not weight, making the current requirement unnecessary.

Proposed section H36.101(b)(8)(ii) would require approach tests to be

conducted between 90 percent and 105 percent of the rotorcraft's maximum certification weight. This change is needed to make this section consistent with section H36.101(b)(6)(ii), and simplifies the rules for the three conditions. (See §§ H36.101(b)(6)(ii) for takeoff and flyover).

Proposed section H36.101(b)(8)(iii) removes the paragraph for additional flight test data that is used to determine the variation of EPNL with weight for the approach condition. In approach, noise generation is predominantly a function of complex aeroacoustic sources associated with main rotor blade vortex interaction, not weight, making the current requirement unnecessary. This would further harmonize measurement procedures and streamline certification testing.

Proposed section H36.101(b)(6) requires at least one flight at, or above, the noise certification weight for each of the three flight procedures. The proposal also removes the requirement for correction of off-reference weight for the takeoff and approach procedures. This paragraph is also being removed from section H36.205.

Proposed section H36.101(c)(2) would change the minimum test temperature from 36°F (2.2°C) to 14°F (−10°C). The current 36°F (2.2°C) temperature limit is unnecessarily restrictive, given that no higher levels of atmospheric absorption could be encountered by lowering the test day temperature. Although there is a revised minimum test air temperature limit, the limit for the noise measuring equipment is unchanged.

Proposed section 36.101(c)(2) would also specify that the temperature test window be based on the 10-meter temperature values and that the 10-meter temperature and relative humidity values be used to adjust the sound propagation path for propagation path absorption. Noise certification data collected to date has demonstrated that EPNL values corrected using atmospheric data measured at 10 meters are acoustically identical to those corrected using averaged temperature and relative humidity data. The proposed changes would replace historically unreliable temperature data collection.

Proposed section H36.101(c)(3) would specify allowing the use of only the relative humidity and ambient temperature values of the 10-meter measurement station for allowable sound attenuation in the one-third octave band centered at 8 kHz and no longer require the use of aircraft relative humidity and ambient temperature measurements. This change is supported by years of noise certification data demonstrating that atmospheric measurements at 10-meters satisfies both the sound attenuation and relative humidity range requirements. Helicopter noise certification test experience has shown that relative humidity measurements at the helicopter position is difficult and subject to error given the available instrumentation and procedures. Analysis has indicated minimal differences between humidity measured at the helicopter position and the 10-meter measurement position. Corrections have been no greater than 0.1 dB except under extreme conditions that otherwise would be considered an anomalous meteorological condition.

Proposed section H36.101(c)(5) would specify that tests not be conducted under anomalous wind or anomalous meteorological conditions. If these conditions exist at test sites in a desert environment, temperature and relative humidity must be established using FAA-approved procedures.

Proposed section H36.101(d) would specify that the helicopter height and lateral position is determined relative to the reference flight track, not the centerline or runway. The differential global positioning system is acceptable as an independent method of determining the position of the helicopter.

Section H36.103 Takeoff Test Conditions

Proposed section H36.103(b)(1) would specify that the takeoff procedure airspeed be established prior to entering the 10dB-down time interval of the climbout as opposed to the current requirement that the takeoff procedure airspeed must be established during the horizontal portion of the takeoff test procedure. This change more clearly specifies that the portion of the takeoff at which the required airspeed must be maintained; this procedure allows the pilot to establish and stabilize required power settings at the time the climb is started. This proposal would simplify the pilot workload by requiring one less parameter (power) that must be stabilized at the time the climb is stated. This method is only satisfactory if the initial 10 dB-down time interval occurs during the climb portion of the profile.

Proposed section H36.103(b)(3) would more clearly define gearbox torque limit. It also adds the alternate of maximum take-off power. The lower of the two is used for specifying required takeoff condition. This change more closely aligns part 36 with JAR 36 without any substantive change. This section will no longer contain paragraphs (i) and (ii); the material is included in the text of (b)(3) as described.

Proposed section H36.103(b)(4)would clarify that portion of the takeoff at which the required best rate of climb airspeed, or the lowest airworthiness approved takeoff speed must be maintained. This section will no longer contain paragraphs (i) and (ii); the material is included in the text of (b)(3) as described. This change more closely aligns part 36 with JAR 36 without any substantive change.

Proposed section H36.103(b)(5) would define the highest rotor speed used in takeoff. It also states that the rotor's average rpm, rather than instantaneous rpm is required to be within ±1.0 percent during the 10 dB-down time interval.

Proposed section H36.103(b)(6) would add a new alternate allowable altitude criteria of a wider zenith tolerance in meters for low altitudes near the start point. The criteria retains the current permitted zenith tolerance defined in degrees throughout the 10 dB-down time interval. This change more closely aligns part 36 with JAR 36 without any substantive change.

Proposed section H36.103 (b)(7) would add a new paragraph that requires that a constant takeoff configuration be maintained, and that the landing gear may be retracted when establishing the best rate-of-climb and corresponding speed as required by the U.S. airworthiness standards.

Section H36.105 Flyover Test Conditions

Proposed section H36.105(b) would specify in detail that an even number of flights (6 or more) is required to assure balanced measurement of any directional effects that may be related to flight path orientation.

Proposed section H36.105(b)(1) would add the term ''cruise configuration'' in requiring that a constant cruise configuration be maintained. This change adopts a commonly understood term and will minimize misinterpretation of allowance for unsteady, variable speed operations during flyover test conditions.

Proposed section H36.105(c)(1) would add two alternative flyover airspeed criteria to the current requirement of continuous power (V_H). The proposed additional level flyover reference airspeeds are 90 percent of the never-exceed airspeed, V_{NE}, and 45 percent of the never-exceed airspeed plus 65 knots; the least of the three is the required airspeed. As explained above in section H36.3(d), the advent of more powerful engines and improved gearboxes have resulted in helicopters that can have a

V_H airspeed in excess of the power-on V_{NE} airspeed. Therefore, new noise certification airspeed criteria are necessary to be consistent with technological advances but still accommodate the airworthiness limitations imposed for safety. These two new reference airspeed criteria would serve to satisfy these advances. This change more closely aligns part 36 with JAR 36 without any substantive change.

Proposed section H36.105(c)(2) would define the highest rotor speed used in flyover. It also states that the rotor's average rpm, rather than instantaneous rpm, is required to be within ± 1.0 percent during the 10 dB-down time interval.

Section H36.107 Approach Test Conditions

Proposed section H36.107(b)(3) would add a new alternate allowable altitude criteria of a wider zenith tolerance in meters for low altitudes near the end point of the approach. The criteria retains the current permitted zenith tolerance defined in degrees throughout the 10 dB-down time interval. This change more closely aligns part 36 with JAR 36 without any substantive change.

Proposed section H36.107(b)(5) defines the highest rotor speed to be used in approach. It also states that the rotor's average rpm, rather than instantaneous rpm, is required to be within ±1.0 percent during the 10 dB-down time interval. Thus, each noise certification condition will be tested at the highest operating rotor RPM as specified in the Flight Manual. These amendments are intended to more closely replicate actual operating rotor speed when conducting noise certification tests.

Proposed section H36.107(b)(6) would add a new paragraph that requires that a constant takeoff configuration be maintained, and that the landing gear may be retracted when establishing the best rate-of-climb and corresponding speed as required by the airworthiness standards.

Section H36.109 Measurement of Helicopter Noise Received on the Ground

Under this proposal, section H36.109 would be revised to reference section B36.3.

Note: The jet noise harmonization proposed rule (65 FR 42796, July 11, 2000) includes a proposal for amending the values in section B36.3. The proposed change would also apply to helicopter noise and tests.

Section H36.111 Reporting and Correcting Measured Data

Proposed section H36.111(c)(2) would add a permissible EPNL correction for takeoff flight condition only. The amount of this allowable correction is limited. Corrections for duration are described in sections H36.205(f)(1) and H36.205(g)(1)(i). This change will reduce the number of takeoff flights during testing.

Paragraphs (c)(2)(i) through (iv) are being re-designated. Paragraph (c)(2)(i) contains a minor editorial correction. Paragraph (c)(2)(ii) is revised to include only the difference between actual and reference flight paths. This change eliminates specific application that have become obsolete by recent technology. The text of current paragraph (c)(2)(iii) is deleted; it is no longer needed if the previous changes are made. The text of current paragraph (c)(2)(iv) is re-designated (c)(2)(iii) and is revised by retaining only the reference to H36.205.

Proposed section H36.111(c)(3) changes the aircraft noise level threshold that must exceed the background level in each ⅓ octave band from 5dB to 3dB. This change would bring appendix H in line with appendix B for transport category and turbojet powered airplanes.

Section H36.113 Atmospheric Attenuation of Sound

Proposed section H36.113(b) would amend the current external reference to the revised section B36.7 proposed in the NPRM for subsonic jet, large airplanes and subsonic transports. Section B36.7 describes the method to calculate atmospheric attenuation rates and completely documents them within the regulation under part 36. Documenting this section within U.S. regulations follows a similar ICAO practice and builds the harmonization between regulations.

Proposed section H36.113(c)(1)(iii) is revised to specify that the 10-meter temperature and relative humidity measurement values be used to adjust for the sound propagation path absorption. Noise certification data collected to date has demonstrated that EPNL values corrected using atmospheric data measured at 10 meters are acoustically identical to those corrected using averaged temperature and relative humidity data. There is no loss in accuracy by avoiding inherent aircraft measurement inaccuracies.

Section H36.205 Detailed Data Correction Procedures

Proposed section H36.205(a)(1) is revised to allow negative value corrections. Such corrections are appropriate to accurately account for any difference between reference and test conditions. Currently, negative corrections resulted in no correction (essentially setting the value to zero). This change will consider all influences, whether negative or positive.

Proposed sections H36.205(a)(1)(i) and H36.205(a)(ii) are revised to specify corrections based on ''differences'' from reference rather than conditions ''greater than'' or ''higher than'' reference. This change clarifies the requirement.

Proposed section H36.205(a)(1)(iii) eliminates the correction to the EPNL calculated from measured data if the test weight is less than maximum certification weight. Based on past test data, such weight effects are difficult to isolate from other dominant parameters. Such corrections are unnecessary.

Under this proposal, section H36.205(a)(2) is deleted. This material is no longer necessary given the allowance of negative correction values described in section H36.205(a)(1).

Proposed section H36.205(a)(3)(iii) redefines in more accurate descriptive terms the distances applied for duration corrections. Instead of ''minimum'' distances, the existing rule requires that distances be based on the PNLTM (maximum PNLT) distance. This is a more accurate method for correcting for noise impact since it is based on the actual noise characteristics (peak PNLT) rather than a minimum distance along the flight path.

Proposed section H36.205(a)(3)(iv) would replace the use of rotor rpm and test speed with the acoustically accurate term of Mach number that accounts for both rpm and test speed effects. This is a more concise and accurate variable to apply when addressing the acoustical effects of cumulative speed.

Proposed section H36.205(b)(ii)(2) simplifies the takeoff airspeed range by designating as the minimal boundary the slowest climb speed allowed under the airworthiness requirements. The proposed language also removes the reference to rotor speed, since rotor speed is not needed in describing a flight profile for data correction purposes. This reference was included in error.

Proposed section H36.205(b)(3) removes the minimal distance description from the paragraph. This description is no longer needed given the proposed change to section H36.205(a)(3)(iii).

Proposed section H36.205(c)(1) removes text that describes speed criteria. It is not appropriate in a section describing data correction because the criteria are included elsewhere in part

36. The proposed language also removes a reference to rotor speed, since rotor speed is not needed in describing a flight profile for data correction purposes.

Proposed section H36.205(d)(2) would eliminate the requirement that the test approach procedure be included in the Flight Manual. Such a procedure is never used in approach , and if included in the Flight Manual, could be confused with approved airworthiness approach procedures. The proposal also explains the term ''10 dB down period'' with ''10 dB-down time interval'' as the accepted nomenclature for this specific time segment. This ''harmonized'' term is being adopted in the regulations for jets, large turboprop, small airplanes, and helicopters.

Proposed section H36.205(d)(3) removes the minimal distance description from the reference to figure H3. This description is no longer needed given the proposed change to section H36.205(a)(3)(iii).

Proposed section H36.205(e)(1) removes the requirement that only the advancing blade tip Mach number be used when making source noise adjustments. It also adds an alternate procedure for off-reference tip Mach number adjustments. The proposal allows use of a more appropriate source noise adjustment parameter which would give results identical to that of the more complex current procedure while substantially reducing the amount of additional flyover passes necessary to generate statistically valid source noise sensitivity curves.

Proposed section H36.205(f)(1)(i) corrects designations of measured takeoff sound propagation path and length, ''L_rA'' to ''AL'' and ''LrA'' to ''ALr'' , respectively.

Proposed section H36.205(f)(2) replaces incorrect designations of takeoff distances for measured and reference paths, ''AM'' to ''AN'' and AMr'' to ''ANr'' , respectively, and add ''i'' to the alpha in the second term.

Proposed section H36.205(f)(3) removes the ''o'' and ''+'' symbol from the equation; they are incorrect.

Proposed corrections for the designator ''K'' by flight condition are as follows: ''Ln'' to ''Lr'', ''M'' to ''N'', ''Mn'' to ''Nr'', and ''N'' to ''M'', ''Nr'' to ''Mr'', respectively, within the paragraph text. This change also corrects a typographical error.

Proposed section H36.205(f)(4) replaces incorrect designations of flyover distances for measured and reference paths, ''AN'' to ''AM'' and ''ANr'' to ''AMr'' , respectively, and adds a subscript ''i'' to the first alpha in the second term.

Proposed sections H36.205(g)(1)(i), through (iv) correct the constant value ''−10'' to ''−7.5'' in front of the log term in each of the Δ_2 equations.

Proposed section H36.205(g)(1)(i) corrects the term for measured and reference lengths, ''AT'' to ''AL'' and ''ATr'' to ''ALr'', respectively within the Δ_2 equation and paragraph text.

Proposed section H36.205(g)(1)(ii) corrects the terms used for measured and reference lengths, ''AS'' to ''AN'' and ''ASr'' to ''ANr'', respectively, within the Δ_2 equation and paragraph text.

Proposed section H36.205(g)(1)(iii) corrects the terms used for measured and reference lengths at each of the flight condition, ''T'' to ''L'' , ''Tr'' to ''Lr'' , ''S'' to ''N'', ''Sr'' to ''Nr'', and ''G'' to ''M'', ''Gr'' to ''Mr'', respectively, within the paragraph text.

Proposed section H36.205(g)(1)(iv) corrects the terms used for measured and reference lengths, ''AG'' to ''AM'' and ''AGr'' to ''AMr'', respectively within the Δ_2 equation and paragraph text. All of the corrections in section H36.205(g)(1) are of previous errors. No substantive changes are intended.

Figures H1, H2 and H3

Proposed revision to Figure H1 deletes the designation of Positions Tr since the minimal distance designation is no longer needed and includes the height above measurement point in metric units; see the text of proposed section H36.205(b)(3) regarding the takeoff condition.

Proposed revision to Figure H2 repositions the bullet-marker that's incorrectly positioned near label G due to a typographical error. The marker is repositioned in the proposed revised graphic image at the intersection of line Dr–Jr and line A–G.

Proposed revision to Figure H3 deletes the designations of Positions S and Sr since the minimal distance designation is no longer needed and includes the height above measurement point in metric units; see the text of section H36.205(d)(3) regarding the approach condition.

In proposed Figures H1, H2, and H3 the titles of the figures are changed to reflect the language of this proposal. The word ''reference'' would replace the word ''corrected'' in each title.

Section H36.305 Noise Levels

Proposed sections H36.305(a)(2)(i) through (iii) would revise the values for the noise/weight reduction rate, from ''3.01'' to ''3.0''. The proposed text also removes the phrase ''for maximum weight of 1,764 pounds or less'' from the end of each paragraph and replaces it with the phrase ''after which the limit is constant.'' The existing text was found to be confusing; this proposed change would enhance clarity. No substantive change in the requirements is intended.

Section J36.1 General

Proposed section J36.1 would increase the maximum takeoff weight requirement of appendix J from 6,000 pounds to 7,000 pounds. As explained previously, Part 27 was amended to increase the allowable passenger seat limit to nine; accordingly the weight limit was increased to 7,000 lbs. This proposal makes the corresponding changes in appendix J.

Section J36.3 Reference Test Conditions.

Proposed section J36.3(c) would clarify that the stabilized airspeed be maintained throughout the measured portion of the flyover. Stabilized airspeed will insure the highest quality noise data by avoiding variability of advancing tip Mach number that effectively impacts noise.

Proposed section J36.3(c)(1) would add the requirement airspeed V_{NE} that must be included in the approved Flight Manual. These changes standardize the languages used in appendices H and J without substantive change.

Section J36.101 Noise Certification and Measurement Conditions

Proposed section J36.101(c)(4) revises the location where meteorological data is measured. This change would harmonize this proposal with the JAR and adds flexibility without substantive change. It also makes the language of this section compatible with J36.101(c)(6).

Proposed section J36.101(c)(6):

1. Specifies that the physical location of meteorological instruments be representative of the atmospheric conditions existing near the surface over the geographical area where the helicopter noise measurements are made.

2. Provides that a fixed meteorological station, such as those found at airports, may be used to meet the location requirement.

3. Adds the requirement that a fixed meteorological station must be within 2,000 meters of the noise measurement area. The 2,000-meter distance limitation is a reasonable allowance when using a ''fixed meteorological station.''

These proposed changes harmonize this proposal with the JAR and add flexibility without substantive change since part 36 requirements specify that

the meteorological measurements be made ''at the noise monitoring station,'' while JAR requirements specify that if the measurement site is within 2,000 meters of an aerodrome thermometer, the aerodrome reported temperature be used.

Section J36.109 Measurement of Helicopter Noise Received on the Ground

Under this proposal, three references to section H36.109 are being changed to section B36.3. Section H36.109 was removed because the data appears in section B36.3. Note: The jet noise harmonization proposed rule (65 FR 42796, July 11, 2000) includes a proposal for amending the values in section B36.3. The proposed change would also apply to helicopter noise and tests but the proposal is not repeated in this NPRM to avoid confusion.

Proposed section J36.305(a) would have the same correction as made in section H36.305(a) above.

Proposed section J36.305(a) increases the upper weight limit from 6,000 pounds to 7,000 pounds maximum gross weight. This is a conforming change for reasons already described.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following two differences with these proposed regulations. These two differences are applicability provisions that already exist and do not represent substantive changes. If this proposal is adopted, the FAA will file these differences with ICAO.

(1) Sections 36.11 and H36.305 of part 36 allow for higher than Stage 2 noise limits for helicopter changes in the type design of certain (Stage 1) helicopters certified before the ''grandfather'' clause date of March 6, 1986; and

(2) Section 36.805(c) allows for higher than Stage 2 noise limits for helicopter changes in the type design of certain (Stage 1) helicopters that the FAA recognizes as the first civil version that was designed, constructed for and accepted for operational use by an Armed Force of the United States.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule (1) has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

This notice of proposed rulemaking would provide nearly uniform noise certification standards for helicopters certificated in the United States, the JAA countries, and any other countries that have adopted as their national regulation either the United States regulation, the JAA regulation, or the ICAO standard.

The proposals would more closely harmonize the flight test conditions, procedures, and reporting requirements mandated by the provisions of Subpart A and appendices H, and J of 14 CFR part 36 with the corresponding applicable provisions of the Joint Aviation Regulations (JAR) 36 and the International Civil Aviation Organization (ICAO) Annex 16. Specifically, the proposal would amend some of the technical specifications of appendices H and J and add a new definition to Subpart A of part 36.

The FAA concludes that the proposed rule would be cost beneficial. The proposed rule would require fewer flyover passes, takeoffs, and microphone systems, would eliminate humidity and wind speed measurements and the requirements to process test data twice and issue separate reports for FAA and ICAO methods, and would extend the gross weight upper limit for the appendix J certification test procedure. The cost savings of the proposed rule are estimated to be $17.31 million ($12.16 million, discounted) over a 10 year period. The one-time cost of this proposed rule would be $40,800 ($33,305 discounted) and would accrue to those manufacturers that need to obtain ICAO/JAA certification.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Small entities are firms employing 1,500 employees or less based on Small

Business Administration guidelines. Enactment of this proposal would impose a one-time cost of $10,200 per small entity, which would be incurred by two small helicopter manufacturers that met the criterion of small entity. The yearly cost-savings per small entity would be $265,000. In view of the substantial net cost-savings per small entity, the FAA has determined that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities; therefore, a regulatory flexibility analysis is not required under the terms of the RFA. The FAA solicits comments with respect to this finding and determination and requests that all comments be accompanied by clear documentation.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be used as the basis for U.S. standards. In addition, consistent with this Administration's belief in the general superiority and desirability of free trade, it is the policy of this Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

This proposed rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal regulations with the European Joint Aviation Requirements. The results would facilitate international trade.

Unfunded Mandated Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 36

Aircraft, Noise control.

The Proposed Amendment

In consideration of the foregoing the Federal Aviation Administration proposes to amend 14 CFR part 36, as follows:

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

2. Section 36.1 is amended by adding a new paragraph (h)(5) to read as follows:

§ 36.1 Applicability and definitions.

* * * * *

(h) * * *

(5) *Maximum normal operating RPM* means the highest rotor speed for each reference procedure corresponding to the airworthiness limit imposed by the manufacturer and approved by the FAA. Where a tolerance on the highest rotor speed is specified, the maximum normal operating rotor speed is the highest rotor speed for which that tolerance is given. If the rotor speed is automatically linked with flight condition, the maximum normal operating rotor speed corresponding with that flight condition must be used during the noise certification procedure. If rotor speed can be changed by pilot action, the highest normal operating rotor speed specified in the flight manual limitation section for power-on conditions must be used during the noise certification procedure.

3.–4. Section 36.11 is amended by revising the introductory text and by removing ''6,000'' and adding ''7,000'' in its place in paragraph (a)(1) to read as follows:

§ 36.11 Acoustical change: Helicopters.

This section applies to all helicopters in the primary, normal, transport, and restricted categories for which an acoustical change approval is applied for under § 21.93(b) of this chapter on or after March 6, 1986. Compliance with the requirements of this section must be demonstrated under appendix H of this part, or, for helicopters having a maximum certificated takeoff weight of not more than 7,000 pounds, compliance with this section may be demonstrated under appendix J of this part.

§ 36.801 [Amended]

5. Section 36.801 is revised by removing the term ''6,000'' in the second sentence and adding the term ''7,000'' in its place.

Subpart O—Documentation, Operating Limitations and Information

6. Revise the heading of Subpart O to read as set forth above:

7. In § 36.1581 paragraph (a)(2) is revised and paragraph (a)(3) is added to read as follows:

§ 36.1581 Manuals, markings, and placards.

* * * * *

(2) For propeller driven small airplanes the noise level information must be one value for takeoff as defined and required by appendix G of this part, along with the maximum takeoff weight and configuration.

(3) For rotorcraft the noise level information must be one value for each takeoff, flyover, and approach as defined and required by appendix H of this part or one value for flyover as defined and required by appendix J of this part along with the maximum takeoff weight, maximum landing weight (for appendix H), and configuration.

* * * * *

Appendix H [Amended]

8. In appendix H, section H36.3 is amended by revising paragraphs (a)(1), (c)(2), (d), (e), (f)(1)(i), and (f)(1)(ii) to read as follows:

Section H36.3 *Reference test conditions.*

(a) * * *

(1) Sea level pressure of 2,116 psf (76 cm mercury, 1,013.25 hPa).

(c) * * *

(2) The reference flight path is defined as a straight line segment inclined from the starting point (1,640 feet prior to the center microphone location at 65 feet above ground level) at an constant climb angle β defined by the certificated best rate of climb and V_y for minimum engine performance. The constant climb angle β is derived from the manufacturer's data (approved by the FAA) to define the flight profile for the reference conditions. The constant climb angle β is drawn through C_r and continues, crossing over station A, to the position corresponding to the end of the type certification takeoff path represented by position I_r.

(d) *Level flyover reference profile.* The beginning of the level flyover reference profile is represented by helicopter position Dr (Figure H2). The helicopter approaches position Dr in level flight 492 feet above ground level as measured at Station A. Reference airspeed must be either $0.9V_H$; $0.9V_{NE}$; $0.45V_H$+65 kts ($0.45V_H$+120km/h); or $0.45V_{NE}$+65kts ($0.45V_{NE}$+120 km/h), whichever of the four speeds is least. The helicopter crosses directly overhead station A in level flight and proceeds to position Jr.

(e) For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the minimum specification engine torque corresponding to maximum continuous power available for sea level, 25°C ambient conditions at the relevant maximum certificated weight. V_{NE} is the never-exceed airspeed. The value of V_H and V_{NE} used for noise certification must be included in the approved Flight Manual.

(f) * * *

(1) * * *

(i) The beginning of the approach profile is represented by helicopter position E. The position of the helicopter is recorded for a sufficient distance (EK) to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of Maximum Tone Corrected Perceived Noise Level (PNLTM), as required. ErKr represents a stable flight condition in terms of torque, rpm, indicated airspeed, and rate of descent resulting in a 6° approach angle.

(ii) The test approach profile is defined by the approach angle η passing directly over the station A at a height of AH, to position K, which terminates the approach noise certification profile. The test approach angle η must be between 5.5° and 6.5°.

* * * * *

9. In appendix H, section H36.5, the Flight Profile Identification-Positions table is amended by removing the symbols S, S_r, T and T_r and their descriptions; the Flight Profile Distances table is amended by removing the symbols AS_r, AT, and AT_r and their meanings. The Flight Profile Identification-Positions table is revised by adding three new symbols and their descriptions in alphabetical order to read as follows:

Section H36.5 *Symbols and units.*

F_r—Position on reference takeoff path directly above noise measuring Station A.

G_r—Position on reference flyover path directly above noise measuring Station A.

H_r—Position on reference approach path directly above noise measuring Station A.

10. In appendix H, Section H36.101 is revised by removing paragraphs (b)(6)(iii) and (b)(8)(iii); by redesignating paragraph (b)(9) as (d)(4); and by revising paragraphs (b)(8)(ii), (c)(2), (c)(3), (c)(5), (d)(2), (d)(3) and newly redesignated paragraph (d)(4) to read as follows:

Section H36.101 *Noise certification test and measurement conditions.*

(b) * * *

(8) * * *

(ii) Each test weight must be within +5 percent and −10 percent of the maximum certification weight.

(c) * * *

(2) Ambient air temperature between 14°F and 95°F (−10°C and 35°C), inclusively, at a point 10 meters above the ground at the noise measuring station. The temperature and relative humidity measured at a point 10 meters above the ground at the noise measuring station must be used to adjust for propagation path absorption.

(3) Relative humidity and ambient temperature at a point 10 meters above the ground at the noise measuring station is such that the sound attenuation in the one-third octave band centered at 8 kHz is not greater than 12 dB/100 meters and the relative humidity is between 20 percent and 95 percent, inclusively.

* * * * *

(5) No anomalous meteorological conditions (including turbulence) that will significantly affect the noise level of the aircraft when the noise is recorded at each noise measuring station.

* * * * *

(d) * * *

(2) The helicopter height and lateral position relative to the reference flight track (which passes through the flight track noise measuring station) must be determined using an FAA-approved method. The equipment used to make the determination must be independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, photo scaling, or differential global positioning system.

(3) The helicopter position along the flight path must be related to the noise recorded at the noise measuring stations by means of synchronizing signals at an approved sampling rate. The position of the helicopter must be recorded relative to the reference flight track during the entire time interval in which the recorded signal is within 10 dB of PNLTM. Measuring and sampling equipment must be approved by the FAA.

(4) Aircraft performance data sufficient to make the corrections required under section H36.205 of this appendix must be recorded at an FAA-approved sampling rate using FAA approved equipment.

11. In appendix H, Section H36.103 is amended by revising paragraphs (b)(1), (b)(3), (b)(4), (b)(5), and (b)(6), and by adding new paragraph (b)(7) to read as follows:

Section H36.103 *Takeoff test conditions.*

* * * * *

(b) * * *

(1) An airspeed of either V_y ±5 knots or the lowest approved speed ±5 knots for the climb after takeoff, whichever speed is greater, must be established and maintained throughout the 10 dB-down time interval.

(2) * * *

(3) Upon reaching a point 1,640 feet (500 meters) from the noise measuring station, the helicopter must be stabilized at the maximum take-off power that corresponds to minimum installed engine(s) specification power available for the reference ambient conditions or gearbox torque limit, whichever is lower.

(4) The helicopter must be maintained throughout the 10 dB-down time interval at the best rate of climb speed V_y ±5 knots, or the lowest approved speed for climb after takeoff, whichever is greater, for an ambient temperature at sea level of 25°C.

(5) The average rotor speed must not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval.

(6) The helicopter must stay within ±10° or ±20 m, whichever is greater, from the vertical above the reference track throughout the 10dB-down time interval.

(7) A constant takeoff configuration selected by the applicant must be maintained throughout the takeoff reference procedure with the landing gear position consistent with the airworthiness certification tests for establishing Best Rate-of-Climb and Speed for Best Rate-of-Climb.

12. In appendix H, Section H36.105 is amended by revising paragraphs (b), introductory text, (b)(1), (b)(3), (c)(1), and (c)(2) to read as follows:

Section H36.105 *Flyover test conditions.*

* * * * *

(b) A test series must consist of at least six flights with an equal number of runs in each direction, over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations)—

(1) In level flight cruise configuration;

(2) * * *

(3) The helicopter must stay within ±10° or ±20 m, whichever is greater, from the vertical above the reference track throughout the 10 dB-down time interval.

(c) * * *

(1) At a speed of $0.9V_H$; $0.9V_{NE}$; $0.45V_H$ + 65 kts ($0.45V_H$ + 120 km/h); or $0.45V_{NE}$ + 65 kts ($0.45V_{NE}$ + 120 km/h), whichever speed is less, maintained throughout the measured portion of the flyover;

(2) At average rotor speed which must not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval.

* * * * *

13. In appendix H, Section H36.107 is amended by revising paragraphs (b)(3) and (b)(5) and adding new paragraph (b)(6) to read as follows:

Section H36.107 *Approach test conditions.*

* * * * *

(b) * * *

(3) The helicopter must stay within ±10° or ±20 m, whichever is greater, from the vertical above the reference track throughout the 10 dB-down time interval;

* * * * *

(4) * * *

(5) At average rotor speed which must not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval; and

(6) A constant approach configuration used in airworthiness certification tests, with the landing gear extended, must be maintained throughout the approach reference procedure.

* * * * *

14. In appendix H, Section H36.109 is revised to read as follows:

Section H36.109 *Measurement of helicopter noise received on the ground.*

The measurement system and the measurement, calibration and general analysis procedures to be used are provided in Appendix A, section A36.3 of this part.

15. In appendix H, Section H36.111 is amended by revising paragraph (c)(2), by removing paragraph (c)(2)(iv) and the undesignated text following (c)(2)(iv), by revising paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii), and by revising paragraph (c)(3) to read as follows:

Section H36.111 *Reporting and correcting measured data.*

* * * * *

(c) * * *

(2) The measured flight path must be corrected by an amount equal to the difference between the applicant's predicted flight path for the certification reference conditions and the measured flight path at the test conditions. Necessary corrections relating to aircraft flight path or performance may be derived from FAA-approved data for the difference between measured and reference engine conditions, together with appropriate allowances for sound attenuation with distance. The Effective Perceived Noise Level (EPNL) correction must be less than 2.0 EPNdB except for take-off flight condition, where the correction must not exceed 4.0 EPNdB, of which the arithmetic sum of Δ_1 (described in section H36.205(f)(1)) and the term $-7.5 \log (AL/AL_r)$ from Δ_2 term (described in section H36.205(g)(1)(i)) must not exceed 2.0 EPNdB, for any combination of the following:

(i) The aircraft is not passing vertically above the measuring station.

(ii) Any difference between the reference flight track and the actual test flight track.

(iii) Detailed correction requirements prescribed in section H36.205 of this appendix.

(3) Aircraft sound pressure levels within the 10 dB-down time interval must exceed the mean background sound pressure levels determined under section B36.3.9.11 by at least 3 dB in each one-third octave band or be corrected under an FAA approved method to be included in the computation of the overall noise level of the aircraft. An EPNL may not be computed or reported from data from which more than four one-third octave bands in any spectrum within the 10 dB-down time interval have been excluded under this paragraph.

* * * * *

16. Section H36.113 is amended by revising paragraphs (b) and (c)(1)(iii) to read as follows:

Section H36.113 *Atmospheric attenuation of sound.*

* * * * *

(b) *Attenuation rates.* The procedure for determining the atmospheric attenuation rates of sound with distance for each one-third octave bands must be in accordance with Society of Automotive Engineering (SAE) ARP 866A included in section A36.7.

(c) * * *

(1) * * *

(iii) The temperature and relative humidity measured at 10 meters above the ground must be used to adjust for propagation path absorption.

* * * * *

17. In appendix H, Section H36.205 is amended by removing paragraphs (a)(1)(iii), (a)(2), and (a)(3)(v); removing the last two sentences in paragraph (b)(3) and (d)(3); by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(iii), (a)(3)(iv), (b)(2), (c)(1), (d)(2), (e), (f)(1)(i), (f)(2)(i), (f)(3), (f)(4), and (g)(1)–(i)–(iv), and by revising Figures H1, H2, and H3 to read as follows:

Section H36.205 *Detailed data correction procedures.*

* * * * *

(a) * * *

(1) If a positive or negative value results from any difference between reference and test conditions, an appropriate correction must be made to the EPNL calculated from the measured noise data. Conditions that can result in a different value include:

(i) Atmospheric absorption of sound under test conditions that are different than the reference; or

(ii) Test flight path at an altitude that is different than the reference

(3) * * *

(iii) The distances for which PNLTM is observed from both the test and reference profiles to the noise measuring station must be calculated and used to determine a noise duration correction due to any change in the altitude of aircraft flyover. The duration correction must be added algebraically to the EPNL calculated from the measured noise data.

(iv) For aircraft flyover, from FAA-approved data in the form of curves or tables giving the variation of EPNL with Mach Number, source noise corrections are determined and must be added to the EPNL, to account for noise level changes due to differences between test conditions and reference conditions.

(b) * * *

(2) For the actual takeoff, the helicopter approaches position C in level flight at 65 feet (20 meters) above ground level at the flight track noise measuring station and at either V_y ±5 knots or the lowest approved speed for the climb after takeoff, whichever speed is greater.

* * * * *

(c) Level flyover profiles. (1) The noise type certification level flyover profile is shown in Figure H2. Airspeed must be stabilized within ±5 knots of the reference airspeed given in section H36.3(d). If the test requirements are otherwise met, flight direction may be reversed for each subsequent flyover, to obtain three test runs in each direction.

* * * * *

(d) * * *

(2) The helicopter approaches position H along a 6° (±0.5°) average approach slope throughout the 10dB-down time interval. The approach procedure must be acceptable to the FAA.

* * * * *

(e) *Correction of noise at source during level flyover.* (1) For level overflight, if any combination of the following factors, airspeed deviations from reference, rotor speed deviations from reference, and temperature deviations from reference, results in a noise

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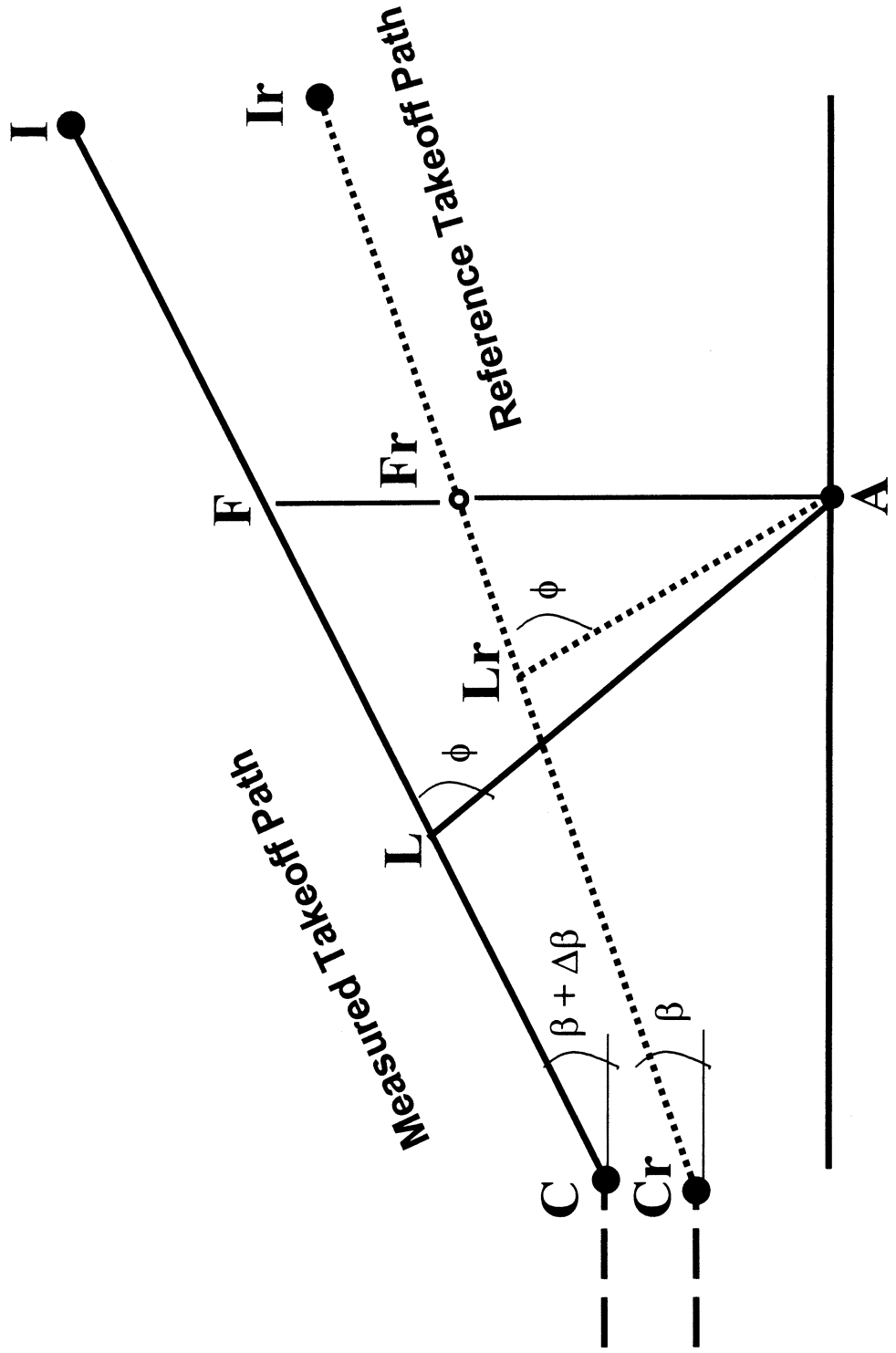

Figure H1.
Comparison of Measured and Reference Takeoff Profiles

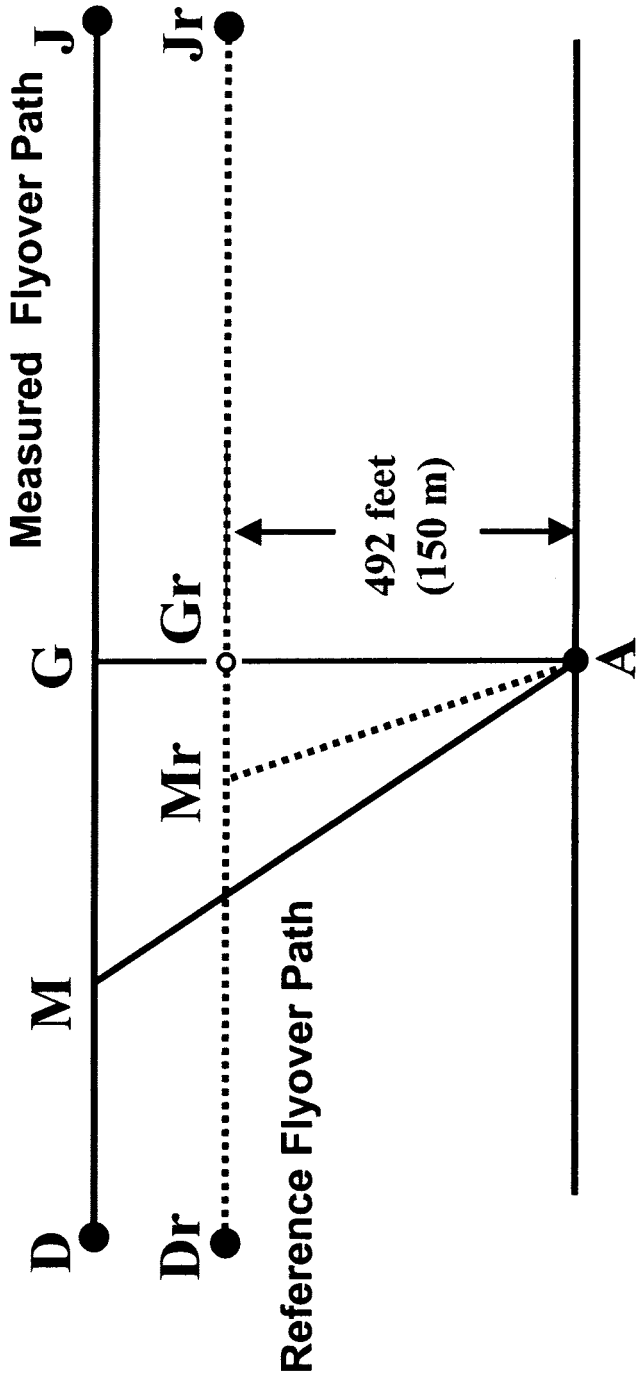

Figure H2.
Comparison of Measured and Reference Flyover Profiles

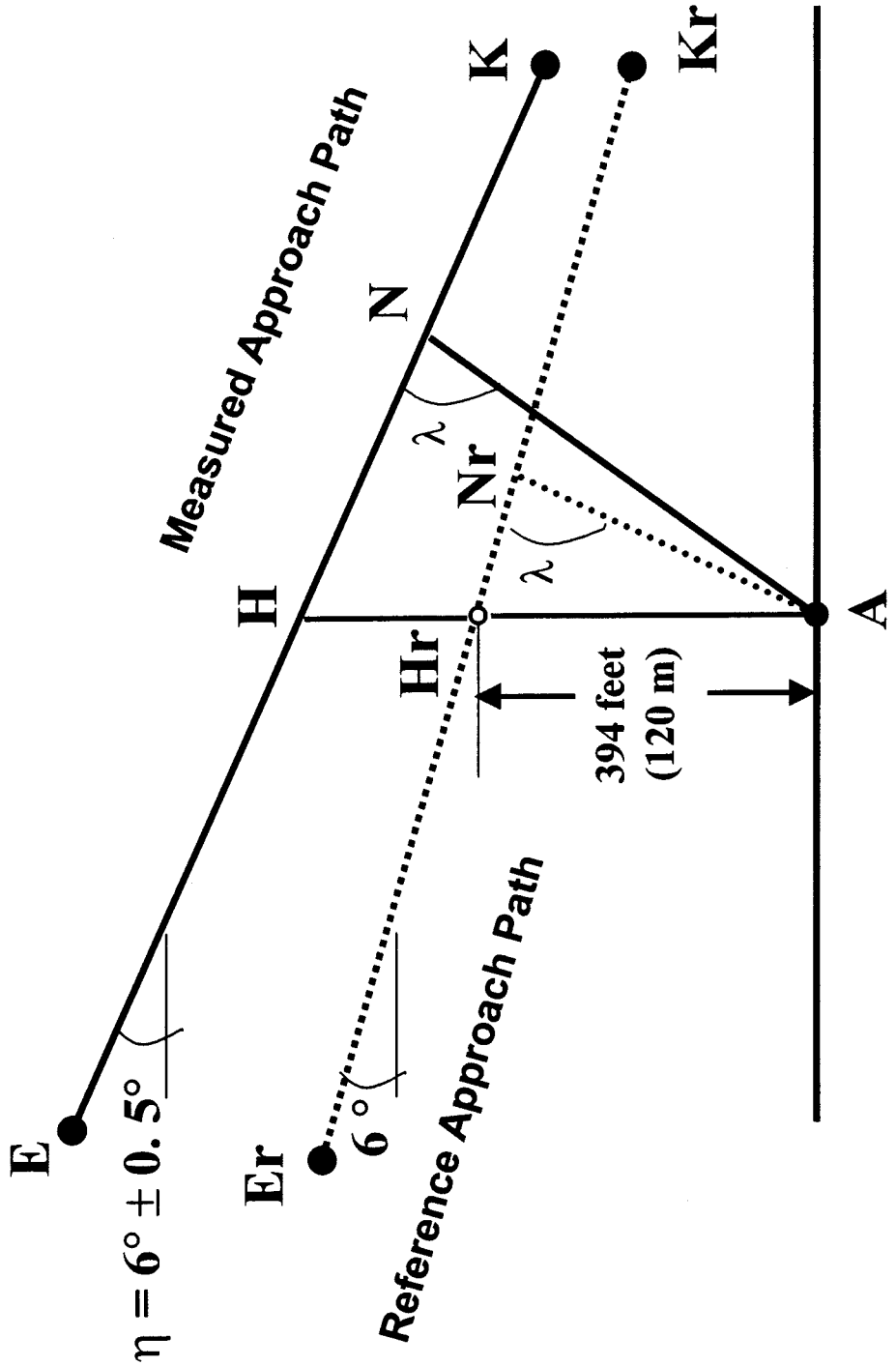

Figure H3.
Comparison of Measured and Reference Approach Profiles

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correlating parameter whose value deviates from the reference value of this parameter, then source noise adjustments must be determined from the manufacturer's data approved by the FAA.

(f) * * *

(1) * * *

(i) Step 1. A set of corrected values are then computed as follows:

$$SPLic = SPLi + (\alpha i - \alpha io)(AL - ALr) + 20 \log (AL/ALr)$$

where SPLi and SPLic are the measured and corrected sound pressure levels, respectively, in the -ith one-third octave band. The first correction term accounts for the effects of change in atmospheric sound absorption where αi and αio are the sound absorption coefficients for the test and reference atmospheric conditions, respectively, for the -ith one-third octave band, and AL is the measured takeoff sound propagation path. The second correction term accounts for the effects of atmospheric sound absorption on the change in the sound propagation path length where ALr is the corrected takeoff sound propagation path. The third correction term accounts for the effects of the inverse square law on the change in the sound propagation path length.

* * * * *

(2) *Approach flight path.* (i) The procedure described in paragraph (f)(1) of this section for takeoff flight paths is also used for the approach flight path, except that the value for SPLic relate to the approach sound propagation paths shown in Figure H3 as follows:

$$SPLic = SPLi + (\alpha i - \alpha io) AN + \alpha io (AN - ANr) + 20 \log (AN/ANr)$$

where the lines AN and ANr are the measured and reference approach sound propagation paths, respectively.

* * * * *

(3) *Sideline microphones.* The procedure prescribed in paragraph (f)(1) of this section for takeoff flight paths is also used for the propagation to the sideline microphones, except that the values of SPLic relate only in the measured sideline sound propagation path as follows:

$$SPLic = SPLi + (\alpha i - \alpha io)KX + \alpha io (KX - KXr) + 20 \log (KX/KXr)$$

K is the sideline measuring station where:

X = L and Xr = Lr for takeoff
X = M and Xr = Mr for flyover
X = N and Xr = Nr for approach

(4) *Level flyover flight path.* The procedure described in paragraph (f)(1) of this section for takeoff flight paths is also used for the level flyover flight path, except that the values of SPLic relate only to the flyover sound propagation paths as follows:

$$SPLic = SPLi + (\alpha i - \alpha io)AM + \alpha io (AM - AMr) + 20 \log (AM/AMr)$$

(g) * * *

(1) * * *

(i) *Takeoff flight path.* For the takeoff flight path shown in Figure H1, the correction term is calculated using the formula—

$$\Delta_2 = -7.5 \log (AL/ALr) + 10 \log (V/Vr)$$

which represents the correction that must be added algebraically to the EPNL calculated from the measured data. The lengths AL and ALr are the measured and corrected takeoff distances from the noise measuring station A to the measured and the corrected flight paths, respectively. A negative sign indicates that, for the particular case of a duration correction, the EPNL calculated from the measured data must be reduced if the measured flight path is at greater altitude than the corrected flight path.

(ii) *Approach flight path.* For the approach flight path shown in Figure H3, the correction term is calculated using the formula—

$$\Delta_2 = -7.5 \log (AN/ANr) + 10 \log (V/Vr)$$

where AN is the measured approach distance from the noise measuring station A to the measured flight path and 394 feet is the overhead distance from station A to the reference flight path.

(iii) *Sideline microphones.* For the sideline flight path, the correction term is calculated using the formula—

$$\Delta_2 = -7.5 \log (KX/KXr) + 10 \log (V/Vr)$$

K is the sideline measuring station

where X = L and Xr = Lr for takeoff
where X = M and Xr = Mr for flyover
where X = N and Xr = Nr for approach

(iv) *Level flyover flight paths.* For the level flyover flight path, the correction term is calculated using the formula—

$$\Delta_2 = -7.5 \log (AM/AMr) + 10 \log (V/Vr)$$

where AM is the measured flyover distance from the noise measuring station A to the measured flight path and 492 feet is the overhead distance from station A to the reference flight path.

* * * * *

18. I appendix H, Section H36.305(a)(2) is revised to read as follows:

Section H36.305 *Noise levels.*

(a) * * *

(2) *Stage 2* noise limits are as follows:

(i) *For takeoff calculated noise levels*—109 EPNdB for maximum takeoff weights of 176,370 pounds or more, reduced by 3.0 EPNdB per halving of the weight down to 89 EPNdB, after which the limit is constant.

(ii) *For flyover calculated noise levels*—108 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.0 EPNdB per halving of the weight down to 88 EPNdB, after which the limit is constant.

(iii) *For approach calculated noise levels*—110 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.0 EPNdB per halving of the weight down to 90 EPNdB, after which the limit is constant.

* * * * *

Appendix J [Amended]

19. Amend the title of Appendix J and section J36.1 introductory text by removing the reference ''6,000'' and adding ''7,000'' in its place

20. In appendix J, Section J36.3 is amended by revising paragraph (c) introductory text and paragraph (c)(1) to read as follows:

Section J36.3 *Reference test conditions.*

* * * * *

(c) *Level flyover reference profile.* The reference flyover profile is a level flight 492 feet (150 meters) above ground level as measured at the noise measuring station. The reference flyover profile has a linear flight track and passes directly over the noise monitoring station. Airspeed is stabilized at $0.9V_H$; $0.9V_{NE}$; $0.45V_H$ + 65 kts ($0.45V_H$ + 120 km/h); or $0.45V_{NE}$ + 65 kts ($0.45V_{NE}$ + 120 km/h), whichever of the four airspeeds is least, and maintained throughout the measured portion of the flyover. Rotor speed is stabilized at the power on maximum normal operating RPM throughout the 10 dB-down time interval.

(1) For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the minimum specification engine power corresponding to maximum continuous power available for sea level, 77°F (25°C) ambient conditions at the relevant maximum certificated weight. The value of V_H and V_{NE} used for noise certification must be included in the Flight Manual.

* * * * *

21. In appendix J, Section J36.101 is amended by revising paragraph (c)(4) and (c)(6) to read as follows:

Section J36.101 *Noise certification test and measurement conditions.*

* * * * *

(c) * * *

(4) Measurements of ambient temperature, relative humidity, wind speed, and wind direction must be made between 4 feet (1.2 meters) and 33 feet (10 meters). Unless otherwise approved by the FAA, ambient temperature and relative humidity must be measured at the same height above the ground.

* * * * *

(6) If the measurement site is within 2,000 meters of an airport's weather measurement equipment, the airport reported temperature, relative humidity and wind velocity may be used. A fixed meteorological station (such as those found at airports or other facilities), within 2,000 meters of the noise measuring station, may meet this requirement.

* * * * *

22. In appendix J, Section J36.109 is amended by revising paragraphs (d)(1)(ii) and (e)(1) by removing the reference to ''section H36.109(c)(3) of appendix H'' and adding the reference ''section A36.3.6 of appendix B'' in its place and revising paragraph (c)(4) to read as follows:

Section J36.109 *Measurement of helicopter noise received on the ground*

* * * * *

(c)(4) Procedures for calibration and checking of system used must follow those described in Section A36.3.9.

* * * * *

23. Section J36.305 is amended by revising paragraph (a) to read as follows:

Section J36.305 *Noise Limits.*

(a) For primary, normal, transport, and restricted category helicopters having a maximum certificated takeoff weight of not more than 7,000 pounds and noise tested under this appendix, the Stage 2 noise limit is 82 decibels SEL for helicopters up to 1,737 pounds maximum certificated takeoff weight at which the noise certification is requested, and increasing at a rate of 3.0 decibels per doubling of weight thereafter. The limit may be calculated by the equation: L_{AE} (limit) = 82 + 3.0 [$\log_{10}$ (MTOW/1737)/$\log_{10}$(2)] dB, where MTOW is the maximum takeoff weight, in pounds, for which certification under this appendix is requested.

Issued in Washington, DC, on September 19, 2000.

James D. Erickson,

Director of Environment and Energy.

[FR Doc. 00–24634 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Thursday,
October 5, 2000

Part VI

Department of the Treasury

Customs Service

19 CFR Parts 10 and 163

United States-Caribbean Basin Trade Partnership Act and Caribbean Basin Initiative; Final Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 AND 163

[T.D. 00–68]

RIN 1515–AC76

United States-Caribbean Basin Trade Partnership Act and Caribbean Basin Initiative

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000. The trade benefits under Title II, also referred to as the United States-Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to non-textile articles that are excluded from duty-free treatment under the Caribbean Basin Initiative (CBI) program. The regulatory amendments contained in this document reflect and clarify the statutory standards for the trade benefits under the CBTPA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits. Finally, this document also includes some interim amendments to the existing Customs Regulations implementing the CBI to conform those regulations to previous amendments to the CBI statute.

DATES: Interim rule effective October 1, 2000; comments must be submitted by December 4, 2000.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Operational issues: Cathy Sauceda, Office of Field Operations (202–927–4198).

Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

Other legal issues: Craig Walker, Office of Regulations and Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

Background

United States-Caribbean Basin Trade Partnership Act

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the ''Act''), Public Law 106–200, 114 Stat. 251. Title II of the Act concerns trade benefits for the Caribbean Basin and is referred to in the Act as the ''United States-Caribbean Basin Trade Partnership Act'' (the ''CBTPA'').

Subtitle A of Title II of the Act concerns trade policy for Caribbean Basin countries and consists of section 201 (short title), section 202 (findings and policy), and section 203 (definitions). Subtitle B of Title II of the Act addresses trade benefits for Caribbean Basin countries and consists of section 211 (temporary provisions to provide additional trade benefits to certain beneficiary countries), section 212 (duty-free treatment for certain beverages made with Caribbean rum), and section 213 (meetings of trade ministers and USTR). This document specifically concerns the additional trade benefit provisions of section 211.

Subsection (a) of section 211 of the Act revises section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701–2707). The CBI is a duty preference program that applies to exports from those Caribbean Basin countries that have been designated by the President as program beneficiaries. Although the origin and related rules for eligibility for duty-free treatment under the CBI are similar to those under the older Generalized System of Preferences duty-free program (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461–2467), the CBI differs from the GSP in a number of respects, including the fact that under the CBI all articles are eligible for duty-free treatment (that is, they do not have to be specially designated as eligible by the President) except those that are specifically excluded under the statute. Prior to the amendment effected by subsection (a) of section 211 of the Act, section 213(b) of the CBI statute was headed ''articles to which duty-free treatment does not apply'' and consisted only of a list of specific types of products excluded from CBI duty-free treatment.

As a result of the amendment made by subsection (a) of section 211 of the Act, section 213(b) of the CBI statute now is headed ''import-sensitive articles'' and consists of five principal paragraphs. These five paragraphs are summarized below.

Paragraph (1) of amended section 213(b) provides that, subject to paragraphs (2) through (5), the duty-free treatment provided under the CBI does not apply to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date [subparagraph (A)];
2. Footwear not designated at the time of the effective date of the CBI (that is, August 5, 1983) as eligible articles for the purpose of the GSP [subparagraph (B)];
3. Tuna, prepared or preserved in any manner, in airtight containers [subparagraph (C)];
4. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS) [subparagraph (D)];
5. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply [subparagraph (E)]; or
6. Articles to which reduced rates of duty apply under section 213(h) (that is, handbags, luggage, flat goods, work gloves, and leather wearing apparel that are a product of a CBI beneficiary country and that were not designated on August 5, 1983, as eligible articles for purposes of the GSP) [subparagraph (F)].

The content of this new paragraph (1) corresponds to that of entire former section 213(b) but with some minor wording changes. Therefore, paragraphs (2) through (5) of amended section 213(b), as discussed below, are entirely new provisions.

Paragraph (2) of amended section 213(b) concerns textile and apparel products. Paragraph (2)(A) provides, during the ''transition period,'' for the application of preferential treatment described in paragraph (2)(B) to specific textile and apparel articles. Under paragraph (2)(B), ''preferential treatment'' means, except where the President takes bilateral emergency action under paragraph (2)(E), that the articles in question may enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels. Section 213(b)(5)(D) defines ''transition period'' for purposes of section 213(b) as meaning, with respect to a CBTPA beneficiary country, the period that

begins on October 1, 2000, and ends on the earlier of September 30, 2008, or the date on which a free trade agreement enters into force with respect to the United States and the CBTPA beneficiary country. Section 213(b)(5)(B) defines ''CBTPA beneficiary country'' for purposes of section 213(b) as meaning any ''beneficiary country'' as defined in section 212(a)(1)(A) of the CBI statute (19 U.S.C. 2702(a)(1)(A)) which the President designates as a CBTPA beneficiary country, taking into account the designation criteria specified in sections 212(b) and (c) and other appropriate designation criteria including those specified under section 213(b)(5)(B). The textile and apparel articles under paragraph (2)(A) of section 213(b) to which the preferential treatment applies are as follows:

1. Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS [paragraph (2)(A)(i)(I)];

2. Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes [paragraph (2)(A)(i)(II)];

3. Apparel articles cut in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more of those countries with thread formed in the United States [paragraph (2)(A)(ii)];

4. Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTSUS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries), but subject to the application of annual quantitative limits expressed in square meter equivalents during the 8-year transition period and with percentage increases of those limits in each of the first four years [paragraph (2)(A)(iii)(I)];

5. Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, but subject to the application of annual quantitative limits expressed in dozens and with percentage increases of those limits in each of the first four years and with application of a set quantitative limit for each year after the fourth year [paragraph (2)(A)(iii)(III)];

6. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both, but subject to a requirement that, in each of seven 1-year periods starting on October 1, 2001, at least 75 percent of the value of the fabric contained in the articles in the preceding year was attributed to fabric components formed in the United States (the 75 percent standard rises to 85 percent for a producer found by Customs to have not met the 75 percent standard in the preceding year) [paragraph (2)(A)(iv)];

7. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the North American Free Trade Agreement (NAFTA). (This CBTPA provision in effect applies to apparel articles which are originating goods, and thus are entitled to preferential duty treatment, under the NAFTA tariff shift and related rules based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The fabrics and yarns in question include fine count cotton knitted fabrics for certain apparel, linen, silk, cotton velveteen, fine wale corduroy, Harris Tweed, certain woven fabrics made with animal hairs, certain lightweight, high thread count poly-cotton woven fabrics, and certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirts—see House Report 106–606, 106th Congress, 2d Session, at page 77, which explains a substantively identical provision of the African Growth and Opportunity Act that is contained in Title I of the Act.) [paragraph (2)(A)(v)(I)];

8. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries and that is not described in paragraph (2)(A)(v)(I), to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under paragraph (2)(A)(v)(I) [paragraph (2)(A)(v)(II)];

9. A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President and representatives of the CBTPA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300-B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [paragraphs (2)(A)(vi) and (2)(C)];

10. Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [paragraph (2)(A)(viii)(I)]; and

11. Textile luggage assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [paragraph (2)(A)(viii)(II)].

In addition, paragraph (2)(A)(vii) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under paragraph (2). These special rules are as follows:

1. Paragraph (2)(A)(vii)(I) sets forth a rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential

treatment under paragraph (2) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. This provision specifies the following as examples of findings and trimmings: Sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), and labels. However, this provision also provides that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (2)(A)(ii) (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of ''foreign'' origin).

2. Paragraph (2)(A)(vii)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under paragraph (2) will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. This provision also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Paragraph (2)(A)(vii)(III) sets forth a *de minimis* rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (2) because the article contains fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries will not be ineligible for that treatment if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the good. However, this provision also states that, notwithstanding the foregoing rule, an apparel article containing elastomeric yarns will be eligible for preferential treatment under paragraph (2) only if those yarns are wholly formed in the United States.

4. Finally, paragraph (2)(A)(vii)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under paragraph (2)(A)(i) or paragraph (2)(A)(ii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (3) of amended section 213(b) is entitled ''transition period treatment of certain other articles originating in beneficiary countries.'' Paragraph (3)(A) provides that, except in the case of any article accorded duty-free treatment under U.S. Note 2(b) to Subchapter II of Chapter 98 of the HTSUS (that is, certain articles assembled or processed in a CBI beneficiary country in whole of components or ingredients that are a product of the United States), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that is a ''CBTPA originating good'' will be identical to the tariff treatment that is accorded at that time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTSUS that is a good of Mexico and is imported into the United States. Section 213(b)(5)(C)(i) defines ''CBTPA originating good'' for purposes of section 213(b) as meaning a good that meets the rules of origin for a good set forth in Chapter 4 of the NAFTA as implemented pursuant to United States law. Section 213(b)(5)(C)(ii) sets forth the following rules for applying Chapter 4 of the NAFTA with respect to a CBTPA beneficiary country for purposes of section 213(b): (1) Only the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA; (2) any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country; (3) any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and (4) any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination of those countries). In the case of handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced rates of duty apply under section 213(h), paragraph (3)(B) of section 213(b) provides that, in implementing the provisions of paragraph (3)(A), the rate of duty under section 213(h) will apply if it is lower than the rate of duty resulting under paragraph (3)(A).

The effect of paragraph (3) of section 213(b) is to provide for the application of NAFTA tariff treatment to goods excluded from the CBI, except for textile and apparel articles (some of which are separately addressed under paragraph (2) of section 213(b) as discussed above). Thus, imports of footwear, canned tuna, petroleum and petroleum products, watches and watch parts, handbags, luggage, flat goods, work gloves, and leather wearing apparel would be eligible for a reduction in duty equal to the preference Mexican products enjoy in accordance with the staged duty-rate reductions set forth in Annex 302.2 of the NAFTA, provided that the merchandise in question meets the origin rules for a ''NAFTA originating good'' (in other words, it must meet the NAFTA rules of origin set forth in General Note 12 of the HTSUS and in the Appendix to Part 181 of the Customs Regulations (19 CFR Part 181)).

Paragraph (4) of amended section 213(b) is entitled ''Customs procedures'' and sets forth regulatory standards for purposes of preferential treatment under paragraph (2) or (3). It includes provisions relating to import procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each CBTPA beneficiary country, and sets forth responsibilities of Customs and the United States Trade Representative regarding the study of, and reporting to Congress on, cooperative and other actions taken by each CBTPA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (4) that require regulatory treatment in this document are the following:

1. Paragraph (4)(A)(i) provides that any importer that claims preferential treatment under paragraph (2) or (3) must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (4)(A)(i) concerns the use of a Certificate of Origin and specifically requires that

the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (4)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (4)(A)(i) will not be required in the case of an article imported under paragraph (2) or (3) if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Other Changes to the CBI Program

Section 235 of the Trade and Tariff Act of 1984 (Public Law 98–573, 98 Stat. 2948) amended section 213(a) of the CBI statute (19 U.S.C. 2703(a)) by adding at the end a new paragraph (a)(3) (now paragraph (a)(4)). This provision provides that (1) notwithstanding 19 U.S.C. 1311, the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico, and (2) no duty will be imposed on the withdrawal from warehouse of the product of that processing or manufacturing if, at the time of that withdrawal, the product meets the requirements of section 213(a)(1)(B) (that is, the CBI 35 percent value-content requirement). In connection with the publication of the final CBI implementing regulations (see T.D. 84–237, published in the **Federal Register** at 49 FR 47986 on December 7, 1984), Customs noted that this amendment of the CBI statute was intended to allow processing or manufacturing in a Customs bonded manufacturing warehouse in Puerto Rico at the tail end of the manufacturing process so as to enable a product from a CBI beneficiary country to meet the 35 percent value-content requirement. Customs further noted in T.D. 84–237 that the amendment resulted in a significant change in the CBI rules of origin since an article could be substantially transformed in the Puerto Rican warehouse so as to lose its status as a product of a beneficiary country but would still be entitled to duty-free treatment upon withdrawal from the warehouse provided that (1) the article entered in the warehouse was a product of, and was imported directly from, a beneficiary country, and (2) the article withdrawn from the warehouse meets the 35 percent value-content requirement. Although no change was made to the CBI regulatory texts at that time in response to this statutory amendment, Customs now believes that it would be preferable for purposes of transparency to reflect this aspect of the CBI statute within the existing CBI regulatory structure. This document therefore includes a conforming amendment to the CBI regulations to accomplish this.

Section 212 of the Customs and Trade Act of 1990 (Public Law 101–382, 104 Stat. 629) amended section 213 of the CBI statute (1) by adding a new subsection (h) which requires the President to proclaim specified reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that are the product of a beneficiary country and that were not designated on August 5, 1983, as eligible articles for purposes of the GSP, and (2) by making consequential conforming changes to subsection (b) which, as indicated above, at that time consisted only of a list of products excluded from duty-free treatment under the CBI. Although some of these changes made by section 212 of the 1990 Act have been superseded by the changes made by subsection (a) of section 211 of the Act as discussed above, the basic reduced duty principle reflected in section 213(h) of the CBI statute remains intact and warrants regulatory treatment. Accordingly, regulatory amendments are included in this document for this purpose.

Finally, section 215 of the Customs and Trade Act of 1990 amended section 213(a) of the CBI statute by adding a new paragraph (5) which provides that the duty-free treatment provided for under the CBI will apply to an article (other than an article listed in section 213(b)) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if (1) the article is imported directly from the beneficiary country into the customs territory of the United States, (2) the article was by any means advanced in value or improved in condition in a beneficiary country, and (3) if any materials are added to the article in a beneficiary country, those materials are a product of a beneficiary country or the United States. This amendment was intended to ensure that a product made in Puerto Rico which is sent to a CBI beneficiary country for a minimal amount of processing would be eligible for duty-free treatment under the CBI when imported into the United States even though the article has not been substantially transformed in the CBI beneficiary country (see House Report 101–650, 101st Congress, 2d Session, at 131). This document includes an amendment to the Customs Regulations to prescribe standards for the application of this provision.

In addition, this document includes a number of editorial changes to the CBI regulatory texts to conform those texts to the statutory changes discussed above.

Section-by-Section Discussion of Interim Amendments

Section 10.191

The amendments to this section involve the definitions in paragraph (b) and include changing various cross-references to ''§ 10.198'' to reflect the addition of new §§ 10.198a and 10.198b as discussed below. In addition, paragraphs (b)(2)(i) and (b)(2)(ii) are revised, and a new paragraph (b)(2)(vi) is added, to reflect subparagraphs (1)(A), (B), and (F) of section 213(b) of the CBI statute as amended by subsection (a) of section 211 of the Act.

Sections 10.192 and 10.193

The amendments to these sections involve cross-reference changes similar to those made in § 10.191.

Section 10.195

The amendment to this section involves a revision of paragraph (b) (which concerns the addition of value in the U.S. Virgin Islands and in the Commonwealth of Puerto Rico) to accommodate the amendment to the CBI statute made by section 235 of the Trade and Tariff Act of 1984. The amendment consists of the designation of the existing regulatory text as paragraph (b)(1) and the addition of a new paragraph (b)(2) to cover manufacturing in a bonded warehouse in Puerto Rico after final exportation of an article from a beneficiary country. The paragraph (b)(2) text clarifies the statutory reference to ''products of'' a beneficiary country as meaning products that meet the ''grown, produced, or manufactured'' standard set forth in § 10.195(a), because the term ''product of'' has been consistently interpreted by Customs to refer to products that meet that standard and, since Congress is presumed to have known about that interpretation when it drafted the statute, Customs believes that this result

would be consistent with Congressional intent. For the same reason, the paragraph (b)(2) text clarifies the meaning of ''imported directly'' with reference to the provisions of § 10.193.

New § 10.198a

This section covers the basic duty reduction principle of section 213(h) of the CBI statute as added by section 212 of the Customs and Trade Act of 1990. The exception clause at the beginning of this new section has been included because of the potential effect that paragraph (3) of amended section 213(b) would have on the application of reduced duty rates under section 213(h)-see new § 10.233 discussed and set forth below. Although the relevant legislative history is silent on the question of what origin and preference rules should apply beyond the ''product of'' language of section 213(h), Customs does not believe that Congress intended that less stringent rules should apply for these import-sensitive products than would apply to other products that are eligible for full CBI duty-free treatment. Accordingly, this new § 10.198a incorporates by reference the ''imported directly'' and ''grown, produced, or manufactured'' and 35 percent value-content requirements of §§ 10.193 and 10.195.

New § 10.198b

This section covers the amendment of section 213(a) of the CBI statute made by section 215 of the Customs and Trade Act of 1990. Contrary to the approach taken in new § 10.198a and except as regards the ''imported directly'' requirement, the § 10.198b text does not incorporate by reference the normal CBI origin and preference regulatory standards because their application here would in some cases be inconsistent with the clear wording of the statutory provision in question.

New §§ 10.221 Through 10.227

These new sections are intended to implement those textile and apparel preferential treatment provisions within paragraphs (2), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations.

Section 10.221 outlines the statutory context for the new sections and is self-explanatory.

Section 10.222 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of ''apparel articles,'' by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of ''assembled in one or more CBTPA beneficiary countries'' is based in part on the definition of ''wholly assembled'' in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)) but also adds a reference to thread as a material that is not considered to be a component for purposes of the definition. In addition, the definition is intended to allow a prior partial assembly in the United States, consistent with the overall structure of the CBTPA as reflected in the types of operations allowed under the program.

3. The definition of ''CBTPA beneficiary country'' is an adaptation of, and for purposes of this context is consistent with, the definition contained in section 213(b)(5)(B).

4. The definition of ''cut in one or more CBTPA beneficiary countries'' precludes any cutting operation performed in a country other than a CBTPA beneficiary country in accordance with the clear language of the statute.

5. The definition of ''knit-to-shape'' follows the definition in § 102.21(b)(3) of the Customs Regulations (19 CFR 102.21(b)(3)).

6. The definition of ''made in one or more CBTPA beneficiary countries'' refers specifically to non-underwear t-shirts because the defined expression appears only in paragraph (2)(A)(iii)(III) of amended section 213(b) which applies only to non-underwear t-shirts. Neither the statute nor the legislative history provides any explanation for the use of the words ''made in'' in this context. Since the statutory text requires that the articles be made in the CBTPA region from regionally-formed fabric, and in view of the fact that the production of t-shirts from fabric invariably involves both cutting of the fabric and assembly of the cut components, Customs interprets ''made in'' to refer to cutting and complete assembly.

7. The definition of ''major parts'' is taken from the definition in § 102.21(b)(4) of the Customs Regulations (19 CFR 102.21(b)(4)).

8. The definition of ''NAFTA'' is the same as that used in section 112(e)(3) under Title I of the Act and is appropriate for the present context because a distinction is made under the statute between the original Agreement signed by the United States, Canada, and Mexico (which this definition reflects) and the implementation of that Agreement under U.S. law.

9. The definition of ''preferential treatment'' reflects the terms of paragraph (2)(B) of amended section 213(b).

10. The definition of ''wholly assembled in one or more CBTPA beneficiary countries'' is intended to ensure, consistent with the wording of the statute and the clear meaning of ''wholly'' in this context, that all assembly operations (including any initial partial assembly or any tail-end assembly operation) will be performed in the countries that are the intended beneficiaries of the CBTPA program.

11. The definition of ''wholly formed'' relies in part on the definition of ''fabric-making process'' in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)) and also uses a similar approach for yarns and thread because the statute uses these terms with reference to fabrics, yarns, and thread. The definition is intended to ensure that all processes essential for yarn or thread or fabric formation are performed in the United States or CBTPA beneficiary countries.

Section 10.223 identifies the articles to which preferential treatment applies under paragraph (2) of amended section 213(b). Paragraph (a) identifies the various groups of textile and apparel articles described under paragraph (2)(A) of the statute and includes in the introductory text an ''imported directly'' requirement, consistent with the terms of the implementing Presidential Proclamation. Paragraph (b) covers the special rules contained in paragraph (2)(A)(vii) of the statute regarding: findings and trimmings; interlinings; the *de minimis* rule; and the rule for nylon filament yarn. Paragraph (c) explains what is meant by ''imported directly.'' The following specific points are noted regarding these regulatory texts:

1. With regard to paragraph (a)(2), which corresponds to paragraph (2)(A)(i)(II) of the statute, Customs notes that the statutory provision does not address the issue of whether the embroidery or stone-washing and other processes mentioned in that provision (which are principally finishing operations normally done after assembly) must be done in beneficiary countries. The relevant legislative history does not address the issue. The statute could be read to allow these processes to be done in a country that is not a CBTPA beneficiary country provided that, after these processes are completed, the article is returned to a CBTPA beneficiary country for direct

importation into the United States. However, Customs believes that this interpretation would not be compatible with the Congressional finding in section 202 of the Act that offering temporary benefits to Caribbean Basin countries will, among other things, promote the growth of free enterprise and economic opportunity in those neighboring countries, because it could have the effect of diverting those finishing operations to third countries and thus away from the intended beneficiaries under the Act. Customs has determined that limiting the performance of those processes to CBTPA beneficiary countries would be in accord with the findings of Congress and would be more consistent with the intent of the CBTPA program. Accordingly, in paragraph (a)(2) of the regulatory text, the words ''in a CBTPA beneficiary country'' have been added at the end after ''processes.''

2. In paragraphs (a)(4) and (a)(5) which correspond to paragraphs (2)(A)(iii)(I) and (2)(A)(iii)(III) of the statute, respectively, the parenthetical cross-reference and the t-shirt reference have been replaced by a reference to ''non-underwear t-shirts'' in order to simplify the text and clarify the relationship between the two provisions in this regard.

3. In paragraph (a)(6) which corresponds to paragraph (2)(A)(iv) of the statute, specific reference is made to ''brassieres'' in order to explain the coverage of the HTSUS provision referred to in the statute.

4. In paragraph (a)(8), which corresponds to paragraph (2)(A)(v)(II) of the statute, no reference has been made at the end to treatment provided ''for fabrics and yarn'' because treatment in this context must be read in the context of paragraph (2)(A)(v)(I) of the statute and therefore can only have reference to articles made from fabrics and yarn.

5. Paragraph (a)(12) reflects the terms of new HTSUS subheading 9820.11.18 which is set forth in the Annex to the implementing Proclamation referred to above.

6. Paragraph (b)(1) is divided into two parts: Paragraph (b)(1)(i) reflects the basic findings, trimmings, interlinings, and *de minimis* rules of paragraphs (2)(A)(vii)(I)–(III) of the statute, and paragraph (b)(1)(ii) is intended to clarify the relationship between findings and trimmings on the one hand and fibers and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under the statute. As regards paragraph (b)(1)(ii), Customs believes that some clarification is appropriate in this context because sometimes a fiber or yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign fibers or yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (b)(1)(ii) a foreign yarn, for example, that is used in an article as a trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation. In addition, the following points are noted regarding the paragraph (b)(1) texts:

a. In the first sentence of paragraph (b)(1)(i)(A), the words ''the value of'' have been added after the word ''if'' to clarify that it is the value of the findings and trimmings that must not exceed the 25 percent level. In addition, in the second sentence of paragraph (b)(1)(i)(A), the comma appearing in the statutory text between ''decorative lace'' and ''trim'' has been removed to clarify what Customs believes to be the intent (see section 112(d)(1)(A) of the Act which is essentially identical to paragraph (2)(A)(vii)(I) of the statute but employs the expression ''decorative lace trim''). Also in the second sentence of paragraph (b)(1)(i)(A), the words ''zippers, including zipper tapes and labels'' in paragraph (2)(A)(vii)(I) of the statute have been replaced with the words ''zippers (including zipper tapes), labels'' because there is no such thing as a ''zipper label'' and to ensure proper treatment of labels as findings and trimmings in their own right. Customs believes that the wording of these regulatory texts in these regards is consistent with the intent of Congress as reflected in the explanation of the provision in the relevant legislative history (see House Report 106–606, 106th Congress, 2d Session, at page 79);

b. A separate paragraph (b)(1)(i)(C) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words ''(and any findings and trimmings)'' in paragraph (2)(A)(vii)(II)(aa) of the statute; and

c. The second sentence of paragraph (2)(A)(vii)(III) of the statute regarding elastomeric yarns has been included in the regulatory text as an exception at the end of paragraph (b)(1)(i)(D), which sets forth the *de minimis* rule, because Customs believes that both the placement and the wording of the elastomeric yarn provision in the statute support the conclusion that it is intended to operate only as an exception to the *de minimis* rule. The regulatory text refers specifically to any apparel article described in ''paragraph (a)(1) through (a)(5)'' because those are the only apparel article provisions under § 10.223 that specify ''yarns wholly formed in the United States.''

7. In paragraph (b)(2), which sets forth the special rule for nylon filament yarn of paragraph (2)(A)(vii)(IV) of the statute, specific reference is made to Canada, Mexico, and Israel because those are the only countries with which the United States had a free trade agreement that entered into force before January 1, 1995.

8. The explanation of ''imported directly'' in paragraph (c) follows the text used in § 10.193 of the CBI implementing regulations (19 CFR 10.193) but incorporates editorial changes to reflect a CBTPA context.

Section 10.224 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in paragraph (4)(A)(i) of the statute. Paragraph (a) of the regulatory text contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific groups of articles described under paragraph (2)(A) of the statute and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA (which involves different country of origin standards for preferential duty treatment). Paragraph (c) sets forth instructions for preparation of this Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the CBTPA program.

Section 10.225 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in paragraph (4)(A)(i) of the statute for procedures ''similar in all material respects to the requirements of Article 502(1) of the NAFTA,'' this regulatory text is based on the NAFTA regulatory text contained in 19 CFR

181.21, but includes appropriate changes to conform to the current context. However, contrary to the NAFTA regulatory text, paragraph (a) of § 10.225 does not allow for a declaration based on a copy of an original Certificate of Origin.

Section 10.226 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to ''the provisions of part 163'' which sets forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. The effect is the same as that under the NAFTA § 181.22 text.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1) of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for CBTPA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of paragraph (4)(B) of the statute, this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Finally, section 10.227 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)) and in the CBI regulations (19 CFR 10.198(c)), the text expands on the GSP/CBI approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production in a CBTPA beneficiary country that Customs may need to review for purposes of verifying a claim for preferential treatment.

3. Finally, paragraph (a)(3) refers to evidence in a CBTPA beneficiary country to document the use of U.S. materials in an article produced in the CBTPA beneficiary country, because the presence of U.S. materials is a key element for many of the articles to which preferential treatment applies under the CBTPA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained by the CBTPA beneficiary country producer not only with regard to the production process but also with regard to the source of the materials used in that production.

New §§ 10.231 Through 10.237

These new sections are intended to implement those non-textile preferential tariff treatment provisions within paragraphs (3), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations. In view of the similarities between paragraphs (2) and (3) under the statute, in particular as regards the use of a Certificate of Origin and related Customs procedures, the structure and content of new §§ 10.231 through 10.237 are based on the structure and content used in this document for the textile provisions of new §§ 10.221 through 10.227, but with appropriate changes or variations to reflect the paragraph (3) statutory context. The following particular points are noted regarding the texts of new §§ 10.231 through 10.237:

1. The term ''preferential tariff treatment'' is used throughout (rather than ''preferential treatment'') in order to reflect the use of the word ''tariff'' as a modifier of ''treatment'' in paragraph (3) of the statute. The definition of this term in § 10.232 is based primarily on paragraph (3)(A)(i) of the statute.

2. The definition of ''CBTPA originating good'' in § 10.232 reflects the terms of paragraph (5)(C)(i) of the statute but refers specifically to provisions within the HTSUS and the NAFTA regulations to clarify the meaning of the reference in the statute to Chapter 4 of the NAFTA ''as implemented pursuant to United States law.''

3. In § 10.233(a) which identifies the articles eligible for preferential tariff treatment under paragraph (3) of the statute, an ''imported directly'' requirement has been included for the same reason stated above in regard to new § 10.223. The remainder of § 10.233(a) reflects the terms of paragraphs (3)(A)(i) and (ii) of the statute.

4. Section 10.233(b) sets forth standards for applying the NAFTA rules of origin for purposes of determining whether an article qualifies as a CBTPA originating good. The regulatory text follows paragraph (5)(C)(ii) of the statute.

5. Section 10.233(c) concerns leather-related goods to which duty reductions apply under section 213(h) of the CBERA and specifically reflects the terms of paragraph (3)(B) of the statute regarding application of the lower rate of duty.

6. Section 10.234 sets forth the basic NAFTA Certificate of Origin requirement. In view of the applicability of the NAFTA rules of origin in this context, Customs has determined that the appropriate procedure would be to use a modified version of the separate Customs Form used for the NAFTA. Accordingly, the § 10.234 text is considerably shorter than the text of new § 10.224 because it does not contain the text of the Certificate and the instructions for its completion.

Appendix to Part 163

Finally, this document amends Part 163 of the Customs Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim ''(a)(1)(A) list'') references to the CBTPA Textile Certificate of Origin and supporting documentation prescribed under new § 10.226 and to the CBTPA Non-textile Certificate of Origin and supporting documentation prescribed under new § 10.236.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs

Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the United States-Caribbean Basin Trade Partnership Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0226.

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

The collection of information in these interim regulations is in §§ 10.224, 10.225, 10.226, 10.234, 10.235, and 10.236. This information conforms to requirements in 19 U.S.C. 2703 and is used by Customs to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to duty-free entry under the United States-Caribbean Basin Trade Partnership Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated annual reporting and/or recordkeeping burden: 18,720 hours.

Estimated average annual burden per respondent/recordkeeper: 440 hours.

Estimated number of respondents and/or recordkeepers: 42.

Estimated annual frequency of responses: on occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.191 through 10.198 is revised to read, and a new specific authority citation for §§ 10.221 through 10.227 and §§ 10.231 through 10.237 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.191 through 10.198b also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

Sections 10.221 through 10.227 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. The authority citation under the center heading ''CARIBBEAN BASIN INITIATIVE'' is removed.

3. In § 10.191:

a. Paragraph (b)(1) is amended by removing the reference ''§ 10.198'' and adding, in its place, the reference ''§ 10.198b'';

b. In the introductory text of paragraph (b)(2), the first sentence is amended by adding at the end before the period the words ''or in § 10.198b'';

c. Paragraphs (b)(2)(i) and (b)(2)(ii) are revised;

d. Paragraph (b)(2)(iv) is amended by removing the reference ''Chapter 27'' and adding in its place the reference ''headings 2709 and 2710'';

e. Paragraphs (b)(2)(vi) through (b)(2)(viii) are redesignated as paragraphs (b)(2)(vii) through (b)(2)(ix)

f. A new paragraph (b)(2)(vi) is added;

g. Paragraph (b)(3) is amended by removing the reference ''§ 10.198'' and adding, in its place, the reference ''§ 10.198a''; and

h. Paragraph (b)(4) is amended by removing the reference ''§ 10.198'' and adding, in its place, the reference ''§ 10.198b''.

The revisions and addition read as follows:

§ 10.191 General.

* * * * *

(b) * * *

(2) * * *

(i) Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date.

(ii) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act

of 1974, as amended (19 U.S.C. 2461 through 2467).

* * * * *

(vi) Articles to which reduced rates of duty apply under § 10.198a.

* * * * *

4. In § 10.192, the first sentence is amended by removing the reference ''§ 10.198'' and adding, in its place, the reference ''§ 10.198b''.

5. In § 10.193, the introductory text is amended by removing the reference § 10.198'' and adding, in its place, the reference ''§ 10.198b''.

6. In § 10.195, paragraph (b) is revised to read as follows:

§ 10.195 Country of origin criteria.

* * * * *

(b) *Commonwealth of Puerto Rico and U.S. Virgin Islands*—(1) *General.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Any cost or value of materials or direct costs of processing operations attributable to the U.S. Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the United States.

(2) *Manufacture in the Commonwealth of Puerto Rico after final exportation.* Notwithstanding the provisions of 19 U.S.C. 1311, if an article from a beneficiary country is entered under bond for processing or use in manufacturing in the Commonwealth of Puerto Rico, no duty will be imposed on the withdrawal from warehouse for consumption of the product of that processing or manufacturing provided that:

(i) The article entered in the warehouse in the Commonwealth of Puerto Rico was grown, produced, or manufactured in a beneficiary country within the meaning of paragraph (a) of this section and was imported directly from a beneficiary country within the meaning of § 10.193; and

(ii) At the time of its withdrawal from the warehouse, the product of the processing or manufacturing in the Commonwealth of Puerto Rico meets the 35 percent value-content requirement prescribed in paragraph (a) of this section.

* * * * *

7. New §§ 10.198a and 10.198b are added under the center heading ''CARIBBEAN BASIN INITIATIVE'' to read as follows:

§ 10.198a Duty reduction for certain leather-related articles.

Except as otherwise provided in § 10.233, reduced rates of duty as proclaimed by the President will apply to handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467), provided that the article in question at the time it is entered:

(a) Was grown, produced, or manufactured in a beneficiary country within the meaning of § 10.195;

(b) Meets the 35 percent value-content requirement prescribed in § 10.195; and

(c) Was imported directly from a beneficiary country within the meaning of § 10.193.

§ 10.198b Products of Puerto Rico processed in a beneficiary country.

Except in the case of any article described in § 10.191(b)(2)(i) through (vi), the duty-free treatment provided for under the CBI will apply to an article that is the growth, product, or manufacture of the Commonwealth of Puerto Rico and that is by any means advanced in value or improved in condition in a beneficiary country, provided that:

(a) If any materials are added to the article in the beneficiary country, those materials consist only of materials that are a product of a beneficiary country or the United States; and

(b) The article is imported directly from the beneficiary country into the customs territory of the United States within the meaning of § 10.193.

8. Part 10 is amended by adding a new center heading followed by new §§ 10.221 through 10.227 to read as follows:

Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act

Sec.

10.221 Applicability.
10.222 Definitions.
10.223 Articles eligible for preferential treatment.
10.224 Certificate of Origin.
10.225 Filing of claim for preferential treatment.
10.226 Maintenance of records and submission of Certificate by importer.
10.227 Verification and justification of claim for preferential treatment.

Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act

§ 10.221 Applicability.

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(2) of the CBERA (19 U.S.C. 2703(b)(2)) provides for the preferential treatment of certain textile and apparel articles from CBERA beneficiary countries. The provisions of §§ 10.221–10.227 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to CBERA section 213(b)(2).

§ 10.222 Definitions.

When used in §§ 10.221 through 10.227, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more CBTPA beneficiary countries. ''Assembled in one or more CBTPA beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components (other than thread, decorative embellishments, buttons, zippers, or similar components) that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

CBERA. ''CBERA'' means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2).

Cut in one or more CBTPA beneficiary countries. ''Cut in one or more CBTPA beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more CBTPA beneficiary countries.

Foreign. ''Foreign'' means of a country other than the United States or a CBTPA beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Knit-to-shape. The term ''knit-to-shape'' applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape.''

Made in one or more CBTPA beneficiary countries. ''Made in one or more CBTPA beneficiary countries'' when used with reference to non-underwear t-shirts means cut in one or more CBTPA beneficiary countries and wholly assembled in one or more CBTPA beneficiary countries.

Major parts. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 2703(b)(2).

Wholly assembled in one or more CBTPA beneficiary countries. ''Wholly assembled in one or more CBTPA beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of all components (including thread, decorative embellishments, buttons, zippers, or similar components) that occurred only in one or more CBTPA beneficiary countries.

Wholly formed. ''Wholly formed,'' when used with reference to yarns or thread, means that all of the production processes, starting with the extrusion of filament or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

§ 10.223 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.221 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a CBTPA beneficiary country:

(1) Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a CBTPA beneficiary country;

(3) Apparel articles (other than articles described in paragraph (a)(12) of this section) cut in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more CBTPA beneficiary countries with thread formed in the United States;

(4) Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTSUS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

(5) Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States;

(6) Brassieres classifiable under subheading 6212.10 of the HTSUS, cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both;

(7) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries and that is not described in paragraph (a)(7) of this section, to the extent that the President has determined that the fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the preferential treatment provided under paragraph (a)(7) of this section;

(9) A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President and representatives of the CBTPA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the CBTPA beneficiary country;

(10) Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(11) Textile luggage assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(12) Knitted or crocheted apparel articles (other than non-underwear t-

shirts described in paragraph (a)(5) of this section) cut and wholly assembled in one or more CBTPA beneficiary countries or the United States from fabrics wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), provided that the assembly is with thread formed in the United States.

(b) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, fibers and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article, except in the case of any apparel article described in paragraph (a)(1) through (a)(5) of this section containing elastomeric yarns which will be eligible for preferential treatment only if those yarns are wholly formed in the United States.

(ii) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (b)(1)(i)(A) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (b)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1), (a)(2) or (a)(3) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from Canada, Mexico or Israel.

(c) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.224 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a CBTPA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.221. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country in the form specified in paragraph (b) of this section. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 4820–02–P

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address		2. Producer Name & Address
3. Importer Name & Address		6.U.S./Caribbean Fabric Producer Name & Address
4. Description of Article	5. Preference Group	7. U.S./Caribbean Yarn Producer Name & Address
		8. U.S. Thread Producer Name & Address
		9. Name of Handloomed, Handmade, or Folklore Article
10. Name of Preference Group G Fabric or Yarn:		

Preference Groups:

A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(1)].

B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(2)].

C: Non-knit apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(3)].

D: Apparel knit to shape from U.S. yarn and knit apparel cut and assembled from regional or U.S. fabric from U.S. yarn [19 CFR 10.223(a)(4)].

E: Non-underwear t-shirts made of regional fabric from U.S. yarn [19 CFR 10.223(a)(5)].

F: Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries [19 CFR 10.223(a)(6)].

G: Apparel cut and assembled in one or more CBTPA beneficiary countries from fabrics or yarn not formed in the United States or one or more CBTPA beneficiary countries (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.223(a)(7) or (a)(8)].

H: Handloomed, handmade, or folklore articles [19 CFR 10.223(a)(9)].

I: Luggage assembled from U.S.-formed and cut fabric from U.S. yarn. [19 CFR 10.223(a)(10)].

J: Luggage cut and assembled from U.S. fabric from U.S. yarn [19 CFR 10.223(a)(11)].

K: Knitted or crocheted apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(12)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.
I agree to maintain, and present upon request, documentation necessary to support this certificate.

12. Authorized Signature		13. Company
14. Name (Print or Type)		15. Title
16a.Date(DD/MM/YY)	16b.Blanket Period From: To:	17. Telephone Number Facsimile Number

BILLING CODE 4820–02–P

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the

producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10, which should be completed only when preference group ''G'' is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a CBTPA beneficiary country or that is not available in commercial quantities in the United States;

(13) Block 16a should reflect the date on which the Certificate was completed and signed;

(14) Block 16b should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.226(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 16a). The ''to'' date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.225 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.223, the importer must make a written declaration that the article qualifies for that treatment. In the case of an article described in § 10.223(a)(1) or (a)(10), the written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''R'' as a prefix to the subheading within Chapter 98 of the HTSUS under which the article is classified, and, in the case of any article described in § 10.223(a)(2) through (a)(9) and (a)(11), the inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.226(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.224, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.226 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.225 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.225(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.225(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.224(c)(14), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US $2,500, provided that, unless waived by the port director, the producer, exporter,

importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the CBTPA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.224 through 10.226, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.227 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.225, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.226, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.225, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.223(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.224(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.223(c)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

9. Part 10 is amended by adding a new center heading followed by new §§ 10.231 through 10.237 to read as follows:

Non-Textile Articles Under the United States-Caribbean Basin Trade Partnership Act

Sec.
10.231 Applicability.
10.232 Definitions.
10.233 Articles eligible for preferential tariff treatment.
10.234 Certificate of Origin.
10.235 Filing of claim for preferential tariff treatment.
10.236 Maintenance of records and submission of Certificate by importer.
10.237 Verification and justification of claim for preferential tariff treatment.

Non-Textile Articles Under the United States-Caribbean Basin Trade Partnership Act

§ 10.231 Applicability.

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(3) of the CBERA (19 U.S.C. 2703(b)(3)) provides for special preferential tariff treatment of certain non-textile articles that are otherwise excluded from duty-free treatment under the CBERA. The provisions of §§ 10.231–10.237 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential tariff treatment pursuant to CBERA section 213(b)(3).

§ 10.232 Definitions.

When used in §§ 10.231 through 10.237, the following terms have the meanings indicated:

CBERA. ''CBERA'' means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3).

CBTPA originating good. ''CBTPA originating good'' means a good that meets the rules of origin for a good as set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter and as applied under § 10.233(b).

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement

entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential tariff treatment. ''Preferential tariff treatment'' when used with reference to an imported article means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States with duty and other tariff treatment that is identical to the tariff treatment that would be accorded at that time under Annex 302.2 of the NAFTA to an imported article described in the same 8-digit subheading of the HTSUS that is a good of Mexico.

§ 10.233 Articles eligible for preferential tariff treatment.

(a) *General.* The preferential tariff treatment referred to in § 10.231 applies to any of the following articles, provided that the article in question is a CBTPA originating good, is imported directly into the customs territory of the United States from a CBTPA beneficiary country, and is not accorded duty-free treatment under U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS (see § 10.26):

(1) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(2) Tuna, prepared or preserved in any manner, in airtight containers;

(3) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(4) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(5) Articles to which reduced rates of duty apply under § 10.198a, except as otherwise provided in paragraph (c) of this section.

(b) *Application of NAFTA rules of origin.* In determining whether an article is a CBTPA originating good for purposes of paragraph (a) of this section, application of the provisions of General Note 12 of the HTSUS and the appendix to part 181 of this chapter will be subject to the following rules:

(1) No country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(2) Any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(3) Any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and

(4) Any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination involving the United States and CBTPA beneficiary countries).

(c) *Duty reductions for leather-related articles.* If, after it is determined that an article described in paragraph (a)(5) of this section qualifies as a CBTPA originating good and is eligible for preferential tariff treatment under this section, it is determined that the article in question also would otherwise qualify for a reduced rate of duty under § 10.198a and that reduced rate of duty is lower than the rate of duty that would apply under this section, that lower rate of duty will apply to the article for purposes of preferential tariff treatment under this section.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.234 Certificate of Origin.

A Certificate of Origin as specified in § 10.236 must be employed to certify that an article described in § 10.233(a)(1) through (5) being exported from a CBTPA beneficiary country to the United States qualifies for the preferential tariff treatment referred to in § 10.231. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential tariff treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.235 Filing of claim for preferential tariff treatment.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for an article described in § 10.233(a)(1) through (5), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''R'' as a prefix to the subheading of the HTSUS under which the article in question is classified. Except in any of the circumstances described in § 10.236(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.236 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for an article under § 10.235

must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.235(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on an article under § 10.235(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 450, including privately-printed copies of that Form, or, as an alternative to Customs Form 450, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 450;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified period, not to exceed 12 months, set out in the Certificate by the exporter.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential tariff treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the CBTPA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.234 through 10.236, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential tariff treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.237 Verification and justification of claim for preferential tariff treatment.

(a) *Verification by Customs.* A claim for preferential tariff treatment made under § 10.235, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.236, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential tariff treatment. A verification of a claim for preferential tariff treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential tariff treatment under § 10.235, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rule of origin set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter. A properly completed Certificate of Origin in the form prescribed in § 10.236(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in

§ 10.233(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential tariff treatment.

PART 163—RECORDKEEPING

1. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to Part 163 is amended by adding two new listings under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

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IV. * * *

§ 10.226 CBTPA Textile Certificate of Origin and supporting records

§ 10.236 CBTPA Non-textile Certificate of Origin and supporting records

* * * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: September 29, 2000.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–25517 Filed 10–2–00; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Thursday,
October 5, 2000

Part VII

Department of the Treasury

Customs Service

19 CFR Parts 10 and 163

African Growth and Opportunity Act and Generalized System of Preferences; Final Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 163

[T.D. 00–67]

RIN 1515–AC72

African Growth and Opportunity Act and Generalized System of Preferences

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000. The trade benefits under Title I, also referred to as the African Growth and Opportunity Act (the AGOA), apply to sub-Saharan African countries designated by the President and involve: The extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-textile articles normally excluded from GSP duty-free treatment that are not import-sensitive; and the entry of specific textile and apparel articles free of duty and free of any quantitative limits. The regulatory amendments contained in this document reflect and clarify the statutory standards for preferential treatment under the AGOA and also include specific documentary, procedural and other related requirements that must be met in order to obtain that treatment. Finally, this document also includes some interim amendments to the existing Customs Regulations implementing the GSP to conform those regulations to previous amendments to the GSP statute.

DATES: Interim rule effective October 1, 2000; comments must be submitted by December 4, 2000.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Operational issues: Cathy Sauceda, Office of Field Operations (202–927–4198).

Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

Other legal issues: Craig Walker, Office of Regulations and Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

Background

African Growth and Opportunity Act

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the ''Act''), Public Law 106–200, 114 Stat. 251. Title I of the Act concerns the extension of certain trade benefits to sub-Saharan Africa and is referred to in the Act as the ''African Growth and Opportunity Act'' (the ''AGOA'').

Subtitle A of Title I of the Act concerns trade policy for sub-Saharan Africa. Subtitle A is codified at 19 U.S.C. 3701–3706 and includes section 104 (19 U.S.C. 3703) which (1) authorizes the President to designate a sub-Saharan African country as an ''eligible'' sub-Saharan African country if the President determines that the country meets specified eligibility requirements and (2) requires that the President terminate a designation if the President determines that an eligible country is not making continual progress in meeting those requirements. Subtitle A also includes section 107 (19 U.S.C. 3706) which, for purposes of Title I, defines the terms ''sub-Saharan Africa'' and ''sub-Saharan African country'' and variations of those terms with reference to 48 listed countries.

Subtitle B of Title I of the Act concerns trade benefits under the AGOA. The provisions within Subtitle B to which this document relates are sections 111, 112 and 113.

Section 111

Subsection (a) of section 111 of the Act amends Title V of the Trade Act of 1974 (the Generalized System of Preferences, or GSP, statute which previously consisted of sections 501–507, codified at 19 U.S.C. 2461–2467) by inserting after section 506 a new section 506A entitled ''Designation of sub-Saharan African countries for certain benefits'' and codified at 19 U.S.C. 2466a.

Subsection (a) of new section 506A authorizes the President, subject to referenced eligibility requirements and criteria, to designate a country listed in section 107 of the Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b). This subsection (a) also requires that the President terminate a designation if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements for designation.

Subsection (b) of new section 506A concerns preferential tariff treatment for certain articles and consists of the following two paragraphs:

1. Paragraph (1) authorizes the President to provide duty-free treatment for any article described in section 503(b)(1) (B) through (G) of the GSP statute that is the growth, product, or manufacture of a beneficiary sub-Saharan African country. A beneficiary sub-Saharan African country is a country listed in section 107 of the Act that has been designated by the President as eligible under subsection (a) of new section 506A. The President is authorized to provide duty-free treatment for an article if, after receiving the advice of the International Trade Commission in accordance with section 503(e) of the GSP statute, the President determines that the article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries. The articles described in section 503(b)(1) (B) through (G) of the GSP statute are those that are normally excluded from duty-free treatment under the GSP and consist of the following:

a. Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

b. Import-sensitive electronic articles;

c. Import-sensitive steel articles;

d. Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

e. Import-sensitive semimanufactured and manufactured glass products; and

f. Any other articles which the President determines to be import-sensitive in the context of the GSP.

2. Paragraph (2) provides that the duty-free treatment under paragraph (1) will apply to any article described in that paragraph that meets the requirements of section 503(a)(2) (that is, the basic GSP origin and related rules). Paragraph (2) also makes application of those basic rules in this context subject to the following two additional rules:

a. If the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to that United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2); and

b. The cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries shall be applied in determining that percentage.

Thus, in order for an article described in paragraph (1) to receive duty-free treatment, that article must meet the basic origin and related rules that apply to all eligible articles from any GSP-eligible country, but subject to two additional rules. In other words, (1) the article must have become the growth, product, or manufacture of a beneficiary sub-Saharan African country by some process other than a simple combining or packaging operation or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article, (2) the article must be imported directly from a beneficiary sub-Saharan African country into the customs territory of the United States, (3) the article must have at least 35 percent of its appraised value attributed to the sum of the direct costs of processing operations performed in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries that are members of the same association of countries and are treated as one country under section 507(2) of the GSP statute, plus the cost or value of the materials produced in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries, and (4) as variations from the general GSP 35 percent value-content rule (the two additional rules): the cumulation of the cost or value of materials from different beneficiary countries is not dependent on those beneficiaries being members of an association of countries; and the cost or value of materials produced in the customs territory of the United States (the 50 States and the District of Columbia and Puerto Rico) may be counted toward the 35 percent requirement to a maximum of 15 percent of the article's appraised value.

Subsection (c) of new section 506A defines the terms ''beneficiary sub-Saharan African country'' and ''beneficiary sub-Saharan African countries'' for purposes of the AGOA as a country or countries listed in section 107 of the Act that the President has determined is eligible under subsection (a) of new section 506A.

Subsection (b) of section 111 of the Act revises section 503(c)(2)(D) of the GSP statute in order to accommodate inclusion of a reference to ''any beneficiary sub-Saharan African country.'' The effect of this amendment is to preclude the withdrawal of GSP duty-free treatment from a beneficiary sub-Saharan African country by application of the GSP competitive need limitation provisions. This amendment is not addressed in the regulatory changes set forth in this document.

It is noted that section 114 of the Act also amends the GSP statute by inserting after new section 506A another new section 506B (codified at 19 U.S.C. 2466b and entitled ''Termination of benefits for sub-Saharan African countries'') which provides for continuation of GSP duty-free treatment through September 30, 2008, in the case of a beneficiary sub-Saharan African country as defined in section 506A(c).

Section 112

Section 112 of the Act sets forth new rules that provide for the preferential treatment of certain textile and apparel products. These rules are codified at 19 U.S.C. 3721 and thus are outside the GSP statutory framework. Moreover, these rules in effect operate as an exception to the approach under the GSP because section 503(b)(1)(A) of the GSP statute excludes most textile and apparel articles from preferential (that is, duty-free) treatment under the GSP.

Subsection (a) of section 112 contains the basic preferential treatment statement. It provides that textile and apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the GSP statute shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113 of the Act.

Subsection (b) of section 112 lists the specific textile and apparel products to which the preferential treatment described in subsection (a) applies. These products are as follows:

1. Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States (HTSUS) and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS [paragraph (b)(1)(A)];

2. Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes [paragraph (b)(1)(B)];

3. Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States) if those articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States [paragraph (b)(2)];

4. Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary sub-Saharan African countries), subject to rules or conditions involving (1) application of quantitative limits on preferential treatment (in effect, tariff rate quotas) for each of eight 1-year periods beginning on October 1, 2000, with a percentage increase in each year, (2) subject to those tariff rate quota provisions and until September 30, 2004, application of preferential treatment to apparel articles wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric used to make the articles, and (3) application of an import surge safeguard mechanism that could lead to suspension by the President of duty-free treatment for an article if increased imports of that article cause serious damage, or the threat of serious damage, to a domestic industry producing a like or directly competitive article [paragraph (b)(3)];

5. Cashmere sweaters, that is, sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary

sub-Saharan African countries and classifiable under subheading 6110.10 of the HTSUS [paragraph (b)(4)(A)];

6. Wool sweaters containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries [paragraph (b)(4)(B)];

7. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the North American Free Trade Agreement (NAFTA). (This AGOA provision in effect applies to apparel articles which are originating goods, and thus are entitled to preferential duty treatment, under the NAFTA tariff shift and related rules based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The subject fabrics and yarns include fine count cotton knitted fabrics for certain apparel, linen, silk, cotton velveteen, fine wale corduroy, Harris Tweed, certain woven fabrics made with animal hairs, certain lightweight, high thread count poly-cotton woven fabrics, and certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirts—see House Report 106–606, 106th Congress, 2d Session, at page 77.) [paragraph (b)(5)(A)];

8. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country and that is not described in paragraph (b)(5)(A), to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under paragraph (b)(5)(A) [paragraph (b)(5)(B)]; and

9. A handloomed, handmade, or folklore article of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of the beneficiary country or countries, subject to a determination by the President regarding which, if any, particular textile and apparel goods of the country or countries will be treated as being handloomed, handmade, or folklore articles [paragraph (b)(6)].

Subsection (c) of section 112 concerns the elimination of existing quotas on textile and apparel articles imported into the United States from Kenya and Mauritius. This provision is not addressed in the regulatory changes set forth in this document.

Subsection (d) of section 112 sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under section 112. These special rules are as follows:

1. Paragraph (d)(1)(A) sets forth a general rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if the value of those foreign findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and used in the production of brassieres), zippers (including zipper tapes), and labels. However, as an exception to the paragraph (d)(1)(A) general rule, paragraph (d)(1)(C) provides that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (b)(2) of section 112 (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of ''foreign'' origin).

2. Paragraph (d)(1)(B) sets forth a general rule regarding the treatment of specific interlinings, that is, a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. The paragraph also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Finally, paragraph (d)(2) sets forth a *de minimis* rule which provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

Subsection (e) of section 112 defines certain terms for purposes of sections 112 and 113 of the Act and, in paragraph (e)(2), states that the terms ''beneficiary sub-Saharan African country'' and ''beneficiary sub-Saharan African countries'' have the same meaning as those terms have under new section 506A(c) discussed above.

Finally, subsection (f) of section 112 provides that section 112 takes effect on October 1, 2000, and will remain in effect through September 30, 2008.

Section 113

Section 113 of the Act sets forth standards and conditions for the designation of beneficiary sub-Saharan African countries and for the granting of preferential treatment to textile and apparel articles under section 112. These provisions are primarily intended to avoid transshipment situations and thus ensure that preferential treatment is applied to goods as intended by Congress.

Subsection (a) of section 113 sets forth various terms and conditions that a potential beneficiary sub-Saharan African country must meet for purposes of preferential treatment under section 112. These terms and conditions involve enforcement and related actions to be taken by, and within, those potential beneficiary sub-Saharan African countries and thus, except in the case of paragraphs (a)(1)(F) and (a)(2), do not relate to matters that require regulatory action in this document. Paragraph (a)(1)(F) requires a country to agree to report, on a timely basis, at the request of the U.S. Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system. For purposes of paragraph (a)(1)(F), paragraph (a)(2) states that documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

Subsection (b) of section 113 sets forth regulatory standards for purposes

of preferential treatment under section 112, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each beneficiary sub-Saharan African country, prescribes a penalty that the President must impose on an exporter if the President determines that the exporter has engaged in transshipment, specifies when ''transshipment'' occurs for purposes of the subsection, and sets forth responsibilities of Customs regarding monitoring and reporting to Congress on actions taken by countries in sub-Saharan Africa. The specific provisions under subsection (b) that require regulatory treatment in this document are the following:

1. Paragraph (b)(1)(A) provides that any importer that claims preferential treatment under section 112 must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (b)(1)(A) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (b)(2) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (b)(1)(A) will not be required in the case of an article imported under section 112 if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Finally, subsection (c) of section 113 requires Customs to provide technical assistance to the beneficiary sub-Saharan African countries and to send production verification teams to at least four beneficiary sub-Saharan African countries each year, and subsection (d) of section 113 contains an appropriation authorization to carry out these duties. These provisions are not addressed in the regulatory changes set forth in this document.

Other Changes to the GSP Program

Section 226 of the Customs and Trade Act of 1990 (Pub. L. 101–382, 104 Stat. 660) amended section 503 of the GSP statute (19 U.S.C. 2463) in order to include explicit country of origin language in the statutory text. The amendments involved (1) inclusion of a reference to an eligible article which is ''the growth, product, or manufacture'' of a beneficiary developing country, (2) inclusion of a requirement that the implementing regulations promulgated by the Secretary of the Treasury provide that, in order to be eligible for duty-free treatment, an article must be ''wholly the growth, product, or manufacture of a beneficiary developing country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country,'' and (3) inclusion of a limitation on the conferring of origin for purposes of duty-free treatment in the case of simple combining or packaging operations or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article. The Customs Regulations implementing the GSP were originally published in 1975 and were never amended to reflect the 1990 statutory amendments. This document therefore sets forth conforming regulatory amendments for this purpose.

In addition, in Proclamation 6942 of October 17, 1996 (published in the **Federal Register** at 61 FR 54719 on October 21, 1996), President Clinton amended the GSP in a number of respects. One of those changes involved the termination of the designation of Malaysia both as a beneficiary developing country for purposes of the GSP and as a member of the Association of South East Asian Nations for purposes of the GSP. Section 10.175 of the Customs Regulations (19 CFR 10.175) sets forth standards for the GSP direct importation requirement and, in paragraph (e)(1), permits shipment, with some restrictions, from a member of an association designated for GSP purposes through a former beneficiary developing country whose designation as a member of that same association for GSP purposes was terminated by the President; paragraph (e)(2) of that section lists three former beneficiary developing countries whose designation was terminated as described in paragraph (e)(1). This document adds Malaysia to that paragraph (e)(2) list.

Finally, Customs notes that §§ 10.171(a), 10.175(e), and 10.176(c) of the Customs Regulations contain out-of-date references to various GSP statutory provisions. This document conforms those references to the current GSP statute.

Section-by-Section Discussion of Interim Amendments

Section 10.171

The amendment of this section involves an amendment of the first sentence of paragraph (a) to reflect the correct codification of the GSP statute.

Section 10.175

The amendments of this section involve (1) corrections to various GSP statutory citations in paragraphs (e)(1) and (e)(2), and (2) the addition of Malaysia to the list of countries in paragraph (e)(2) to reflect the action taken by the President in Proclamation 6942 as discussed above.

Section 10.176

The amendments to this section include the revision of paragraph (a) to reflect the changes to the GSP statute previously made by section 226 of the Customs and Trade Act of 1990 as discussed above. It is noted that the amended GSP statutory text regarding the basic rules of origin closely follows the wording of the corresponding Caribbean Basin Initiative (CBI) statutory text (section 213(a)(1) and (2) of the Caribbean Basin Economic Recovery Act (CBERA), codified at 19 U.S.C. 2703(a)(1) and (2)), and the legislative history relating to section 226 clearly indicates that the CBI statute was the model for this change to the GSP statute (see House Report 101–650, 101st Congress, 2d Session, at page 137). Accordingly, revised paragraph (a) of § 10.176 as set forth in this document follows the corresponding CBI regulatory provision (§ 10.195(a) of the Customs Regulations, 19 CFR 10.195(a)) but with appropriate textual variations to reflect a GSP context. It should also be noted that in the revised GSP text (1) reference is no longer made to merchandise which is the ''assembly'' of a beneficiary developing country because, similar to the CBI, that term is not used in the statute and in any event is covered by the phrase ''growth, product, or manufacture,'' and (2) the reference to the ''imported directly'' requirement has not been retained because that requirement is already separately and adequately addressed in § 10.175 (this does not modify the GSP imported directly requirement).

In addition, paragraph (c) of this section is amended to correct an out-of-date reference to a provision within the GSP statute.

New § 10.178a

This section is intended to cover the preferential tariff treatment provisions of subsection (b) of new section 506A of the GSP statute.

Paragraphs (a) and (b) of the regulatory text reflect the terms of section 506A(b)(1). Paragraph (a) sets the statutory context for the section and paragraph (b) describes the designation authority of the President and lists the articles that may be designated for duty-free treatment.

Paragraph (c) specifies the manner in which a claim for duty-free treatment under the section should be made. It follows the procedure specified in § 10.172 of the GSP regulations but provides for use of the symbol ''D'' (rather than ''A'') as the special program indicator on the entry.

Paragraph (d) of the regulatory text reflects the rules of origin principles contained in section 506A(b)(2). In order to avoid unnecessary duplication of regulatory text, and in consideration of the fact that the statute provides for application of the GSP origin and related rules in this context (subject to two exceptions in the case of the 35 percent value content requirement), paragraph (d) provides for application of the relevant existing GSP regulatory provisions (that is, §§ 10.171, 10.173, and 10.175 through 10.178) but with certain specified exceptions or variations to conform to the AGOA context.

New §§ 10.211 Through 10.217

These new sections are intended to implement those textile and apparel preferential treatment provisions within sections 112 and 113 of the Act that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations.

Section 10.211 outlines the statutory context for the new sections and is self-explanatory.

Section 10.212 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of ''apparel articles,'' by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of ''assembled in one or more beneficiary countries'' is based in part on the definition of ''wholly assembled'' in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)) but also adds a reference to thread as a material that is not considered to be a component for purposes of the definition. In addition, the definition is intended to allow a prior partial assembly in the United States, consistent with the overall structure of the AGOA as reflected in the types of operations allowed under the program.

3. The definition of ''cut in one or more beneficiary countries'' precludes any cutting operation performed in a country other than a beneficiary country in accordance with the clear language of the statute.

4. The definition of ''knit-to-shape'' follows the definition in § 102.21(b)(3) of the Customs Regulations (19 CFR 102.21(b)(3)).

5. The definition of ''major parts'' is taken from the definition in § 102.21(b)(4) of the Customs Regulations (19 CFR 102.21(b)(4)).

6. The definition of ''NAFTA'' reflects the definition contained in section 112(e)(3) of the Act.

7. The definition of ''originating'' refers to the Customs Regulations that implement section 334 of the Uruguay Round Agreements Act and therefore is consistent with the intent of Congress (see House Report 106–606, 106th Congress, 2d Session, at page 77).

8. The definition of ''wholly assembled in'' is intended to ensure, consistent with the wording of the statute and the clear meaning of ''wholly'' in this context, that all assembly operations (including any initial partial assembly or any tail-end assembly operation) will be performed in the countries that are the intended beneficiaries of the AGOA program.

9. The definition of ''wholly formed'' relies in part on the definition of ''fabric-making process'' in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)) and also uses a similar approach for yarns and thread because the Act uses these terms with reference to fabrics, yarns, and thread. The definition is intended to ensure that all processes essential for yarn or thread or fabric formation are performed in the United States or beneficiary countries.

Section 10.213 identifies the specific articles to which preferential treatment applies under section 112 of the Act. Paragraph (a) repeats the ''imported directly'' requirement of section 112(a) of the Act and identifies the various types of articles described within sections 112(b)(1)–(6) of the Act. Paragraph (b) covers the special rules for findings, trimmings, and interlinings and the *de minimis* rule contained in section 112(d) of the Act. Paragraph (c) explains what is meant by ''imported directly.'' The following specific points are noted regarding these regulatory texts:

1. With regard to paragraph (a)(2), which corresponds to section 112(b)(1)(B) of the Act, Customs notes that the statutory provision does not address the issue of whether the embroidery or stone-washing and other processes mentioned in that provision (which are principally finishing operations normally done after assembly) must be done in beneficiary countries. The relevant legislative history does not address the issue. The statute could be read to allow these processes to be done in a non-beneficiary country provided that, after these processes are completed, the article is returned to a beneficiary country for direct importation into the United States. However, Customs believes that this interpretation would lead to a result that is contrary to the Congressional statement of policy set forth in section 103 of the Act which mentions, among other things, the encouragement of increased trade and investment between the United States and sub-Saharan Africa and the strengthening and expansion of the private sector in sub-Saharan Africa, because it could have the effect of diverting those finishing operations to third countries and thus away from the intended beneficiaries under the Act. Customs has determined that limiting the performance of those processes to beneficiary countries would further the stated policy of Congress and would be more consistent with the intent of the Act. Accordingly, in paragraph (a)(2) of the regulatory text, the words ''in a beneficiary country'' have been added at the end after ''processes.''

2. In paragraph (a)(3), which corresponds to section 112(b)(2) of the Act, no comma has been included before the parenthetical expression and a comma has been added after that parenthetical expression, in order to correct an apparent inadvertent drafting or printing error and thus ensure proper grammatical sense (this makes the regulatory text consistent with a corresponding statutory text set forth under section 211 of the Act, which is not the subject of this document).

3. In paragraph (a)(7), which corresponds to section 112(b)(4)(B) of the Act, no mention is made of

''merino'' wool because, notwithstanding the use of this word in the heading of the statutory provision, Customs interprets the statutory language as reflecting the intent of Congress to set a maximum (18.5 micron) diameter limitation without regard to the type of animal from which the wool was obtained.

4. In paragraph (a)(9), which corresponds to section 112(b)(5)(B) of the Act, no reference has been made at the end to treatment provided ''for yarns or fabrics'' because treatment in this context must be read in the context of section 112(b)(5)(A) of the Act and therefore can only have reference to articles made from yarns or fabric.

5. Paragraph (b) is divided into two parts: Paragraph (b)(1) reflects the basic rules of section 112(d) of the Act and paragraph (b)(2) is intended to clarify the relationship between findings and trimmings on the one hand and fibers and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under section 112(d). As regards paragraph (b)(2), Customs believes that some clarification is appropriate in this context because sometimes a fiber or yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign fibers or yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (b)(2) a foreign yarn, for example, that is used in an article as a trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation. In addition, the following is noted regarding the paragraph (b) texts:

a. In paragraph (b)(1)(i) the words ''and zippers, including zipper tapes and labels'' in section 112(d)(1)(A) of the Act have been replaced with the words ''zippers (including zipper tapes), labels'' because there is no such thing as a ''zipper label'' and to ensure proper treatment of labels as findings and trimmings in their own right. Customs believes that this wording of the regulatory text is consistent with the intent of Congress as reflected in the explanation of the provision in the relevant legislative history (see House Report 106–606, 106th Congress, 2d Session, at page 79); and

b. A separate paragraph (b)(1)(iii) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words ''(and any findings and trimmings)'' in section 112(d)(1)(B)(i) of the Act.

6. The explanation of ''imported directly'' in paragraph (c) is consistent with current regulatory practice. The text follows that used in the Caribbean Basin Initiative (CBI) implementing regulations (see 19 CFR 10.193) rather than the text used in the corresponding GSP regulation (19 CFR 10.175) because the CBI text allows for contributions from multiple beneficiary countries without affecting compliance with the imported directly requirement and thus is more appropriate for the production scenarios permitted under section 112(b) of the Act.

Section 10.214 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in section 113(b)(1)(A) of the Act. Paragraph (a) contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific articles described in section 112(b) of the Act and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA which involves different country of origin standards for preferential duty treatment. Paragraph (c) sets forth instructions for preparation of the Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the AGOA program.

Section 10.215 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in section 113(b)(1)(A) of the Act for procedures ''similar in all material respects to the requirements of Article 502(1) of the NAFTA,'' this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but includes appropriate changes to conform to the current context. However, contrary to the NAFTA regulatory text, paragraph (a) of § 10.215 does not allow for a declaration based on a copy of an original Certificate of Origin.

Section 10.216 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to ''the provisions of part 163'' which sets forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. The effect is the same as that under the NAFTA § 181.22 text.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1) of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for AGOA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of section 113(b)(2) of the Act, this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Finally, section 10.217 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)) and in the CBI regulations (19 CFR 10.198(c)), the text expands on the GSP/CBI approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the Customs Regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production in a beneficiary country that Customs may need to review for purposes of verifying a claim for preferential treatment. This paragraph is based on the specifics regarding country of origin documentation contained in section 113(a)(2) of the Act.

3. Finally, paragraph (a)(3) refers to evidence in a beneficiary country to document the use of U.S. materials in an article produced in the beneficiary country, because the presence of U.S. materials is a key element for many of the articles to which preferential treatment applies under the AGOA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained by the beneficiary country producer not only with regard to the production process but also with regard to the source of the materials used in that production.

Appendix to Part 163

Finally, this document amends Part 163 of the Customs Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim ''(a)(1)(A) list'') a reference to the Certificate of Origin and supporting documentation prescribed under new § 10.216.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the African Growth and Opportunity Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0224.

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

The collection of information in these interim regulations is in §§ 10.214, 10.215, and 10.216. This information conforms to requirements in 19 U.S.C. 3722(b)(1)(A) and is used by Customs to determine whether textile and apparel articles imported from designated beneficiary sub-Saharan African countries are entitled to duty-free entry under the African Growth and Opportunity Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated annual reporting and/or recordkeeping burden: 10,400 hours.

Estimated average annual burden per respondent/recordkeeper: 23 hours.

Estimated number of respondents and/or recordkeepers: 440.

Estimated annual frequency of responses: On occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Generalized System of Preferences, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.171 through 10.178 is revised to read, and a new specific authority citation for §§ 10.211 through 10.217 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

Sections 10.171 through 10.178a also issued under 19 U.S.C. 2461 *et seq.*;

* * * * *

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

* * * * *

2. In § 10.171, the first sentence of paragraph (a) is amended by removing the reference ''(19 U.S.C. 2461–2465)'' and adding, in its place, the reference ''(19 U.S.C. 2461–2467)'.

3. In § 10.175:

a. Paragraph (e)(1) is amended by removing the words ''section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3))'' and adding, in their place, the words ''section 507(2), Trade Act of 1974, as amended (19 U.S.C. 2467(2))'' and by removing the words ''section 504, Trade Act of 1974, as amended (19 U.S.C. 2464)'' and adding, in their place, the words ''section 502(d), Trade Act of 1974, as amended (19 U.S.C. 2462(d))'; and

b. Paragraph (e)(2) is amended by removing the words ''section 504 of the Trade Act of 1974 (19 U.S.C. 2464)'' and adding, in their place, the words ''section 502(d) of the Trade Act of 1974 (19 U.S.C. 2462(d))'' and by adding ''Malaysia'' in appropriate alphabetical order in the list of countries at the end of the paragraph.

4. In § 10.176, paragraph (a) is revised, and paragraph (c) is amended by removing the words ''section 502(a)(3) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(3))'' and adding, in their place, the words ''section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2))''. The revision of paragraph (a) reads as follows:

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries*—(1) *General.* Except as otherwise provided in this section, any article which either is wholly the growth, product, or manufacture of, or is a new or different article of commerce that has been grown, produced, or manufactured in, a beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences (GSP). No article will be considered to have been grown, produced, or manufactured in a beneficiary developing country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the GSP may be accorded to an article only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries that are members of the same association of countries and are treated as one country under section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), plus the direct costs of processing operations performed in the beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary developing country within the meaning of paragraph (a)(1) of this section will be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph. For purposes of this section:

(i) Simple combining or packaging operations and mere dilution include, but are not limited to, the following:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering, *etc.;*

(C) Blending foreign and beneficiary developing country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength;

(ii) Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and

(iii) The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.

* * * * *

5. A new § 10.178a is added to read as follows:

§ 10.178a Special duty-free treatment for sub-Saharan African countries.

(a) *General.* Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) authorizes the President to provide duty-free treatment for certain articles otherwise excluded from duty-free treatment under the Generalized System of Preferences (GSP) pursuant to section 503(b)(1)(B) through (G) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(B) through (G)) and authorizes the President to designate a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) as an eligible beneficiary sub-Saharan African country for purposes of that duty-free treatment.

(b) *Eligible articles.* The duty-free treatment referred to in paragraph (a) of this section will apply to any article within any of the following classes of articles, provided that the article in question has been designated by the President for that purpose and is the growth, product, or manufacture of an eligible beneficiary sub-Saharan African country and meets the requirements specified or referred to in paragraph (d) of this section:

(1) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

(2) Certain electronic articles;

(3) Certain steel articles;

(4) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

(5) Certain semimanufactured and manufactured glass products; and

(6) Any other articles which the President determines to be import-sensitive in the context of the GSP.

(c) *Claim for duty-free treatment.* A claim for the duty-free treatment referred to in paragraph (a) of this section must be made by placing on the entry document the symbol ''D'' as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which duty-free treatment is claimed;

(d) *Origin and related rules.* The provisions of §§ 10.171, 10.173, and 10.175 through 10.178 will apply for purposes of duty-free treatment under this section. However, application of those provisions in the context of this section will be subject to the following rules:

(1) The term ''beneficiary developing country,'' wherever it appears, means ''beneficiary sub-Saharan African country;'

(2) In the GSP declaration set forth in § 10.173(a)(1)(i), the column heading ''Materials produced in a beneficiary developing country or members of the same association'' should read ''Material produced in a beneficiary sub-Saharan African country or in the U.S.;''

(3) The provisions of § 10.175(c) will not apply; and

(4) For purposes of determining compliance with the 35 percent value content requirement set forth in § 10.176(a):

(i) An amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States, and the provisions of § 10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials; and

(ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(e) *Importer requirements.* In order to make a claim for duty-free treatment under this section, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;

(2) Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country. If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country. If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in § 10.176(a) and paragraph (d) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose;

(3) Must establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records referred to in paragraph (e)(2) of this section;

(4) Must have shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.175(d)(1) through (3) were met;

(5) Must have records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in § 10.176(a) and paragraph (c) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose; and

(6) Must be prepared to produce the records referred to in paragraphs (e)(1), (e)(2), (e)(4), and (e)(5) of this section within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to in paragraph (e)(3) of this section justify the importer's claim for duty-free treatment.

6. Part 10 is amended by adding a new center heading followed by new §§ 10.211 through 10.217 to read as follows:

Textile and Apparel Articles Under the African Growth and Opportunity Act

Sec.

10.211 Applicability.
10.212 Definitions.
10.213 Articles eligible for preferential treatment.
10.214 Certificate of Origin.
10.215 Filing of claim for preferential treatment.
10.216 Maintenance of records and submission of Certificate by importer.
10.217 Verification and justification of claim for preferential treatment.

Textile and Apparel Articles Under the African Growth and Opportunity Act

§ 10.211 Applicability.

Title I of Public Law 106–200 (114 Stat. 251), entitled the African Growth and Opportunity Act (AGOA), authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from beneficiary countries. The provisions of §§ 10.211–10.217 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to section 112.

§ 10.212 Definitions.

When used in §§ 10.211 through 10.217, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more beneficiary countries. ''Assembled in one or more beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components (other than thread, decorative embellishments, buttons, zippers, or similar components) that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

Beneficiary country. ''Beneficiary country'' means a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) which has been the subject of a finding by the President, published in the **Federal Register**, that the country has satisfied the requirements of section 113 of the African Growth and Opportunity Act (19 U.S.C. 3722) and which the President has designated as a

beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a).

Cut in one or more beneficiary countries. ''Cut in one or more beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries.

Foreign. ''Foreign'' means of a country other than the United States or a beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Knit-to-shape. The term ''knit-to-shape'' applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape.''

Major parts. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Originating. ''Originating'' means having the country of origin determined by application of the provisions of § 102.21 of this chapter.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative limitations as provided in 19 U.S.C. 3721.

Wholly assembled in. When used with reference to a textile or apparel article in the context of one or more beneficiary countries or one or more lesser developed beneficiary countries, the expression ''wholly assembled in'' means that all of the components of the textile or apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in one or more beneficiary countries or one or more lesser developed beneficiary countries.

Wholly formed. ''Wholly formed,'' when used with reference to yarns or thread, means that all of the production processes, starting with the extrusion of filament or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

§ 10.213 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.211 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary country:

(1) Apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles cut in one or more beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more beneficiary countries with thread formed in the United States;

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarn originating either in the United States or one or more beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary countries);

(5) Apparel articles wholly assembled in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric used to make the articles;

(6) Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary countries and classifiable under subheading 6110.10 of the HTSUS;

(7) Sweaters, containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary countries;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabric or yarn that is not formed in the United States or a beneficiary country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the NAFTA;

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabric or yarn that is not formed in the United States or a beneficiary country and that is not described in paragraph (a)(8) of this section, to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the preferential treatment provided under paragraph (a)(8) of this section; and

(10) A handloomed, handmade, or folklore article of a beneficiary country or countries that is certified as a handloomed, handmade, or folklore article by the competent authority of the beneficiary country or countries, provided that the President has determined that the article in question will be treated as being a handloomed, handmade, or folklore article.

(b) *Special rules for certain component materials*—(1) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.211 because the article contains:

(i) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks

and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(ii) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(iii) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(iv) Fibers or yarns not wholly formed in the United States or one or more beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

(2) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (b)(1)(i) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (b)(1) of this section.

(c) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country;

(2) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.214 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.211. The Certificate of Origin must be prepared by the exporter in the beneficiary country in the form specified in paragraph (b) of this section. Where the beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

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African Growth and Opportunity Act
Textile Certificate of Origin

1. Exporter Name & Address		2. Producer Name & Address
3. Importer Name & Address		6. U.S./ African Fabric Producer Name & Address
4. Description of Article	5. Preference Group	7. U.S./ African Yarn Producer Name & Address
		8. U.S. Thread Producer Name & Address
		9.Name of Handloomed, Handmade or Folklore Article
10. Name of Preference Group H Fabric or Yarn:		

Preference Groups:

A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(1)].
B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(2)].
C: Apparel cut and assembled from U.S. fabric from U.S. yarn and thread [19 CFR 10.213(a)(3)].
D: Apparel assembled from regional fabric from yarn originating in the U.S. or one or more beneficiary countries [19 CFR 10.213(a)(4)].
E: Apparel assembled in one or more lesser developed beneficiary countries [19 CFR 10.213(a)(5)].
F: Sweaters knit to shape in chief weight of cashmere [19 CFR 10.213(a)(6)].
G: Sweaters knit to shape with 50 percent or more by weight of fine wool [19 CFR 10.213(a)(7)].
H: Apparel cut and assembled in one or more beneficiary countries from fabrics or yarn not formed in the United States or a beneficiary country (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.213(a)(8) or (a)(9)].
I: Handloomed, handmade or folklore articles [19 CFR 10.213(a)(10)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.

I agree to maintain, and present upon request, documentation necessary to support this certificate.

12.Authorized Signature		13. Company
14. Name (Print or Type)		15. Title
16a.Date(DD/MM/YY)	16b.Blanket Period From: To:	17. Telephone Number Facsimile Number

BILLING CODE 4820–02–C

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate

it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10, which should be completed only when preference group ''H'' is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a beneficiary country or that is not available in commercial quantities in the United States;

(13) Block 16a should reflect the date on which the Certificate was completed and signed;

(14) Block 16b should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.216(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 16a). The ''to'' date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.215 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must make a written declaration that the article qualifies for that treatment. In the case of an article described in § 10.213(a)(1), the written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''D'' as a prefix to the subheading within Chapter 98 of the HTSUS under which the article is classified, and, in the case of any article described in § 10.213(a)(2) through (a)(10), the inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.214, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.216 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.215 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.215(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.215(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.214(c)(14), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.214 through 10.216, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.217 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.215, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.216, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.215, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.213(a). If the importer is claiming that the article incorporates fabric or yarn that originated or was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.214(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the beneficiary country to the United States. If the imported article was shipped through a country other than a beneficiary country and the invoices and other documents from the beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.213(c)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

PART 163—RECORDKEEPING

1. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

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§ 10.216 AGOA Textile Certificate of Origin and supporting records

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Raymond W. Kelly,

Commissioner of Customs.

Approved: September 29, 2000.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–25518 Filed 10–2–00; 8:45 am]

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Federal Register

Thursday,
October 5, 2000

Part VIII

Department of Labor

Veterans' Employment and Training

41 CFR Part 61–250
Annual Report From Federal Contractors; Proposed Rule

DEPARTMENT OF LABOR

Veterans' Employment and Training

41 CFR Part 61–250

RIN 1293–AA07

Annual Report From Federal Contractors

AGENCY: Veterans' Employment and Training, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations to implement certain provisions of the Veterans Employment Opportunity Act of 1998 (''VEOA''). Under the current version of that part, pursuant to the Vietnam Era Veterans' Readjustment Act of 1974, as amended (''VEVRAA''), all contractors and subcontractors with Federal contracts in excess of $10,000 are required to use the Federal Contractor Veterans' Employment Report VETS–100 form (''VETS–100 Report'') to report their efforts toward the hiring of qualified veterans in two specified categories. Section 7 of VEOA raised the reporting threshold from $10,000 to $25,000, and added a third category of veterans to the required reports. This rule would implement those changes, along with other changes that either are required by VEOA or will improve the administration of the related veterans' programs.

DATES: To be assured of consideration, comments must be received on or before December 4, 2000.

ADDRESSES: Comments should be sent to Robert Wilson, Chief, Compliance Programs, VETS, by regular mail at the U.S. Department of Labor, Room S–1316, 200 Constitution Avenue, NW, Washington, D.C. 20210, or by e-mail at Wilson-Robert@ dol.gov. Written comments limited to 10 pages or fewer also may be transmitted by facsimile (FAX) at (202) 693–4755. Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4717(VOICE) or 1(877)670–7008 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rulemaking (''NPRM'') will be made available in the following formats: large print, electronic file on computer disk, and audio tape. To schedule an appointment to review the comments and/or to obtain the Notice of Proposed Rulemaking in an alternate format, contact VETS at the telephone numbers and addresses listed above.

FOR FURTHER INFORMATION CONTACT: Robert Wilson, Chief, Compliance Programs, VETS, at the addresses and telephone numbers listed above.

SUPPLEMENTARY INFORMATION: The preamble to this NPRM is organized as follows:

I. Background—provides a brief description of the development of these proposed regulations.

II. Authority—cites the statutory provisions supporting these regulations and Departmental redelegation authority.

III. Section-by-Section Review of the Rule—summarizes pertinent aspects of the regulatory text and describes its purposes and application.

IV. Regulatory Procedure—sets forth the applicable regulatory requirements.

I. Background

President Clinton signed VEOA into law in October 1998. The statute extended the affirmative action and reporting responsibilities of Federal contractors and subcontractors, which previously protected veterans of the Vietnam era and special disabled veterans, to include any other U.S. veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. VEOA raised the reporting threshold for Federal contractors and subcontractors from $10,000 to $25,000. VEOA also added the requirement that contractors and subcontractors report to the Secretary of Labor the maximum number and the minimum number of persons they employed during the reporting period.

In addition, in 1998, VETS changed the annual deadline for submission of the VETS–100 Report from March 31 to September 30. This change was intended to conform the VETS–100 reporting cycle to that of the EEO–1 Report, and thereby reduce the reporting burden on contractors.

The proposed rule would incorporate both these substantive changes and additional stylistic and/or phrasing changes. The latter changes were prompted by the June 1, 1998, Presidential Memorandum on Plain Language, which instructed Federal Departments and Agencies to write regulations in language understandable to most people. Accordingly, VETS has reworded subsection topic header statements into the form of questions; replaced the term ''shall'' with ''must'' (to indicate an obligation) or ''will'' (to indicate a future action), as appropriate; and altered the wording of the regulations in other ways, as described below in Section III, ''Section-by-Section Review of the Rule.'' These changes are intended to enhance the readability and usefulness of the regulations.

II. Authority

A. Statutory Authority

The statutory authorities for this NPRM are Sections 7 and 8 of VEOA (38 U.S.C. § 4212(d)); VEVRAA, as amended, 38 U.S.C. 101 *et seq.*, Pub. L. 93–508, 88 Stat. 1578; and the Veterans' Benefits Improvements Act of 1996 (''VBIA''), 38 U.S.C. 101(29), Pub. L. 104–275, 110 Stat. 3322.

B. Departmental Authorization

Secretary's Order 1–83, Section 3(a), authorized the Assistant Secretary of Labor for Veterans' Employment and Training to develop and implement policies required to administer and enforce statutes dealing with veterans' reemployment, including VEVRAA. Secretary's Order 4–83 redesignated the Office of the Assistant Secretary of Labor for Veterans' Employment and Training as the Veterans' Employment and Training Service, or VETS.

III. Section-by-Section Review of the Rule

Throughout the rule, minor language changes have been made to comply with the Presidential Memorandum on Plain Language by clarifying the wording of the regulations. Unless specified below, none of these changes are intended to alter the substantive meaning of the regulations.

In addition, throughout the rule, references to the U.S. Code have been corrected to reflect the numbering changes effected by VEOA and the Veterans' Benefit Improvement Act of 1996 (VBIA); similarly, references to the regulations promulgated by the Office of Federal Contract Compliance Programs (''OFCCP'') have been amended to reflect changes to those regulations, including new section numbers, that took effect on January 4, 1999. See Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans; Final Rule, 63 FR 59630 *et seq.* (November 4, 1998). Finally, the former Veterans' Administration (''VA'') has been upgraded to a Cabinet-level agency; therefore, references to the VA throughout the rule have been changed

to use the agency's new name, the Department of Veterans' Affairs.

Sections or paragraphs of the rule that are not discussed in this preamble have not been changed in any substantive way from the previous version of the regulations.

Section 250.1 What Are the Purpose And Scope of This Part?

This section would outline the purpose and scope of the regulations. Paragraph (a) would correct the regulations' citation to the U.S. Code, as amended by VEOA; would reflect the new reporting threshold; and would indicate which contractors would be required to file reports under the regulations. Paragraph (d) would direct readers to the OFCCP regulations that govern the affirmative action obligations of contractors and subcontractors toward protected veterans.

Section 250.2 What Definitions Apply to This Part?

This section would provide the definitions that would apply to this part. Paragraph (b)(1) would update the reference to the Standard Industrial Classification Manual from the 1972 edition to the 1987 edition, and would add the acronym for the Employer Identification Number (EIN). Paragraph (b)(4), the definition of ''special disabled veteran,'' would be amended to clarify that in order to be protected, veterans must have served in the military, ground, naval, or air service of the United States, and not of any other nation. The definition of ''veteran of the Vietnam era'' in paragraph (b)(5) would be amended to add a similar clarification, and also to conform to the statutory definition of the term at 38 U.S.C. 101(29), which was altered by VBIA. Paragraph (b)(6) would be amended to define ''other veterans,'' as required by VEOA. Paragraphs (b)(9) and (b)(10) would add definitions for the terms ''states'' and ''eligibility period,'' respectively.

Section 250.10 What Reporting Requirements Apply to Federal Contractors and Subcontractors, and What Specific Wording Must the Reporting Requirements Contract Clause Contain?

This section would continue the requirement that covered Federal contractors and subcontractors submit reports at least annually regarding their hiring and continued employment of veterans in the three categories defined in the proposed Section 250.2. It also would amend the required language for the contract clause that must be included in each covered Federal contract and subcontract. Paragraphs (a)(1) and (a)(2) of the amended clause would add the requirement that contractors and subcontractors report on their employment of ''other veterans,'' as defined in Section 250.2; paragraph (a)(3) would require contractors and subcontractors to report the maximum number and minimum number of persons employed during the reporting period. Both of these changes are required by VEOA.

Paragraph (c) of the amended clause would change the annual deadline for submitting the VETS–100 Report from March 31 to September 30, to conform with the EEO–1 reporting date, as explained in the ''Background'' section above. The same paragraph would define the eligibility period for the report. Paragraph (d) would amend the definition of the reporting period. Contractors and subcontractors would still be able to select an ending date for the period; however, the range of permissible dates would be changed. The previous version of the clause permitted ending dates between January 1 and March 1; the amended version would permit ending dates between July 1 and August 31.

Paragraph (e) would be revised to indicate that both contractors and subcontractors must comply with the voluntary disclosure requirements, pursuant to OFCCP regulations at 41 CFR 60–250.42.

Section 61–250.11 On What Form Must the Data Required Above Be Submitted?

This section would amend the proposed form and instructions for completing the VETS-100 Report, and provide new avenues for submission of the report.

Paragraph (a): This paragraph of the proposed section would provide a copy of the amended form and the text of the amended instructions. The introduction to the instructions would be amended to clarify that a separate report must be completed for each hiring location in all States, as those two terms would be defined under the proposed Section 250.2. The term ''supplemental'' would be deleted to emphasize that the obligation to complete and submit the VETS–100 Report is separate from the obligation to complete and submit the EEO–1 Report.

Instructions: The section of the instructions entitled ''How to Prepare Form'' would be amended to insert an explanation of the meaning of shaded areas on the form, as well as instructions for determining the reporting period by selecting an ending date for the report. The latter information is not new; under the proposed rule, it would be moved from a different section of the instructions in order to emphasize that the reporting period applies to the entire report.

The section of the instructions entitled ''Company Identification'' would be revised to require reporting of the contractor's Standard Industrial Code (SIC) and Dun and Bradstreet I.D. number (DUNS), if available, in addition to the EIN that is already required. These changes will assist VETS in identifying Federal contractors and subcontractors.

The section entitled ''Information on Employees,'' previously called ''Information on Veterans,'' would be revised in a number of ways. The paragraph ''Counting veterans'' would be added, in response to numerous questions from contractors, to clarify how contractors must count veterans who fall into more than one category. The paragraph ''Data on Current Employees'' would amend a currently untitled paragraph to explain which payroll period should be used to provide the data, which full-time and part-time employees must be included in the data, and which data are optional, and to comply with VEOA by expanding the categories of veterans who must be included. The paragraph ''Data on New Hires'' (titled ''New Hires Data'' in the current regulation) would be amended to explain which data in this section are optional, and to delete the explanation of how to select the reporting period; this explanation, as noted above, would be moved to the section headed ''How to Prepare Form.'' The new paragraph ''Maximum and minimum number of employees'' would comply with VEOA by requiring contractors and subcontractors to report the maximum and minimum number of persons employed during the reporting period.

In the ''Definitions'' section, the definitions of the terms ''special disabled veteran'' and ''veteran of the Vietnam era'' would be amended, and a definition of ''other veterans'' would be added, in the same ways, and for the same reasons, as the definitions of the same terms in 41 CFR 61–250.2, as described above. The section ''Legal Basis for Reporting Requirements'' would be amended as required by VEOA.

Paragraph (b): This paragraph would require most contractors and subcontractors who submit computer-generated output to do so in the form of an electronic file. This requirement is intended to reduce the cost of submitting the VETS–100 form for contractors and of tallying the

information on the form for the Federal government.

Paragraph (c): This paragraph would be added to provide small business the opportunity to submit the VETS–100 Report via the Internet and to obtain a company number via e-mail.

Paragraph (e): This paragraph would be revised to change the filing deadline to September 30, as explained above, and to include an Internet address to obtain VETS–100 information.

Section 61–250.12 What Invitation to Self-Identify Must a Contractor Offer to Veterans?

This section would be revised in minor ways. The phrase ''and subcontractors'' would be added to the first sentence, to clarify that covered subcontractors, as well as covered contractors, must invite veterans to self-identify, and must comply with the voluntary disclosure requirements when issuing that invitation. ''Other veterans,'' as defined in Section 61–250.2, would be added to the categories of veterans who must receive the invitation, pursuant to VEOA.

Section 61–250.20 How Will DOL Determine Whether a Contractor or Subcontractor is Complying With the Requirements of This Part?

The language of this section would be amended to clarify that during the course of a compliance evaluation, OFCCP may determine whether a contractor or subcontractor has submitted the reports required by this part.

Section 61–250.99 What are the OMB Control Numbers for This Part?

This section would be updated to reflect the most recent regulations implementing the Paperwork Reduction Act.

IV. Regulatory Procedures

Paperwork Reduction Act Approval

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The proposed rule would revise regulations which contain information collection requirements which are currently approved under OMB No. 293–0005. The proposal includes new data reporting requirements. We estimate the collection burden to be 30 minutes per respondent. A description of the information to be collected is shown below.

Contractors and subcontractors will be required to collect data on a new category of veterans, ''other veterans.'' Additionally, contractors and subcontractors must report the maximum and minimum number of persons employed during the reporting period. Both of these changes are required by VEOA. Company identification information is revised to request the submission of a contractor's Standard Industrial Code (SIC) and require the Dun and Bradstreet I.D. number (DUNS), if available.

VETS invites the public to comment on whether each of the proposed collections of information: (1) Ensures that the collection of information is necessary to the proper performance of the agency, including whether the information will have practical utility; (2) estimates the projected burden, including the validity of the methodology and assumptions used, accurately; (3) enhances the quality, utility, and clarity of the information to be collected; and (4) minimizes 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).

Executive Order 12866, Regulatory Planning and Review

The Department of Labor has determined that this Proposed Rule is not a ''significant regulatory action'' under Executive Order 12866 because this action will not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis is required.

Unfunded Mandates

Executive Order 12875—This rule will not create an unfunded Federal Mandate upon any State, local, or tribal government. Unfunded Mandate Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Executive Order 13132, Federalism

This Notice of Proposed Rule Making 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, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

Regulatory Flexibility Act

This Notice of Proposed Rulemaking does not substantially change the existing obligation of Federal contractors or subcontractors. The Department of Labor certifies that the proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, no regulatory flexibility analysis is required.

Clarity of This Regulation

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that isn't clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

List of Subjects in 41 CFR Part 61–250

Government contracts, Reporting and recordkeeping requirements, Veterans.

Signed at Washington, D.C., this 26th day of September 2000.

Alexis M. Herman,

Secretary of Labor.

Accordingly, title 41, part 61–250 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 61–250—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.
61–250.1 What are the purpose and scope of this part?
61–250.2 What definitions apply to this part?
61–250.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?
61–250.11 On what form must the data required by this part be submitted?
61–250.12 What invitation to self-identify must a contractor offer to veterans?
61–250.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?
61–250.99 What are the OMB control numbers for this part?

Authority: 38 U.S.C. 4212(d).

§ 61–250.1 What are the purpose and scope of this part?

(a) This part 61–250 implements 38 U.S.C. 4212(d). Each contractor or subcontractor who enters into a contract in the amount of $25,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction), and who is subject to 38 U.S.C. 4212(a) and the Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60–250, must submit a report according to the requirements of § 61–250.10 of this part.

(b) Except as noted in § 61–250.10 of this part, the regulations at 41 CFR part 60–250, administered by OFCCP, continue to apply to contractors' and subcontractors' affirmative action obligations regarding veterans.

(c) Reporting requirements of this part regarding veterans will be deemed waived in those instances in which the Deputy Assistant Secretary, OFCCP, has granted a waiver under 41 CFR 60–250.4(b)(1), or has concurred in granting a waiver under 41 CFR 60–250.4(b)(2), from compliance with all the terms of the equal opportunity clause for those establishments not involved in government contract work. Where OFCCP grants only a partial waiver, compliance with these reporting requirements regarding veterans will be required.

(d) 41 CFR 60–250.42 and Appendix B to part 60–250 provide guidance concerning the affirmative action obligations of Federal contractors and subcontractors toward applicants for employment who are special disabled veterans, veterans of the Vietnam era, or other veterans as defined in this part.

§ 61–250.2 What definitions apply to this part?

(a) For purposes of this part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this part have the same meaning as set forth in 41 CFR part 60–250.

(b) For purposes of this part:

(1) *Hiring location* (identical to *establishment* as defined by the instructions for completing Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1) means an economic unit which produces goods or services, such as a factory, office, store, or mine. In most instances the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity (definition adapted from the 1987 Standard Industrial Classification Manual). Units at different locations, even though engaged in the same kind of business operation, should be reported as separate establishments. For locations involving construction, transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities, however, it is not necessary to list separately each individual site, project, field, line, etc., unless it is treated by the contractor as a separate legal entity with a separate Employer Identification Number (EIN). For these physically dispersed activities, list as establishments only those relatively permanent main or branch offices, terminals, stations, etc., which are either:

(i) Directly responsible for supervising such dispersed activities, or

(ii) The base from which personnel and equipment operate to carry out these activities. (Where these dispersed activities cross State lines, at least one such establishment should be listed for each State involved.)

(2) *Employee* means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes except insurance salespersons who are considered to be employees for such purposes solely because of the provisions of section 3121(d)(3)(B) of the Internal Revenue Code (26 U.S.C.). The term employee does not include persons who are hired on a casual basis for a specified time, or for the duration of a specified job, and who work on remote or scattered sites or locations where it is not practical or feasible for the employer to make a visual survey of the work force within the report period; for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employees' work at the site; persons temporarily employed in any industry other than construction, such as mariners, stevedores, waiters/waitresses, movie extras, agricultural laborers, lumber yard workers, etc., who are obtained through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement; or persons on the payroll of a temporary service agency who are referred by such agency for work to be performed on the premises of another employer under that employer's direction and control.

(3) *Job category* means any of the following: Officials and managers, professionals, technicians, sales workers, office and clerical, craft workers (skilled), operatives (semiskilled), laborers (unskilled), service workers, as required by Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1, as defined as follows:

(i) *Officials and managers* means occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation. Includes: Officials, executives, middle management, plant managers, department managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains and mates (except fishing boats), farm operators and managers, and kindred workers.

(ii) *Professionals* means occupations requiring either college graduation or experience of such kind and amount as to provide a background comparable to college education. Includes: Accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, surveyors, teachers, and kindred workers.

(iii) *Technicians* means occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post-high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: Computer programmers and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses,

photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

(iv) *Sales* means occupations engaging wholly or primarily in direct selling. Includes: Advertising agents and sales workers, insurance agents and brokers, real estate agents and brokers, stock and bond sales workers, demonstrators, sales workers and sales clerks, grocery clerks and cashier-checkers, and kindred workers.

(v) *Office and clerical* includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

(vi) *Craft Workers (skilled)* means manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. These workers exercise considerable independent judgment and usually receive an extensive period of training. Includes: The building trades, hourly paid supervisors and lead operators who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, arts occupations, hand painters, coaters, decorative workers, and kindred workers.

(vii) *Operatives (semiskilled)* means workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: Apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryers, furnace workers, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, stationary firefighters, truck and tractor drivers, weavers (textile), welders and flamecutters, electrical and electronic equipment assemblers, butchers and meat cutters, inspectors, testers and graders, handpackers and packagers, and kindred workers.

(viii) *Laborers (unskilled)* means workers in manual occupations which generally require no special training to perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: Garage laborers, car washers and greasers, gardeners (except farm) and grounds keepers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

(ix) *Service Workers* means workers in both protective and non-protective service occupations. Includes: Attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, charworkers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection workers, guards, doorkeepers, stewards, janitors, police officers and detectives, porters, servers, amusement and recreation facilities attendants, guides, ushers, public transportation attendants, and kindred workers.

(4) *Special disabled veteran* means—

(i) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more, or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under section 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(5) *Veteran of the Vietnam era* means a veteran:

(i) Who served on active duty in the U.S. military, ground, naval or air service for a period of more than 180 days, and who was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty was performed:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975, or

(B) Between August 5, 1964 and May 7, 1975 in any other location; or

(ii) Who was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability, if any part of such active duty was performed:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in any other location.

(6) *Other veterans* means any other veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized.

(7) *OFCCP* means the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor.

(8) *OASVET* means the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor.

(9) *States* means the individual states of the United States, the Distict of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(10) *Eligibility period* means the calendar year (January 1 through December 31) preceding the year in which the report must be filed. This calendar year is the same year in which the contractor received the Federal contract.

§ 61–250.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?

Each contractor or subcontractor described in § 61–250.1 of this part must submit reports in accordance with the following reporting clause, which must be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). Such clause is considered as an addition to the equal opportunity action clause required by 41 CFR 60–250.5. The reporting requirements clause is as follows:

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER VETERANS

(a) The contractor or subcontractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era, and the number who are other veterans who served on active duty during a war or in a

campaign or expedition for which a campaign badge has been authorized;

(2) The total number of new employees hired during the period covered by the report, and of that total, the number who are special disabled veterans, the number who are veterans of the Vietnam era, and the number who are other veterans as defined above; and

(3) The maximum number and minimum number of employees of such contractor at each hiring location during the period covered by the report.

(b) The above items must be reported by completing the form entitled ''Federal Contractor Veterans' Employment Report VETS–100.''

(c) VETS–100 reports must be submitted no later than September 30 of each year beginning September 30, 2000. The eligibility period (the period during which an employer received a Federal contract) for this report and all subsequent reports is the calendar year (January 1 through December 31) that precedes the year in which the report is submitted.

(d) The employment activity report required by paragraphs (a)(2) and (a)(3) of this section must reflect total new hires and maximum and minimum number of employees during the 12-month period preceding the ending date that the contractor selects for the current employment report required by paragraph (a)(1) of this section. Contractors may select an ending date: (1) As of the end of any pay period during the period July 1 through August 31 of the year the report is due; or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The number of veterans reported according to paragraph (a) above must be based on voluntary disclosure. Each contractor and subcontractor subject to the reporting requirements at 38 U.S.C. 4212(d) must invite all applicants for employment who are veterans who fall into one of the categories in paragraph (a)(1) above, and who wish to benefit under the affirmative action program at 38 U.S.C. 4212, to identify themselves to the contractor. The invitation must state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212. Nothing in this paragraph (e) precludes an employee from informing a contractor or subcontractor at a future time of his or her desire to benefit from this program. Nothing in this paragraph (e) relieves a contractor from liability for discrimination under 38 U.S.C. 4212.

§ 61–250.11 On what form must the data required by this part be submitted?

(a) Data items required in paragraph (a) of the contract clause set forth in § 61–250.10 must be reported for each hiring location on the VETS–100 form. This form is mailed annually to those employers who are included in the VETS–100 data base. The form, and instructions for preparing it, are also set forth as follows:

THE VETS–100 REPORT FORM IS REPRINTED AS APPENDIX A TO 41 CFR PART 61–250

This report is to be completed by all nonexempt contractors and subcontractors with contracts (or subcontracts) for the furnishing of supplies and services or the use of real or personal property (including construction) for $25,000 or more. Reports must be completed for each hiring location in any State, as defined in 41 CFR 61–250.2(b). All multi-establishment employers, i.e., those doing business at more than one hiring location, must file: (1) a report covering the principal or headquarters office; (2) a separate report for each hiring location employing 50 or more persons; and (3) either (i) a separate report for each hiring location employing fewer than 50 persons, or (ii) consolidated reports, by State, covering the hiring locations within the State that have fewer than 50 employees. Each consolidated report must also list the names and addresses of all hiring locations covered by the report.

HOW TO PREPARE FORM

Shaded areas designate optional information. Answers to questions in all other areas of the form are mandatory. Contractors should determine the period covered by the report (''the reporting period'') by selecting an ending date for the report. The ending date may fall either: (1) At the end of any pay period during the period July 1 through August 31 of the year the report is due; or (2) On December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to use that date for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100). The report must cover the twelve consecutive months preceding the selected ending date.

COMPANY IDENTIFICATION

Parent Company. Please provide the company name, address, and employer identification number (EIN) of the headquarters office of the multi-hiring location company that owns the hiring location for which this report is filed. The EIN is mandatory; the Dun and Bradstreet I.D. number (DUNS) is mandatory if available; and the Standard Industrial Code (SIC) should also be reported if available.

Hiring Location for Which This Report Is Filed. Please provide the name, address, and EIN for each hiring location for which this report is filed. The EIN is mandatory; the SIC and the DUNS should also be reported if available.

INFORMATION ON EMPLOYEES

(Veterans and non-veterans)

Counting veterans: Some veterans will fall into more than one of the targeted veteran categories. For example, a veteran may be both a special disabled veteran and a Vietnam era veteran. In such cases, the veteran must be counted in both categories.

Data on Current Employees: The payroll period for this data is the period that ends on the date the contractor selects as the ending date for the entire report, according to the instructions above in ''How to Prepare Form.'' The data must include all permanent full-time and part-time employees who were employed as of the ending date of the selected payroll period, except those employees specifically excluded as indicated in 41 CFR 61–250.2(b)(2). Employees must be counted by veteran status (columns L, M, and N—special disabled veterans, Vietnam-era, or other veterans as defined below) for each of the nine occupational categories. Entries in the Total line of columns L, M, and N are optional.

Data on New Hires: Report on the Total line in columns O through R the number of regular full-time and part-time employees, by veteran status (columns O, P, and Q) and total employees (column R), who were included in the payroll for the first time during the reporting period. Entries in lines 1 through 9 (shaded area) of columns O through R are optional.

Maximum and minimum number of employees: The contractor must report the maximum and minimum number of persons it employed during the reporting period.

DEFINITIONS

Hiring location means an establishment as defined at 41 CFR 61–250.2(b).

Special disabled veteran means:

(i) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more, or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under section 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a veteran:

(i) who served on active duty in the U.S. military, ground, naval or air service for a period of more than 180 days, and who was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty was performed:

(A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or

(B) between August 5, 1964 and May 7, 1975 in any other location; or

(ii) who was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability, if any part of such active duty was performed:

(A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) between August 5, 1964, and May 7, 1975, in any other location.

Other veterans means any other veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized.

LEGAL BASIS FOR REPORTING REQUIREMENTS

Title 38, United States Code, Section 4212(d), requires that Federal contractors and subcontractors report at least annually on the number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era, and the number who are other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. Also required are the total number of new hires during the reporting period, the number of new hires who fall into each of the three categories of veterans listed above, and the maximum and minimum number of persons employed during the reporting period. The regulations implementing these statutory provisions are found at 41 CFR 61–250.

DESCRIPTION OF JOB CATEGORIES

Officials and managers means occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation. Includes: Officials, executives, middle management, plant managers, department managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains and mates (except fishing boats), farm operators and managers, and kindred workers.

Professionals means occupations requiring either college graduation or experience of such kind and amount as to provide a background comparable to college education. Includes: Accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, surveyors, teachers, and kindred workers.

Technicians means occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post-high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: Computer programmers and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

Sales means occupations engaging wholly or primarily in direct selling. Includes: Advertising agents and sales workers, insurance agents and brokers, real estate agents and brokers, stock and bond sales workers, demonstrators, sales workers and sales clerks, grocery clerks and cashier-checkers, and kindred workers.

Office and clerical includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

Craft Workers (skilled) means manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. These workers exercise considerable independent judgment and usually receive an extensive period of training. Includes: The building trades, hourly paid supervisors and lead operators who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, arts occupations, hand painters, coaters, decorative workers, and kindred workers.

Operatives (semiskilled) means workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: Apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryers, furnace workers, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, stationary firefighters, truck and tractor drivers, weavers (textile), welders and flamecutters, electrical and electronic equipment assemblers, butchers and meat cutters, inspectors, testers and graders, handpackers and packagers, and kindred workers.

Laborers (unskilled) means workers in manual occupations which generally require no special training to perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, gardeners (except farm) and grounds keepers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

Service Workers means workers in both protective and non-protective service occupations. Includes: Attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, charworkers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection workers, guards, doorkeepers, stewards, janitors, police officers and detectives, porters, servers, amusement and recreation facilities attendants, guides, ushers, public transportation attendants, and kindred workers.

(b) Contractors and subcontractors that submit computer-generated output to satisfy their VETS–100 reporting obligations must submit the output in the form of an electronic file. This file must comply with current Department of Labor specifications for the layout of these records, along with any other specifications established by the Department for the applicable reporting year. Contractors and subcontractors that submit VETS–100 Reports for ten locations or less are exempt from this requirement, but are strongly encouraged to submit an electronic file. In these cases, state consolidated reports count as one location each.

(c) Small companies may wish to submit the VETS–100 Report via the Internet. The Internet address for the site is http://nvti.cudenver.edu/vets/vets100login.htm. A company number is required to access this site. The number is provided to employers on the VETS–100 Report form that is mailed annually to those employers who are included in the VETS–100 database. Other employers may obtain a company number by e-mailing their request to newcompany@vets100.com, or by calling the VETS–100 Reporting System at (703) 461–2460.

(d) OASVET or its designee will use all available information to distribute the required forms to contractors identified as subject to the requirements of this part.

(e) It is the responsibility of each contractor or subcontractor to obtain necessary supplies of the VETS–100 Report form before the annual September 30 filing deadline. Contractors and subcontractors who do not receive forms should request them in time to meet the deadline. Requests for the VETS–100 Report form may be made by mail by contacting: Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attn: VETS–100 Report Form Request or on the Internet at http://nvti.cudenver.edu/vets/vets100.asp

§ 61–250.12 What invitation to self-identify must a contractor offer to veterans?

Each contractor and subcontractor subject to the reporting requirements at 38 U.S.C. 4212(d) must invite all applicants for employment who are special disabled veterans, veterans of the Vietnam era, or other veterans as defined in § 61–250.2, and who wish to benefit under the affirmative action program at 38 U.S.C. 4212, to identify

themselves to the contractor. The invitation must state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant to any adverse treatment, and that the information will be used only in accordance with the regulations implemented under 38 U.S.C. 4212. Nothing in this section precludes an employee from informing a contractor or subcontractor at a future time of his or her desire to benefit from this program. Nothing in this section relieves a contractor from liability for discrimination under 38 U.S.C. 4212.

§ 61–250.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?

During the course of a compliance evaluation, OFCCP may determine whether a contractor or subcontractor has submitted its report as required by this part.

§ 61–250.99 What are the OMB control numbers for this part?

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and its implementing regulations at 5 CFR part 1320, the Office of Management and Budget has assigned Control No. 1293–0005 to the information collection requirements of this part.

BILLING CODE 4510–79–P

Appendix A to Part 61–250

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO:1293-0005
Expires 01-31-2001

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING
6101 STEVENSON AVE
ALEXANDRIA, VA 22304

TYPE OF CONTRACTOR (Check one or both as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☐ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☐ Multiple Establishment-State Consolidated (specify number of locations) _____.(MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No:	*TWELVE MONTH PERIOD ENDING*		M M D D Y Y Y Y (2 0 0 0)
NAME OF PARENT COMPANY:	*ADDRESS (NUMBER AND STREET):*		
CITY:	*COUNTY:*	*STATE:*	*ZIP CODE:*

NAME OF HIRING LOCATION:	*ADDRESS (NUMBER AND STREET):*		
CITY:	*COUNTY:*	*STATE:*	*ZIP CODE:*

SIC:					*DUNS:*			—				—					*EMPLOYER I.D. No. (IRS TAX No.)*			—							

INFORMATION ON VETERANS

REPORT ALL REGULAR FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, AND R. ENTRIES IN COLUMNS O THROUGH R, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. **ENTRIES IN COLUMN N, LINES 1-9; COLUMN Q, LINE 10 AND THE MAXIMUM AND MINIMUM NUMBER OF EMPLOYEES (AREAS SHADED LIGHT GRAY) ARE OPTIONAL FOR 2000 ONLY AND WILL BE REQUIRED FOR THE 2001 REPORTING CYCLE.** DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)			
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	OTHER VETERANS (Q)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (R)
OFFICIALS AND MANAGERS	1							
PROFESSIONALS	2							
TECHNICIANS	3							
SALES WORKERS	4							
OFFICE AND CLERICAL	5							
CRAFT WORKERS (SKILLED)	6							
OPERATIVE (SEMI-SKILLED)	7							
LABORERS								
SERVICE WORKERS	9							
TOTAL	10							

Report the total maximum and minimum number of regular employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT (VETS-100)

WHO MUST FILE

The Vets-100 report is to be completed by all nonexempt federal contractors and subcontractors with contracts or subcontracts for the furnishing of supplies and services or the use of real or personal property for $25,000 or more. Services include but are not limited to the following services: Utility, construction, transportation, research, insurance, and fund depository, irrespective of whether the government is the purchaser or seller. The existence of $25,000 or more in federal contracts or subcontracts during a given calendar year establishes the requirement to file a VETS-100 Report during the following calendar year.

WHEN TO FILE

This annual report must be filed no later than September 30. Mail to the address pre-printed on the front of the form.

LEGAL BASIS FOR REPORTING REQUIREMENTS

Title 38, United States Code, Section 4212(d) and PL 105-339, require that federal contractors report at least annually the numbers of: 1) special disabled veterans, 2) veterans of the Vietnam era, and 3) other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized who are in their workforce. Reporting is required by hiring location and includes both the number employed and the number of new hires, within the three categories listed above. The number of veterans employed within these categories is to be broken out by job category and maximum and minimum total employment is to be reported as well.

HOW TO SUBMIT THE VETS-100 REPORTS

Single-establishment employers must file one completed form. All multi-establishment employers, i.e., those doing business at more than one hiring location, must file (A) one form covering the principal or headquarters office: (B) a separate form for each hiring location employing 50 or more persons: and (C) EITHER, (I) a separate form for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees. Each state consolidated report must also list the name and address of the hiring locations covered by the report. Company consolidated reports such as those required by EEO-1 reporting procedures are NOT required for the VETS-100 report. Completed reports for the headquarters location and all other hiring locations for each company should be mailed in one package to the address indicated on the front of the form.

RECORD KEEPING

Employers must keep copies of the completed annual VETS-100 report submitted to DOL for a period of two years.

HOW TO PREPARE THE FORMS

As VETS only sends one copy of the VETS-100 Reporting form to each headquarters location, multi-establishment employers submitting hard copy reports should produce facsimile copies of the headquarters form for reporting data on each location.

Type of Contractor Indicate the type of contractual relationship (prime contractor or subcontractor) that the organization has with the Federal Government. If the organization serves as both a prime contractor and a subcontractor on various federal contracts, check both boxes.

Type of Form If a reporting organization submits only one VETS-100 Report form for a single location, check the Single Establishment box. If the reporting organization submits more than one form, only one form should be checked as Multiple Establishment-Headquarters. The remaining forms should be checked as either Multiple Establishment-Hiring Location or Multiple Establishment-State Consolidated. For state consolidated forms, the number of hiring locations included in that report should be entered in the space provided. For each form, only one box should be checked within this block.

COMPANY IDENTIFICATION INFORMATION

Company Number Do not change the Company Number that is printed on the form. If there are any questions regarding your Company Number, please call the VETS-100 staff at (703) 461-2460 or e-mail HELPDESK@VETS100.COM.

Twelve Month Period Ending Enter the end date for the twelve month reporting period used as the basis for filing the VETS-100 Report. To determine this period, select a date in the current year between July 1 and August 31 that represents the end of a payroll period. That payroll period will be the basis for reporting Number of Employees, as described below. Then the twelve month period preceding the end date of that payroll period will be your twelve month period covered. This period is the basis for reporting New Hires, as described below. Any federal contractor or subcontractor who has written approval from the Equal Employment Opportunity Commission to use December 31 as the ending date for the EEO-1 Report may also use that date as the ending date for the payroll period selected for the VETS-100 Report.

Name and Address for Single Establishment Employers COMPLETE the identifying information under the Parent Company name and address section. LEAVE BLANK all of the identifying information for the Hiring Location.

Name and Address for Multi Establishment Employers **For parent company headquarters location,** COMPLETE the name and address for the parent company headquarters, LEAVE BLANK the name and address of the Hiring Location. **For hiring locations of a parent company,** COMPLETE the name and address for the Parent Company location, COMPLETE the name and address for the Hiring Location.

SIC Code, DUNS Number, and Employer ID Number Single Establishment and Multi Establishment Employers should COMPLETE the SIC Code, DUNS Number, and Employer ID Number as described below.

SIC Code Enter the four (4) digit SIC Code applicable to the hiring location for which the report is filed. If there is not a separate SIC Code for the hiring location, enter the SIC Code for the parent company.

Dun and Bradstreet I.D. Number (DUNS) If the company or any of its establishments has a Dun and Bradstreet Identification Number, please enter the nine (9) digit number in the space provided. If there is a specific DUNS Number applicable to the hiring location for which the report is filed, enter that DUNS Number. Otherwise, enter the DUNS number for the parent company.

Employer I.D. Number (EIN) Enter the nine (9) digit numbers assigned by the I.R.S. to the contractor. If there is a specific EIN applicable to the hiring location for which the report is filed, enter that EIN. Otherwise, enter the EIN for the parent company.

INFORMATION ON VETERANS

Number of Employees Select any payroll period ending between July 1 and August 31 of the current year. Provide all data for regular full-time and part-time employees who were special disabled veterans, Vietnam-era veterans, or other veterans employed as of the ending date of the selected payroll period. Do not include employees specifically excluded as indicated in 41 CFR 61-250.2(b)(2). Employees must be counted by veteran status for each of the nine occupational categories (Lines 1-9) in columns L and M. Blank spaces will be considered zeros.

New Hires Report the number of regular full-time and part-time employees by veteran status who were hired (both veterans and non-veterans) and who were included in the payroll for the first time during the 12-month period ending between July 1 through August 31 of the current year. The totals in columns O, P and R (Line 10) are required. Enter all applicable numbers, including zeros.

Maximum/Minimum Employees Report the maximum and minimum number of regular employees on board during the period covered as indicated by PL 105-339.

DEFINITIONS:

'Hiring location' means an establishment as defined at 41 CFR 61 250.2(b).

'Special Disabled Veteran' means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans' Affairs for a disability (I) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under Section 3106 of Title 38, U.S.C. to have a serious employment handicap or (B) a person who was discharged or released from active duty because of a service-connected disability.

'Veteran of the Vietnam-era' means a person who: (A) served in the military, ground, naval or air service of the United States on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred: (I) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (ii) between August 5, 1964, and May 7, 1975, in all other cases; or (B) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed (I) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (ii) between August 5, 1964, and May 7, 1975, in all other cases.

Other Veterans means veterans who served in the military, ground, naval or air service of the United States on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. To identify the campaigns or expeditions that meet this criterion, contact the Office of Personnel Management (OPM) and ask for the OPM VETS Guide, Appendix A. A local OPM telephone number may be found in the telephone book under Federal Government or consult Directory Assistance for your area code for the nearest OPM location. For those with Internet access, the information required to make this determination also is available at http://www.opm.gov/veterans/html/vgmedal2.htm.

Public reporting burden for this collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Department of Labor, Office of Information Management, Room N-1301, 200 Constitution Avenue, NW, Washington D.C. 20210. All completed VETS-100 Reports should be sent to the address indicated on the front of the form.

[FR Doc. 00–25446 Filed 10–4–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.J. Res. 109/P.L. 106–275
Making continuing appropriations for the fiscal year 2001, and for other purposes. (Sept. 29, 2000; 114 Stat. 808)

S. 1638/P.L. 106–276
To amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty. (Oct. 2, 2000; 114 Stat. 812)

S. 2460/P.L. 106–277
To authorize the payment of rewards to individuals furnishing information relating to persons subject to indictment for serious violations of international humanitarian law in Rwanda, and for other purposes. (Oct. 2, 2000; 114 Stat. 813)

Last List September 28, 2000

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