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Federal Register

12–1–00 Friday
Vol. 65 No. 232 Dec. 1, 2000
Pages 75153–75580

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AJ07

Pay Under the General Schedule; Locality-Based Comparability Payments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to change the boundaries of two locality pay areas for 2001 by adding areas of application to the Boston-Worcester-Lawrence, MA-NH-ME-CT, locality pay area and the San Francisco-Oakland-San Jose, CA, locality pay area. We are adding the State of Rhode Island as an area of application to the Boston locality pay area and Monterey County, CA, as an area of application to the San Francisco locality pay area. These changes are based on recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations or pay setting and representatives of Federal employee organizations. Based on comments received on the proposed regulations, we are also adding to the Boston locality pay area the portion of Bristol County, MA, not already included in the Boston area.

EFFECTIVE DATE: The regulations are effective on January 1, 2001, and are applicable on the first day of the first pay period beginning on or after January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; EMAIL: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On August 16, 2000, the Office of Personnel Management (OPM) published proposed regulations to add two locations as areas of application to existing locality pay areas. Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to provide for such pay localities as the Pay Agent considers appropriate. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations or pay setting and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, and they submit annual recommendations to the Pay Agent about the locality pay program for General Schedule employees. The establishment or modification of pay area boundaries must conform with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

Based on the Council's recommendations in 1993, the Pay Agent approved using Metropolitan Statistical Area (MSA) boundaries as the basis for defining locality pay areas. OMB establishes MSAs based on population size, population density, and commuting patterns. The Council also recommended and the Pay Agent approved criteria for adding adjacent counties as ''areas of application.''

In its letter of October 22, 1999, to the Pay Agent, the Federal Salary Council recommended making two changes in the area of application criteria for 2001. The first change would create a new set of ''Full State'' criteria to treat a State smaller than 115 percent of the average county size as a single county for application of the existing county criteria. This change would make the State of Rhode Island an area of application to the Boston locality pay area. The Council recommended this change because nearby higher-paying locality pay areas virtually surround Rhode Island, agencies in Rhode Island have reported difficulties in filling positions because of higher locality rates in Boston and Hartford, and counties in Rhode Island are so small that no single county passes the existing criteria.

The second change would amend the population density portion of the current criteria by reducing the ''percent of population living in urbanized areas'' criterion from 90 percent to 80 percent. This change would qualify Monterey County, CA, as an area of application to the San Francisco locality pay area. The Council recommended this change because a significant portion of Monterey County is devoted to Federal parkland and military installations, making it difficult to pass the population density criterion even though there is a significant level of commuting between Monterey and San Francisco.

In its 1999 report to the President, the Pay Agent tentatively agreed to make the changes recommended by the Federal Salary Council. The revised criteria for adding an adjacent area as an area of application are:

A. *County-wide areas of application.* To be included in the pay area, the affected county must—

1. currently be in the Rest of U.S. pay area and be contiguous to a pay locality (exclusive of any other areas of application);
2. contain at least 2,000 General Schedule (GS) employees;
3. have a significant level of urbanization based on 1990 Census data, defined as a population density of more than 200 persons per square mile or at least 80 percent of the population in urbanized areas; and
4. demonstrate some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the county under consideration and the central core of the metropolitan area as identified by the Census Bureau.

B. *Partial-county areas of application in New England.* To be in the pay area, the partial county must—

1. currently be in the Rest of U.S. pay area and be contiguous to the pay locality (exclusive of any other areas of application);
2. contain at least 2,000 GS employees;
3. be part of an entire county that has a population density of more than 200 persons per square mile or at least 80 percent of the population in urbanized areas; and
4. be part of an entire county that demonstrates some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the county under

consideration and the central core of the metropolitan area as identified by the Census Bureau.

C. *Federal facilities crossing pay locality boundaries.* To be in the pay locality, the portion of a Federal facility which crosses pay locality boundaries and which is not in the pay locality must—

1. contain at least 1,000 GS employees;

2. have the duty stations of the majority of GS employees within 10 miles of the locality; and

3. have a significant number of its employees commuting from the pay locality.

D. *Full-State areas of application.* In order to be evaluated for area of application status, an entire State may be considered as one county for purposes of applying the county-wide area-of-application criteria if—

1. no part of the State is already in a separate metropolitan pay area;

2. the State is adjacent to the pay area (exclusive of any other areas of application); and

3. the State is smaller than 115 percent of the average county size in square miles in the lower 48 States plus Washington, DC, as determined by OPM using land area data published by the Census Bureau and the number of counties in the United States as determined by the Census Bureau.

After application of the above criteria, the entire State must still pass the county-wide area-of-application criteria before it can become an area of application.

We received more than 800 comments on the proposed regulations. Virtually all of the comments were in support of the proposed changes. A few comments focused on issues outside the scope of the proposed rule, such as when other areas might become separate locality pay areas.

We also received a number of comments about a portion of Bristol County, MA, that lies between the Boston Consolidated Metropolitan Statistical Area (CMSA) and the State of Rhode Island. There are eight cities/townships in this small strip, which is about 10 miles wide (east to west) at it widest and about 30 miles long (north to south). Although there is a significant amount of commuting to and from both Providence and Boston from this area, all of the cities/townships in this area are part of the Providence MSA because there is a greater level of commuting to and from Providence.

Commenters, including affected employees, Members of Congress, an employing agency, and the Greater Boston Federal Executive Board, concluded that Federal agencies in these areas will not be able to recruit and retain an adequate workforce if employees can drive 10 miles or less in virtually any direction and receive the higher Boston locality pay rate. After reviewing the comments and other pertinent data on this small area, including commuting patterns and population density, we have concluded that all of Bristol County, MA, should be included in the Boston locality pay area. The Pay Agent believes that excluding these eight cities/townships would create an egregious situation, unique under the locality pay program. This small area, which has significant ties to both Providence and Boston, is virtually surrounded by the Boston locality pay area and the new Rhode Island area of application. In addition, the entire area is within easy commuting distance of the rest of the Boston locality pay area. There are no other similarly situated areas.

Therefore, the final regulations include both the State of Rhode Island and all of Bristol County, MA, in the Boston-Worcester-Lawrence, MA-NH-ME-CT, locality pay area. In addition, as originally recommended by the Federal Salary Council and proposed by the Pay Agent, the final regulations include Monterey County, CA, in the San Francisco-Oakland-San Jose, CA, locality pay area.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 2786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

2. In § 531.603, paragraphs (b)(2) and (b)(29) are revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) * * *

(2) Boston-Worcester-Lawrence, MA-NH-ME-CT-RI—consisting of the Boston-Worcester-Lawrence, MA-NH-ME-CT CMSA, plus the State of Rhode Island and all of Bristol County, MA;

* * * * *

(29) San Francisco-Oakland-San Jose, CA—consisting of the San Francisco-Oakland-San Jose, CA CMSA, plus Monterey County, CA;

* * * * *

[FR Doc. 00–30790 Filed 11–29–00; 2:33 pm]

BILLING CODE 6325–01–P

FEDERAL TRADE COMMISSION

16 CFR Parts 300 and 303

Rules and Regulations Under the Textile Fiber Products Identification Act; Rules and Regulations Under the Wool Products Labeling Act of 1939

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (FTC or Commission) amends the Rules and Regulations under the Textile Fiber Products Identification Act (Textile Rules) to revise the form for Application for a Registered Identification Number (''RN'') in order to facilitate receiving applications electronically; incorporate by reference the generic fiber names and definitions for manufactured fibers in International Organization for Standardization standard ISO 2076: 1999(E), ''Textiles—Man-mad fibres—Generic names;'' clarify origin labeling

requirements for products made in the U.S. and assembled or finished abroad or products manufactured abroad of U.S. fabric; and correct a typographical error. The Commission amends the Rules and Regulations under the Wool Products Labeling Act of 1939 (Wool Rules) to clarify that only one RN will be granted to a qualifying firm; and clarify the origin labeling requirements for products made in the U.S. and assembled or finished abroad or products manufactured abroad of U.S. fabric. Because these amendments are technical and non-substantive, the Commission finds that notice and comment are not required. For this reason, the requirements of the Regulatory Flexibility Act also do not apply.

DATES: The rules are effective on December 1, 2000. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of December 1, 2000.

ADDRESS: Requests for copies of this document should be sent to the Consumer Response Center, Room 202, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The notice announcing the amendments is available on the Internet at the Commission's website: *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Ecklund, Senior Investigator, (202) 326–2841, *secklund@ftc.gov,* or Faith Vieno, Paralegal Specialist, (202) 326–2299, *fvieno@ftc.gov,* Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Textile Fiber Products Identification Act (Textile Act), 15 U.S.C. 70, requires manufacturers and sellers of covered textile products to mark each product with: (1) The generic names and percentages by weight of the constituent fibers present in the product, in the order of predominance by weight; (2) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the RN issued to the company by the Commission; and (3) the name of the country where the product was processed or manufactured. Pursuant to section 7(c) of the Textile Act, 15 U.S.C. 70e(c), the Commission has issued implementing regulations, the Textile Rules, 16 CFR Part 303. Similar information is required pursuant to the Wool Products Labeling Act (Wool Act), 15 U.S.C. 68, and the Fur Products Labeling Act (Fur Act), 15 U.S.C. 69. Implementing rules under those statutes are found at 16 CFR Part 300 (Wool Rules) and 16 CFR Part 301 (Rules and Regulations under the Fur Products Labeling Act).

II. Registered Identification Numbers Issued by the Commission

Pursuant to its Rules, the Commission issues RNs to qualified applicants, *i.e.,* those who manufacture or market textile, wool or fur products covered by the labeling requirements and who reside in the U.S.[1] In the past, applicants were required to submit RN applications to the Commission by mail or fax on the form that appears at 16 CFR 303.20(d).[2] The Commission now has the capability to receive applications and updates to applications online at its website, *http://www.ftc.gov.* Therefore, it is amending the application form in order to facilitate the online application process. The requirement for a signature, line 8 of the form, is eliminated. The online form will require entry of the name of a responsible official who certifies, in making the application, that the business is eligible for the RN by virtue of residing in the U.S. and manufacturing or marketing a product covered by one of the three labeling statutes. Other minor changes to the application form have been made to facilitate the process. The online application will require the same information as the printed application, although it necessarily will appear in a different format.

An amendment to section 300.4(b) of the Wool Rules clarifies that a qualified applicant will be assigned only one RN, which may be used for the labeling of any products covered by the Textile, Wool, or Fur Acts. In the past, the Commission did, on occasion, assign more than one RN to a particular company; however, it ceased this practice a number of years ago. Therefore, this section is amended, consistent with current RN procedures, by removing a clause that refers to assignment of multiple numbers.

The Commission's RN database is available on the FTC's Internet website. Businesses are urged to use this service to check whether the information concerning their RN is current and, if necessary, update the information. Updating an application also can be accomplished online.

[1] 16 CFR 303.20, 16 CFR 300.4, 16 CFR 301.26.

[2] The Wool and Fur Labeling Rules cross-reference the form that appears in the Textile Rules. *See,* 16 CFR 300.4(e) and 16 CFR 301.26(d).

III. Recognition of ISO Standard for Generic Fiber Names

In 1998, the Commission amended the Textile Rules to incorporate by reference the generic fiber names and definitions for manufactured fibers in ISO 2076: 1989, ''Textiles—Man-made fibres—Generic names.'' [3] The Commission noted that a revision of ISO 2076 was under consideration at that time and stated that when the revised standard was finalized, it would amend the Textile Rules to reference that revised standard. The revised ISO standard was finalized in 1999; therefore, the Commission amends the Textile Rules to incorporate the new standard.

IV. Clarification of Country of Origin Disclosure Requirements

The Textile and Wool Acts require that covered products be labeled to show the country of origin, whether domestic or foreign.[4] The Commission's Rules implement the statutory requirement, explain how it applies to products made in part in the U.S. and in part in another country, and provide examples of proper labeling.[5]

Imported products must name the country where they were manufactured or processed. Products made in the U.S. of materials also made in the U.S. should be labeled as ''Made in USA,'' or words to that effect. Products made in the U.S. of imported materials should disclose both the U.S. manufacturing and the imported component—for example, ''Made in USA of imported fabric'' or ''Knitted in USA of imported yarn.'' Similarly, products partially manufactured in a foreign country and partially manufactured in the U.S. should be labeled to show the manufacturing process in both the foreign country and the U.S.—for example, ''Imported cloth, finished in USA,'' ''Sewn in USA of imported components,'' or ''Made in [foreign country], finished in USA.'' The same disclosure principle applies to products manufactured abroad of fabric made in the U.S., or products assembled abroad of components manufactured in the U.S. Therefore, the Commission is revising section 303.33(a)(4)(i) of the Textile Rules and section 300.25(a)(4)(i) of the Wool Rules to add examples covering these latter situations. For example, a product manufactured abroad of U.S. fabric could be labeled ''Made in [Foreign Country]/fabric made in USA'' or simply ''Made in [Foreign Country] of US fabric.'' A garment that is assembled or finished abroad of components made

[3] 63 FR 7508, 7510–11 (Feb. 13, 1998).

[4] 15 U.S.C. 70b(b)(4) & (5); 15 U.S.C. 68b(e).

[5] 16 CFR 303.33; 16 CFR 300.25.

in the USA could be labeled, for example: ''Knit in USA, assembled in [Foreign Country],'' or words to that effect.[6]

List of Subjects in 16 CFR Parts 300 and 303

Incorporation by reference, Labeling, Textile fiber products identification, Trade Practices, Wool products.

For the reasons set forth above, the Commission amends 16 CFR Part 300 and 16 CFR Part 303, as follows:

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

1. The authority citation for Part 300 continues to read as follows:

Authority: 15 U.S.C. 68 *et seq.* and 15 U.S.C. 70 *et seq.*

2. Section 300.4(b) is revised to read as follows:

§ 300.4 Registered identification numbers.

* * * * *

(b) Any manufacturer of a wool product or person subject to section 3 of the Act with respect to such wool product, residing in the United States, may apply to the Federal Trade Commission for a registered identification number for use by the applicant on the stamp, tag, label, or other mark of identification required under the Act.

3. Section 300.25(a)(4)(i) is revised to read as follows:

§ 300.25 Country where wool products are processed or manufactured.

(a) * * *

(4) * * *

(i) The manufacturing process in the foreign country and in the USA; for example:

Imported cloth, finished in USA

or

Sewn in USA of imported components

or

Made in [foreign country], finished in USA

or

Scarf made in USA of fabric made in China

or

Comforter Filled, Sewn and Finished in the U.S. With Shell Made in China

or

Made in [Foreign Country]/fabric made in USA

or

Knit in USA, assembled in [Foreign Country].

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for Part 303 continues to read as follows:

Authority: 15 U.S.C. 70 *et seq.*

2. Section 303.5(a) is revised to read as follows:

§ 303.5 Abbreviations, ditto marks, and asterisks prohibited.

(a) In disclosing required information, words or terms shall not be designated by ditto marks or appear in footnotes referred to by asterisks or other symbols in required information, and shall not be abbreviated except as permitted in § 303.33(e) of this part.

3. The first sentence of section 303.7 is revised to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

Pursuant to the provisions of section 7(c) of the Act, the Commission hereby establishes the generic names for manufactured fibers, together with their respective definitions, set forth in this section, and the generic names for manufactured fibers, together with their respective definitions, set forth in International Organization for Standardization ISO 2076: 1999(E), ''Textiles—Man-made fibres—Generic names.'' * * *

* * * * *

4. Section 303.20(d) is revised to read as follows:

§ 303.20 Registered identified numbers.

* * * * *

(d) Form to apply for a registered identification number or to update information pertaining to an existing number (the form is available upon request from: Enforcement Division, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or on the Internet at *http://www.ftc.gov;* application may also be made directly on the Internet):

[6] Minimal foreign processing that does not alter the basic identity or character of the product would not have to be disclosed under this provision. For example, a product made in the U.S. then sent abroad for a minor finishing process, such as washing, dyeing, pressing, application of ink designs, adding buttons, repairs or alterations, tagging or labeling, etc., could be labeled simply ''Made in USA.'' See, Comment of the FTC before the Dept. of Treasury, Customs Service, ''In the Matter of Country of Origin Marking Rules for Textiles and Textile Products Advanced in Value, Improved in Condition, or Assembled Abroad,'' Dec. 18, 1998. (This comment is available online at *http://www.ftc.gov/os/statutes/textilejump.htm.*)

APPLICATION FOR A REGISTERED IDENTIFICATION NUMBER ("RN")

DO NOT WRITE IN THIS SPACE

DATE ISSUED: _____ DATE UPDATED: _____ RN: _____ BY: _____

1. PURPOSE OF APPLICATION (Both new applicants and update applicants must complete all entries on this form)

☐ APPLY FOR A NEW RN
☐ UPDATE INFORMATION ON AN EXISTING RN OR WPL NUMBER. ENTER EXISTING RN OR WPL NUMBER _____

2. LEGAL NAME OF APPLICANT FIRM (Note: Proprietorships, please provide full legal name of the person who is the proprietor)

3. NAME UNDER WHICH APPLICANT DOES BUSINESS (Only if different from legal name)

4. TYPE OF COMPANY (if "OTHER" is checked, please state the type of company)

☐ PROPRIETORSHIP ☐ PARTNERSHIP ☐ CORPORATION ☐ LLC / LLP ☐ OTHER _____

5. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS (Include zip code. Address must be actual location where business is conducted in the US. An *additional* mailing address or PO Box address may also be listed, if desired) STREET ADDRESS (Required)	OPTIONAL ADDITIONAL MAILING ADDRESS	CONTACT INFORMATION TELEPHONE NUMBER (___)_____ FAX NUMBER (___)_____ E-MAIL ADDRESS _____@_____ INTERNET URL ADDRESS _____

6. TYPE OF BUSINESS (Mark *all* that apply)

☐ MANUFACTURING ☐ IMPORTING ☐ WHOLESALING ☐ RETAILING ☐ MAIL-ORDER ☐ INTERNET ☐ OTHER _____

7. LIST PRODUCTS (To qualify for an RN, a company must be engaged in the importation, manufacturing, selling or other marketing of at least one (1) product line subject to the Textile, Wool or Fur Act)

8. CERTIFICATION

By filing this form with the Federal Trade Commission, the company named above applies for a registered number to use on labels required by one or more of the following acts: the Textile Fiber Products Identification Act (15 U.S.C. §§70-70k), the Wool Products Labeling Act (15 U.S.C. §§68-68j), or the Fur Products Labeling Act (15 U.S.C. §§69-69k). The company official (proprietor, partner, or corporate officer) listed below verifies that the information supplied on this form is true and correct.

9. NAME OF COMPANY OFFICIAL (Type or print legibly)	10. TITLE OF COMPANY OFFICIAL	11. DATE SUBMITTED
INSTRUCTIONS Regulations under the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any USA company that is a manufacturer or marketer of fiber or fur products may, in lieu of the name under which it does business, be identified by its RN on labels required by these statutes. In completing this form, please observe the following: (a) All numbered boxes must be filled in except for optional information. (b) PLEASE, Type or Print legibly.	(c) Submit one (1) completed application: By Mail to: Federal Trade Commission Division of Enforcement 600 Pennsylvania Avenue NW Washington, DC 20580 Or By Fax to: (202) 326-3197 Or On-Line at: www.ftc.gov	CANCELLATION POLICY RNs are subject to cancellation if the holder fails to promptly submit an updated FTC Form 31 upon any change(s) in its legal name (Line #2), type of company information (Line #4), or business address (Line #5).

FTC Form 31 (rev. 9/2000)

5. Section 303.33(a)(4)(i) is revised to read as follows:

§ 303.33 Country where textile fiber products are processed or manufactured.

(a) * * *

(4) * * *

(i) The manufacturing process in the foreign country and in the USA; for example:

Imported cloth, finished in USA

or

Sewn in USA of imported components

or

Made in [foreign country], finished in USA

or

Scarf made in USA of fabric made in China

or

Comforter Filled, Sewn and Finished in the U.S. With Shell Made in China

or

Made in [Foreign Country]/fabric made in USA

or

Knit in USA, assembled in [Foreign Country].

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–29470 Filed 11–30–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 97C–0415]

Listing of Color Additives Exempt From Certification; Luminescent Zinc Sulfide; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 8, 2000 (65 FR 48375). This document amended the color additive regulations to provide for the safe use of luminescent zinc sulfide as a color additive in certain externally applied cosmetics. In amending the color additive regulations, the document inadvertently omitted a phrase from the codified. This document corrects that error.

EFFECTIVE DATE: This rule is effective December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Aydin Oearstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–19952, appearing on page 48377 in the **Federal Register** of August 8, 2000, the following correction is made:

§ 73.2995 [Corrected]

1. On page 48377, in the second column, in § 73.2995 *Luminescent zinc sulfide*, in paragraph (c), beginning in the fifth line, the phrase ''(included under § 720.4(c)(7)(ix) and (c)(8)(v) of this chapter) subject'' is corrected to read ''and nail polish included under § 720.4(c)(7)(ix) and (c)(8)(v) of this chapter, respectively,''.

Dated: November 21, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–30580 Filed 11–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 207–2000]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(8), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). This system of records is maintained by the Environmental and Natural Resources Division and is entitled ''Environmental and Natural Resources Division Case and Related Files System, JUSTICE/ENRD–003.''

The system of records may contain information which relates to official Federal investigations and matters of law and regulatory enforcement. Accordingly, where applicable, the exemptions are necessary to avoid interference with law and regulatory enforcement functions. The exemptions are necessary to protect the confidentiality of civil investigatory and criminal law enforcement materials and of properly classified information.

EFFECTIVE DATE: December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Cahill at 202–307–1823.

SUPPLEMENTARY INFORMATION: On February 23, 2000 (65 FR 8916) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

Regulatory Flexibility Act: This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

Executive Order 12988: The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

Executive Order 12866: The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: November 21, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.92 is amended by revising the heading and paragraphs (a) and (b) to read as follows:

§ 16.92. Exemption of Environment and Natural Resources Division Systems—Limited Access.

(a)(1) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(8), (f) and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1):

(i) Environment and Natural Resources Division Case and Related Files System, JUSTICE/ENRD–003.

(ii) [Reserved]

(2) These exemptions apply only to the extent that information in this system relates to the investigation, prosecution or defense of actual or potential criminal or civil litigation, or

which has been properly classified in the interest of national defense and foreign policy, and therefore is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations, and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by the Environment and Natural Resources Division.

(b) Only that information that relates to the investigation, prosecution or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) Subsection (c)(3). Subsection (c)(3) requires an agency to provide an accounting of disclosures of records concerning an individual. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) Subsections (c)(4) (requiring an agency to inform individuals about any corrections made to a record that has been disclosed) and (g) (providing for civil remedies when an agency fails to comply with these provisions). These provisions are inapplicable to the extent that this system of records is exempted from subsection (d).

(3) Subsection (d). Subsection (d) requires an agency to allow individuals to gain access to a record about him or herself; to dispute the accuracy, relevance, timeliness or completeness of such records; and to have an opportunity to amend his or her record or seek judicial review. To the extent that information contained in this system has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could compromise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) Subsection (e)(1). Subsection (e)(1) requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish the agency's purpose. In the course of criminal or civil investigations, cases, or other matters, the Environment and Natural Resources Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) Subsection (e)(2). Subsection (e)(2) requires an agency to collect information to the greatest extent practicable from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs. To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others with whom the subject might be in contact) would be informed of the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) Subsection (e)(3). Subsection (e)(3) requires an agency to inform each individual whom it asks to supply information, on a form that can be retained by the individual, the authority which authorizes the solicitation, the principal purpose for the information, the routine uses of the information, and the effects on the individual of not providing the requested information. To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by disclosing the existence of a confidential investigation, revealing the identity of witnesses or confidential informants, or impeding the information gathering process.

(7) Subsection (e)(5). Subsection (e)(5) requires an agency to maintain records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual. In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) Subsection (e)(8). Subsection (e)(8) requires agencies to make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process. To serve notice would give persons sufficient warning to evade law enforcement efforts.

(9) Subsections (f) and (g). Subsection (f) requires an agency to establish procedures to allow an individual to have access to information about him or herself and to contest information kept by an agency about him or herself. Subsection (g) provides for civil remedies against agencies who fail to comply with the Privacy Act requirements. These provisions are inapplicable to the extent that this system is exempt from the access and amendment provisions of subsection (d).

* * * * *

[FR Doc. 00–30607 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 208–2000]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsections (c)(3) and (4); (d)(1)(2)(3) and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j) and (k). This system of records is maintained by the Office of Special Counsel—Waco (OSCW) and is entitled ''CaseLink Document Database for Office of Special Counsel—Waco, JUSTICE/OSCW–001.''

The system of records may contain information which relates to official federal investigation. The exemptions are necessary to protect law enforcement and investigatory information and functions as described in the proposed rule and will be applied only to the investigatory information contained in this system.

EFFECTIVE DATE: December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Cahill at 202–307–1823.

SUPPLEMENTARY INFORMATION: On September 5, 2000 (65 FR 53679) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

Regulatory Flexibility Act: This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

Executive Order No. 12866: The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: November 21, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, CFR part 16 is amended as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR Part 16 is amended by adding to Subpart E § 16.104 to read as follows:

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 16.104 Exemption of Office of Special Counsel—Waco System.

(a) The following system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k): CaseLink Document Database for Office of Special Counsel—Waco, JUSTICE/OSCW–001. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(b) Only that portion of this system which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsections:

(1) Subsection (c)(3). To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties and civil remedies.

(2) Subsection (c)(4). This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) Subsection (d)(1). Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others.

(4) Subsection (d)(2). Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(5) Subsections (d)(3) and (4). These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) Subsections (e)(1) and (5). It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete; but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide leads in criminal investigations.

(7) Subsection (e)(2). To collect information from the subject individual would serve notice that he or she is the subject of criminal investigative or law enforcement activity and thereby present a serious impediment to law enforcement.

(8) Subsection (e)(3). To inform individuals as required by this subsection would reveal the existence of an investigation and compromise law enforcement efforts.

(9) Subsection (e)(8). To serve notice would give persons sufficient warning to evade law enforcement efforts.

(10) Subsection (g). This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

[FR Doc. 00–30608 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–EW–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212–AA58

Premium Rates; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule makes three amendments to the PBGC's premium regulations. One amendment allows plan administrators to pay a prorated premium for a short plan year rather than paying a full year's premium and requesting a refund. A second amendment simplifies and narrows the definition of ''participant'' for PBGC premium purposes. A third amendment simplifies the standard for claiming the variable-rate premium exemption for plans that are fully insured under section 412(i) of the Internal Revenue Code.

DATES: Effective January 1, 2001. The amendments made by this rule apply to plan years beginning after 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Employee Retirement Income Security Act of 1974 (ERISA) requires the payment of annual premiums to the PBGC for pension plans that Title IV of ERISA covers. ERISA section 4006 establishes the amount of the annual premium. For single-employer plans, there is a flat-rate premium of $19 per participant and a variable-rate premium of $9 per $1,000 of unfunded vested benefits. For multiemployer plans, there is only a flat-rate premium of $2.60 per participant.

Under the PBGC's premium regulations (29 CFR Parts 4006 and 4007), plan administrators count participants and calculate unfunded

vested benefits as of a ''snapshot date,'' which in most cases is the last day of the plan year preceding the premium payment year. However, for certain plans involved in mergers or spinoffs and (in general) for new and newly-covered plans, the snapshot date is the first day of the premium payment year.

On April 10, 1992, the PBGC published in the **Federal Register** (at 57 FR 12666) a proposed amendment to its premium regulation. Among other things, the proposal would have revised the rules on prorating premiums for short plan years; would have redefined the term ''participant'' for premium purposes; and would have simplified the requirement for exemption from the variable-rate premium for fully insured plans. The PBGC is now making changes to its premium regulations in these three areas. (The PBGC is also eliminating an obsolete provision governing the 1998 plan years of certain public utility company plans.)

Short-Year Premiums

Section 4006.5(f) of the PBGC's regulation on Premium Rates (29 CFR Part 4006) currently provides for premium refunds for certain types of short plan years, with the annual premium prorated by months. The rule covers (1) a short first year of a new or newly-covered plan; (2) a short year created by a change in plan year; (3) a short year created by distribution of plan assets pursuant to a plan termination; and (4) a short year created by the appointment of a trustee for a single-employer plan under ERISA section 4042. The regulation requires the plan administrator to pay the full 12-month premium and then file for a refund (or claim a credit against a future premium payment).

The amendment adopted in this final rule gives the plan administrator of a plan that has a short plan year the option to pay a prorated premium for the short year (instead of paying a non-prorated premium and then requesting a refund or claiming a credit against a future premium payment). In most cases, the short plan year will have ended well before the premium due date, and the plan administrator will therefore know the length of the short plan year when filing. However, this is not required, and the plan administrator may anticipate that the plan will have a short plan year, estimate its length, and pay a prorated premium accordingly. For example, the plan administrator may anticipate the adoption of a plan amendment shortening the plan year or the distribution of plan assets in connection with the plan's termination. In such circumstances, if it turns out—for whatever reason—that the plan year is longer than anticipated, the plan administrator must make up any premium underpayment (which is subject to interest and penalties from the due date forward).

The risk of error in anticipating the length of a plan year is clearly greater where the plan administrator of a plan with 500 or more participants is paying the flat-rate premium early in the plan year (typically with Form 1–ES). To address this, the amendment provides ''safe harbor'' penalty relief in certain cases for an underpayment of the flat-rate premium that is due by the early filing due date (the end of February for calendar-year plans). The safe harbor applies where a plan amendment that changes the plan year has been adopted, but the short year has not ended, by the early filing due date, and later events result in a plan year longer than anticipated because the expected change in plan year does not take place. This may happen, for example, if the amendment changing the plan year is rescinded before the end of the short year provided for in the amendment. In a situation of this kind, the new safe harbor rule waives any underpayment penalty accruing between the flat-rate payment due date (the end of February for calendar-year plans) and the due date for the reconciliation filing (October 15 for calendar-year plans) where the penalty arises from reliance on the short-year amendment.

The amendment clarifies that if a plan is amended to provide for a change in the plan year, the plan does not have a short plan year for PBGC premium purposes if the plan disappears in a multiple-plan transaction (such as a plan merger, consolidation, or spinoff) at or before the time the new plan year cycle begins.

The short-year proration amendment adopted in this final rule will provide broader relief than the PBGC's 1992 short-year proposal. As an alternative to refunds, that proposal would have allowed (1) payment of a prorated premium only for a short first year of a new or newly covered plan, and (2) a credit against the following year's premium for a short plan year created by a change in plan year. The three comments that addressed the proposal all favored the revision of the short-year rules.

Examples

The following examples illustrate the operation of the new short-year rules.

Example 1. Suppose that calendar-year Plan A, a small plan whose flat-rate and variable-rate premiums are both due on October 15, is amended on January 15, 2001, to change to a plan year beginning March 15 and to provide for a short plan year beginning January 1, 2001, and ending March 14, 2001. Plan A's plan administrator may pay a prorated premium for the short plan year equal to 3/12 of the premium otherwise payable for all of 2001 (*i.e.,* a premium for the months of January, February, and March). A full year's premium will be paid for the new, full plan year beginning March 15, 2001, and ending March 14, 2002. However, if Plan A merges into or consolidates with Plan B effective March 15, 2001, it is not eligible for payment of a prorated premium for the plan year beginning January 1, 2001.

Example 2. Suppose that Plan A in Example 1 is a large plan whose estimated flat-rate premium must be paid by February 28, 2001, and that the plan administrator pays a prorated estimated flat-rate premium based on the assumption that the new plan year cycle will begin in accordance with the amendment (*i.e.,* 3 1/12 of 90 percent of the final flat-rate premium that would be due for 2001 in the absence of proration, or 3 1/12 of 100 percent of the flat-rate premium that would be due for 2001 in the absence of proration if the 2001 participant count were the same as in 2000). If Plan A then merges into Plan B effective March 15, 2001, Plan A will not be eligible for payment of a prorated premium, and the estimate paid will in retrospect be insufficient. However, under the new safe harbor test, the PBGC will not assess a penalty if the estimated premium paid would have been at least enough to satisfy the safe harbor rules if the new plan year cycle had begun as contemplated by the plan year amendment.

''Participant'' Definition

A plan's flat-rate premium is based on the number of participants in the plan on the premium snapshot date. The definition of ''participant'' in the premium rates regulation applies only for premium purposes. Whether an individual is a participant in a plan for premium purposes has no bearing on whether the individual is a participant in the plan for any other purpose under Title IV of ERISA, or for any purpose under Title I of ERISA or the Internal Revenue Code. Similarly, an individual is not considered to be a participant in a plan for premium purposes simply because the individual is a participant in the plan for other purposes.

The existing definition of ''participant'' in § 4006.2 of the premium rates regulation breaks participants down into three broad categories: active, inactive, and deceased (with surviving beneficiaries). A person is counted as an active participant if the person is ''earning or retaining credited service under the plan,'' without reference to whether the plan is obligated to provide benefits with respect to the person. In contrast, a person is counted as an inactive participant if the person is entitled to

receive benefits from the plan and as a deceased participant if a beneficiary of the deceased person is entitled to receive benefits from the plan. Thus, the test for including a person in either the ''inactive'' or the ''deceased'' category is whether the plan has an obligation to provide benefits with respect to the person.

Amended Definition—In General

The amended definition counts as participants those individuals with respect to whom a plan has benefit liabilities. The amendment represents no substantive change regarding the ''inactive'' and ''deceased'' categories. However, the amendment excludes from the participant count—and thus eliminates premiums for—individuals who are earning or retaining credited service (and thus would be included as participants under the old definition) if, on the snapshot date, they have no accrued benefits (and the plan does not have any other benefit liabilities with respect to them). (An ongoing plan's liability for a benefit is not disregarded solely because the plan provides that the conditions for the benefit must be satisfied before the plan terminates or that the benefit will not be paid after the plan terminates.)

For example, suppose a plan requires an individual to perform 1,000 hours of service in a service computation period to earn any portion of an accrued benefit for that period. If, on the snapshot date, a new plan entrant has only 900 hours of service in the current service computation period, the PBGC would treat the individual as not having an accrued benefit under the plan for purposes of the amended ''participant'' definition. If the plan has no other benefit liabilities with respect to the individual, the individual would not be considered a participant.

Much of the discussion in this preamble focuses on accrued benefits rather than benefit liabilities because a plan necessarily has benefit liabilities for any individual who has an accrued benefit. However, in rare cases, a plan may have benefit liabilities for an individual who has no accrued benefit (*e.g.,* because the individual has only an ancillary death benefit). In circumstances of that kind, the individual would count as a participant for PBGC premium purposes.

Under the new definition, the participant count for premiums will typically exclude plan participants in a plan that is frozen for benefit accruals either before their participation begins or so soon thereafter that they have not had time to accrue a benefit. It will also typically exclude plan participants in permanent part-time jobs who work too few hours to meet their plans' minimum service requirements for accrual.

One result of this change is that newly created plans that do not grant past service credits will typically owe no flat-rate premium for their first year. This is because the premium snapshot date for a new plan comes at the beginning of the premium payment year, when participants have not yet earned ''future service'' credits (on which accrued benefits would be based).

When Individuals Are No Longer Counted as Participants

The amendment also makes a change in the rule governing when a non-vested individual is considered to no longer be a participant for premium purposes. The existing definition requires that a terminated non-vested participant who has not received a deemed cashout (or died) be included in the participant count until the first anniversary of separation from employment, even if under plan terms the participant incurs a one-year break in service before then. (See the preamble to the PBGC's 1989 final rule on premiums, 54 FR 28943, 28946 (July 10, 1989), where this is discussed.)

Thus, under the existing definition, a participant could incur a break in service for plan purposes, but not be considered to have incurred a break in service for premium purposes, in a situation where the participant's service computation period did not coincide with the plan year. For example, under the terms of a calendar-year plan, an individual might incur a one-year break in service before December 31, 2001 (the premium snapshot date for the 2002 premium) if the individual left employment on February 1, 2001, and did not perform 500 hours of service during a computation period ending on November 30, 2001, even though December 31, 2001, comes before the first anniversary of the individual's separation from employment.

Under the amended definition, a non-vested individual is considered to no longer be a participant after the individual incurs a one-year break in service as defined in the plan, regardless of whether the individual has been absent from employment until the first anniversary of separation. (The equivalent of a ''one-year break in service'' for an elapsed time plan would be a one-year period of severance, which typically coincides with the PBGC's existing rule; thus, the change would typically have no impact on elapsed time plans.)

The amended definition also makes clear that the PBGC treats a non-vested individual as no longer being a participant when the individual dies or receives a deemed cashout under the terms of the plan. Finally, the amended definition explicitly provides that a vested individual (or a deceased individual who was vested at death) ceases to be a participant in a plan when all benefit liabilities with respect to the individual have been provided for, either by payment from the plan or through purchase of an irrevocable commitment by an insurer to provide the benefits.

This amendment takes a different approach than the 1992 proposal, but addresses the concerns expressed in comments on that proposal. Under the 1992 proposal, the entire definition of ''participant'' would have been replaced by a cross-reference to the definition used for purposes of filing the Form 5500 annual report. Most commenters objected to this proposed change because some non-vested individuals who had incurred a one-year break in service (and thus would not be considered participants for PBGC premium purposes under the PBGC's existing definition) would have to be counted as participants under the Form 5500 definition.

Some commenters also argued that premiums should not be charged for a terminated non-vested individual who had a break in service because neither the plan nor the PBGC would ordinarily have any liability to pay benefits to the individual upon plan termination. The commenters believed such individuals would be included in the Form 5500 definition of ''participant.'' The amendment that the PBGC is adopting is responsive to these comments by excluding from the definition of ''participant'' an individual with respect to whom a plan does not have benefit liablities.

Fully Insured Plans

Section 412(h)(2) of the Internal Revenue Code exempts certain fully insured plans from plan funding requirements. To be exempt, a plan must meet the requirements of Code section 412(i). Section 4006.5(a)(3) of the premium rates regulation currently exempts a plan from the variable-rate premium if the plan is described in Code section 412(i) throughout the plan year preceding the premium payment year (or, in the case of a new or newly covered plan, throughout the premium payment year up to the premium due date).

Under the amendment that the PBGC is adopting in this final rule, the

exemption for section 412(i) plans applies to a plan if it is described in section 412(i) of the Code on the premium snapshot date. This change makes it simpler to determine whether the exemption applies. The change is identical to that proposed in 1992, which generated no public comments.

Compliance With Rulemaking Guidelines and Paperwork Reduction Act

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

The changes made by this rule will have a modest positive economic impact on plans that are affected by it. For the vast majority of small plans, there will be little or no impact. The greatest effect will come from the change in the ''participant'' definition, which eliminates premiums for the first year of newly created plans that do not grant past service credits. There are very few small plans of this kind. Payment of a prorated premium under the new short plan year rules will save the interest on the excess amount that would otherwise have been paid and refunded, but for small plans this amount will typically be insignificant.

The PBGC therefore certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

This rule affects information collection requirements under the PBGC's regulation on Payment of Premiums (29 CFR Part 4007). A notice regarding those information collection requirements appears elsewhere in today's **Federal Register**.

List of Subjects

29 CFR Part 4006

Employee benefit plans, Pension insurance.

29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

For the foregoing reasons, 29 CFR Parts 4006 and 4007 are amended as follows:

PART 4006—PREMIUM RATES

1. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. In § 4006.2, the definition of ''Participant'' is revised to read as follows:

§ 4006.2 Definitions.

* * * * *

Participant has the meaning described in § 4006.6.

* * * * *

3. In § 4006.5, paragraph (a)(3) is amended by removing the words ''at all times during'' in the first sentence and adding in their place the words ''on the last day of'' and by removing the last sentence; paragraph (g) is removed; and paragraph (f) is revised to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(f) *Proration for certain short plan years.* The premium for a plan that has a short plan year as described in this paragraph (f) is prorated by the number of months in the short plan year (treating a part of a month as a month). The proration applies whether or not the short plan year ends by the premium due date for the short plan year. For purposes of this paragraph (f), there is a short plan year in the following circumstances:

(1) *New plan.* A new or newly-covered plan becomes effective for premium purposes on a date other than the first day of its first plan year.

(2) *Change in plan year.* A plan amendment changes the plan year, but only if the plan does not merge into or consolidate with another plan or otherwise cease its independent existence either during the short plan year or at the beginning of the full plan year following the short plan year.

(3) *Distribution of assets.* The plan's assets (other than any excess assets) are distributed pursuant to the plan's termination.

(4) *Appointment of trustee.* The plan is a single-employer plan, and a plan trustee is appointed pursuant to section 4042 of ERISA.

4. Section 4006.6 is added to read as follows:

§ 4006.6 Definition of ''participant.''

(a) *General rule.* For purposes of this part and part 4007 of this chapter, an individual is considered to be a participant in a plan on any date if the plan has benefit liabilities with respect to the individual on that date.

(b) *Loss or distribution of benefit.* For purposes of this section, an individual is treated as no longer being a participant—

(1) In the case of an individual with no vested accrued benefit, after—

(i) The individual incurs a one-year break in service under the terms of the plan,

(ii) The individual's entire ''zero-dollar'' vested accrued benefit is deemed distributed under the terms of the plan, or

(iii) The individual dies; and

(2) In the case of a living individual whose accrued benefit is fully or partially vested, or a deceased individual whose accrued benefit was fully or partially vested at the time of death, after—

(i) An insurer makes an irrevocable commitment to pay all benefit liabilities with respect to the individual, or

(ii) All benefit liabilities with respect to the individual are otherwise distributed.

(c) *Examples.* The operation of this section is illustrated by the following examples:

Example 1. Participation under a calendar-year plan begins upon commencement of employment, and the only benefit provided by the plan is an accrued benefit (expressed as a life annuity beginning at age 65) of $30 per month times full years of service. The plan credits a ratable portion of a full year of service for service of at least 1,000 hours but less than 2,000 hours in a service computation period that begins on the date when the participant commences employment and each anniversary of that date. John and Mary both commence employment on July 1, 2000. On December 31, 2000 (the snapshot date for the plan's 2001 premium), John has credit for 988 hours of service and Mary has credit for 1,006 hours of service. For purposes of this section, Mary is considered to have an accrued benefit, and John is considered not to have an accrued benefit. Thus, the plan is considered to have benefit liabilities with respect to Mary, but not John, on December 31, 2000; and Mary, but not John, must be counted as a participant for purposes of computing the plan's 2001 premium.

Example 2. The plan also provides that a participant becomes vested five years after commencing employment and defines a one-year break in service as a service computation period in which less than 500 hours of service is performed. On February 1, 2002, John has an accrued benefit of $18 per month beginning at age 65 based on credit for 1,200 hours of service in the service computation period that began July 1, 2000. However, John has credit for only 492 hours of service in the service computation period that began July 1, 2001. On February 1, 2002, John terminates his employment. On December 31, 2002 (the snapshot date for the 2003 premium), John has incurred a one-year break in service, and thus is not counted as a participant for purposes of computing the plan's 2003 premium.

Example 3. On January 1, 2004, the plan is amended to provide that if a vested participant whose accrued benefit has a present value of $5,000 or less leaves employment, the benefit will be immediately

cashed out. On December 30, 2005, Jane, who has a vested benefit with a present value of less than $5,000, leaves employment. Because of reasonable administrative delay in determining the amount of the benefit to be paid, the plan does not pay Jane the value of her benefit until January 9, 2006. Under the provisions of this section, Jane is treated as not having an accrued benefit on December 31, 2005 (the snapshot date for the 2006 premium), because Jane's benefit is treated as having been paid on December 30, 2005. Thus, Jane is not counted as a participant for purposes of computing the plan's 2006 premium.

Example 4. If the plan amendment had instead provided for cashouts as of the first of the month following termination of employment, and the plan paid Jane the value of her benefit on January 1, 2006, Jane would be treated under the provisions of this section as having an accrued benefit on December 31, 2005, and would thus be counted as a participant for purposes of computing the plan's 2006 premium.

PART 4007—PAYMENT OF PREMIUMS

5. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

6. In section 4007.8, a new paragraph (i) is added to read as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(i) *Safe harbor relief for certain plan amendments prospectively changing plan year.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i),—

(1) The plan has been amended to change its plan year and the amendment as in effect on that date makes the premium payment year a short year that will end after that date; and

(2) The plan administrator pays at least the lesser of—

(i) The amount determined under § 4007.8(g) based on the actual length of the premium payment year, or

(ii) The amount determined under § 4007.8(g) based on the length that the premium payment year would have if the new plan year cycle began as anticipated by the amendment.

Issued in Washington, DC, this 22nd day of November, 2000.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 00–30322 Filed 11–30–00; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the appendix to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 2001. This rule also amends the PBGC's regulation on Disclosure to Participants by adding information on 2001 maximum guaranteed benefit amounts to Appendix B (and updating the Internet address for obtaining the PBGC booklet ''Your Guaranteed Pension''). The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 2001.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to ''$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200].'' This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). The appendix to Part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to the appendix to Part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $59,700 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2001. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: $750 multiplied by $59,700/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 2001 is $3,392.05 per month in the form of a life annuity beginning at age 65. This amendment updates the appendix to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 2001. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $3,392.05 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 2001 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include

this information in participant notices. Participant notices may also include the Internet address for obtaining the PBGC booklet ''Your Guaranteed Pension.'' This rule updates that address.

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 2001 maximum guaranteeable benefit amounts for the information of the public.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4011

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4022

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

PART 4011—DISCLOSURE TO PARTICIPANTS

1. The authority citation for part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

§ 4011.10 [Amended]

2. Section 4011.10 is amended by removing the Internet address ''http://www.pbgc.gov/ygp.htm'' from the second sentence of paragraph (b)(9) and adding in its place the address ''http://www.pbgc.gov''.

Appendix A to Part 4011 [Amended]

3. Appendix A to part 4011 is amended by removing the Internet address ''http://www.pbgc.gov/ygp.htm'' under the heading ''WHERE TO GET MORE INFORMATION'' and adding in its place the address ''http://www.pbgc.gov''.

4. Appendix B to part 4011 is amended by adding a new entry in numerical order to the table to read as follows:

Appendix B to Part 4011—Table of Maximum Guaranteed Benefits

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
* * * * * * *								
2001	$3,392.05	$40,704.60	$2,679.72	$32,156.64	$2,204.83	$26,457.96	$1,526.42	$18,317.04

* * * * *

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

5. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

6. Appendix D to part 4022 is amended by adding a new entry in numerical order to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix D to Part 4022—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
* * * * *	
2001	3,392.05

Issued in Washington, D.C., this 17th day of November, 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–30323 Filed 11–30–00; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table that applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 2001, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit

liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b), early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach ''unreduced retirement age'' (*i.e.,* the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–00 with Table I–01 in order to provide an updated correlation, appropriate for calendar year 2001, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–01 will be used to value benefits in plans with valuation dates during calendar year 2001.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2001, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2001.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 4044 is amended by removing Table I–00 and adding in its place Table I–01 to read as follows:

Appendix D to Part 4044—Tables Used to Determine Expected Retirement Age

TABLE I–01.—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 2000, and before January 1, 2002]

Participant reaches URA in year—	Participant's retirement rate category is—			
	Low [1] if monthly benefit at URA is less than—	Medium [2] if monthly benefit at URA is		High [3] if monthly benefit at URA is greater than—
		From	To	
2002	442	442	1,867	1,867
2003	454	454	1,915	1,915
2004	466	466	1,965	1,965
2005	478	478	2,016	2,016
2006	490	490	2,068	2,068
2007	503	503	2,122	2,122
2008	516	516	2,177	2,177
2009	530	530	2,234	2,234
2010	543	543	2,292	2,292
2011 or later	557	557	2,352	2,352

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, DC, this 17th day of November, 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–30324 Filed 11–30–00; 8:45 am]

BILLING CODE 7708–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 2000–8 CARP]

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress announces a cost of living adjustment of 3.4% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is based on the change in the Consumer Price Index from October, 1999, to October, 2000.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. 17 U.S.C. 118(c). The last proceeding to adjust the terms and rates for the section 118 license began in 1996. 61 FR 54458 (October 18, 1996).

On January 14, 1998, the Copyright Office announced final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works, including the 1998 rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities. 63 FR 2142 (January 14, 1998).

Pursuant to these regulations, on December 1 of each year ''the Librarian of Congress shall publish a notice of the change in the cost of living during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.'' 37 CFR 253.10(a). The regulations also require that the Librarian publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. 37 CFR 253.10(b).

Accordingly, the Copyright Office of the Library of Congress is hereby announcing the change in the Consumer Price Index and performing the annual cost of living adjustment to the rates set out in § 253.5(c). 63 FR 2142 (January 14, 1998).

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 1999, to the most recent Index published before December 1, 2000, is 3.4% (1999's figure was 168.2; the figure for 2000 is 174.0, based on 1982–1984=100 as a reference base). Rounding off to the nearest dollar, the adjustment in the royalty rate for the use of musical compositions in the repertory of ASCAP and BMI is $239, each, and $65 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

Final Regulation

For the reasons set forth in the preamble, part 253 of title 37 of the Code of Federal Regulations is amended as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. 37 CFR 253.5 is amended by revising paragraphs (c)(1) through (c)(3).

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, $239 annually.

(2) For all such compositions in the repertory of BMI, $239 annually.

(3) For all such compositions in the repertory of SESAC, $65 annually.

* * * * *

Dated: November 21, 2000.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 00–30513 Filed 11–30–00; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 111

Invalid Ancillary Service Endorsements

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On August 2, 2000 (65 FR 47362), the Postal Service published for comment a proposed rule amending the Domestic Mail Manual (DMM) to eliminate the transitional provisions for the handling of mail bearing invalid ancillary service endorsements. This final rule sets forth changes to the DMM, allowing the Postal Service to reject mail bearing invalid endorsements and treat such items as unendorsed mail.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Jackie Estes, (202) 268–3543.

SUPPLEMENTARY INFORMATION: In July 1997 the Postal Service simplified the endorsements used to request ancillary services by eliminating the existing endorsements and substituting four choices, ''Address Service Requested,'' ''Forwarding Service Requested,'' ''Return Service Requested,'' and ''Change Service Requested.'' As a transitional accommodation to mailers with stationery bearing the former endorsements, the Postal Service adopted standards providing for the handling of mail bearing the former endorsements. To reduce the risk of confusion and error created by conflicting and obsolete endorsements, the Postal Service proposed to eliminate

the transitional provisions. Based on its review, the Postal Service has determined to adopt the proposed changes without revision. As of January 1, 2001, the DMM is revised to eliminate the transitional accommodation to mailers with stationery bearing obsolete ancillary service endorsements.

DMM F030.1.2 is revised to provide ancillary services only in accordance with the valid endorsements shown in DMM F010. Mail bearing obsolete, invalid, or conflicting ancillary service endorsements will no longer be considered acceptable for mailing and the Postal Service may refuse to accept this mail. If mail bearing invalid or conflicting endorsements is discovered in the mailstream it will be handled as unendorsed mail. In the case of Standard Mail (B), ''treatment as unendorsed mail'' effectively means that mail will be treated as if endorsed ''Forwarding Service Requested.'' This provision recognizes that the general public (in contrast with business mailers) is unfamiliar with ancillary service endorsements and ensures that packages will be delivered or returned.

Comments Received

The Postal Service received two comments on the proposed rule. One comment was from an importer of material for domestic entry, and the other from an individual customer.

The importer was concerned that mail bearing invalid or conflicting ancillary service endorsements would not be accepted for mailing, potentially creating a disadvantage for the importer, relative to foreign postal administrations, who enter mail in accordance with international postal conventions. Mailers who import material for domestic entry to the United States Postal Service, for the services, benefits, and opportunities that arrangement presents, must comply with domestic mailing requirements. Exceptions based on the origin or particular qualities of matter that is mailed domestically are not permitted. Commercial mailers are expected to communicate applicable DMM requirements to their clients and ensure the mailability of material intended for domestic entry. International mail received from foreign postal administrations is subject to the provisions of the Universal Postal Convention. The provisions of this agreement are different than domestic procedures and requirements and are generally binding on the Postal Service, which is signatory to the Convention. Changes to international mailing conditions must generally be negotiated and require amendment of multilateral conventions and agreements. Modifications to the conditions for entry of international mail are not being considered at this time.

The individual customer comment concerned the lost value of stationery bearing obsolete or invalid endorsements and the treatment of items deposited in mail collection boxes which enter the mailstream and are therefore considered ''accepted.'' The proposed rule was asserted to be ''discriminatory,'' since improperly prepared mail that is presented to an employee could be refused, while mail deposited in a collection box can remain in the mailstream and be treated as unendorsed mail.

Mailers have had an extended period of time to adopt correct ancillary service endorsements. Residual stationery inventory can be used if obsolete endorsements are obliterated, minimizing any hardship. Otherwise, acceptance employees routinely reject improperly prepared mail or require customers to correct irregularities. The fact that improperly prepared items may enter the mailstream through unstaffed collection points reflects the practicalities of providing convenient and universal access to the postal network and is not discriminatory. The final rule simply requires the proper endorsement of mail for which an ancillary service is desired and terminates the transitional provisions for servicing invalid endorsements.

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the *Domestic Mail Manual* (DMM) as follows:

F Forwarding and Related Services

F000 Basic Services

* * * * *

F030 Address Correction, Address Change, FASTforward, and Return Services

1.0 ADDRESS CORRECTION SERVICE

* * * * *

1.2 Invalid Endorsement

Any obsolete ancillary service endorsement or similar sender endorsement not shown in F010 is considered invalid. Material bearing invalid or conflicting ancillary service endorsements will not be accepted for mailing. If discovered in the mailstream, mail bearing an invalid ancillary service endorsement or conflicting endorsements is treated as unendorsed mail. Exception: Standard Mail (B) pieces that are unendorsed, or that bear invalid or conflicting ancillary service endorsements and are undeliverable, will be treated as if endorsed ''Forwarding Service Requested.''

This change will be published in a future issue of the *Domestic Mail Manual*. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–30581 Filed 11–30–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301068; FRL–6748–6]

RIN 2070–AB78

Peroxyacetic 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 peroxyacetic acid, in or on all raw and processed food commodities when used in sanitizing solutions containing a diluted end-use concentration of peroxyacetic acid up to 500 ppm, and applied to tableware, utensils, dishes, pipelines, tanks, vats, fillers, evaporators, pasteurizers, aseptic equipment, milking equipment, and other food processing equipment in food handling establishments including, but not limited to dairies, dairy barns, restaurants, food service operations, breweries, wineries, and beverage and food processing plants. Ecolab, Incorporated 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 peroxyacetic acid. This final rule amends the current peroxyacetic acid exemption; and adds the subject peroxyacetic acid exemption. This final rule is being published with a companion final rule titled ''Hydrogen Peroxide; Exemption From the Requirement of a Tolerance.''

DATES: This regulation is effective December 1, 2000. Objections and requests for hearings, identified by docket control number OPP–301068, must be received by EPA on or before January 30, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301068 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager 33, Antimicrobial Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 308–6341; e-mail address: swindell.marshall@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–301068. 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 February 3, 1999 (64 FR 22) (FRL–5273–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by, Ecolab, Incorporated. This notice included a summary of the petition prepared by the petitioner Ecolab, Incorporated. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1196 be amended by establishing an exemption from the requirement of a tolerance for residues of peroxyacetic acid.

III. Risk Assessment

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. 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. The nature of the toxic effects caused by peroxyacetic acid are discussed in this unit.

Ecolab, Inc. has requested a waiver of all toxicology testing requirements for peroxyacetic acid. This includes waivers for all acute, 90-day sub-chronic, chronic, oncogenicity, developmental, reproductive, mutagenicity, neurotoxicity and metabolism requirements for peroxyacetic acid. The Agency has reviewed the data waivers requested and concurs that no additional generic toxicology testing will be needed for

peroxyacetic acid for the following reasons.

1. Peroxyacetic acid is highly reactive and short lived because of the inherent instability of the peroxide bond (ie., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics and metals accelerates decomposition. The instability of peroxyacetic acid to exist as itself, along with detoxifying enzymes found in cells (eg., catalase, glutathione peroxidase), makes it very difficult to find any residues of peroxyacetic acid in or on foods (at proposed use levels), by conventional analytical methods.

The proposed food contact applications also utilize very low concentrations of peroxyacetic acid. Therefore, food residues are expected to be short-lived, based on half-lives for peroxyacetic acid as short as a few minutes under certain conditions. The primary degradates are acetic acid, oxygen and water, and these degradates are not of toxicological concern.

2. There are acceptable acute generic data referenced in the Reregistration Eligibility Document (RED) for Peroxy Compounds (December 1993, Case 4072). Peroxyacetic acid was found to be corrosive and severely irritating to the eyes, skin, and mucous membranes but only when high concentrations were used. The proposed use patterns involve low concentrations and are expected to result in a lack of any residues of toxicological concern. The RED document waived all other non-acute toxicology data requirements for peroxyacetic acid.

3. No data exists for the subchronic, chronic, carcinogenicity, mutagenicity, developmental and reproductive toxicity of peroxyacetic acid. However, peroxyacetic acid shares similar chemical characteristics with hydrogen peroxide which has a more extensive toxicology data base. For example, peroxyacetic acid and hydrogen peroxide both decompose into two identical degradates that do not pose any toxicological concern. These two degradates are oxygen and water. Acetic acid is also a degradate of peroxyacetic acid and does not pose any toxicological concern.

Peroxyacetic acid and hydrogen peroxide also show similar chemical characteristics for corrosivity, pH, rapid peroxide bond dissociation, and production of oxygen molecules. Because of these similar chemical characteristics, and low expected exposures with the proposed uses, the dose-response toxicology relationships (i.e. adverse effects experienced only at very high doses) shown by the data for hydrogen peroxide, can also be expected with peroxyacetic acid. The remaining toxicology testing requirements for peroxyacetic acid were waived because of the similar chemical characteristics, similar expected dose-response relationships with hydrogen peroxide, low exposure levels under the proposed uses, and for the reasons given above.

V. Aggregate Exposures

A. Dietary Exposure

1. *Food*. For the proposed sanitizer uses, the 15.2% (by weight) concentrate of peroxyacetic acid will be diluted with potable water at the rate of 1 to 1.8 ounces of concentrated product per 1,024 ounces (8 gallons) of dilution water for food contact surfaces (eg., food packaging equipment), and for eating, drinking, and food preparation utensils. For low temperature (120 degrees F) tableware sanitization in warewashing machines, the dilution rate is 1 ounce of concentrated product per 3,840 ounces (30 gallons) of dilution water.

These dilution rates correspond to a low concentration range of peroxyacetic acid in the sanitizer product at the time of application of 40 to 274 ppm. The sanitizer solution, having a low concentration of peroxyacetic acid reacts on contact with the surface on which it is applied and degrades rapidly to acetic acid, oxygen and water which pose no toxicological concern. Therefore, residues of peroxyacetic acid resulting from its use in sanitizer solutions up to 500 ppm are expected to be negligible on all raw and processed food commodities. The difference between the 274 ppm maximum end use concentration, and the 500 ppm exemption concentration requested by Ecolab, is warranted to overcome any degradation of peroxyacetic acid during transport and non-use periods, and to provide flexibility for changes in formulation.

The following EPA and FDA tolerances and/or exemptions from tolerances for peroxyacetic acid are noted:

Under 40 CFR 180.1196 as a direct application at 100 ppm to fruits, vegetables, tree nuts, cereal grains, herbs and spices.

Under 21 CFR 178.1010(b)(30) for sanitizing solutions used on food-processing equipment and utensils and on other food contact articles. Sanitizing solutions may contain not less than 100 ppm nor more than 200 ppm peroxyacetic acid as per 21 CFR 178.1010(c)(25).

Under 21 CFR 178.1010(b)(38) for sanitizing solutions used on food processing equipment and dairy processing equipment. Sanitizing solutions may contain not less than 200 ppm nor more than 315 ppm as per 21 CFR 178.1010(c)(33).

Under 21 CFR 173.315(a)(2) in washing or to assist in lye peeling of fruits and vegetables that are not raw agricultural commodities. The concentration can not exceed 80 ppm in the wash water.

In 21 CFR 184.1005, the acetic acid degradate of peroxyacetic acid is Generally Recognized As Safe (GRAS) as a direct food additive substance when used in baked goods, cheeses, dairy product analogs, chewing gum, condiments, relishes, fats, oils, gravies, sauces, and meat products.

2. *Drinking Water Exposure*. The proposed indoor food contact uses for peroxyacetic acid are not expected to result in transfer of peroxyacetic acid to any potential drinking water sources. Therefore, no risk assessment is warranted.

B. Other Non-Occupational Exposure

Peroxyacetic acid is currently registered by EPA for a wide variety of uses including: agricultural premises and equipment; food handling/storage establishments premises and equipment; commercial, institutional and industrial premises and equipment; residential and public access premises; medical premises and equipment; materials preservation; and industrial processes and water systems. The Agency does not know of all approved or actual uses for peroxyacetic acid. However, non-dietary exposures are not expected to pose any quantifiable added risk because of the lack of any expected residues and degradates of toxicological concern. Minimal residues and degradates are expected due to previously discussed unique chemistry associated with peroxide bond chemistry.

VI. Cumulative Effects

The Food Quality Protection Act (1996) stipulates that when determining the safety of a pesticide chemical, EPA shall consider, among other things, available information concerning the cumulative effects to human health that may result from dietary, residential, or other non-occupational exposure to other substances that have a common mechanism of toxicity. The reason for consideration of other substances is due to the possibility that low-level exposures to multiple chemical substances that cause a common toxic effect by a common mechanism could lead to the same adverse health effect as would a higher level of exposure to any of the other substances individually. A person exposed to a pesticide at a level

that is considered safe may in fact experience harm if that person is also exposed to other substances that cause a common toxic effect by a mechanism common with that of the subject pesticide, even if the individual exposure levels to the other substances are also considered safe.

Because of the low use rates of peroxyacetic acid, its low toxicity and rapid degradation, EPA does not believe that there are any concerns regarding the potential for cumulative effects of peroxyacetic acid with other substances, due to a common mechanism of action. Peroxyacetic acid is not known to have a common toxic metabolite with other substances. Therefore, EPA has not assumed that peroxyacetic acid has a common mechanism of toxicity with other substances.

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

Peroxyacetic acid is of low toxicity, and the proposed uses employ low concentrations. Because of the low toxicity and rapid degradation of peroxyacetic acid following application, EPA concludes that this exemption from the requirement of a tolerance in or on all raw and processed food commodities, when peroxyacetic acid is used in diluted sanitizing solutions up to 500 ppm, will not pose a dietary risk to the U.S. population, infants, or children, under reasonably forseeable circumstances. Further, EPA finds that there is a reasonable certainty of no harm from aggregate exposure to peroxyacetic acid and thus that the exemption for peroxyacetic acid is safe. The Agency's human risk assessment findings are summarized below.

1. *Acute dietary risk assessment.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No acute exposure and risk assessment is applicable for peroxyacetic acid because no acute toxicological effects of concern are anticipated with the proposed food contact uses. This is due to the lack of any residues of toxicological concern because of the rapid decomposition of peroxyacetic acid into acetic acid, oxygen, and water. Use of peroxyacetic acid for indoor food equipment sanitization uses is not expected to result in the transfer of any residues to potential drinking water sources.

2. *Chronic dietary risk assessment.* Residues of peroxyacetic acid are not expected to remain on the surface of materials which it contacts. Therefore, the risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is applicable because no chronic toxicological effects are anticipated with the proposed food contact uses for peroxyacetic acid. This is due to the lack of any residues of toxicological concern because of the rapid decomposition of peroxyacetic acid into acetic acid, oxygen, and water. Use of peroxyacetic acid for indoor food equipment sanitization uses is not expected to result in the transfer of any residues to potential drinking water sources.

3. *Aggregate cancer risk for U.S. population.* The Agency believes that based on the known chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e. O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Available data show that peroxyacetic acid rapidly breaks down into oxygen, water, and acetic acid. Because of this rapid decomposition, the Agency does not expect residues of the parent compound when used as a sanitizer.

Based on the proposed use concentrations for peroxyacetic acid, and data indicating a lack of residues of concern on food, exposure to peroxyacetic acid under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenisis. This conclusion is supported by the rapid decomposition of peroxyacetic acid into oxygen, water, and acetic acid, which are not of toxicological concern, and the existence of specific enzymes in the human body (i.e. catalase and glutathione peroxidase) which also can break down peroxyacetic acid.

The Agency concludes that cancer risk for the U.S. population from aggregate exposure to peroxyacetic acid is negligible under the proposed food contact use concentrations.

4. *Aggregate risks and determination of safety for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of peroxyacetic acid, EPA considered data from developmental and reproductive toxicity studies available from the scientific literature and summarized by the Office of Water. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database, unless EPA determines that a different margin of safety will be safe for infants and children.

Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the no observed adverse effect level (NOAEL) in the animal study appropriate to the particular risk assessment. This 100-fold uncertainty factor/margin of exposure is designed to account for inter-species extrapolation and intra-species variability.

In the case of the proposed food contact uses for peroxyacetic acid, because of the lack of any significant residues of toxicological concern, a NOAEL was not identified for risk assessment purposes, and the uncertainty (safety) factor approach was not used for assessing any risk level by peroxyacetic acid. For the same reason, an additional safety factor to protect infants and children is unnecessary. Additionally, based on the following information, no increased susceptibility to infants or children is expected to occur.

i. Three studies on the developmental and reproductive effects of hydrogen peroxide (and by similarity, peroxyacetic acid) are available. The data from these studies indicates that no apparent developmental or reproductive effects were observed from administration of hydrogen peroxide at concentrations up to 1% (1,000 milligrams/kilograms).

ii. Peroxyacetic acid is a highly reactive and short lived molecule because of the inherent instability of the peroxide bond (ie., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics, and metals accelerates dissociation. The instability of peroxyacetic acid to exist as itself, along with natural detoxifying enzymes found in plant and animal cells (eg., catalase, glutathione peroxidase), makes it very difficult to find any residues of peroxyacetic acid in or on foods (at proposed use levels), by conventional analytical methods. The proposed food

contact applications utilize very low concentrations of peroxyacetic acid (ppm). Food residues are expected to be short-lived and are not expected to accumulate. This is because peroxyacetic acid dissociates rapidly into acetic acid, oxygen, and water. The Agency has no toxicological concern with acetic acid, oxygen, and water.

iii. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given in items a and b above.

Therefore, because of the rapid decomposition of peroxyacetic acid residues into degradates that are of no toxicological concern (ie., oxygen, water, acetic acid), the Agency concludes that there is a reasonable certainty of no harm for infants and children from exposure to peroxyacetic acid under the proposed food contact use concentrations.

VIII. Other Considerations

A. Endocrine Disruptors

The Food Quality Protection Act (FQPA; 1996) requires that EPA develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect....'' EPA has been working with interested stakeholders, including other government agencies, public interest groups, and industry and research scientists to develop a screening and testing program as well as a priority setting scheme to implement this program. The Agency's proposed Endocrine Disrupter Screening Program was published in the **Federal Register** on December 28, 1998 (63 FR 71541). As the Agency proceeds with implementation of this program, further testing of peroxyacetic acid for endocrine effects may be required. The currently available animal data suggest no significant endocrine effects from exposure to hydrogen peroxide.

B. Analytical Method(s)

Because an exemption from the requirement of a tolerance without numerical limitation on residue levels is being granted for peroxyacetic acid, an enforcement analytical method is not needed. However, an analytical method (designated QATM 202 by Ecolab, Inc., a redox titration procedure) is available in cases of gross misuse. The analytical method is being made available to anyone interested in pesticide enforcement when requested, from Norm Cook, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, 3rd Floor, Arlington, VA 22202, 703 308–8253.

C. Existing Tolerances

In 40 CFR Part 180.1196, an exemption from the requirement of a tolerance is established for residues of peroxyacetic acid up to 100 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grains, herbs, and spices.

D. International Tolerances

There are no Codex Alimentarius (Codex) Commission Maximum Residue Levels for peroxyacetic acid.

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–301068 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 January 30, 2001.

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 VIII.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 control number OPP–301068, 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 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: November 9, 2000.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1196 is revised to read as follows:

§ 180.1196 Peroxyacetic acid; exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for residues of peroxyacetic acid in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial treatment in solutions containing a diluted end use concentration of peroxyacetic acid up to 100 ppm per application on fruits, vegetables, tree nuts, cereal grains, herbs, and spices.

(b) An exemption from the requirement of a tolerance is established for residues of peroxyacetic acid, in or on all raw and processed food commodities when used in sanitizing solutions containing a diluted end-use concentration of peroxyacetic acid up to 500 ppm, and applied to tableware, utensils, dishes, pipelines, tanks, vats, fillers, evaporators, pasteurizers, aseptic equipment, milking equipment, and other food processing equipment in food handling establishments including, but not limited to dairies, dairy barns, restaurants, food service operations, breweries, wineries, and beverage and food processing plants.

[FR Doc. 00–30679 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301071; FRL–6748–5]

RIN 2070–AB78

Hydrogen Peroxide; 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 Hydrogen Peroxide, in or on all raw and processed food commodities when used in sanitizing solutions containing a diluted end-use concentration of hydrogen peroxide up to 1,100 ppm, and applied to tableware, utensils, dishes, pipelines, tanks, vats, fillers, evaporators, pasteurizers, aseptic equipment, milking equipment, and other food processing equipment in food handling establishments including, but not limited to dairies, dairy barns, restaurants, food service operations, breweries, wineries, and beverage and food processing plants. Ecolab, Incorporated submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, (FFDCA) as amended by the Food Quality Protection Act (FQPA) 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 hydrogen peroxide. This final rule reinserts, and amends the hydrogen peroxide exemption that was deleted from the July 1, 1998 edition of 40 CFR; incorporates the currently published hydrogen peroxide exemption, unchanged and adds the subject hydrogen peroxide exemption. This final rule is being published with a companion final rule titled ''Peroxyacetic Acid; Exemption from the Requirement of a Tolerance.''

DATES: This regulation is effective December 1, 2000. Objections and requests for hearings, identified by docket control number OPP–301071, must be received by EPA on or before January 30, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301071 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager 33, Antimicrobial Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–6341; and e-mail address: swindell.marshall@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	Examples of Potentially Affected Entities
Industry	111	Crop production
.....	112	Animal production
.....	311	Food manufacturing
.....	32532	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–301071. 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 February 3, 1999 (64 FR 22) (FRL–5273–7), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Ecolab, Inc. This notice included a summary of the petition prepared by the petitioner Ecolab, Inc. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1197 be amended by establishing an exemption from the requirement of a tolerance for residues of hydrogen peroxide.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. 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.

III. 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. The nature of the toxic effects caused by hydrogen peroxide are discussed in this unit.

Ecolab, Inc., has requested a waiver of all toxicology testing requirements for hydrogen peroxide. This includes waivers for all acute, 90–day subchronic, chronic, oncogenicity, developmental, reproductive, mutagenicity, neurotoxicity and metabolism requirements for hydrogen peroxide. The Agency has reviewed the data waivers requested and concurs that no additional generic toxicology testing will be needed for hydrogen peroxide for the following reasons:

1. Hydrogen peroxide is highly reactive and short lived because of the inherent instability of the peroxide bond (ie., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics and metals accelerates decomposition. The instability of hydrogen peroxide to exist as itself, along with detoxifying enzymes found in cells (eg., catalase, glutathione peroxidase), makes it very difficult to find any residues of hydrogen peroxide in or on foods (at proposed use levels), by conventional analytical methods.

The proposed food contact applications also utilize very low concentrations of hydrogen peroxide. Therefore, food residues are expected to be short-lived, based on half-lives for hydrogen peroxide as short as a few minutes under certain conditions. Residues are not of toxicological concern because hydrogen peroxide decomposes rapidly into oxygen and water. The Agency has no toxicological concern with oxygen and water.

2. There are acceptable acute generic data referenced in the Reregistration Eligibility Document for Peroxy Compounds (December 1993, Case 4072). Hydrogen peroxide was found to be corrosive and severely irritating to the eyes, skin, and mucous membranes but only when high concentrations were used. The proposed use patterns are expected to result in a lack of any residues of toxicological concern.

3. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given above, and because there is an extensive data base assembled by the Agency's Office of Water. Although the Office of Water's data does show toxicological effects in experimental animals, these effects occur only at high doses that are not expected from the proposed uses of hydrogen peroxide. In addition, the rapid decomposition of hydrogen peroxide into oxygen and water, which are not of toxicological concern, mitigates any concern for residues.

Therefore, the lack of any residues of toxicological concern and the existence of toxicological effects only at high dose levels in experimental animals minimizes any concern for exposure to the very low doses that may be present as a result of the proposed uses.

The Agency also recognizes that commercially available 3% hydrogen peroxide solutions have been used for many years for personal and medical uses. The use directions for some of these products state that these 3% solutions can be used as a sanitizing mouthwash. Other food contact and medicinal uses for hydrogen peroxide include applications for wines and liquors (artificial aging), dentifrices, sanitary lotions, and pharmaceutical preparations.

The long use history of hydrogen peroxide and weight of empirical evidence and experimental data has led the Food and Drug Administration (FDA) to put hydrogen peroxide on the Generally Recognized As Safe (GRAS) list when used on food processing equipment, utensils, and food contact articles (21 CFR part 178). Potential symptoms of acute over exposure to medium or high concentrations of hydrogen peroxide include irritation of eyes, nose and throat, corneal ulceration, erythema, vesicles on skin, and bleaching of hair.

IV. Aggregate Exposures

A. Dietary Exposure

1. *Food*. For the proposed sanitizer uses, the 11.2% (by weight) concentrate of hydrogen peroxide will be diluted with potable water at the rate of 1 to 1.8 ounces of concentrated product per 1,024 ounces (8 gallons) of dilution water for food contact surfaces (eg., food packaging equipment), and for eating, drinking, and food preparation utensils. For low temperature (120 degrees F) tableware sanitization in warewashing machines, the dilution rate is 1 ounce of concentrated product per 3,840 ounces (30 gallons) of dilution water.

These dilution rates correspond to a concentration range of hydrogen peroxide in the sanitizer product at the time of application of 29 to 202 parts per million (ppm). The sanitizer solution, having a low concentration of hydrogen peroxide, reacts on contact with the surface on which it is applied and degrades rapidly into oxygen and water which pose no toxicological concern. Therefore, residues of hydrogen peroxide resulting from its use in sanitizer solutions even up to 1,100 ppm are expected to be negligible on all raw and processed food commodities. The difference between the 202 ppm maximum end use concentration, and the 1,100 ppm exemption concentration requested by Ecolab, is warranted to overcome any degradation of hydrogen peroxide during transport and non-use periods, and to provide flexibility for changes in formulation.

Additional dietary sources of the GRAS substance hydrogen peroxide are not expected to be significant and range in concentration from 0.04 to 1.25% in the FDA food contact approvals cited below:

Under 21 CFR 184.1366, hydrogen peroxide is GRAS when used on milk intended for use in cheese making (maximum treatment level of 0.05%), whey, during preparation of modified whey by electrodialysis methods (maximum treatment level of 0.04%), dried eggs, dried egg whites, and dried egg yolks, tripe, beef feet, herring, wine, starch (maximum treatment level of 0.15%), instant tea, corn syrup (maximum treatment level of 0.15%), colored cheese whey (maximum treatment level of 0.05%), wine vinegar, and emulsifiers containing fatty acid esters (maximum treatment level of 1.25%).

Hydrogen peroxide presently has the following additional EPA and FDA clearances:

Under 40 CFR 180.1197 as a direct application at 120 ppm to fruits, vegetables, tree nuts, cereal grains, herbs and spices.

Under 21 CFR 172.892 for modification of food starch to be added to human food items.

Under 21 CFR 178.1005 for sterilization of polymeric food surfaces. Sanitizing solution is not to contain more than 35% hydrogen peroxide.

Under 21 CFR 178.1010(b)(30) for sanitizing solutions used on food-

processing equipment and utensils and on other food contact articles. Sanitizing solutions may contain not less than 550 ppm nor more than 1,100 ppm hydrogen peroxide (21 CFR 178.1010(c)(25)).

Under 21 CFR 184.136 as GRAS when hydrogen peroxide meets Food Chemical Codex specifications, to treat certain foods as a antimicrobial, bleaching agent, oxidizing and reducing agent. Residual hydrogen peroxide must be removed during processing of food.

Under 21 CFR 173.315(a)(2) for use in washing or to assist in the lye peeling of fruits and vegetables that are not raw agricultural commodities. Used in combination with acetic acid. Not to exceed 59 ppm in wash water.

Under 21 CFR 178.1010(c)(33) for sanitizing solutions used on food processing equipment and dairy processing equipment. Sanitizing solutions may contain not less than 300 ppm nor more than 465 ppm of hydrogen peroxide.

2. *Drinking water exposure*. Use of hydrogen peroxide for indoor food equipment sanitization uses is not expected to result in the transfer of any residues to potential drinking water sources. Therefore, no risk assessment is warranted.

B. Other Non-Occupational Exposure

Hydrogen peroxide is currently registered by EPA for a wide variety of uses. These includes use as a water additive for control of spoilage microorganisms on raw and processed food commodities; use as an algaecide, fungicide and bactericide on growing crops and post harvest potatoes; use on agricultural premises and equipment, food handling/storage establishments premises and equipment; use on commercial, institutional and industrial premises and equipment; use on residential, public access premises, medical premises and equipment; use for materials preservation; and for industrial processes and water systems.

Hydrogen peroxide is also approved for a variety of medicinal uses including sanitization of scrapes, cuts, and burns to human and animal skin, and as a human oral sanitizing mouthwash. It is also used by medical doctors for general cleansing and sanitization of surgical areas of the body after operations. Hydrogen peroxide use in homes is medicinal and exposures are expected to be infrequent and at extremely short topical duration.

The Agency does not know of all approved or actual uses for hydrogen peroxide. However, non-dietary exposures are not expected to pose any quantifiable added risk because of a lack of any significant residues of toxicological concern.

V. Cumulative Effects

The FQPA (1996) stipulates that when determining the safety of a pesticide chemical, EPA shall consider, among other things, available information concerning the cumulative effects to human health that may result from dietary, residential, or other non-occupational exposure to other substances that have a common mechanism of toxicity. The reason for consideration of other substances is due to the possibility that low-level exposures to multiple chemical substances that cause a common toxic effect by a common mechanism could lead to the same adverse health effect as would a higher level of exposure to any of the other substances individually. A person exposed to a pesticide at a level that is considered safe may in fact experience harm if that person is also exposed to other substances that cause a common toxic effect by a mechanism common with that of the subject pesticide, even if the individual exposure levels to the other substances are also considered safe.

Because of the low use rates of hydrogen peroxide, its low toxicity, and rapid degradation, EPA does not believe that there are any concerns regarding the potential for cumulative effects of hydrogen peroxide with other substances due to a common mechanism of action.

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

Because hydrogen peroxide is of low toxicity, and the proposed uses employ low concentrations of hydrogen peroxide, and hydrogen peroxide degrades rapidly following application, EPA concludes that this exemption from the requirement of a tolerance in or on all raw and processed food commodities, when hydrogen peroxide is used in diluted sanitizing solutions up to 1,100 ppm, poses no dietary risk to the U.S. population including infants and children, under reasonably forseeable circumstances. Further, EPA finds that there is a reasonable certainty of no harm from aggregate exposure to hydrogen peroxide and thus that the exemption for hydrogen peroxide is safe. The Agency's human risk assessment findings are summarized below.

1. *Acute dietary risk assessment*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute exposure and risk assessment is applicable because no acute toxicological effects of concern or exposure are anticipated with the proposed food contact uses for hydrogen peroxide. This is due to the lack of any residues of toxicological concern as a result of the automatic and rapid decomposition of hydrogen peroxide into oxygen and water. Use of hydrogen peroxide for indoor food equipment sanitization uses is not expected to result in the transfer of any residues to potential drinking water sources.

2. *Chronic dietary risk assessment*. Residues of hydrogen peroxide are not expected to remain on the surface of materials which it contacts. Therefore, the risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is applicable because no chronic toxicological effects are anticipated with the proposed food contact uses for hydrogen peroxide. This is due to the lack of any residues of toxicological concern as a result of the automatic and rapid decomposition of hydrogen peroxide into oxygen and water. Use of hydrogen peroxide for indoor food equipment sanitization uses is not expected to result in the transfer of any residues to potential drinking water sources.

3. *Aggregate cancer risk for U.S. population*. Available data suggest that hydrogen peroxide can act as a promoter of carcinogenisis at relatively high doses (in excess of 600 milligrams/kilograms (mg/kg)) after chronic administration in drinking water to experimental animals. Epidemiological reports indicate that the major effect from accidental ingestion of high doses of hydrogen peroxide in humans (ie., 1,000 mg/kg) is acute and severe clinical toxicity, which in a few cases resulted in death.

Based on the proposed use concentrations for hydrogen peroxide, and data indicating negligible residues on food, exposure to hydrogen peroxide under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenisis. This conclusion is supported further by the rapid decomposition of hydrogen peroxide into oxygen and water, which are not of toxicological concern, and the existence of specific enzymes (ie., catalase and glutathione peroxidases) for breakdown of hydrogen peroxide.

Therefore, the Agency concludes that the cancer risk for the U.S. population from aggregate exposure to hydrogen peroxide is negligible under the proposed food contact use concentrations.

4. *Aggregate risks and determination of safety for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of hydrogen peroxide, EPA considered data from developmental and reproductive toxicity studies available from the scientific literature and summarized by the Office of Water. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base, unless EPA determines that a different margin of safety will be safe for infants and children.

Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors (UF) in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the no observed adverse effect level (NOAEL) in the animal study appropriate to the particular risk assessment. This 100-fold UF/MOE is designed to account for interspecies extrapolation and intraspecies variability.

In the case of the proposed food contact uses for hydrogen peroxide, because of the lack of any residues of toxicological concern, a NOAEL was not identified for risk assessment purposes, and the uncertainty (safety) factor approach was not used for assessing any risk level by hydrogen peroxide. For the same reason, an additional safety factor to protect infants and children is unnecessary. Additionally, based on the following, no increased susceptibility to infants or children is expected to occur.

i. Three older studies on the developmental and reproductive effects of hydrogen peroxide are available. The data from these studies indicates that no apparent developmental or reproductive effects were observed from administration of hydrogen peroxide at concentrations up to 1% (1,000 mg/kg).

ii. Hydrogen peroxide is highly reactive and short lived because of the inherent instability of the peroxide bond (ie., the O-O bond). Agitation or contact with rough surfaces and metals accelerates dissociation. The proposed food contact applications utilize very low concentrations of hydrogen peroxide (i.e ppm). Food residues are expected to be short-lived and are not expected to accumulate. This is because hydrogen peroxide dissociates rapidly in air into oxygen and water. The Agency has no toxicological concern with oxygen and water.

iii. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given in items a and b above, and because there is an extensive data base assembled by the Agency's Office of Water showing toxicological effects in experimental animals only at high concentrations, which are not expected with the proposed use patterns.

iv. The Agency also recognizes that commercially available 3% hydrogen peroxide solutions have been used for many years for personal and medical uses. The use directions for some of these products state that these solutions can be used as a sanitizing mouthwash. The long use history of hydrogen peroxide and weight of empirical and experimental data has led the FDA to put it on the GRAS list when used on food processing equipment, utensils, and food contact articles (21 CFR part 178).

Therefore, because of the rapid decomposition of hydrogen peroxide residues into degradates that are of no toxicological concern (ie., oxygen, water), the Agency concludes that there is a reasonable certainty of no harm for infants and children from exposure to hydrogen peroxide under the proposed food contact use concentrations.

VII. Other Considerations

A. Endocrine Disruptors

The FQPA (1996) requires that EPA develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect....'' EPA has been working with interested stakeholders, including other government agencies, public interest groups, and industry and research scientists to develop a screening and testing program as well as a priority setting scheme to implement this program. The Agency's proposed Endocrine Disrupter Screening Program was published in the **Federal Register** on December 28, 1998 (63 FR 71541). As the Agency proceeds with implementation of this program, further testing of hydrogen peroxide for endocrine effects may be required. The currently available animal data suggest no significant endocrine effects from exposure to hydrogen peroxide.

B. Analytical Method(s)

Because an exemption from the requirement of a tolerance without numerical limitation for residues in food is being granted for hydrogen peroxide, an enforcement analytical method is not needed. However, an analytical method (designated QATM 202 by Ecolab, Inc., a redoxtitration procedure) is available in cases of gross misuse. The analytical method is being made available to anyone interested in pesticide enforcement when requested, from Norm Cook, Antimicrobials Division (7510C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, 3rd Floor, Arlington, VA 22202, 703–308–8253.

C. Existing Tolerances

In 40 CFR 180.1197, an exemption from the requirement of a tolerance is established for residues of hydrogen peroxide in or on all food commodities at the rate of less than or equal to 1% hydrogen peroxide per application on growing crops and post harvest potatoes, when applied as an algaecide, fungicide, and bactericide.

D. International Tolerances

There are no Codex Alimentarius (Codex) Commission Maximum Residue Levels for Hydrogen Peroxide.

VIII. 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–301071 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 January 30, 2001.

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 VIII.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 control number OPP–301071, 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).

IX. 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 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).

X. 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: November 9, 2000.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. Section 180.1197, is revised to read as follows:

§ 180.1197 Hydrogen Peroxide; exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for residues of hydrogen peroxide in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial treatment in solutions containing a diluted end-use concentration of hydrogen peroxide up to 120 ppm per application on fruits, vegetables, tree nuts, cereal grains, herbs, and spices.

(b) An exemption from the requirement of a tolerance is established for residues of hydrogen peroxide in or on all food commodities at the rate of less than or equal to 1% hydrogen peroxide per application on growing crops and post harvest potatoes when applied as an algaecide, fungicide and bactericide.

(c) An exemption from the requirement of a tolerance is established for residues of hydrogen peroxide, in or on all raw and processed food commodities when used in sanitizing solutions containing a diluted end-use concentration of hydrogen peroxide up to 1,100 ppm, and applied to tableware, utensils, dishes, pipelines, tanks, vats, fillers, evaporators, pasteurizers, aseptic equipment, milking equipment, and other food processing equipment in food handling establishments including, but not limited to dairies, dairy barns, restaurants, food service operations, breweries, wineries, and beverage and food processing plants.

[FR Doc. 00–30680 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6910–4]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 8 new sites to the NPL; 7 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be January 2, 2001.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see Section II, ''Availability of Information to the Public'' in the ''Supplementary Information'' portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on July 27, 2000 (65 FR 46096).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the

limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of November 20, 2000, the Agency has deleted 227 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of November 20, 2000, EPA has deleted portions of 21 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL.

As of November 20, 2000, there are a total of 757 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—December 2000.''

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435.

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–6699.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 8 sites to the NPL; 7 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section. Table 1 presents the 7 sites in the General Superfund Section and Table 2 presents the site in the Federal Facilities Section. Sites in the tables are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
CA	Alark Hard Chrome	Riverside.
FL	Alaric Area Ground Water Plume.	Tampa.
IL	Indian Refinery-Texaco Lawrenceville..	Lawrenceville.
MO	Riverfront	New Haven.
MT	Lockwood Solvent Ground Water Plume.	Billings.
OR	Portland Harbor	Portland.
SD	Gilt Edge Mine	Lead.

Number of Sites Added to the General Superfund Section: 7.

TABLE 2.—NATIONAL PRIORITIES LIST FINAL RULE, FEDERAL FACILITIES SECTION

State	Site name	City/county
VA	Naval Weapons Station Yorktown—Cheatham Annex.	Williamsburg.

Number of Sites Added to the Federal Facilities Section: 1.

B. Status of NPL

With the 8 new sites added to the NPL in today's final rule; the NPL now contains 1,231 final sites; 1,071 in the General Superfund Section and 160 in the Federal Facilities Section. With a separate rule (published elsewhere in today's **Federal Register**) proposing to add 13 new sites to the NPL, there are now 63 sites proposed and awaiting final agency action, 57 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,294. (These numbers reflect the status of sites as of November 20, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The Indian Refinery-Texaco Lawrenceville site was proposed July 28, 1998 (63 FR 40247). (Please note that an addendum providing additional information for the Indian Refinery-Texaco Lawrenceville site was proposed on May 11, 2000 (65 FR 30489).) The Alaric Area Ground Water Plume site and the Naval Weapons Station Yorktown—Cheatham Annex site were both proposed on February 4, 2000 (65 FR 5468). The Gilt Edge Mine and Lockwood Solvent Ground Water Plume sites were proposed on May 11, 2000 (65 FR 30489). The Alark Hard Chrome, Riverfront, Portland Harbor sites were proposed on July 27, 2000 (65 FR 46131).

For Alark Hard Chrome and Riverfront sites, EPA received no comments and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—December 2000''.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this

regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Does the Regulatory Flexibility Act Apply to This Final Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must

submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule To Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the University of *Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

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), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are the Executive Orders on Federalism and Are They Applicable to This Final Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XIII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Under section 3(b) of Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. In this case, the addition of the site to the NPL will not impose any substantial direct compliance costs on the Tribes. While the Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 22, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 and Table 2 of Appendix B to Part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	* * * *	*	*
CA	Alark Hard Chrome	Riverside.	
*	* * * *	*	*
FL	Alaric Area Ground Water Plume	Tampa.	
*	* * * *	*	*
IL	Indian Refinery—Texaco Lawrenceville	Lawrenceville.	
*	* * * *	*	*
MO	Riverfront	New Haven.	
*	* * * *	*	*
MT	Lockwood Solvent Ground Water Plume	Billings.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes [a]
*	* * * *	*	*
OR	Portland Harbor	Portland.	
*	* * * *	*	*
SD	Gilt Edge Mine	Lead.	
*	* * * *	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes [a]
*	* * * *	*	*
VA	Naval Weapons Station Yorktown—Cheatham Annex	Williamsburg.	
*	* * * *	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

[FR Doc. 00–30630 Filed 11–30–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[Docket No. 001120325-0325-01: I.D. 110800B]

RIN 0648-A077

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

ACTION: Aboriginal subsistence whaling quota.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota for gray whales, and other limitations deriving from regulations adopted at the 1997 Annual Meeting of the International Whaling Commission (IWC). For 2000, the quota is zero gray whales landed. This quota and other limitations will govern the harvest of gray whales by members of the Makah Indian Tribe (Tribe).

DATES: Effective November 28, 2000.

ADDRESSES: Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, (202) 482-2652.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*), which requires the Secretary of Commerce to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of gray whales from the Eastern stock in the North Pacific. The gray whale quota was based on a joint request by the Russian Federation and the United States, with documentation of the needs of 2 Native groups, the Chukotka Natives and the Tribe in Washington State.

This action by the IWC thus authorized aboriginal subsistence whaling by the Tribe for gray whales, as discussed in greater detail in the 1999 notification (64 FR 28413). This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the Makah Tribal Council (Council).

The IWC set a 5-year block quota (1998 through 2002) of 620 gray whales, with an annual cap of 140 animals taken. The IWC regulation does not address the number of allowed strikes. The requested quota and accompanying documentation assumed an average annual harvest of 120 whales by the Chukotka people and an average annual harvest of 4 whales by the Tribe.

The United States and the Russian Federation have concluded an arrangement providing that the Tribe may take no more than five gray whales, and the Russian natives may take no more than 135 gray whales. On June 9, however, the United States Court of Appeals for the Ninth Circuit ruled that the Department of Commerce's environmental assessment (EA) under the National Environmental Policy Act (NEPA) should have been completed before agreeing to request a gray whale quota from the IWC. The Court ordered the agency to prepare a new EA under circumstances that would ensure an objective evaluation of the environmental consequences of the gray whale harvest.

NOAA has begun preparation of the new EA. In the meantime, NOAA is setting the gray whale quota at zero, pending completion of the NEPA process. NOAA has also rescinded its cooperative agreement with the Council.

November 28, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–30650 Filed 11–28–00; 3:53 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 232
Friday, December 1, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–103–2]

Importation of Artificially Dwarfed Plants in Growing Media From the People's Republic of China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would amend our regulations to allow artificially dwarfed (penjing) plants of the genera *Buxus, Ehretia* (*Carmona*), *Podocarpus, Sageretia,* and *Serissa* to be imported into the United States from the People's Republic of China in an approved growing medium subject to specified growing, inspection, and certification requirements. This action will allow interested persons additional time to prepare and submit comments.

DATE: We invite you to comment on Docket No. 98–103–1. We will consider all comments that we receive by December 20, 2000.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 98–103–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–103–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2000, we published in the **Federal Register** (65 FR 56803–56806, Docket No. 98–103–1) a proposed rule to amend our regulations governing the importation of plants and plant products to allow artificially dwarfed (penjing) plants of the genera *Buxus, Ehretia* (Carmona), *Podocarpus, Sageretia,* and *Serissa* to be imported into the United States from the People's Republic of China in an approved growing medium subject to specified growing, inspection, and certification requirements.

Comments on the proposed rule were required to be received on or before November 20, 2000. We are reopening and extending the comment period on Docket No. 98–103–1 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will consider all comments that we received between September 20, 2000, and December 20, 2000.

Further, interested persons may now obtain the qualitative, pathway-initiated pest risk assessment for this action, titled ''Pest Risk Assessments, Penjing Plants from China,'' on the APHIS web site at: *http://www.aphis.usda.gov/ppq/pim/.*

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166 and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of November 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–30597 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 424

[Docket No. 98–062P]

Performance Standards for On-line Antimicrobial Reprocessing of Pre-Chill Poultry Carcasses

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its poultry products inspection regulations to allow, on a voluntary basis, the on-line reprocessing of pre-chill carcasses that are accidently contaminated with digestive tract contents during slaughter. FSIS is proposing that, to permit this on-line reprocessing of visibly contaminated birds, the treated carcasses must meet pre-chill performance standards for *Salmonella* and *E. coli* that are significantly lower than the existing criteria for verifying process control for *E. coli* and the pathogen reduction performance standards for *Salmonella* for chilled poultry. The proposed change will allow contaminated poultry carcasses, including turkeys, to remain on the main processing line for treatment, rather than having to be moved off the main line. Birds with no visible contamination may undergo the same antimicrobial treatment, but they will remain subject to the Agency's pathogen reduction performance standards and process control criteria already in place for raw chilled product. Birds whose entire carcass is affected with contamination or are mutilated will not be permitted to be processed on-line. Under this proposal, establishments doing on-line antimicrobial reprocessing will need to do so in accordance with the Hazard Analysis and Critical Control Point (HACCP) system requirements in 9 CFR part 417. This proposed rule is in response to petitions from Rhodia Inc., of Cranbury, New Jersey, and Alcide Corporation of Redmond, Washington.

DATES: Comments must be received on or before January 30, 2001.

ADDRESSES: Submit written comments to the FSIS Docket Clerk, Room 102, Cotton Annex Building, 300 12th Street,

SW., Washington, DC 20250–3700. Interested persons are requested to submit an original and two copies of comments concerning this proposal. Written comments should be sent to the Docket Clerk at the address shown above and should refer to Docket Number 98–062P. Copies of all comments submitted in response to this proposal will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations & Inspection, Office of Policy, Program Development, and Evaluation, FSIS, at (202) 205–0699 or FAX (202) 401–1760.

SUPPLEMENTARY INFORMATION: FSIS is responsible for ensuring that poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. Under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470), FSIS provides mandatory inspection of poultry and poultry products distributed in interstate and foreign commerce and in designated States and U.S. territories. Inspection of poultry slaughtering establishments is intended to ensure that fresh, ready-to-cook poultry and parts are not adulterated or misbranded.

Poultry Reprocessing

FSIS estimates that 2 percent of inspected poultry carcasses are reprocessed. This estimate is based on approximately two years of in-plant data collection and represents the national average. The Agency requires that poultry with cut, contaminated surfaces be reprocessed by trimming, and poultry with uncut, contaminated inner surfaces be reprocessed by trimming alone or in combination with other methods, such as washing or vacuuming. After viscera removal, the contaminated carcasses are hung on a designated area of the retain rack. Carcasses are then transferred to the reprocessing station where they are suspended to prevent contamination during trimming and washing. The crops are removed, and external carcass surfaces are thoroughly washed. The contaminant is removed, and the reprocessed carcass is rinsed with water containing 20 ppm chlorine. After further examination by plant personnel, clean carcasses are lotted and made available for reinspection by FSIS inspectors. Carcasses found by the FSIS inspectors to be not adulterated are passed for human consumption.

Reprocessing procedures must be submitted in writing to FSIS. FSIS field personnel are authorized to grant approvals for reprocessing stations to include 60-day provisional approvals (experimental under section 381.3(b)) to permit method development and data accumulation via MPI Bulletin 78–40 (''Disposition of Contaminated Poultry Carcasses,'' 3/28/78). Provisional approvals can be refused or revoked if the establishment cannot maintain consistently effective results. Final approvals must be based in part upon data from 20 consecutive days of successful operations.

The statutory basis for poultry reprocessing is section 6(c) of the PPIA (21 U.S.C. 455(c)) which provides that carcasses, parts, and products that may by reprocessing be made not adulterated, need not be condemned and destroyed if reprocessed under the supervision of an inspector and found to be not adulterated. The methods used to reprocess carcasses have changed over time. In the early 1960's, FSIS prohibited reprocessing by washing of poultry carcasses. This meant that contamination had to be removed by trimming. As a practical matter, the entire back of contaminated carcasses often had to be cut out and discarded.

In 1975, an Agriculture Research Service (ARS) study showed that the microbial profile of thoroughly washed carcasses previously contaminated with digestive tract contents was no different than the microbial profile of uncontaminated birds. Industry responded by requesting that FSIS permit contamination to be removed by washing. Industry also supplied data to demonstrate that washing also removed visible specks of internal contamination.

Citing newer technology that made the present procedure of trimming ''unsuitable,'' on August 19, 1977, the Food Safety and Quality Service (now FSIS) proposed (42 FR 41873) to permit the reprocessing of internally contaminated carcasses if two conditions were met. First, each establishment must receive approval from FSIS of the off-line reprocessing procedure (trimming, vacuuming, or washing singly or in various combinations) and equipment. Second, the surface of each reprocessed carcass must be treated with a chlorinated water solution. A final rule, issued on March 8, 1978 (43 FR 12846), reduced the chlorine requirements from 50 ppm to 20 ppm and clarified some information about the areas designated for reprocessing.

During the 1970's and 1980's, the industry made significant technological advances and increased its process control capabilities. The development of automated evisceration equipment and improvements in genetics, nutrition health, and flock management permitted the poultry industry to present uniform lots of birds to inspectors faster than inspectors could inspect them using traditional methods. In the 1980's, the Agency developed new inspection procedures, including New Line Speed (NELS) and Streamlined Inspection System (SIS) for chickens and the New Turkey Inspection (NTI) system, which shifted quality control responsibilities to the plant and relied more heavily on monitoring and verification than in the past. Inspection was now conducted in two distinct phases—a post-mortem inspection phase and a reinspection phase.

Under the current regulations, any carcass of poultry accidently contaminated during slaughter with digestive tract contents will not be condemned if promptly reprocessed in a designated area off-line under the supervision of an inspector and found to be not adulterated. Under provisions of § 381.91, carcasses of poultry contaminated with volatile oils, paints, or any other substance that renders the carcass adulterated will be condemned. In addition, any organ or other part of a carcass that has been accidentally mutilated in the course of processing will be condemned, and if the whole carcass is affected, the whole carcass will be condemned.

Advantages of On-Line Versus Off-Line Reprocessing

Although FSIS' regulations require any visibly contaminated poultry carcass to be reprocessed at an approved reprocessing station away from the main processing line, there has been concern that pathogenic organisms may be spread by the off-line reprocessing technique (Beuchat, LR, and JH Ryu, Produce Handling and Process Practices, 1997). This technique involves a significant amount of product handling and provides an opportunity for cross-contamination.

On-line reprocessing of pre-chill poultry would provide great benefits to poultry slaughtering establishments. Production rates could increase considerably if such reprocessing were permitted. An increase in annual revenues resulting from an increase in the production rate would more than offset any one-time investment for the purchase and installation of equipment needed to reprocess on-line.The Agency does not foresee that any establishment would need to reduce its linespeeds as a result of on-line reprocessing, although the FSIS inspector-in-charge has discretion to reduce linespeeds, when necessary.

The benefits to be derived from on-line reprocessing include substantial reductions in pathogens on dressed, ready-to-cook poultry. A reduction in contamination, coupled with an antimicrobial treatment, would result in reduced microbial loads on dressed poultry carcasses. Because carcasses without visible contamination would undergo the antimicrobial treatment if reprocessing was done on-line, most poultry products would benefit from on-line reprocessing. There would be added assurance that reprocessed poultry are free of contamination and unlikely to be a cause of cross contamination when introduced into the chiller system.

Industry is aware of the potential benefits to be derived from on-line reprocessing. Consequently, over the last several years, companies have been exploring various methodologies. The first to come forward with data from trials performed at five plants (Choctow Maid, Carthage, MS; Perdue Farms, Rockingham, NC; Wayne Farms, Jack, AL; Choctow Foods, Forrest, MS; and Amick Farms, Batesburg, SC) was Rhodia, Inc., whose system uses trisodium phosphate (TSP). Rhodia's data show that its on-line reprocessing system can achieve pathogen levels significantly lower than the Agency pathogen reduction performance standards and process control verification criteria.

In addition, Alcide Corporation has developed the Sanova™ Continuous On-line Processing (COP) antimicrobial intervention process for poultry, which uses acidified sodium chlorite. FSIS is aware that other companies in addition to Rhodia and Alcide are doing in-plant testing and may soon be coming forward with data on the effectiveness of their antimicrobial systems.

TSP as a Processing Aid

Rhodia Inc., Rhone-Poulenc, Inc., its parent company, and Stauffer Chemical Company, its predecessor company, have conducted tests on the efficacy of various processes using solutions of food-grade TSP as a processing aid on raw meat and poultry carcasses for the purpose of reducing the numbers and prevalence of various pathogenic microorganisms. TSP is listed by the Food and Drug Administration (FDA) as generally recognized as safe (GRAS) for multiple-purpose use in accordance with good manufacturing practices (GMP) (21 CFR 182.1778). As part of the testing of TSP, numerous laboratory, plant, and commercial trials have been conducted pre-chill and post-chill in slaughtering operations for beef and poultry (chicken and turkey) and for poultry giblets.

The trials tested both TSP spray/drench systems using inside/outside birdwashers (IOBW) and TSP immersion/application techniques using a drag through tank. Each of the commercial plant trials consistently demonstrated the efficacy of TSP in reducing prevalence and levels of Aerobic Plate Counts (APC's), *Campylobacter, E. coli,* and *Enterobacteriaceae* on meat and poultry.

The efficacy of a TSP rinse combined with a chlorine rinse in reducing the prevalence and levels of pathogenic bacteria on poultry is well documented by Rhodia. From the data submitted by Rhodia, it appears that APC's can be reduced up to 1.5 $\log_{10}$ cycles (*i.e.,* just less than 99 percent); *Campylobacter* prevalence can be reduced from 78.6 percent to 41.6 percent, a 37 percent reduction; *E. coli* and *Enterobacteriaceae* can be reduced to below the level of detection; and *Salmonella* can be reduced to below 1 percent of the total number of birds sampled.

Petition for Approval of TSP on Raw, Chilled Poultry Carcasses

In 1992, Rhone-Poulenc petitioned FSIS for approval of the use of TSP on raw, chilled poultry carcasses. The petitioner included data in its petition to demonstrate that the use of TSP is effective in reducing the prevalence of bacteria, including pathogenic bacteria, on raw, chilled poultry products. FSIS evaluated the petitioner's request and concluded that the treatment leaves virtually no residues in or on the product.

FSIS also determined that the use of TSP requested by the petitioner was suitable for its intended purpose as an antimicrobial processing aid, and that the use of this substance on raw, chilled poultry carcasses at the stated level would not render the treated product adulterated, misbranded, or otherwise not in accordance with the requirements of the PPIA. In a final rule issued on July 29, 1996 (61 FR 39273), FSIS amended the poultry products inspection regulations (formerly in § 381.147; now in the table in § 424.21(c)) to add ''antimicrobial agents'' as a new class of substance for use on poultry products and to include TSP as an approved antimicrobial agent whose use is limited to raw, chilled poultry carcasses.

In-Plant Trials of On-Line Reprocessing

Because of the antimicrobial efficacy demonstrated by TSP on chilled poultry in commercial poultry slaughter operations, Rhodia requested and received authorization from FSIS to conduct in-plant trials of the use of TSP for on-line reprocessing of pre-chill carcasses. FSIS regulations (§ 381.91(b)(1) and (2)) require that the carcasses be reprocessed off-line under the supervision of an FSIS inspector.

Under the FSIS-approved protocol, a TSP treatment using an IOBW for the on-line reprocessing was tested. In the first stage of the approved protocol, visible contamination was removed from carcasses prior to zero tolerance verification by using one or more IOBW with a water spray containing 20 ppm chlorine. In the second stage, carcasses passed through another IOBW where a TSP antimicrobial rinse was applied.

Two separate phases of sampling took place in each trial at five plants. Phase 1 was conducted over a 4-week period and involved extensive sampling, in part, to verify proper startup of the system. Phase 2 was conducted over an 8-week period and involved collecting a lesser number of samples on a random basis.

The trials were conducted within the following operating parameters:

(1) There was strict compliance with FSIS regulatory policy, including the zero tolerance for fecal matter (9 CFR 381.65(e)), and with the existing pre-chill finished product standards (9 CFR 381.76, Table 1).

(2) Birds whose entire carcass was affected with contamination were not eligible for on-line reprocessing with TSP. These carcasses were reprocessed off-line in accordance with 9 CFR 381.91.

(3) The temperature of the TSP treatment solution did not exceed the carcass temperature at the time of treatment, and the treatment solution was applied by spraying/drenching carcasses up to 15 seconds.

(4) The TSP concentration levels were between 8 and 12 percent, with a critical limit of not less than 8 percent.

The 960 samples generated at each plant were divided equally among three sampling points. ''A'' samples were taken randomly from ''normal'' on-line fully eviscerated carcasses with no visible contamination before they underwent the first IOBW rinse for on-line reprocessing. The ''A'' samples, therefore, can be considered the control samples because they represented the actual bacterial load on carcasses proceeding on-line during days the sampling was conducted. ''B'' samples were taken from visibly contaminated carcasses that would normally have been reprocessed off-line but that were marked and allowed to be reprocessed on-line. ''C'' samples were obtained

from carcasses after they were reprocessed off-line, where they underwent procedures such as vacuuming, washing, or trimming, singly or in combination, and treated with chlorinated water. All samples were frozen and shipped to laboratories for analysis by AOAC/BAM analytical methods.

Results of Trials

The data submitted to FSIS in support of Rhodia's petition show that the combined effects of the TSP and chlorine rinses substantially reduced the average APC's and *Enterobacteriaceae* counts and the prevalence of *Campylobacter, E. coli,* and *Salmonella* on treated sample carcasses. Specifically, the data show that:

- On-line TSP reprocessing achieved a 1 $\log_{10}$ greater reduction in average APC's than normally reprocessed on-line carcasses before the chiller (''A'' samples) and a one-half log greater reduction in average APC's than off-line reprocessed carcasses before the chiller (''C'' samples).
- The average prevalence of *Campylobacter* on normal on-line carcasses before the chiller (''A'' samples) was 78 percent, and the average prevalence was 80 percent for off-line carcasses before the chiller (''C'' samples). There was a 32 percent reduction in *Campylobacter* prevalence for TSP reprocessed birds. (There were no *Campylobacter* samples tested in Phase 2 of the trials).
- On-line TSP reprocessing resulted in less than a 1.0 percent prevalence for *E. coli.* On-line carcasses in the control group (''A'' samples) had an average *E. coli* prevalence of 97 percent before the chiller, and off-line reprocessed carcasses (''C'' samples) averaged a 22 percent prevalence rate before the chiller.
- TSP on-line reprocessing reduced the prevalence for *Enterobacteriaceae* to 1.0 percent of carcasses. The average prevalence of *Enterobacteriaceae* on normal on-line pre-chilled carcasses (''A'' samples) was 98 percent, and the average prevalence was 81 percent for off-line reprocessed pre-chilled carcasses (''C'' samples).
- *Salmonella* prevalences were based on more than 1,200 samples each of the normal on-line carcasses, the TSP on-line reprocessed carcasses, and the off-line reprocessed carcasses. Less than 0.5 percent of the on-line carcasses treated with chlorine and TSP rinses were positive for *Salmonella.* On-line pre-chilled carcasses (''A'' samples) averaged a prevalence of 30 percent, and off-line reprocessed pre-chilled carcasses (''C'' samples) averaged a 22 percent prevalence.

Establishing a Pathogen Reduction Standard for On-Line Reprocessing Systems

In its petition, as noted above, Rhodia presented data from frozen samples that showed that the TSP rinse, in combination with a chlorinated water system, achieved substantial microbial load reduction on treated carcasses. Rhodia Inc., asked that FSIS amend its rules to provide for the on-line reprocessing of poultry with a substance or reprocessing system that has demonstrated, with statistically significant validating data generated under conditions of in-plant trial tests, the ability to reduce the pre-chill prevalence of *Salmonella* to less than 0.5 percent and to reduce the pre-chill prevalence of *E. coli* to less than 1.0 percent on frozen samples.

The on-line reprocessing of carcasses would occur after FSIS post-mortem inspection (in non-HACCP Inspection Models project plants) and the removal from the slaughter/processing line of carcasses extensively contaminated with digestive tract content or fecal material, condemned poultry carcasses, and parts or organs that are obviously unwholesome or unfit for human food. The removal of processing defects (nonconformances such as digestive tract contents, lungs, hair, feathers, bruises, scabies, airsacculitis, and others listed in § 381.76) is unchanged by this proposed rule and would continue to occur before on-line antimicrobial processing and before carcasses enter the chiller tank.

Under this proposal, carcasses with visible digestive tract contamination, including fecal contamination, would be permitted to remain on-line and would be treated with an antimicrobial agent before entering the chiller. Carcasses with extensive digestive tract contamination would continue to be eligible for reprocessing off-line but would not be eligible for on-line reprocessing.

FSIS is not proposing the specific pre-chill *Salmonella* and *E. coli* standards because, at this time, various antimicrobial treatments have been demonstrated to have differing effects. FSIS does intend to establish one or more pre-chill performance standards that establishments using on-line reprocessing with an antimicrobial treatment will be required to meet. FSIS invites comment, especially in the form of additional data, on the specific performance standards that establishments should be required to meet.

E. coli continues to be the best microbial indicator for fecal contamination. *Salmonella* is the most frequently occurring foodborne pathogen, and it is widely associated with raw poultry. Because *E. coli* contamination is largely preventable, and because the current *E. coli* and *Salmonella* requirements contained in § 381.94 were met or exceeded in the commercial on-line reprocessing trials, FSIS believes that these organisms would be appropriate for pre-chill performance standards for reprocessing on line.

Under provisions of the HACCP final rule, FSIS requires all poultry slaughter establishments to test carcasses for generic *E. coli* using an AOAC approved method of analysis to verify process control for fecal contamination. The rule establishes testing frequencies based on production levels. The HACCP final rule does not require establishments to conduct their own testing for *Salmonella,* but FSIS tests product and reports the results to establishments. FSIS has published guide books for sampling for both *E. coli* and *Salmonella* (footnotes 1 and 3 in § 381.94). The guidebooks are available in the Docket Room (See **ADDRESSES**) and on the FSIS web page at *http://www.fsis.usda.gov.* FSIS believes that establishments operating on-line antimicrobial reprocessing systems for pre-chilled carcasses should follow the guidelines for sample collection for the pre-chill pathogen reduction performance standards for *E. coli* and *Salmonella* in accordance with footnotes 1 and 3 in 9 CFR 381.94.

Campylobacter

In 1999, the National Advisory Committee on Meat and Poultry Inspection requested that the National Advisory Committee for Microbiological Criteria for Foods evaluate options for defining a performance standard for *Campylobacter. Campylobacter* is the most frequent cause of bacterial foodborne illness in the United States. It is estimated that between 60 and 80 percent of chilled whole birds sampled at processing facilities are contaminated with the microorganism. The National Advisory Committee for Microbiological Criteria for Foods expressed concern in defining a *Campylobacter* standard, in part, because of the paucity of data on the relationship among *Campylobacter*, other microorganisms (*e.g., Salmonella* and generic *E. coli*), and poultry. For example, there are no available on-farm or slaughter intervention strategies designed to eliminate *Campylobacter*, and a new method developed by the Agricultural Research Service to detect

and quantify *Campylobacter* has not yet been fully assessed and compared against the current method used by FSIS. Consequently, FSIS believes that there are insufficient data to establish a performance standard for *Campylobacter* as part of this proposed rulemaking for on-line antimicrobial reprocessing of pre-chill poultry carcasses. However, FSIS is interested in establishing such a standard for this pathogen and is seeking comment and data regarding this issue.

Alcide's Petition for Acidified Sodium Chlorite

In January 1999, FSIS granted interim approval to the Alcide Corporation of Redmond, Washington, to permit the use of Sanova™ equipment using acidified sodium chlorite as an antimicrobial treatment for reducing microbial levels on raw poultry carcasses. The Agency's approval did not extend to the use of the equipment and acidified sodium chlorite for on-line reprocessing of contaminated poultry. FSIS stated in the January 1999 letter that it would eventually add the substance to the chart specifying the food ingredients approved for use in the preparation of meat and poultry products under the heading ''Antimicrobial agents'' for pre-chilled poultry carcasses at § 424.21(c).

In November 1999, FSIS received a petition from Alcide requesting that the Agency conduct rulemaking to approve the use of its Sanova™ continuous on-line processing (COP) system, which uses acidified sodium chlorite as an antimicrobial treatment for on-line reprocessing of contaminated poultry. The process can be used in conjunction with an IOBW, but an IOBW is not a requirement of the system. The COP system features a spray cabinet to deliver an antimicrobial treatment of acidified sodium chlorite (500 to 1200 ppm sodium with citric acid) to poultry carcasses before the carcasses are chilled.

FSIS intended to initiate rulemaking to amend the chart to include acidified sodium chlorite until a recent final rule (64 FR 72168) and a Memorandum of Understanding with the Food and Drug Administration (FDA) on the listing of food ingredients (MOU; FDA/FSIS Regarding the Listing of Food Ingredients and Sources of Radiation Used in the Production of Meat and Poultry Products, January 2000) were issued. The documents provide that FDA will list in its regulations in title 21 of the Code of Federal Regulations (CFR) all food ingredients and sources of radiation that are safe for use in the production of meat and poultry products. FSIS, through a separate rulemaking activity, intends to delete the chart in § 424.21(c), and the contents of the chart will be appended to 21 CFR. Meanwhile, FDA amended its food additive regulations to provide for the safe use of acidified sodium chlorite as a antimicrobial agent in the processing of red meat carcasses (63 FR 11118), on red meat parts and organs (65 FR 1776), in poultry processing (64 FR 26841), and on poultry carcass parts (65 FR 16312).

Alcide also requested that any regulatory proposal on performance standards for on-line reprocessing of poultry be deferred until FSIS has had the opportunity to evaluate Alcide's petition. The Agency has reviewed Alcide's petition and the accompanying data. The Agency's review of the test results from Alcide indicates that the COP system achieves an average reduction in *Salmonella* prevalence of 27.27 percent, and an average reduction of *Campylobacter* prevalence of 25.6 percent. Alcide's samples were fresh and chilled, not frozen. Of the 1,070 post-COP treated carcasses sampled in the five establishments, an average of 34 percent were negative for *E. coli*, and 66 percent were positive. Assuming that 10 or fewer cells of *E. coli* are considered as a limit of detection, the estimated prevalence in the sampling is 26.4 percent. If the samples were frozen, Alcide estimated that freezing would reduce the number of organisms in a sample by 1 $\log_{10}$ (*i.e.,* 90 percent) resulting in only 5.4 percent of the samples having a count greater than 10.

Unlike the Rhodia data that were quantitative and focused on absolute levels of reduction (*i.e.,* less than 0.5 percent of the treated samples were positive for *Salmonella*), Alcide's data documented degrees of reduction (*i.e.,* there was an average reduction by 27.27 percent of the prevalence of *Salmonella* on the treated samples). Alcide's data appear to document statistically significant food safety enhancements achieved at the five test establishments, without establishing specific numerical performance standards as Rhodia did through its petition. Therefore, at this time, the Agency has not been able to equate the results of the data from the two petitions. Nonetheless, because the Agency has decided to go forward with this rulemaking, it has granted the Alcide petition, in part, except for the company's request to use non-quantitative performance standards. FSIS is seeking public comment on performance standard levels and hopes to receive further data that are relevant to this issue. It also seeks comment on whether is is possible to equate the Rhodia and Alicde data.

National Chicken Council Data

Meanwhile, a third set of data was submitted to the Agency by the National Chicken Council (NCC). The NCC conducted testing in five establishments regarding the commercial application of TSP. The NCC data, like the Rhodia data, show that on-line antimicrobial reprocessing is superior to off-line reprocessing, and that the prevalence of *E. coli* and *Salmonella* can be reduced considerably. In contrast to the Rhodia data, however, the NCC data show that freezing the samples has an impact on the prevalence and counts of *E. coli* and results in lower numbers. Although the prevalence of *Salmonella* was lower in frozen samples than in refrigerated samples in the NCC study, the difference between frozen and refrigerated samples was not statistically significant. NCC asserted that its sampling (1,840 samples were analyzed for *Salmonella* spp, and 1,320 were analyzed for *E. coli*) demonstrated that the that the 0.5 percent pre-chill performance standard for *Salmonella* and the 1.0 percent pre-chill performance standard for *E. coli* were not achievable following TSP application in commercial operations.

NCC's study was conducted in four stages. Carcass rinses of whole birds were performed at three designated sites along the production line: pre TSP (post IOBW), post TSP, and post-chill. The sample types included ''visually clean/no TSP,'' ''visually contaminated/with TSP,'' and ''visually contaminated/off-line reprocessed/no TSP.'' All carcass rinses were tested for the presence or absence of *E. coli* and *Salmonella* using validated rapid screening methods. Carcass rinses were kept chilled on wet ice or refrigerated until transported to the laboratory. Frozen samples were held on dry ice for 18 to 24 hours and thawed before setting. Positive results were confirmed biochemically and serologically.

Because the NCC data results are substantially different from the Rhodia data, the Agency is seeking comment on what should be the new pre-chill performance standards in order to balance public health benefits for consumers and achievable goals that encourage establishment participation. The Agency also is seeking comments on the issue of the effect freezing has on samples and any other aspects of the NCC data. The data are available in the FSIS Docket Room and on the FSIS web page.

The NCC data point out another factor. Currently, even in plants where

TSP or the Sanova system is in use, birds that are grossly contaminated, and then reprocessed off-line, enter the chiller without the TSP or Sanova treatment. This fact is significant because there is sometimes a higher prevalence of *Salmonella* in these plants post-chill than pre-chill. Thus, FSIS requests comment on whether it should include, as a condition for permitting on-line reprocessing, that all birds entering the chiller, including those reprocessed off-line, be treated with the antimicrobial intervention.

Environmental Impact

There are increasing environmental concerns associated with the use of nutrients, particularly nitrogen, phosphorus, and potassium, in agricultural systems. In response to the growing body of evidence about the relationship among solid nutrient loadings, nutrient transport off-sites, and surface and ground water quality, USDA's Natural Resources Conservation Service (NRCS) and other Federal agencies have revised their policies for delivering nutrient management and issued new technical guidelines.

In agriculture, the greatest focus is on the inputs of nutrients in the form of fertilizers that exceed outputs of nitrogen and phosphorus in the form of crops and manure production. High densities of poultry plants in some areas in the United States have generated concerns about manure production exceeding the needs of crops to which the manure is applied. The density of animals on the land is directly related to nutrient flows to aquatic ecosystems.

In addition, there is a concern about the introduction of additional substances into the agricultural production process, particularly in view of NRCS's stated goal of reducing nutrients used in agricultural production. However, the waste water of the more than 80 poultry establishments that are engaged in on-line reprocessing operations with TSP is handled routinely by existing water treatment systems or recycled as by-products without entering the plant's systems, municipal water systems, or the ground water.

However, would establishments operating under more restrictive state environmental laws and regulations incur additional costs as a result of on-line reprocessing operations? Are such operations restricted in some States? FSIS would like the public to comment on the environmental impacts associated with on-line reprocessing operations.

Request for Comments

FSIS has decided to publish this proposed rule and to solicit comments on the exact performance standard that it should adopt. Although the Agency is not now proposing specific performance levels, FSIS is giving the public an opportunity to comment on and provide data that would support adopting a particular performance level as the standard.

The Agency is aware that not all antimicrobial substances or processing systems for poultry pre-chill may be capable of attaining the pathogen reduction levels Rhodia claims to have achieved in its trials. FSIS is proceeding with this proposal because it considers pathogen reduction to be one of its primary goals, and data supplied to date appear to show significant improvements in the ability to reduce microbial contamination of poultry. FSIS remains open to considering other new technologies or treatments, and alternate standards, in developing a final rule. In recent years, trials with TSP and other substances have proliferated. FSIS would like to accommodate any technology that is safe and will significantly reduce the prevalence of *E. coli, Salmonella,* and other microorganisms on poultry carcasses pre-chill.

In developing an appropriate standard, the Agency believes that poultry contaminated with digestive tract contents must be held to a more rigid pathogen reduction standard than product that is not visibly contaminated because digestive tract contents are a source of pathogens and other microorganisms. Furthermore, physical removal of visible contamination does not necessarily remove significant levels of these pathogens and other microorganisms, as evidenced by the Rhodia trials involving off-line reprocessed pre-chill carcasses.

Persuasive data that support specific performance standards for on-line reprocessed visibly contaminated poultry pre-chill will be the basis for the final rule. The Agency would like public consideration of the following questions: Should the performance standards be based on organisms other than *E. coli* and *Salmonella*? What is the appropriate standard if chilled (*i.e.,* not frozen) samples are submitted for laboratory analysis?

It is important to emphasize that Rhodia used frozen, not chilled, laboratory samples in its in-plant trials. Data obtained by Rhodia on the effects of freezing whole carcass rinse samples indicated that there was no difference between frozen or chilled TSP treated samples. All TSP treated samples were negative for *E. coli, Enterobacteriaceae,* and *Salmonella.* These results are based on a 2-day split sampling and testing study at a plant conducting on-line reprocessing using TSP. A copy of these results is available to the public for review in the FSIS Docket Room (See **ADDRESSES**). No data were obtained regarding frozen *Campylobacter* samples. *Campylobacter* cells are sensitive to freezing and generally die off when subjected to temperatures at or below freezing.

If adopted, the performance standards should not only significantly improve a single establishment's performance but also should lower the national baseline, compelling improvements in process control and pathogen reduction by all establishments. FSIS is interested in hearing from the poultry industry, industry-related organizations, the scientific community, academia, consumers, consumer groups, and other interested persons before developing a final rule.

The Proposed Rule

FSIS is proposing to amend the poultry products inspection regulations at 9 CFR 381.91 by adding a new subsection (c) that would allow poultry carcasses contaminated with digestive tract contents during slaughter to remain on the main processing line along with uncontaminated carcasses for treatment with an antimicrobial agent before the chiller. FSIS also is proposing to amend the chart in 9 CFR 424.21(c) to extend the use of antimicrobial agents to pre-chill poultry carcasses.

Because FSIS is proposing to hold the visibly contaminated carcasses to more rigorous performance standards than apply to other birds, plants would need to establish verification and validation procedures as part of their HACCP system requirements. As part of the plant's on-going verification procedures, FSIS expects that plants will identify the visibly contaminated carcasses to distinguish them from the uncontaminated carcasses before the birds proceed down the processing line in order that the visibly contaminated carcasses can be sampled separately from the other birds after the treatment. Furthermore, FSIS expects that plants will identify an appropriate sampling frequency for verification as part of the HACCP system requirements.

In addition, in accordance with § 417.5(a)(1), establishments will need to include in their hazard analyses validating data, generated under conditions of in-plant commercial operations, demonstrating that the on-

line reprocessed contaminated poultry carcasses achieve the proposed pre-chill standards that FSIS adopts. Establishments would establish critical control points for the use of the antimicrobial treatment based on the determinations that they make as part of their reassessment.

FSIS is not proposing to change the requirement in § 381.65(e) that carcasses contaminated with visible fecal material not enter the chilling tank or to change the finished product standards in § 381.76(b)(3). In addition, under the proposed regulation, on-line reprocessed carcasses, as well as the on-line non-contaminated carcasses, must comply with the criteria for verifying process control (*E. coli* testing) and with the pathogen reduction performance standards for *Salmonella* in accordance with § 381.94 of the poultry regulations.

The Agency emphasizes that this proposal would neither mandate on-line reprocessing by all establishments nor establish the use of specific equipment and antimicrobial aids to reprocess pre-chilled poultry carcasses on-line.

Finally, the Agency requests comments on amending the chart in § 424.21(c) to extend the use of trisodium phosphate to ''pre-chill'' poultry carcasses.

Cost of the Proposal

The economic impact of this rule is likely to be minimal because of the voluntary nature of the practice this proposal would authorize. An establishment will use on-line reprocessing if it is consistent with the objectives of the firm, conforms with plant configuration, provides increased efficiency in achieving product standards, improves product characteristics, and other factors. The poultry industry is highly competitive; an increase in product price by a single producer is likely to result in a loss of market share. A firm is not likely to purchase new equipment that will increase overall production costs or reduce profits.

The cost for a poultry plant to adopt an acceptable on-line reprocessing system will vary from plant to plant and will be contingent on the location, physical structure, and age of the plant and the adaptability of the equipment. Available information indicates that the capital cost per line ranges from $10,000 to more than $55,000, with an average cost of $35,600, which is close to the manufacturer's estimate for a single line cost of $30,000.

Operating costs associated with on-line reprocessing systems also can vary significantly as a result of plant size, number of lines, processing capacity, plant configuration, and other factors. Rhodia estimates that the TSP application cost will be about 0.2 cents per pound for an average chicken slaughter plant. The application of other antimicrobial substances may vary slightly in cost. Plant data suggest that total annual operating costs, which include labor, water softener, TSP, and water, are very close to the manufacturer's estimate. Available information suggests annual operating costs of about $125,000 per line for an average plant. Costs associated with off-line reprocessing would be expected to decline following installation of on-line reprocessing equipment because of reduced labor and other operating requirements. Available data suggest the decrease in operating costs because of reduced off-line reprocessing is about $70,000 per line, somewhat more than half of the increase in operating costs associated with TSP on-line reprocessing. The available plant information suggests that about two-thirds of the plants would not experience any change in sewage treatment. The remaining third would be required to perform additional treatment at the plant to meet discharge limits. Two-thirds of the plants would show no change in water use, while the remaining plants will have to increase use by 1 to 2 gallons per bird, or about 10 percent.

For the average plant, the net present value of capital costs and the net change in operating costs of TSP on-line reprocessing is about $1.2 million over a 10-year period using a discount rate of 7 percent. Based on the assumptions that the average plant processes about 200,000 birds per day, that an average bird has a dressed weight of 3.6 pounds, and the plant operates an average of 255 days per year over the next 10 years, the increase in total production costs is slightly more than .2 cents per pound. The capital costs amortized over a 10-year period are minimal on a per pound basis. The costs to the poultry processing industry would accrue to plants engaged in slaughter, either exclusively or in combination with processing. In 1996, there were 281 federally inspected plants of this description. Only one Federal-State cooperative inspection plant is currently engaged in poultry slaughter. If all such plants voluntarily install an on-line reprocessing system, the total cost to the poultry industry would be about $345 million over a 10-year period.

The cost of a TSP on-line reprocessing system represents an insignificant portion of the retail price per pound of poultry. If there is any increase in the retail price of poultry, it will be modest and offset by consumer confidence that the product presents lower microbial risks.

Cost Impact on Small Entities

The impact of the proposed rule on small establishments is likely to be minimal given that it is voluntary. A firm will adopt the practice if it is consistent with its objectives. The limited evidence available does not indicate that small firms would be at a disadvantage if on-line reprocessing were a uniformly accepted practice. The initial capital costs and net change in operating costs do not appear to be related to plant size. In addition, the magnitude of the costs, $1.2 million over 10 years, would not represent a significant share of overall costs for small firms.

Request for Comments on Economic Impact

The Agency would like comment from the public and especially from poultry firms that are currently engaged in TSP or acidified sodium chlorite reprocessing on the costs presented in this document. Are the economic assumptions valid? Do the decreases in operating costs for reduced off-line reprocessing appear to be reasonable? The Agency expects that on-line reprocessing will provide establishments with considerable economic advantages related to cost savings gained from no longer having to reprocess birds off-line. What levels of savings would accrue to plants adopting on-line reprocessing operations? How much will the proposed new standards for *Salmonella* and *E. coli,* if implemented, contribute to higher costs for product sampling? If the pathogen reduction standards become tighter, can compliance costs be expected to increase? Because adopting on-line reprocessing is voluntary, the amounts of the increase are difficult to determine. FSIS also would like to hear from the public about whether the Agency should consider deleting the provisions for off-line reprocessing in § 381.91(b)(1) and (2) if on-line reprocessing is implemented. FSIS would like comments on the economic impact on both large and small establishments if such actions were taken.

Industrial Hygiene Survey

At the request of FSIS, because of concerns raised by in-plant inspectors, an industrial hygiene survey was conducted in 1999 by an independent firm to evaluate potential dermal, ocular, respiratory, or other exposure of inspectors to TSP while working with

TSP-treated poultry or around TSP treatment facilities. The study did not address TSP exposure to plant employees, whose job activities differ significantly from those of inspection employees. Based on interviews and observations of inspectors and sampling results, the risk of bodily contact with significant quantities of TSP solution is minimal for slaughter line inspectors. They are not present when the TSP solution is prepared and inspect and handle the birds prior to TSP application. This indicates no alkalinity, TSP contact, or dermal hazard. The survey results also show no respiratory or ocular hazard from ambient TSP dust or mist in the plant.

Other inspectors who perform a variety of tasks throughout the plant may come into contact with small quantities of TSP solution when conducting pre-chill finished product standard checks and Acceptable Quality Level (AQL) giblet checks. There is also the potential for transient ocular exposure. The survey recommends the mandatory use of safety glasses when performing activities where exposure to TSP occurs and PVC or natural rubber gloves when handling poultry post TSP application. It encourages the consideration of barrier creams on a voluntary basis, routine washing at signs of TSP solution contact, and awareness of emergency lavage for accidental eye contact. The study recommends that federally inspected establishments provide emergency eyewashes within a limited distance from TSP use areas and training regarding these recommendations.

Rhodia Inc. conducted a later study in June 1999 to monitor the effects of TSP exposure on both plant and inspection employees at four locations in 46 plants. The study concluded that there were no safety risks to either plant or inspection employees from exposure to TSP. Food Safety Benefits of On-line Reprocessing.

Scientific and public concern about microbiological contamination of poultry products has expanded from the processing of such products to conditions under which poultry are slaughtered to pre-slaughter poultry production. FSIS has encouraged the scientific community and the industry to develop slaughter and processing methods and treatments that would yield raw poultry products that are as free as practicable of pathogenic bacteria.

The use of TSP and other antimicrobial rinses would not eliminate the need for continued careful handling of raw poultry products. However, by allowing the visibly contaminated carcasses to remain on-line, all carcasses are subject to further rinsing and antimicrobial treatment. The result will be lesser risks because of reduced pathogen prevalence on contaminated poultry carcasses. Not handling contaminated carcasses in off-line reprocessing may reduce the risk of foodborne pathogens from cross-contamination of the contaminated carcasses.

Executive Order 12866

FSIS has determined that this regulatory proposal is not a significant rule under Executive Order 12866 and, therefore, it has not undergone review by the Office of Management and Budget.

Alternatives

Executive Order 12866 requires that FSIS identify and assess alternative forms of regulation. FSIS considered two alternatives to this proposed rule: (1) Not proposing to allow for the on-line reprocessing of contaminated carcasses and (2) proposing to require plants to perform on-line reprocessing of pre-chill contaminated carcasses and establishing specific numerical performance standards that the reprocessed poultry must meet using a mandated antimicrobial treatment or process. FSIS rejected both alternatives for the reasons explained below.

Failing To Propose

FSIS is committed to reducing the levels of microbial pathogens in poultry products. On-line reprocessing of poultry in commercial trials using solutions of TSP/chlorine and acidified sodium chlorite has been shown to be a highly effective method of reducing the microbial levels of raw poultry to levels substantially below the performance standards and criteria established by the pathogen reduction/HACCP final rule.

Mandating Procedures, Materials, and Methods

FSIS is proposing to give all establishments the option of adopting on-line reprocessing of visibly contaminated birds. By not mandating that all plants adopt on-line reprocessing, FSIS is recognizing that there are other solutions to reducing bacterial loads that may be more appropriate and cost-effective for small plants. There are many possible solutions for pathogen reduction of raw poultry and poultry products, and the industry continues to seek out new products and equipment that will be effective.

Pathogen reduction is central to the FSIS food safety strategy. However, eliminating as many prescriptive or command-and-control regulations as possible also is an important part of the overall strategy for updating and improving inspection in light of HACCP. Therefore, there will be no mandate proposed for establishments to use TSP or any other substance as the antimicrobial reprocessing aid.

Various substances have undergone trials to determine their potential as antimicrobial processing agents. Such substances include acidified sodium chlorite; organic acids such as lactic, acetic, and formic acids; chlorine dioxides; and ozone. Plants will be free to use other products that have demonstrated their efficacy in reducing levels of microorganisms in in-plant commercial trials. This is consistent with the Agency's strategy of encouraging the industry to take advantage of new technology to reduce the risks associated with the consumption of meat and poultry products.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule would provide for the on-line reprocessing of poultry carcasses accidently contaminated with digestive tract contents during slaughter.

States and local jurisdictions are preempted under the PPIA from imposing any requirements with respect to federally inspected premises and facilities, and operations of such establishments, that are in addition to, or different from, those imposed under the PPIA. States and local jurisdictions also are preempted under the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions, however, may exercise concurrent jurisdiction over poultry products that are misbranded or adulterated under the PPIA or, in the case of imported products, which are not at such an establishment after their entry into the United States. States and local jurisdictions also may make requirements or take other actions that are consistent with the PPIA, with respect to any other matters regulated under the PPIA.

Under PPIA provisions, States that maintain poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the PPIA. These States, however, may impose more stringent

requirements on such State-inspected products and establishments.

Additional Public Notification/Request for Comments

FSIS has considered the potential civil rights impact of this proposed rule on minorities, women, and persons with disabilities. FSIS anticipates that this proposed rule will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. However, proposed rules generally are designed to provide information and receive public comments on issues that may lead to new or revised Agency regulations or instructions. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to more than 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Paperwork Requirements

FSIS has reviewed the paper and recordkeeping requirements in this proposed rule in accordance with the Paperwork Reduction Act. Establishments choosing to reprocess poultry on-line using an antimicrobial treatment before the chiller will need to do so in accordance with 9 CFR Part 417. Accordingly, establishments will reassess their HACCP plans as prescribed in § 417.4(a)(3). Also, in accordance with § 417.5(a)(1), establishments will need to generate and maintain validating data, generated under conditions of in-plant commercial operation, demonstrating that the reprocessing substance or system resulted in product that meets any performance standard that FSIS adopts. Based on the determinations establishments make as part of their reassessments, they may establish critical control points for the use of the antimicrobial treatment.

Estimate of Burden: The Agency estimates that it will take 8 hours for establishments to reassess their HACCP plans and to prepare the validating data they will include in their hazard analysis. For purposes of this paperwork analysis, FSIS will assume that all establishments will establish a critical control point for the use of the antimicrobial treatment. Accordingly, an establishment will spend about 5 minutes a day (250 days) completing one monitoring record and 2 minutes a day filing the record for one HACCP plan.

Respondents: Meat and poultry product establishments.

Estimated Number of Respondents: 80.

Estimated Number of Responses per Respondent: 1 for HACCP reassessment; 250 for monitoring records, and 250 for filing the record.

Estimated Total Annual Burden on Respondents: 2,974.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, FSIS, USDA, Room 109 Cotton Annex Building, Washington, DC 20250–3700.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the method and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mr. Puricelli at the address above and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

List of Subjects in 9 CFR Parts 381 and 424

Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

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

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470, 7 CFR 2.18, 2.53.

2. Section 381.91 would be amended by adding paragraph (c) to read as follows:

§ 381.91 Contamination.

* * * * *

(c) In lieu of the provisions in paragraph (b) of this section, any poultry carcass contaminated during slaughter with digestive tract contents may remain on the main processing/slaughter line and be reprocessed while on-line through use of an antimicrobial technique, in accordance with the Hazard Analysis and Critical Control Point (HACCP) system requirements in part 417 of this chapter. Validating data, generated under conditions of in-plant commercial operations, must demonstrate that the visibly contaminated carcasses that are reprocessed on-line meet the pre-chill performance standard of: ____. Birds whose entire carcass is contaminated by digestive tract contents under paragraph (b)(1) of this section or birds that have been mutilated under paragraph (a) of this section may not remain on the main processing/slaughter line and may not be reprocessed using the on-line antimicrobial technique.

PART 424—PREPARATION AND PROCESSING OPERATIONS

3. The authority citation for 9 CFR part 424 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

4. The table in § 424.21(c) would be amended by adding an entry for ''Antimicrobial agents for use as secondary additives'' after the entries for ''Antimicrobial agents'' to read as follows:

§ 424.21 Use of food ingredients and sources of radiation.

* * * * *

(c) * * *

Class of substance	Substance	Purpose	Products	Amount
*	* *	*	* *	*
Antimicrobial agents for use as secondary additives.	Trisodium phosphate	To reduce microbial levels during reprocessing.	Raw, chilled or pre-chilled poultry carcasses.	8 to 12%; in conjunction with a water spray containing 20 ppm chlorine; solution to be maintained between 45–55°F after chilling and applied by spraying chilled or pre-chilled carcasses for up to 15 seconds in accordance with 21 CFR 182.1778.
*	* *	*	* *	*

* * * * *

Done at Washington, DC, on: November 22, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–30497 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM/STD–00–550]

RIN 1904–AB08

Energy Conservation Standards for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: On October 6, 2000, the Department of Energy (DOE or Department) published a Notice of public workshop and availability of the Framework Document for Distribution Transformer Efficiency Standards. 65 FR 59761. The document announced that December 1, 2000, would be the closing date for receiving public comments and information on the matters addressed in the Framework Document and on other matters relevant to consideration of energy conservation standards for distribution transformers. On November 1, 2000, during the public workshop on the energy efficiency rulemaking process for distribution transformers, several stakeholders requested that the comment period be extended. The Department agrees to extend the comment period closing date until January 16, 2001.

DATES: Comments must be received on or before January 16, 2001.

ADDRESSES: Written comments are welcome. Please submit written comments to: Ms. Geraldine Paige, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Conservation Program for Consumer Products: Energy Conservation Standards for Distribution Transformers, Docket No. EE–RM/STD–00–550'', EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9130; Telefax: (202) 586–4617. You should label comments both on the envelope and on the documents, and submit them for DOE receipt by January 16, 2001. Please submit one signed copy and a computer diskette (WordPerfect 8) or 10 copies (no telefacsimiles). The Department will also accept electronically-mailed comments, by e-mail to *Geraldine.Paige@ee.doe.gov,* but you must supplement such comments with a signed hard copy.

FOR FURTHER INFORMATION CONTACT: Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9142, e-mail: *carl.adams@ee.doe.gov*, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: *Edward.Levy@hq.doe.gov.*

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

Dan W. Reicher,

Assistant Secretary Energy Efficiency and Renewable Energy.

[FR Doc 00–30641 Filed 11–30–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 00–29]

RIN 1557–AB90

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend its assessment regulation to clarify that the OCC has authority to charge a national bank when the OCC conducts a special examination of a third party that provides services to the bank. The proposal applies in the same way to a District of Columbia bank and to a Federal branch or agency.

DATES: Comments must be received by January 2, 2001.

ADDRESSES: Please direct your comments to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Washington, DC 20219, Attention: Docket No. 00–29; Fax number (202) 874–5274 or Internet address: *regs.comments@occ.treas.gov.* Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Mitchell E. Plave, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Proposal

The OCC charters, regulates, and supervises more than 2,300 national banks and 58 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States.

The OCC funds the activities it undertakes to carry out this mission through assessments and fees charged to the banks it supervises. The National Bank Act authorizes the OCC to collect ''assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the office of the Comptroller.'' 12 U.S.C. 482 (Supp. 1999). The statute requires that our charges ''be set to meet the Comptroller's expenses in carrying out authorized activities.'' *Id.* Under part 8, the OCC currently assesses national banks, District of Columbia banks, and Federal branches and agencies according to a formula based on factors that include a bank's size, condition, and whether it is the ''lead'' bank or ''non-lead'' bank among national banks in a holding company.[1] The OCC also has the authority to assess a fee for special examinations and investigations of these banks. 12 CFR 8.6(a).

In its current form, section 8.6(a) refers only to fees for a special examination of a national bank, a District of Columbia bank, or an affiliate of either.[2] It does not reflect the OCC's authority to assess a national bank in connection with special examinations of any of the bank's service providers. The Bank Service Company Act provides that entities that perform services for national banks (or for other entities supervised by the OCC, including subsidiaries subject to examination by the OCC) ''shall be subject to regulation and examination by [the OCC] to the same extent as if such services were being performed by the bank itself on its own premises.'' [3]

While banks historically have used third parties to perform certain activities—payment processing, for example—some banks are entering new lines of business or introducing novel and potentially high-risk new products, relying substantially on third party service providers to enable the bank to participate in or to conduct those activities. These include, for instance, certain types of credit card programs, sub-prime lending, check cashing, and other specialized types of lending. In many instances, the interest of the service provider in transactions it originates is significantly greater than that of the bank. This increased reliance on service providers will result in an increased need for the OCC to examine or investigate third party service providers in order to evaluate the effect that third-party activities and relationships have on the safety and soundness of the bank.[4]

The OCC would charge a special examination or investigation fee when examination or investigation of the activities of a third party service provider is warranted by the high risk or unusual or novel nature of the activities conducted by the service provider for the bank, or when the OCC believes that the bank has insufficient systems, controls, or personnel to adequately monitor, measure, and control the risks associated with the activity. Thus, for example, the OCC would not impose the fee in the case of examinations of service providers that provide servicing and processing for a bank's ongoing transactions with its customers. The OCC also would plan to inform the bank, when commencing a special examination or investigation or expanding another examination, when we expect to charge a special examination or investigation fee. [5]

Accordingly, we propose to amend our regulation to make explicit our authority to assess a national bank (or other entity supervised by the OCC) for an examination or investigation of any of its service providers.[6] The assessment authority extends to District of Columbia banks and to Federal branches and agencies as well as to national banks. In addition, the proposal permits the OCC to impose the assessment if we examine or investigate third party providers of services to subsidiaries subject to examination by the OCC. The proposal amends section 8.6(a) to state that the OCC may assess a national bank, a District of Columbia bank, or a Federal branch or agency, a fee for the examination or investigation of an entity that performs services for the institution or its subsidiary that is subject to OCC examination and regulation pursuant to the Bank Service Company Act (12 U.S.C. 1867(c)). The fees for special exams and investigations would be based on an hourly rate, with the hourly rate provided each year by the OCC in its Notice of Comptroller of the Currency Fees (Notice of Fees). [7]

We also propose to amend section 8.6(a) to clarify that fees may be charged for conducting special examinations and investigations of Federal branches and agencies of foreign banks or their affiliates. Federal branches and agencies are subject to the same ''duties, restrictions, penalties, liabilities, conditions, and limitations'' that apply to national banks, except as otherwise specifically provided by statute. [8] Current section 8.6 does not address the assessment of a fee for the special examination or investigation of Federal branches and agencies or their affiliates. Proposed section 8.6 makes our authority to assess such a fee explicit. The amount of these fees would be provided in the Notice of Fees.

Finally, the title of part 8 would be amended to more accurately reflect the scope of the regulation. While part 8 includes Federal branches and agencies within the scope of the rule, only national banks and District of Columbia banks are listed in the title. The proposal removes from the title references to the types of regulated entities covered by the regulation.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. *See* 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC is of the opinion that this proposal, if it is adopted in final form, is unlikely to have a significant impact on a substantial number of small entities, within the meaning of those

[1] A ''lead bank'' is the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's Call Report. 12 CFR 8.2(a)(6)(ii)(A).

[2] 12 CFR 8.6(a) also permits the OCC to assess a fee for fiduciary examinations and examinations made pursuant to 12 CFR part 5.

[3] 12 U.S.C. 1867(c).

[4] The OCC has recently noted the risks that may be associated with using service providers in a recent Advisory Letter and urged national banks to focus on conducting proper due diligence before entering into third party arrangements and on maintaining effective oversight and controls during the third party relationship. *See* OCC Advisory Letter No. 2000–9, ''Third Party Risk,'' August 29, 2000.

[5] In light of this proposal, national banks using third party service providers should consider including provisions in their contractual arrangements with such service providers obligating the providers to indemnify or reimburse the bank for any assessments levied on the bank in connection with an examination of the provider.

[6] The special investigations covered by § 8.6 includes investigations brought under 12 CFR part 19.

[7] *See* 12 CFR 8.8.

[8] 12 U.S.C. 3102(b).

terms as used in the RFA. As previously noted, a national bank would be assessed a fee for the examination or investigation of its service provider only when the examination or investigation is warranted by the high risk or unusual or novel nature of the activities conducted by the service provider for the bank or when the OCC believes that the bank has insufficient systems, controls, or personnel to adequately monitor, measure, and control the risks associated with the activity. As a result, the OCC believes that the fees will not be imposed on a substantial number of small entities. Commenters are invited to provide the OCC with any information they may have about the likely quantitative effects of the proposal.

III. Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

IV. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate 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 in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 8

National banks.

Authority and Issuance

For reasons set forth in the preamble, the OCC proposes to amend part 8 of Chapter I of title 12 of the Code of Federal Regulations as follows:

PART 8—ASSESSMENT OF FEES

1. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. The title of part 8 is revised to read as set forth above.

3. Section 8.6 is amended by revising the section heading and paragraph (a) to read as follows:

§ 8.6 Fees for special examinations and investigations.

(a) *Fees.* Pursuant to the authority contained in 12 U.S.C. 481 and 482, the Office of the Comptroller of the Currency assesses a fee for:

(1) Examining the fiduciary activities of national and District of Columbia banks and related entities;

(2) Conducting special examinations and investigations of national banks, District of Columbia banks, and Federal branches or Federal agencies of foreign banks;

(3) Conducting special examinations and investigations of any entity subject to regulation and examination by the OCC pursuant to the Bank Service Company Act (12 U.S.C. 1867(c));

(4) Conducting special examinations and investigations of affiliates of national banks, District of Columbia banks, and Federal branches or Federal agencies of foreign banks; and

(5) Conducting examinations and investigations made pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities.

* * * * *

Dated: October 18, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–30600 Filed 11–30–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–13–AD]

Airworthiness Directives; Eurocopter France Model SA.315B, SA.316B, SA.316C, SE.3160, and SA.319B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes the supersedure of an existing airworthiness directive (AD) for Eurocopter France (ECF) Model SA.315B, SA.316B, SA.316C, SE.3160, and SA.319B helicopters. That AD requires initial and recurring inspections of the main rotor blade (blade) spar for cracks. This action would require initial and recurring dye penetrant or eddy current inspections for a cracked blade spar at 100-hour time-in-service (TIS) intervals or 600 cycles, whichever occurs first, rather than the 25-hour TIS intervals currently required. This proposal is prompted by an accident in which a Model SA.315B helicopter blade failed due to fatigue cracking. The proposed actions are intended to prevent separation of a blade and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before January 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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 mailed comments submitted in response to this action must submit a self-addressed,

stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–13–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

You may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On August 21, 1998, the FAA issued AD 98–10–09, Amendment 39–10725 (63 FR 46160, August 31, 1998), to require inspecting the blade spar for cracks at 25-hour TIS intervals. That action was prompted by an accident in which a Model SA.315B helicopter blade spar failed due to fatigue cracking. That condition, if not corrected, could result in blade separation and subsequent loss of control of the helicopter.

Since the issuance of that AD, we have determined that the initial and recurring inspections for a cracked blade spar should be accomplished by a dye penetrant or eddy current inspection at intervals of 100 hours TIS or 600 cycles, whichever occurs first. Eddy current and dye penetrant inspections are more reliable than visual inspections especially on the lower surface of the rotor blade where the blade's weight may close the crack. ECF has issued Service Bulletins (SB) SA 315 No. 05.39 and SA 316/319 No. 05.98, both dated November 12, 1999, specifying a check of the main rotor blade root spar for cracks. ECF has also issued SB 65.137R1, dated November 17, 1993, specifying running a sealant bead around the spar-to-fitting junction and inspecting for corrosion. After investigating a main rotor blade failure at the first cuff-to-spar assembly bolt, ECF redefined the interval for crack inspections on the spar and added another criterion (sudden occurrence of vibrations) that makes this inspection necessary. A sudden occurrence of a one-per-rev vibration could indicate a cracked blade.

We have identified an unsafe condition that is likely to exist or develop on other ECF Model SA.315B, SA.316B, SA.316C, SE.3160, and SA.319B helicopters of these same type designs. The proposed AD would supersede the current AD and redefine the recurring inspection interval. The proposed AD will require, within 25 hours TIS and thereafter at intervals not to exceed 100 hours TIS or 600 cycles, whichever occurs first, inspecting each blade spar for a crack, using dye penetrant or eddy current, and inspecting each blade cuff to ensure an adequate sealant bead. A ''cycle'' is any landing, regardless of whether the main rotor rotation is continued or stopped, or any completion of an external load operation; e.g. load release. If a crack is found, the proposed AD would require replacing the blade with an airworthy blade before further flight.

The FAA estimates that 93 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 hours to inspect and 4 hours to replace a blade, if necessary, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $66,960, assuming three inspections per year and no blade replacement.

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.

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:

The Proposed Amendment

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 39–10725 (63 FR 46160), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. 2000–SW–13–AD. Supersedes AD 98–10–09, Amendment 39–10725, Docket No. 98–SW–23–AD.

Applicability: Model SA.315B, SA.316B, SA.316C, SE.3160, and SA.319B helicopters with a main rotor blade (blade), with any of the following part numbers (P/N): 3160S11–10000 all dash numbers, 3160S11–30000 all dash numbers, 3160S11–35000 all dash numbers, 3160S11–40000 all dash numbers, 3160S11–45000 all dash numbers, 3160S11–50000 all dash numbers, or 3160S11–55000 all dash numbers, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a blade separation and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) or before the next flight following the onset of any one-per-rev vibration, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or 600 ''cycles'' (a ''cycle'' is any landing, regardless of whether the main rotor rotation is continued or stopped, or any completion of an external load operation; e.g. load release), whichever occurs first,

(1) Inspect each blade spar for a crack.

(i) Without removing the blade from the helicopter, clean each blade root area using ''Teepol'' or an equivalent product.

(ii) Support the blade tip to eliminate blade droop while inspecting the lower blade surface.

(iii) By either a dye penetrant or eddy current method, inspect each blade along the hatched area indicated in Figure 1, beginning on the blade lower surface, then on the flat section of the trailing edge (B), on the blade upper surface, and then on the flat section of the leading edge (A).

Note 2: Eurocopter France Service Bulletins (SB) SA 315 No. 05.39 and SA 316/319 No. 05.98, dated November 12, 1999, pertain to the subject of this AD.

(iv) If a crack is found, replace the blade with an airworthy blade before further flight.

BILLING CODE 4910–13–P

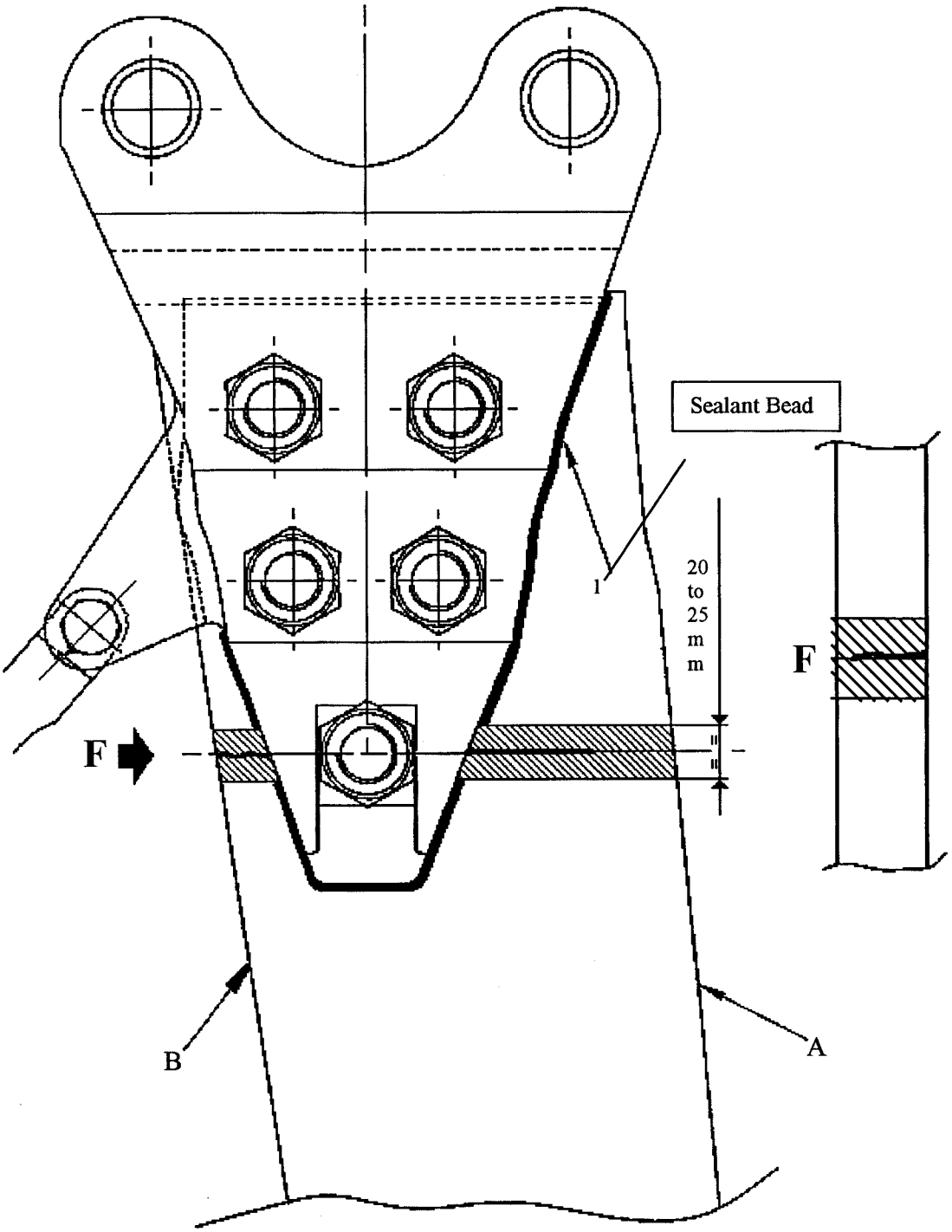

Figure 1

(2) Ensure that there is a sealant bead (1) around the edge of each blade cuff. If no sealant bead exists or if a sealant bead shows excessive wear, before further flight, apply a sealant bead in accordance with paragraph 2.2 of the Accomplishment Instructions of Eurocopter France SB 65.137R1, dated November 17, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits will not be issued.

Note 5: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1998–171–039(A)R2 and 1998–170–056(A)R2, both dated January 12, 2000.

Issued in Fort Worth, Texas, on November 14, 2000.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–30653 Filed 11–30–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 210–2000]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(4)(G) and (H), (e)(5), (f), and (g) of the Privacy Act, 552 U.S.C. 552a. The system of records is: the ''United States Attorneys' Office, *Giglio* Information Files, JUSTICE/USA–018.''

The ''United States Attorneys' Office, *Giglio* Information Files, JUSTICE/USA–018'' enables United States Attorneys' offices to maintain and disclose records of potential impeachment information received from the Department's investigative agencies, in accordance with *Giglio* v. *United States,* 405 U.S. 150 (1972). It permits the United States Attorneys' offices to obtain from federal and state agencies and to maintain and disclose for law enforcement purposes records of impeachment information that is material to the defense. The exemptions are necessary as explained in the accompanying rule.

DATES: Submit any comments by January 2, 2001.

ADDRESSES: Address all comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill—202–307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the ''*Giglio* Information Files, JUSTICE/USA–018.'' This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–602, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: November 21, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend part 16 of Title 28 of the Code of Federal Regulations as follows:

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend § 16.81 by redesignating current paragraph (g) as (i) and adding paragraphs (g) and (h) to read as follows:

§ 16.81 Exemption of the United States Attorneys Systems-limited access.

* * * * *

(g) The *Giglio* Information Files (JUSTICE/USA–018) system of records is exempt from 5 U.S.C. 552a subsections (c)(4), (e)(2), (e)(5), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a (j)(2), and exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f), pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. § 552a(j)(2) and (k)(2).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3); because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(2) From subsection (c)(4); because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d); because access to the records contained in these systems is not necessary or may impede an ongoing investigation. Most information in the records is derivative from the subject's employing agency files, and individual access will be through the employing agency's files. Additionally, other information in the records may be related to allegations against an agent or witness that are currently being investigated. Providing access to this information would impede the ongoing investigation.

(4) From subsection (e)(1); because in the interests of effective law enforcement and criminal prosecution, *Giglio* records will be retained because they could later be relevant in a different case; however, this relevance cannot be determined in advance.

(5) From subsection (e)(2); because the nature of the records in this system, which are used to impeach or demonstrate bias of a witness, requires that the information be collected from others.

(6) From subsections (e)(4) (G) and (H); because this system of records is exempt from individual access pursuant to subsections (j) and (k) of the Privacy Act of 1974.

(7) From subsection (e)(5); because the information in these records is not being used to make a determination about the subject of the records. According to constitutional principles of fairness articulated by the Supreme Court in *United States* v. *Giglio*, the records are required to be disclosed to criminal defendants to ensure fairness of criminal proceedings.

(8) From subsection (f); because records in this system have been exempted from the access provisions of subsection (d).

(9) From subsection (g); because records in this system are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

* * * * *

[FR Doc. 00–30610 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 97

[USCG 2000–7080]

RIN 2115–AF97

Cargo Securing on Vessels Operating in U.S. Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations to implement cargo securing standards for U.S. and foreign vessels,

carrying general cargoes and hazardous materials on international voyages, to parallel the new requirements in Chapter VI and VII of the International Convention for the Safety of Life at Sea (SOLAS). The Coast Guard is also seeking comments on five options for the future development of cargo-securing regulations for U.S.-certificated vessels carrying hazardous materials in domestic coastwise trade.

DATES: Comments and related material must reach the Docket Management Facility on or before March 1, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG 2000–7080), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, please contact Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G–MSO–2), U.S. Coast Guard, telephone 202–267–1053. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG 2000–7080), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

A public meeting was held on this matter in Room 2415 of the Coast Guard's Headquarters Building in Washington, DC, on February 3, 1999. A notice of that meeting and its agenda was published in the **Federal Register** (64 FR 1648) on January 11, 1999.

We do not now plan to hold any further public meetings, but you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that another meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Several maritime incidents during the early 1990's underscored the risk of serious injury or death, vessel loss, property damage, and environmental damage caused by improperly secured cargo aboard vessels. The most well-known incident occurred off the New Jersey coast in early 1992. During a voyage in bad weather, the M/V *Santa Clara I* lost 21 containers overboard, including 4 containers of the hazardous material, arsenic trioxide.

The Coast Guard convened a Board of Inquiry to investigate the M/V *Santa Clara I* mishap. The Board found that the container losses were caused by cargo securing failures related to bad weather and human error. Based on its findings, the Board recommended adopting the International Maritime Organization's (IMO) voluntary guidelines on cargo securing manuals as regulations in the International Convention for the Safety of Life at Sea, 1974 (SOLAS). The Commandant approved the Board's recommendation. With the support of other IMO member governments, the U.S. led a proposal to include new requirements for cargo securing manuals in SOLAS. These requirements were adopted as part of the 1994 amendments to SOLAS. These requirements are located in SOLAS Chapters VI/5.6 and VII/6.6.

Under SOLAS, all cargo vessels engaged on international voyages and equipped with cargo securing systems or individual securing arrangements must have a Flag State approved Cargo Securing Manual (CSM) by December 31, 1997. Under SOLAS and Executive Order 12234—which authorizes the Secretary to issue regulations that implement SOLAS—these requirements for a cargo securing manual apply to all U.S.-flag cargo vessels of 500 gross tons or more, engaged in international trade. Vessel types affected include general-cargo vessels, cellular containerships, roll-on/roll-off vessels, passenger/cargo vessels, supply vessels, bulk vessels capable of carrying non-bulk cargo, heavy lift ships, freight ships carrying packaged or break-bulk cargoes, and other similar vessels. Any vessel engaged solely in the carriage of bulk solids or liquid cargoes is exempt by SOLAS from the requirements for a cargo-securing manual.

To conform to these SOLAS requirements, CSMs must provide up-to-date information and guidance to assist a vessel's master and crew regarding the proper use of the equipment available to adequately stow and secure the vessel's cargo.

U.S. Coast Guard Navigation and Vessel Inspection Circular 10–97 (NVIC 10–97), ''Guidelines for Cargo Securing Manual Approval,'' provides interim guidance for U.S-flag vessel compliance with the SOLAS requirements. The NVIC includes CSM submittal, review, approval, and appeal procedures. A copy of the NVIC is available in the public docket or on the Internet at *http://www.uscg.mil/hq/g-m/nvic/.*

Problems with cargo securing are not limited to vessels engaged only in international trade. There have been a number of cargo-related marine casualties (such as loss overboard of containerized hazardous material) involving U.S.-flag vessels engaged in U.S. domestic coastwise trade. The majority of domestic marine casualties were caused by poor cargo securing methods, inadequate equipment, and poor planning and management of personnel securing cargo.

Changes in the technology of transporting hazardous materials, mostly in container feeder service using

deck barges instead of ships within the U.S., have altered the management and oversight of cargo securing operations. These types of operations have had a significant number of cargo loss incidents over the last 5 years. These cargo losses have directly affected the safety at the arrival port facilities; introduced hazardous materials into U.S. domestic waters, and hazard the safety of the public in ports and along adjacent waterways used by commercial traffic. Because of this trend and the resulting increased risk of harm to the public and the environment, the Coast Guard is considering the need for cargo securing requirements for U.S. vessels engaged in U.S. domestic coastwise trade.

On February 3, 1999, the Coast Guard held a public meeting to collect comments on the need for U.S. regulations for national and international vessel cargo securing standards. The notice requested written and verbal comments that could be provided before, at, and after the meeting. Two written comments were received. You may view them at the public docket (USCG 1999–4951) on the Internet at *http://dms.dot.gov.* The meeting featured a presentation, including Coast Guard-collected casualty and risk-based information, as well as Coast Guard actions to date. The 14 members of the public and maritime industry who attended provided no verbal comments.

We contacted the Towing Safety Advisory Committee (TSAC) on this issue during the summer of 1999, and its executive staff decided to place this issue on its agenda for the TSAC's September 15, 1999 working meeting. At that meeting, a separate TSAC Container Barge Working Group was established, met, and discussed cargo securing operational standards within their industry. Several operational managers for container barge companies attended the Working Group session and spoke on their industry standards for cargo securing. The Working Group discussed whether there was a need for national cargo securing standards and options for reducing risk from hazardous material cargo transportation entailing cargo securing.

The Coast Guard has developed its proposal for options to develop national regulatory standards in line with the information received from the public meeting and TSAC Working Group session.

Discussion of Proposed Rule

International Requirements for Cargo Securing

The incorporation of the international standards from SOLAS for cargo securing in U.S. regulations is being completed under the Secretary's authority provided by 46 U.S.C. 3306(a)(1). Section 3306 contains broad authority to prescribe regulations for the proper inspection and certification of vessels and their fittings, equipment and appliances. It also provides regulatory flexibility for meeting technological changes.

The Coast Guard has developed proposed regulations that it intends to place in a new part 97 in Title 33, Code of Federal Regulations, Subchapter F, ''Vessel Operating Regulations.'' This new part 97 will be consistent with the rules provided by Chapter VI, Regulation 5(6) and Chapter VII, Regulation 6(6) and IMO recommended guidelines on the development and approval of CSMs for vessels applicable to SOLAS. This new part will describe—

(a) Applicability of and authorities for the cargo securing rules;

(b) Required elements for cargo securing systems;

(c) Enforcement actions for failure to comply with the part while operating in U.S. waters; and

(d) Ability for an organization to become an approval authority of CSMs for the U.S.

Domestic Requirements for Cargo Securing

At this point, the Coast Guard is not proposing regulations for U.S. vessels carrying hazardous materials as break-bulk or containerized cargoes in U.S. domestic coastwise trade. Rather, the Coast Guard is seeking comments on five options for the future development of national standards for these operations.

Option One: The Coast Guard develops regulations for the above described U.S. vessels that meet the same standards proposed for vessels required to meet the SOLAS requirements listed in this rulemaking as part of the new 33 CFR part 97.

Option Two: The Coast Guard develops regulations that allow companies to institute their own operational cargo securing and safety management standards for their vessel(s). These written standards would be submitted for approval by the Coast Guard, or to a recognized cargo standards organization selected by the Coast Guard for review and approval. If the vessel's company has already established cargo securing standards within a U.S.-certificated safety management system that meets 33 CFR part 96, this would be viewed as being equivalent to these requirements. The Coast Guard would amend and re-publish NVIC 10–97 to provide guidance on the minimum performance elements required for the company's cargo securing procedures or cargo securing manual. The Coast Guard would oversee the use of these procedures during vessel inspections and during normal, routine port safety monitoring of the vessel.

Option Three: The Coast Guard develops regulations that require a certificate of loading and securing, prior to a vessel's departure for sea, only when it will transport hazardous materials which come under the requirements of 49 CFR part 176. If the vessel is not carrying hazardous materials, it would not be required to be surveyed or have a cargo certificate for that voyage. A certificate for the cargo load would be received by the vessel's master, who would hire a Coast Guard recognized cargo surveying organization to survey the secured cargoes aboard the vessel before it departs from port. These regulations would establish standards for cargo surveying organizations to be recognized by the Coast Guard and enforcement authorities of the Coast Guard for violation of these regulations.

Option Four: The Coast Guard would develop regulations which would combine all three of the previously written options, allowing a vessel's owner to choose how to meet the regulations when a vessel would carry hazardous materials in domestic trade.

Option Five: The Coast Guard would not develop separate Federal cargo stowage and securing regulations but would incorporate by reference industry standards (developed in concert with TSAC) into regulations for coastwise-operating U.S. vessels. The Coast Guard would amend and re-publish NVIC 10–97 to provide guidance on the use of these industry standards and provide guidelines on how the industry would manage and internally audit the use of the standards by vessel personnel. The Coast Guard would externally audit the use of these incorporated standards and review records of their use during normal U.S-vessel inspections for certification or during routine port safety monitoring of the vessels.

The applicability for these standards would be for any U.S. vessel which—

(a) Is of 300 gross tons or more;

(b) Carries hazardous materials other than bulk solids or bulk liquids;

(c) Meets the requirements to hold a U.S. Coast Guard Certificate of

Inspection under 46 CFR subchapter I (Parts 90–105); and

(d) Is certificated for domestic operation on coastwise voyages within the United States.

The Coast Guard proposes to place such regulations in 46 CFR part 91 and does not expect that these national standards will be applicable to U.S. vessels that operate only on inland waterways and rivers; lakes, bays, and sounds; or Great Lakes routes.

The Coast Guard requests that respondents, in their written comments about the five proposed options for domestic coastwise vessel operations, list which option they support, and explain the reason for their support. Respondents should also provide reasoning for not supporting the other four options, and they may offer any other proposals that they think we should consider to ensure the safety of the stowage and securing of hazardous materials in U.S. domestic coastwise trade.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Since this action parallels existing international requirements, which became effective on December 31, 1997, already enforced on vessels in that trade, we expect no economic impact from this proposed rule and a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard reviewed the effects of this enforcement policy when publishing its NVIC 10–97 on November 7, 1997. It is expected that this policy will not impact small entities, as there are few, if any, small entities that own or operate the craft affected by these proposed regulations.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think your business, organization, or governmental jurisdiction qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please consult with: Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G–MSO–2), U.S. Coast Guard, at 202–267–1053, by facsimile 202–267–4570, or by email at *rgauvin@comdt.uscg.mil.*

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

For vessels complying with SOLAS, this proposed rule has collection-of-information requirements already covered by the SOLAS Cargo Ship Safety Equipment Certificate (CG–3347), approved under the Office of Management and Budget (OMB) control number 2115–0056. For vessels that must comply with U.S-certification requirements, this proposed rule has collection-of-information requirements already covered under the U.S. Coast Guard's Certificate of Inspection (CG–841), approved under OMB control number 2115–0517.

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism.

It is well settled that States are precluded from regulating in categories that are reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306 (design, construction, alteration, repair, maintenance, operation, and equipping of vessels, and cargo handling) are within the field foreclosed from State regulation. See *United States* v. *Locke* 120 S. Ct. 1135 (2000); *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151 (1978). The exercise of State authority would conflict with the exercise of Federal authority under Federal Statute. Also see *International Association of Independent Tank Vessel Owners (Intertanko)* v. *Locke,* 148 F.3d 1053 (9th Cir. 1998). Thus, this rule falls into the above-mentioned categories, thereby precluding States from regulating. Because States may not promulgate rules within these categories, preemption is not an issue under Executive Order 13132.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from

Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. The intent of these proposed rules is to ensure proper securing of cargoes to stop losses overboard of materials that can cause damage to the environment. We expect these regulations to have an indirect, positive effect on the environment, by reducing the frequency of accidental discharges of general and hazardous material cargoes in the ports and waterways of the U.S. and the world. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 97

Cargo stowage and securing, Cargo vessels, Hazardous materials, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Chapter I as follows:

PART 97—[ADDED]

1. Add part 97 to Subchapter F read as follows:

PART 97—RULES FOR THE SAFE OPERATION OF VESSELS, STOWAGE AND SECURING OF CARGOES

Subpart A—General

Sec.

97.100 Purpose.
97.110 To whom does this subpart apply?
97.120 Definitions.
97.130 Incorporation by reference.

Subpart B—Cargo Securing Manual

97.200 To whom does this subpart apply?
97.210 Cargo Securing Manual (CSM)—General.
97.220 Cargo securing devices and arrangements.
97.230 Inspection and maintenance of cargo securing devices.
97.240 Handling and safety instructions for cargo securing devices.
97.250 Evaluation of forces acting on cargo units and securing devices.
97.260 Use of portable cargo securing devices on various cargoes.
97.270 Special requirements for RO–RO vessels or bulk carriers.
97.280 Stowage and securing of containers and other standardized cargoes.

Subpart C—How will Cargo Securing Manual Requirements be Approved and Enforced?

97.300 Purpose.
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97.320 How do I receive approval on a U.S. vessel's Cargo Securing Manual?
97.330 When I amend an approved Cargo Securing Manual, will the amendments have to be reviewed and approved by a U.S. Cargo Securing Manual Approval Authority?
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97.350 How will the Coast Guard handle compliance and enforcement of these regulations?

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97.410 To whom does this regulation apply?
97.420 How does an organization submit a request to be authorized to approve Cargo Securing Manuals for U.S. vessels?
97.430 How will the Coast Guard decide whether to approve an organization's request to be authorized?
97.440 What happens if the Coast Guard disapproves an organization's request to be authorized?
97.450 How will I know what the Coast Guard requires of my organization if my organization receives authorization?
97.460 How does the Coast Guard terminate an organization's authorization?
97.470 What is the status of a certificate if the issuing organization has its authority terminated?
97.480 What further obligations exist for an organization if the Coast Guard terminates its authorization?

Authority: 46 U.S.C. 2103 and 3306 et. seq.; 49 CFR 1.46.; and E.O. 12234.

Subpart A—General

§ 97.100 Purpose.

This subpart implements the requirement that certain vessels operating in U.S. waters on international voyages, carrying general and hazardous materials as break-bulk or containerized cargoes must comply with Chapter VI/5 and VII/6 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, stowage and securing requirements (adopted in London on May 24, 1994, and effective on December 31, 1997).

Note: All chapters of SOLAS are available from the International Maritime Organization, Publication Section, 4 Albert Embankment, London, SE1 75R, United Kingdom, Telex 23588. Please indicate document reference number ''IMO–110E'' in your request.

§ 97.110 To whom does this subpart apply?

This subpart applies to you if—

(a) You are the master of a U.S. vessel and it must comply to Chapter VI/5 or Chapter VII/6 of SOLAS due to the cargo the vessel carries on international voyages;

(b) You are the master of a foreign vessel and it must comply to Chapter VI/5 or Chapter VII/6 of SOLAS due to the cargo the vessel carries on international voyages;

(c) You are the owner of a U.S. vessel that is not required to meet Chapter VI/5 or Chapter VII/6 of SOLAS but request application of this subpart.

(d) You are an organization applying to be selected as a U.S. CSM Approval Authority to review and issue approval certification on CSMs for U.S.-flag vessels.

§ 97.120 Definitions.

As used in this part—

Administration means the Government of the State whose flag the ship is entitled to fly.

Cargo securing devices means all fixed and portable devices used to secure and support cargo units to a ship.

Cargo Securing Manual (CSM) means a manual or documents developed to meet the requirements of SOLAS or this part that are used by the Master of a cargo vessel to instruct and provide reference on how to properly stow and secure cargoes on the vessel for which it is developed.

CSM Approval Authority means an organization recognized by the Commandant of the Coast Guard which meets the requirements of subpart D, 33 CFR part 97, and has been authorized under this part to conduct certain actions and issue approval letters on behalf of the United States.

Captain of the Port (COTP) means the U.S. Coast Guard officer as described in 33 CFR 6.01–3, commanding a Captain of the Port zone described in 33 CFR part 3, or that person's authorized representative.

Cargo unit means vehicles (road vehicles, roll trailers, etc.), railway wagons, containers, flats, pallets, portable tanks, intermediate bulk containers (IBC), packaged units, unit loads, other cargo units such as shipping cassettes, cargo entities such as steel coils and heavy cargo items such as locomotives and transformers. Loading equipment, or any part thereof, transported on the ship, but which is not permanently fixed to the ship, is also considered a cargo unit.

Hazardous material means a substance or material, determined by the Secretary of Transportation to be

capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in 49 CFR part 171, materials designated as hazardous under the provisions of 49 CFR 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 CFR part 173.

Maximum Securing Load (MSL) means the allowable load capacity for a device used to secure cargo to a ship. Safe Working Load (SWL) may be substituted for MSL for securing purposes provided this is equal to or exceeds the strength defined by MSL.

Non-standardized cargo means cargo that requires individual stowage and securing arrangements.

Officer In Charge, Marine Inspection (OCMI) means the U.S. Coast Guard officer as described in 46 CFR 1.01–15(b), in charge of an inspection zone described in 33 CFR part 3, or that person's authorized representative.

Semi-standardized cargo means cargo for which the ship is provided a securing system capable of accommodating a limited variety of cargo units, such as vehicles, trailers, etc.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

Standardized cargo means cargo for which the ship is provided an approved securing system based upon cargo units of a specific type.

Vessel engaged on an international voyage means a vessel to which this part applies that is—

(1) Arriving at a place under the jurisdiction of the United States from a place in a foreign country;

(2) Making a voyage between places outside of the United States; or

(3) Departing from a place under the jurisdiction of the United States and for a place in a foreign country.

§ 97.130 Incorporation by reference.

(a) The Director of the Federal Register approves certain material that is incorporated by reference into this subpart under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce the edition other than specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. You may inspect all material at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC, and at the U.S. Coast Guard Office of Design and Engineering Standards (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001, and receive it from the source listed in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subpart and the sections affected are as follows:

International Maritime Organization (IMO)

4 Albert Embankment, London, SE1 7SR, United Kingdom:

Assembly Resolution 533(13) (Res.A.533(13)), Elements to be taken into account when considering the Safe Stowage and Securing of Cargo Units and Vehicles in Ships, November 17, 1983–97—subpart B.

Assembly Resolution 581(14) (Res.A.581(14)), Guidelines for Securing Arrangements for the transport of Road Vehicles on RO–RO Ships, November 20, 1985–97—subpart B.

Maritime Safety Committee Circular 745 (MSC/Circ. 745), Guidelines for the Preparation of the Cargo Securing Manual, June 13, 1996–97—subpart B and C.

Subpart B—Cargo Securing Manual

§ 97.200 To whom does this subpart apply?

This subpart applies to—

(a) A U.S. cargo vessel of 500 gross tons or more that must comply to Chapter VI/5 or Chapter VII/6 of SOLAS and that does not solely carry liquid or solid cargoes in bulk on international voyages;

(b) A foreign cargo vessel of 500 gross tons or more that must comply to Chapter VI/5 or Chapter VII/6 of SOLAS and that does not solely carry liquid or solid cargoes in bulk on international voyages;

(c) Any U.S. cargo vessel that is not required to meet Chapter VI/5 or Chapter VII/6 of SOLAS but requests application of this subpart.

§ 97.210 Cargo Securing Manuals (CSM)—General.

(a) Each vessel that must meet this part must have a manual on board that has been approved by its Flag Administration that, at a minimum, is developed with chapters or sections that cover the following subjects:

(1) Securing devices and arrangements.

(2) Inspection and maintenance of cargo securing systems.

(3) Stowage and securing of non-standardized and semi-standardized cargo.

(4) Stowage and securing of containers and other standardized cargo.

(b) The information and requirements that are developed in the CSM must be consistent with—

(1) The vessel's trim and stability booklet;

(2) The vessel's International Load Line Certificate;

(3) The vessel's hull strength loading manual (if provided); and

(4) The requirements of 49 CFR part 176 if applicable to the cargoes being carried.

Note to paragraph (b): The guidance provided by the CSM should by no means rule out the principles of good seamanship, nor can it replace experience in stowage and securing practices.

(c) The CSM must describe the specific arrangements and cargo securing devices provided on board the vessel for use with and securing of cargo units, containers, vehicles, and other entities.

(d) Cargo securing instructions must be developed within the CSM based on the transverse, longitudinal and vertical forces that may arise during a vessel voyage due to adverse sea and weather conditions.

(e) The CSM must contain guidance that—

(1) Directs when cargo securing should be completed; and

(2) Explains how the cargo securing should be accomplished, by whom, with what securing devices, and to which specific securing points or fittings on the vessel. This guidance should recommend how often the securing needs to be examined during a vessel's voyage at sea to ensure that the securing system has not failed or loosened due to vessel movement through a heavy seaway or adverse weather conditions.

(f) The cargo securing devices described in a vessel's CSM should be suitable and adaptable to the quantity, type of packaging, and physical properties of the cargo being carried.

(g) The description of the cargo securing devices should show the number of securing devices needed to properly secure cargo in line with the guidelines of the CSM, and list where and how many reserve cargo securing devices are to be kept in the vessel's inventory.

(h) The CSM should include information on the strength of MSL, and instructions for use and maintenance of, specific cargo securing devices carried aboard the vessel.

§ 97.220 Cargo securing devices and arrangements.

(a) The CSM must provide descriptions of the fixed cargo securing

devices provided aboard the vessel, which must include the following:

(1) A list, a plan, or both of the fixed cargo securing devices aboard the vessel with a description and specification for the devices, which includes the—

(i) Name of the device's manufacturer;

(ii) Type designation of the device with a simple sketch for ease of identification;

(iii) Materials the devices are made of;

(iv) Identification markings;

(v) Strength test results or ultimate tensile strength test results;

(vi) Results of non-destructive testing; and

(vii) Securing device's maximum securing load (MSL).

(2) Fixed securing devices attached to a vessel's bulkheads, web frames, stanchions, decks or other vessel structures must be listed in the CSM by type, where provided, and include each device's MSL.

(3) For vessels that were existing when these regulations became effective under SOLAS (after December 31, 1997) with standardized fixed securing devices, the information on the device's MSL and location of securing points is acceptable.

(b) The CSM must provide descriptions of portable cargo securing devices provided to the vessel, which must include the following:

(1) A list of the portable cargo securing devices provided aboard the vessel and specification for the device, which includes the—

(i) Name of the device's manufacturer;

(ii) Type designation of the device with a simple sketch for ease of identification;

(iii) Materials the device is made of, including its safe operational temperatures;

(iv) Identification markings;

(v) Strength test results or ultimate tensile strength test results;

(vi) Results of non-destructive testing; and

(vii) Portable securing device's maximum securing load (MSL).

(2) These lists should include the use and MSL for each portable securing device carried aboard the vessel, including but not limited to container stacking fittings, container deck securing fittings, fittings for interlocking of containers, bridge fittings, chains, wire lashings, rods, tensioners, securing gear for automobiles and other vehicles, and trestles and jacks used for vehicle trailers.

(3) Other materials that support securing, such as anti-skid boards, should also be listed in the portable securing device section of the CSM.

§ 97.230 Inspection and maintenance of cargo securing devices.

The CSM must have a chapter or section on the inspection of all the vessel's cargo securing devices. These securing device inspections must be carried out under the responsibility of the vessel's master. This chapter or section should include—

(a) A listing of requirements or a timeline for the inspection or re-testing of fixed and portable cargo securing devices aboard the vessel as required by regulatory equipment standards;

(b) A listing of requirements for when and how to complete visual examinations of all the vessel's onboard fixed and portable cargo securing system devices;

(c) Procedures for accepting, maintaining, repairing or rejecting fixed or portable cargo securing devices during examination, re-testing, or use; and

(d) A record book section to keep the vessel's records of the inspections, re-testing and maintenance completed on the vessel's fixed or portable cargo securing devices.

Note to paragraph (d): Electronic means of keeping records required by this section are considered acceptable for meeting this requirement.

§ 97.240 Handling and safety instructions for cargo securing devices.

A chapter or section of the CSM must discuss the proper ways to handle securing devices, and provide safety instructions relating to the handling of securing devices by ship or shore personnel when securing and unsecuring units of cargo aboard the vessel. This written information should include specific safety instructions related to the securing and unsecuring of containers and other standardized cargoes as described by § 97.280.

§ 97.250 Evaluation of forces acting on cargo units and securing devices.

A chapter or section of the CSM must have lists, tables, graphs, or diagrams that provide the following:

(a) An outline of the vessel's accelerations that can be expected in various positions onboard the vessel for adverse sea conditions with a range of applicable metacentric height (GM) values.

(b) Calculated examples of the forces acting on typical cargo units when subjected to the accelerations provided in paragraph (a) of this section, and the angles of roll and metacentric height (GM) values above which the forces acting on the cargo units exceed the permissible limits for the specified securing arrangements as far as practicable;

(c) Written examples of how to calculate the number and strength of portable securing devices required to counteract the forces referred to in paragraph (b) of this section, as well as the safety factors to be used for the different types of vessel portable cargo securing devices;

(d) The person who develops a CSM must convert the calculation methods used into a form suited for a particular vessel, its securing devices and the cargo carried. This form may consist of applicable diagrams, tables, calculated examples; and

(e) Other operational arrangements such as electronic data processing (EDP) or use of a loading computer may be accepted as alternatives to the requirements in paragraphs (a) and (d) of this section, providing that the system contains the same information.

Note to § 97.250: Examples of how to complete the strength calculations of portable cargo securing devices required by paragraph (d) are provided in Annex 13 of the Code of Safe Practice for Cargo Stowage and Securing (Res.A.714 (17)), IMO Publication: IMO—292E.

§ 97.260 Use of portable cargo securing devices on various cargoes.

A chapter or section of the CSM must provide—

(a) Direction to the vessel's master for the correct application of portable securing devices, taking into account the following:

(1) Duration of a voyage.

(2) Geographical area of the voyage with regard to the minimum safe operational temperature of portable securing devices.

(3) Sea conditions which may be expected.

(4) Dimensions, designs, and characteristics of the ship.

(5) Estimated static and dynamic forces during the voyage.

(6) Type and packaging of cargo units, including vehicles.

(7) Intended stowage pattern of the cargo units, including vehicles.

(8) Mass and dimensions of the cargo units and vehicles.

(b) A part of this chapter or section of the CSM must describe the application of portable cargo securing devices as to the number of lashings and allowable lashing angles. Where necessary, the text should be supplemented by suitable drawings or sketches to facilitate the correct understanding and proper application of the securing devices to various types of cargo and cargo units. The text should include warnings that certain cargoes have low friction

resistance, and it is advisable to place soft boards or other anti-skid materials under such cargoes to increase friction when secured.

(c) A part of this chapter or section of the CSM must contain recommendations for vessel locations and the methods of stowing and securing—

(1) Containers;

(2) Trailers and other cargo carrying vehicles;

(3) Palletized cargoes;

(4) Unit loads and single load items (*e.g.* wood pulp, paper rolls, etc.);

(5) Heavy weight cargoes; and

(6) Cars or other vehicles.

§ 97.270 Special requirements for RO–RO vessels or bulk carriers.

(a) RO–RO vessels must have a section in their CSM that provide sketches showing the layout of fixed securing devices with MSL identification as well as the distances between securing points in all directions.

(b) Designs or sketches of cargo securing arrangements for cargo units, including vehicles and containers on RO–RO passenger vessels, must show—

(1) The minimum strength requirements for securing devices used;

(2) Forces due to ship motion;

(3) Angle of heel after damage or flooding; and

(4) Other considerations relevant to the effectiveness of the cargo securing arrangements that must be taken into account.

(c) When bulk carriers carry cargo units falling under the applicability of § 97.110, this cargo must be stowed and secured per a CSM approved under this part.

Note to § 97.270: IMO Assembly Resolutions A.533(13) and A.581(14) should be utilized in the development of this section of the CSM involving special requirements.

§ 97.280 Stowage and securing of containers and other standardized cargoes.

A section or chapter must be provided in the CSM on the following:

(a) The stowage and securing of containers, within or without cell guides, and other standardized cargoes for vessels carrying such cargo units.

(b) A comprehensive and understandable loading plan or sets of plans must be provided with the overview of—

(1) Longitudinal and athwartship views of the underdeck and deck stowage locations of containers as appropriate;

(2) Alternative stowage patterns for containers of different dimensions;

(3) Maximum stack masses;

(4) Permissible vertical sequences of masses of stacks;

(5) Maximum stack heights with respect to approved sight lines; and

(6) Application of securing devices using suitable symbols to display stowage positions, stack mass, sequence of masses in stack, and stack height.

(c) This section or chapter of the CSM must support the interpretation of the stowage and securing plan for container stowage, explaining—

(1) The use of specified securing devices;

(2) Any guiding or limiting parameters, such as dimensions of containers, maximum stack masses, sequence of masses in stacks, stacks affected by wind load, height of stacks; and

(3) Any specific warnings of possible consequences from misuse of securing devices or misinterpretations of instructions given.

(d) Necessary cargo stowage and securing information must be provided in the CSM with deviations from the general instructions provided in paragraph (b) of this section, including appropriate warnings of possible misuse of securing devices or misinterpretation of instructions provided. Information should be provided with regard to—

(1) Alternative vertical sequences of masses in stacks;

(2) Stacks affected by wind load in the absence of outer stacks;

(3) Alternative stowage of containers with various dimensions; and

(4) Permissible reduction of securing effort with regard to lower stack masses, lesser stack heights or other reasons.

(e) This section or chapter of the CSM must present the distribution of accelerations on which the stowage and securing system is based. Information on forces induced by wind and sea on deck, as well as, information of the nominal increase of forces or accelerations due to changes from initial stability on the stow, must be provided.

(f) Recommendations must be included in this section or chapter of the CSM which provide guidelines for reducing the risk of cargo losses from deck stowage by restrictions to stack masses or stack heights, when loading scenarios could lead to stability conditions which may generate longer than normal accelerations or motions.

(g) Any symbols used in the sketches required by this section must be used consistently throughout the CSM.

Subpart C—How Will Cargo Securing Manuals Requirements Be Approved and Enforced?

§ 97.300 Purpose.

The purpose of this subpart is to provide you, the person who develops a vessel's CSM, all the information required to submit the CSM for approval and compliance.

§ 97.310 To whom does this subpart apply?

This subpart applies to—

(a) A developer of a CSM, or the owner or operator of a U.S. cargo vessel of 500 gross tons or more that must comply to Chapter VI/5 or Chapter VII/6 of SOLAS, and that does not solely carry liquid or solid cargoes in bulk on international voyages;

(b) Owner, operator, or Master of a vessel of 500 gross tons or more that must comply to Chapter VI/5 or Chapter VII/6 of SOLAS and does not solely carry liquid or solid cargoes in bulk on international voyages; and

(c) A developer of a CSM, or the owner or operator of any U.S. cargo vessel that is not required to meet Chapter VI/5 or Chapter VII/6 of SOLAS but requests approval of a developed CSM for the vessel.

§ 97.320 How do I receive approval on a U.S. vessel's Cargo Securing Manual?

(a) The CSM developer, or the owner or operator of a vessel, may submit a CSM meeting this part to a U.S. CSM Approval Authority for review and approval. Commandant (G–MOC) is the responsible office in the Coast Guard for overseeing and managing the review and approval of U.S. vessel CSM applications. A list of U.S. CSM Approval Authorities can be received by contacting Commandant (G–MOC), 2100 Second Street SW., Washington, DC 20593–0001.

(b) For a CSM to be approved, one copy of the original CSM for the vessel must be provided to a U.S. CSM Approval Authority for review. This copy will not be returned after the review process but will be kept for records of the actions taken on the review and approval, or disapproval of the CSM. The CSM and any amendments must be dated, with a ''change of page'' document included within the CSM, to ensure continuous documentation of amendments made to the manual and the dates they are completed.

(c) When the review process is complete, the U.S. CSM Approval Authority will provide a written statement to the provider of the CSM, which will indicate if the CSM is

approved, requires amendment to complete the approval process, or is disapproved. The submitter of a disapproved CSM may resubmit amendments (with the CSM to be reviewed further) if discrepancies noted in the disapproval can be rectified by new information that was excluded or that further expands the CSM to fully meet the requirements of this part.

(d) The original of the CSM approval letter provided by the U.S. CSM Approval Authority must be kept with the CSM onboard the vessel. The CSM and its approval letter must be made available for Coast Guard personnel examination whenever requested.

§ 97.330 When I amend an approved Cargo Securing Manual, will the amendments have to be reviewed and approved by a U.S. Cargo Securing Manual Approval Authority?

Only certain amendments to an approved CSM require that you resubmit the amended CSM for review and re-approval by a U.S. CSM Approval Authority—

(a) Reconfiguration of a vessel from one type of cargo carriage to another (*e.g.,* a general break-bulk cargo vessel to a container or a RO–RO vessel);

(b) Reconfiguration or replacement of 15 percent or more of the vessel's fixed cargo securing or tie down systems with different types of devices or systems; and

(c) Replacement of 15 percent or more of the vessel's portable cargo securing devices, with different types of devices for securing the cargo not already used aboard the vessel (*e.g.,* wire lashings replaced with turnbuckles or chains).

§ 97.340 How do I appeal a decision made by a U.S. Cargo Securing Manual Approval Authority?

(a) You may submit a written appeal to the U.S. CSM Approval Authority requesting reconsideration of information in dispute. Within 30 days of receiving the appeal, the CSM Approval Authority must provide the vessel owner with a written ruling on the request with a copy to Commandant (G–MOC).

(b) If you are dissatisfied with the CSM Approval Authority's ruling, you may submit a request of appeal on the matter to Commandant (G–MOC). You must make this appeal in writing, including documentation and evidence which needs to be considered. You may ask the Commandant (G–MOC) to stay the effect of the appealed decision by the CSM Approval Authority while the request is under review by the Coast Guard.

(c) The Commandant (G–MOC) will make a decision on your appeal and send you a written response of the decision. That decision will be the final Coast Guard action on your appeal.

§ 97.350 How will the Coast Guard handle compliance and enforcement of these regulations?

(a) While operating in waters under the jurisdiction of the United States, the Coast Guard may board any vessel required to meet this part or SOLAS to determine that the vessel has a CSM onboard. The Coast Guard will also verify that the vessel's Flag Administration or an authorized organization acting on behalf of the Flag Administration has approved the CSM.

(b) A foreign vessel that does not comply with these regulations or SOLAS may be detained by order of the COTP or OCMI. Detainment may occur at the port or terminal where the violation is found until in the opinion of the detaining authority the vessel can go to sea without presenting an unreasonable threat of harm to the port, the marine environment, the vessel, or its crew. The detention order may allow the vessel to go to another area of the port, if needed, rather than stay at the place where the violation was found.

(c) If any vessel that must comply with this part, or with the requirements of SOLAS for approved CSMs, is found in violation of this part, a vessel owner or Master, or any person in charge of the vessel, may be liable for a civil penalty under 46 U.S.C. 3318.

Subpart D—Authorization of an Organization to Act on Behalf of the U.S.

§ 97.400 Purpose.

(a) This subpart establishes criteria and procedures for organizations to be authorized by the Coast Guard to act on behalf of the U.S. The authorization is necessary in order for an organization to perform reviews of CSMs for U.S. vessels and approve them as delegated by the Coast Guard as required by this part.

(b) To receive an up-to-date list of organizations authorized to act under this subpart, send a self-addressed, stamped envelope, and written request to the Commandant (G–MOC), 2100 Second Street SW., Washington, DC 20593–0001.

§ 97.410 To whom does this regulation apply?

This subpart applies to all U.S. organizations that seek authorization to complete reviews of U.S. vessel CSMs and issue U.S. approval letters of their compliance with international requirements and this part, on behalf of the U.S.

§ 97.420 How does an organization submit a request to be authorized to approve cargo securing manuals for U.S. vessels?

(a) An organization must send a written request for authorization to the Commandant (G–MOC), Office of Compliance, 2100 Second Street SW., Washington, DC 20593–0001. The request must include the following:

(1) A certified copy of the organization's certificate of incorporation on file with a U.S. state, including the name and address of the organization, with written statements or documents which—

(i) Show that the organization's owners, managers, and employees are free from influence or control by vessel shipbuilders, owners, operators, lessors, or other related commercial interest as evidenced by past and present business practices;

(ii) Show that the organization has a demonstrated capability to competently evaluate CSMs for completeness and sufficiency per the requirements of SOLAS and this part;

(iii) Demonstrate an acceptable degree of financial security, based on recent audits by certified public accountants over the last 5 years; and

(iv) Show that the organization maintains a corporate office in the United States that has adequate resources and staff to support all aspects of CSM review, approval, and recordkeeping.

(2) A listing of the organization's principal executives, with telephone and telefax numbers;

(3) A written description of the organization, covering the ownership, managerial structure, and organization components, including directly affiliated agencies and their functions, utilized for supporting technical services;

(4) A written list of technical services the organization offers;

(5) A written general description of the geographical area the organization serves;

(6) A written general description of the clients the organization is serving, or intends to serve;

(7) A written description of the type of similar work performed by the organization in the past, noting the amount and extent of such work performed within the previous 3 years;

(8) A written listing of the full-time professional staff employed by the organization and available for technical review and approval of CSMs, including any—

(i) Naval architects, naval engineers, or both, with copies of their professional credentials such as college degrees,

specialized training certificates, or the like; and

(ii) Coast Guard issued Merchant Marine licenses for operation of vessels with unlimited tonnage certification for cargo vessel operation with a summary of underway experience.

(9) Written proof of staff competency to perform tasks, evidenced by detailed summaries of each individual's experience (measured in months or years), during the past 5 years of evaluating maritime cargo securing systems. Experience summaries must be documented on company letterhead and endorsed by a company executive who has had direct observation of the individual and quality of his or her work product;

(10) Written standards used by the organization for internal quality control to ensure consistency in CSM review and approval procedures by qualified professionals;

(11) A description of the organization's training program for assuring continued competency of professional employees identified in the application involved in CSM review and approval; and

(12) A list of five or more business references, including names, addresses, and telephone numbers of principal managers, who can provide evidence of the organization's competence within the past 2 years.

(b) The written request from the organization must also include a statement to the Coast Guard that Coast Guard officials may inspect the organization's facilities and records of CSM review and approval on behalf of the U.S. at any time.

(c) Commandant (G–MOC) may request additional information other than that required by this section in order to complete its evaluation of an organization. If this should occur, Commandant (G–MOC) will provide a written request for the information directly to the organization applying for authorization of CSM Approval Authority.

§ 97.430 How will the Coast Guard decide whether to approve an organization's request to be authorized?

(a) First, the Commandant (G–MOC) will evaluate the organization's request for authorization and supporting written materials, looking for evidence of the following:

(1) The organization's clear assignment of management duties;

(2) Ethical standards for managers and CSM reviewers;

(3) Procedures for personnel training, qualification, certification, and re-qualification that are consistent with recognized industry standards;

(4) Acceptable standards available for the organization's internal auditing and management review;

(5) Recordkeeping standards for CSM review and approval;

(6) Methods used to review and certify CSMs;

(7) Methods for handling appeals; and

(8) Overall procedures consistent with IMO Resolution A.739(18), ''Guidelines for the Authorization of Organizations Acting on Behalf of the Administration.''

(b) After a favorable evaluation of the organization's written request, the Coast Guard will arrange to visit the organization's corporate and port offices for an on-site evaluation of operations.

(c) When a request is approved, the recognized organization and the Coast Guard will enter into a written agreement. This agreement will define the scope, terms, conditions, and requirements of the authorization. Conditions of this agreement are found in § 97.450 of this part.

§ 97.440 What happens if the Coast Guard disapproves an organization's request to be authorized?

(a) The Coast Guard will write to the organization explaining why it did not meet the criteria for authorization.

(b) The organization may then correct the deficiencies and reapply.

§ 97.450 How will I know what the Coast Guard requires of my organization if my organization receives authorization?

Your organization will enter into a written agreement with the Coast Guard. This written agreement will specify—

(a) How long the authorization is valid;

(b) Which duties and responsibilities the organization may perform and what approval letters it may issue on behalf of the U.S.;

(c) Reports and information the organization must send to the Commandant (G–MOC);

(d) Actions the organization must take to renew the agreement when it expires; and

(e) Actions the organization must take if the Coast Guard should revoke its authorization under this subpart.

§ 97.460 How does the Coast Guard terminate an organization's authorization?

At least every 12 months, the Coast Guard evaluates organizations authorized under this subpart. If an organization fails to maintain acceptable standards, the Coast Guard may terminate that organization's authorization and remove the organization from the Commandant's list of authorized organizations.

§ 97.470 What is the status of a certificate if the issuing organization has its authority terminated?

Any CSM approval certificate issued by a U.S. CSM Approval Authority whose authorization is later terminated remains valid as long as amendments have not been completed which require it to be re-approved, as required by § 97.330. In such a situation, the owner of the vessel should contact the Commandant (G–MOC) directly to request information on which authorized organizations are available to act on behalf of the U.S. to complete a new review and approval of the vessel's amended CSM.

§ 97.480 What further obligations exist for an organization if the Coast Guard terminates its authorization?

The written agreement by which an organization receives authorization from the Coast Guard places it under certain obligations if the Coast Guard revokes that authorization. The organization agrees to send written notice of its termination to act on behalf of the U.S. to all vessel owners that have received CSM approvals for their vessel manuals. In that notice, the organization must include—

(a) A written statement explaining why the organization's authorization was terminated by the Coast Guard;

(b) An explanation of the status of issued approvals; and

(c) A current list of organizations authorized by the Coast Guard to conduct CSM reviews and approvals.

Dated: November 21, 2000.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–30447 Filed 11–30–00; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Shipping Label Requirements

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The U.S. Postal Service, in its efforts to make package shipping easier for mailers, is developing standard guidelines for creating package shipping labels. The following changes are proposed to the markings (and endorsements) and Delivery Confirmation requirements in support of this effort:

• Addition of a service indicator at the top of the label to identify the class of mail.

• Modifications to the Delivery Confirmation format to support the new label design and identify the service option requested.

These changes will be consolidated into the *Domestic Mail Manual* (DMM) and subsequently into a publication, which will identify requirements and specifications to assist mailers in designing their shipping labels.

DATES: Comments must be received on or before January 2, 2001.

ADDRESSES: Mail or deliver written comments to John Gullo, Expedited Package Services, United States Postal Service, 475 L'Enfant Plaza SW., Room 4000NB, Washington, DC 20260–7165. Copies of all written comments (available for $0.15 per copy per page) will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at the following address: Library, United States Postal Service, 475 L'Enfant Plaza SW., Room 11800, Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: John Gullo, 202–268–7322.

SUPPLEMENTARY INFORMATION: To meet customer ease-of-use needs, the Postal Service is developing a publication to help mailers design shipping labels for expedited and package products. Currently, a mailer or their vendor may design their own shipping labels providing they include all format elements specified in the DMM. Because of the expense involved in modifying mailing systems to conform to DMM requirements, mailers have requested that this information be made available in a single publication that is similar to other Postal Service publications used for designing letter, flat, and reply mail. By placing these standard requirements and guidelines into a single publication, it will be easier for mailers to create shipping labels that conform to DMM requirements. This, in turn, will improve the Postal Service's ability to process and deliver mailed items.

The DMM currently provides specifications for postage, identifying class of mail, addressing standards, and requirements for adding special services on shipping labels. The Postal Service is recommending the addition of service indicators to identify the class of mail, and modifications to the Delivery Confirmation and other customer printed special services barcode formats. These changes apply only to Priority Mail and Standard Mail (B).

The service indicators contain two elements, a service icon and a service banner. These new elements will satisfy the marking requirements for identifying the class of mail. The service icon appears in a 1-inch square in the upper left corner of the shipping label. Each of the supported services has a unique service icon to aid in handling the package. The letter ''P'' will be used to identify Priority Mail. All Standard Mail (B) subclasses (Parcel Post, Parcel Select, Bound Printed Matter, Special Standard Mail, and Library Rate) will be identified by a solid black box.

The service icon parameters are as follows:

• 1-inch (1″) square.

• Minimum 1-point light lines bordering area.

• Class of mail icon must be 0.75 inch (¾″) or greater.

• ''P'' for Priority Mail or solid black box for Standard Mail (B).

The service banner appears below the permit imprint indicia or postage area and service icon and is centered across the shipping label. The mail class or subclass is bordered above and below by separator lines to distinguish it from the surrounding elements.

The service banner parameters are as follows:

• The mail class or subclass for Standard Mail (B) must be printed in minimum 20-point bold sans serif typeface.

• Text must be in uppercase letters and centered on label.

• Minimum 1/16-inch clearance above and below text.

• Minimum 1-point separator lines above and below class of mail text.

There are two modifications recommended to the existing Delivery Confirmation barcode format. These changes will help postal employees recognize Delivery Confirmation and other special services barcodes when printed on mailer shipping labels. The changes include extending the horizontal identification bars across the width of the label and adding identifiers to the Delivery Confirmation barcode format to help distinguish the retail from the electronic option barcodes when the postage amount is evident on the mailpiece (*e.g.,* meter stamps, PC postage, adhesive postage stamps).

Currently, DMM S918 requires the length of the horizontal identification bars above and below the Delivery Confirmation barcode to be equal to the length of the barcode. This specification is being modified to recommend that the identification bars extend across the width of the label. The identification bars may be used only when a special services barcode is printed on the label. Additionally, mailers who print their own Delivery Confirmation barcodes will be required to identify on the label if they are using the electronic option. This change will be required only for items on which the postage amount is evident on the mailpiece. Labels must be identified with the following information:

(a) ''e/'' in front of the ''USPS DELIVERY CONFIRMATION'' text (*i.e.,* ''e/ USPS DELIVERY CONFIRMATION'').

(b) At the mailers option, the text ''ELECTRONIC RATE APPROVED #[D–U–N–S®]'' (where D–U–N–S® is the customer certification number) may be added below the bottom horizontal identification bar.

Mailers will be required to add the electronic identifier(s) by September 14, 2001.

Samples of Proposed Standard Shipping Label for Priority Mail & Parcel Post

Sample of Modifications to Electronic Option Delivery Confirmation Labels

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404–414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the DMM as follows:

* * * * *

E Eligibility

* * * * *

E100 First-Class Mail

* * * * *

E120 Priority Mail

* * * * *

1.4 Marking

[Add the following to the end of 1.4:]

Shipping labels are recommended to contain service indicators composed of two elements, the service icon and service banner (see Exhibit 1.4).

(a) If used, the service icon should appear in a 1-inch square in the upper left corner of the shipping label. The letter ''P'' must be printed inside the 1-inch square and must be 0.75 inches (¾″) or greater. A minimum ¾-point line must border the 1-inch square.

(b) The service banner should appear directly below the postage payment area and the service icon, and it should extend across the shipping label. If the service banner is used, the text ''USPS PRIORITY MAIL'' must be printed in minimum 20-point bold sans serif typeface, uppercase letters, centered within the banner, and bordered above and below by minimum 1-point separator lines. There must be 1/16-inch clearance above and below the text.

* * * * *

[Add the following exhibit:]

Exhibit 1.4

Priority Mail Service Indicators

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

* * * * *

M012 Markings and Endorsements

* * * * *

3.1 Basic Markings

* * * * *

[Add the following to the end of 3.1:]

Optionally, the basic required marking may be printed on the shipping label as service indicators composed of a service icon and service banner:

(a) The service icon must appear in a 1-inch square in the upper left corner of the shipping label. If the service icon is used, a 1-inch solid black square will identify all Standard Mail (B) subclasses.

(b) The service banner must appear directly below the postage payment area and the service icon, and it must extend across the shipping label. If the service banner is used, the appropriate subclass marking (*e.g.,* PARCEL POST, BOUND PRINTED MATTER, etc.) must be preceded by the text ''USPS'' and must be printed in minimum 20-point bold sans serif typeface, uppercase letters, centered within the banner, and bordered above and below by minimum 1-point separator lines. There must be 1/16-inch clearance above and below the text.

* * * * *

[Add the following exhibit:]

Exhibit 3.1

Standard Mail (B) Service Indicators

* * * * *

S Special Services

S900 Special Postal Services

* * * * *

S918 Delivery Confirmation

* * * * *

[Revise Exhibit 2.1c to read as follows:]

Exhibit 2.1c

Privately Printed Label

* * * * *

3.3 Printing

[Replace a with the following:]

a. Each barcoded label must bear a unique Delivery Confirmation PIC barcode as specified in 3.2. The text ''USPS DELIVERY CONFIRMATION'' (if using retail service option, as specified in 1.4) or ''e/USPS DELIVERY CONFIRMATION'' (if using electronic service option, as specified in 1.4, and the postage amount is evident on the mailpiece) must be printed between ⅛ inch and ½ inch above the barcode in minimum 12-point bold sans serif type. Additionally, mailers approved for the electronic service option, at their discretion, may print the text ''ELECTRONIC RATE APPROVED #[D–U–N–S® NUMBER]'' in minimum 8-point bold sans serif type directly below the bottom horizontal identification bar (see Exhibit 3.3). Human-readable characters that represent the barcode ID must be printed between ⅛ inch and ½ inch under the barcode in minimum 10-point bold sans serif type. These characters must be parsed in accordance with Publication 91. A minimum ⅛-inch clearance must be between the barcode and any printing. The preferred range of widths of narrow bars and spaces is 0.015 inch to 0.017 inch. The width of the narrow bars or spaces must be at least 0.013 inch but no more than 0.021 inch. All bars must be at least ¾ inch high. Minimum 1/16-inch bold bars must appear between ⅛ inch and ½ inch above and below the human-readable endorsements to segregate the Delivery Confirmation barcode from other areas of the shipping label. The line length should extend across the width of the label but must extend the length of the barcode at a minimum (see Exhibit 2.1c). Only information relating to Delivery Confirmation and/or other special services must be placed between these lines. Mailers will be required to comply with this change by September 14, 2001.

* * * * *

[Add Exhibit 3.3:]

Exhibit 3.3

Electronic Service Option Identification

e/ USPS DELIVERY CONFIRMATION

9101 0268 3733 1000 0010 16

ELECTRONIC RATE APPROVED # 026837331

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–30582 Filed 11–30–00; 8:45 am]

BILLING CODE 7210–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL203–2; FRL–6910–8]

Approval and Promulgation of Implementation Plans; Illinois; Reopening of the Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: EPA is reopening and extending the public comment period for a proposed rule published on August 31, 2000 (65 FR 52967). In the August 31, 2000 proposed rule, EPA proposed to approve Illinois' regulations for control of Oxides of Nitrogen (NO_X) emissions from Electric Generating Units (EGUs) provided Illinois corrects identified deficiencies in the regulations. This proposed approval was done in parallel to the adoption of the regulations by the State. EPA solicited public comment on Illinois' proposed NO_X regulations and on EPA's proposed action. At the request of the State of Missouri, EPA is reopening the comment period through December 11, 2000. All comments received before December 11, 2000, including those received between the close of the comment period on September 30, 2000 and the publication of this proposed rule reopening the comment period, will be entered into the public record and considered by EPA before taking final action on the proposed rule.

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *(doty.edward@epa.gov).*

Dated: November 21, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–30633 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6910–3]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 34

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 13 new sites to the NPL. Twelve of the sites are being proposed to the General Superfund Section of the NPL and one site is being proposed to the Federal Facilities Section on the NPL. (Please note that one of the sites is being reproposed to the NPL.)

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before January 30, 2001.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5201G); 1200 Pennsylvania Avenue NW, Washington, DC 20460.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov.* E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW, Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L. 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. *See* Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of

Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (*see* 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on July 27, 2000 (65 FR 46096).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of November 20, 2000, the Agency has deleted 227 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of November 20, 2000, EPA has deleted portions of 21 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993).

Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) The site qualifies for deletion from the NPL.

As of November 20, 2000, there are a total of 757 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435.

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–110, Seattle, WA 98101; 206/553–6699.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed sites; a Documentation Record for the sites describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 13 new sites to the NPL; 12 to the General Superfund Section of the NPL and one site to the Federal Facilities Section. (Please note that the Del Amo site in California is being reproposed to the NPL.) The sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 and Table 2 which follow this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 8 sites to the NPL; resulting in an NPL of 1,231 final sites; 1,071 in the General Superfund Section and 160 in the Federal Facilities Section. With this proposal of 13 new sites, there are now 63 sites proposed and awaiting final agency action, 57 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,294. (These numbers reflect the status of sites as of November 20, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. Withdrawal of Site From Proposal to the NPL

EPA is withdrawing the American Bemberg site in Elizabethton, Tennessee from proposal to the NPL. Refer to the Superfund docket for supporting documentation regarding this action.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of

cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

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), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and

local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Under section 3(b) of Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. In this case, the addition of the site to the NPL will not impose any substantial direct compliance costs on the Tribes. While the Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 34, GENERAL SUPERFUND SECTION

State	Site name	City/ county
CA	Del Amo	Los Angeles.
CT	Broad Brook Mill ..	East Windsor.
ID	St. Maries Creosote.	St. Maries.
MT	Barker Hughesville Mining District.	Barker.
MT	Carpenter Snow Creek Mining District.	Neihart.
NY	Consolidated Iron and Metal.	Newburgh.
OR	Taylor Lumber and Treating.	Sheridan.
UT	Bountiful/Woods Cross 5th South PCE Plume.	Bountiful/ Woods Cross.
UT	Davenport and Flagstaff Smelters.	Sandy City.
VT	Elizabeth Mine	Strafford.
WA	Lower Duwamish Waterway.	Seattle.
WI	Ashland/Northland States Power Lakefront.	Ashland.

Number of Sites Proposed to General Superfund Section: 12.

TABLE 2.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 34, FEDERAL FACILITIES SECTION

State	Site name	City/ county
IL	Chanute Air Force Base	Rantoul.

Number of Sites Proposed to Federal Facilities Section: 1.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: November 22, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–30631 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2595, MM Docket No. 00–233, RM–9996]

Digital Television Broadcast Service; Fort Walton Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Television Fit-For-Life, Inc., licensee of station WFGX(TV), NTSC channel 35, Fort Walton Beach, Florida, requesting the substitution of DTV channel 50 for station WFGX(TV)'s assigned DTV channel 25. DTV channel 50 can be allotted to Fort Walton Beach, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (30–24–12 N. and 86–59–34 W.). As requested, we propose to allot DTV Channel 50 to Fort Walton Beach with a power of 1000 and a height above average terrain (HAAT) of 221 meters.

DATES: Comments must be filed on or before January 16, 2001, and reply comments on or before January 31, 2001.

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: James A. Koerner, Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, Bethesda, Maryland 20852–5706 (Counsel for Television Fit-For-Life, Inc.).

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. 00–233, adopted November 22, 2000, and released November 24, 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, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida is amended by removing DTV Channel 25 and adding DTV Channel 50 at Fort Walton Beach.

Federal Communications Commission

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–30688 Filed 11–30–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2570; MM Docket No. 00–228, RM–9991]

Radio Broadcasting Services; Linden, White Oak, Lufkin, Corrigan, Mount Enterprise, and Pineland, TX and Zwolle, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by OARA, Inc. proposing the reallotment of Channel 257C2 from Linden, Texas, to White Oak, Texas, as that community's first local service. The coordinates for Channel 257C2 at White Oak are 32–30–32 and 94–50–41. To accommodate the allotment at White Oak, we shall also propose to substitute Channel 261C2 for Channel 257C2 at Lufkin, Texas, and modifiy the license for Station KUEZ at coordinates 31–24–28 and 94–45–53; substitute Channel 257A for vacant Channel 261A at Corrigan, Texas, at coordinates 30–59–47 and 94–49–36; reallot Channel 260A from Mount Enterprise, Texas to Zwolle, Louisiana, at coordinates 31–37–53 and 93–38–39; and allot Channel 256A at Pineland, Texas at coordinates 31–08–48 and 93–56–53.

DATES: Comments must be filed on or before January 2, 2000, and reply comments on or before January 17, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ann Bavender, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–228, adopted November 1, 2000, and released November 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Linden, Channel 257C2 and adding White Oak, Channel 257C2, by removing Channel 257C2 at Lufkin and adding Channel 261C2 at Lufkin, by removing Channel 261A at Corrigan and adding Channel 257A at Corrigan, by removing Channel 260A and Mount Enterprise, and by adding Pineland, Channel 256A.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Zwolle, Channel 260A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–30689 Filed 11–30–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574 and 575

[Docket No. NHTSA–00–8296]

RIN 2127–AI32

Certification; Federal Motor Vehicle Safety Standards; Tire Identification and Recordkeeping; Consumer Information Regulations

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

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: Section 11 of the recently enacted Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requires

the Secretary of Transportation to initiate rulemaking to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. The TREAD Act also provides that the Secretary may take whatever additional action is appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle.

Pursuant to that Act, the agency is considering amendments to its regulations to improve the quality and usefulness of tire information and its availability and understandability to consumers. To aid in this effort, the agency is seeking responses from the public to questions relating to such matters as tire identification number content, readability and location, loading, plies and cord material, tread wear indicators, Uniform Tire Quality Grading Standards, speed ratings, run-flat and extended mobility tires, tire inflation pressure, and dissemination of tire safety information.

DATES: You should submit your written comments so that they are received by January 30, 2001.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. George Soodoo, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2720. Fax: (202) 366–4329. Joseph Scott, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2720. Fax: (202) 366–4329.

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

SUPPLEMENTARY INFORMATION: You may read the materials placed in the docket for this notice (*e.g.,* the comments submitted in response to this notice by other interested persons) by going to the DMS at the street address given above under **ADDRESSES**. The hours of the DMS are indicated above in the same location.

You may also read the materials on the Internet. To do so, take the following steps:

(1) Go to the Web page of the Department of Transportation DMS (*http://dms.dot.gov/*).

(2) On that page, click on ''search'' near the top of the page or scroll down to the words ''Search the DMS Web'' and click on them.

(3) On the next page (*http://dms.dot.gov/search/*), scroll down to ''Docket Number'' and type in the four-digit docket number shown in the title at the beginning of this notice. After typing the docket number, click on ''search.''

(4) On the next page (''Docket Summary Information''), which contains docket summary information for the materials in the docket you selected, scroll down to ''search results'' and click on the desired materials. You may download the materials.

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I. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414, requires the agency to address numerous matters through rulemaking. One of these matters, set forth in section 11 of the Act, is the improvement of the labeling of tires required by section 30123 of title 49, United States Code, to assist consumers in identifying tires that may be the subject of a recall. Section 11 provides that the agency must initiate a rulemaking proceeding for that purpose within 30 days after the enactment of the Act and must complete it not later than June 1, 2002.

Additionally, that section provides that the agency may take whatever additional action it deems appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. Section 11 states that such additional action may, for example, include a requirement that the manufacturer of motor vehicles provide the purchasers of the motor vehicles information on appropriate tire inflation levels and load limits if the agency determines that requiring such manufacturers to provide that information is the most appropriate way that information can be provided.

II. Tire Information Labeling/Marking

A. Generally

NHTSA's existing labeling requirements for new passenger car tires are set forth in Federal Motor Vehicle Safety Standard (FMVSS) No. 109, New Pneumatic Tires—Passenger Cars (49 CFR 571.109). Specifically, paragraph S4.3 of FMVSS No. 109 sets forth information labeling requirements for tires, including requirements regarding the positioning of the information on the sidewall to ensure that it is readily visible and to minimize the possibility that it will be scuffed off if the sidewall hits a curb or similar object. It provides that the information listed in paragraphs S4.3 (a) through (e) (*e.g.,* number of plies and maximum permissible inflation pressure) must appear, on at least one sidewall, in an area between the maximum section width and the bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires for which the maximum section width falls in that area, all required labeling must be located between the bead and a point one-half the distance from the bead to the shoulder of the tire.[1] Paragraphs S4.3.1 and S4.3.2 provide more extensive location requirements for other information (*e.g.,* the DOT certification and the name of the manufacturer or

[1] The agency initially addressed the problem of labeling tires whose maximum section width is close to the bead in a 1985 rulemaking regarding tires for vehicles other than passenger cars. (49 FR 37816; September 26, 1984 and 50 FR 10773; March 18, 1985). That rulemaking amended 49 CFR part 574, Tire Identification and Recordkeeping (49 CFR 574.4) and FMVSS No. 119, New Pneumatic Tires for Motor Vehicles Other Than Passenger Cars (49 CFR 571.119) to permit placing markings at a different location in order to permit the introduction of a new tire concept for vehicles other than passenger cars where the tire's maximum section width is at the bead. In particular, Figure 1 of part 574 was amended to specify the requirements for the label's position if a tire's maximum section width falls within one-fourth of the distance from the bead to the tire shoulder. In that case, a marking must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire. Amending part 574 had the practical effect of applying the new requirement to paragraphs S4.3.1 and S4.3.2 of FMVSS No. 109, given that these provisions state that the tires must be labeled ''in the manner specified in part 574.'' A subsequent rulemaking (55 FR 41190; October 10, 1990) amended FMVSS No. 109 to incorporate this provision explicitly.

brand name and number assigned to the manufacturer) to be placed on passenger car tires. They provide that the labeling must be done ''in the manner specified in Part 574.''

NHTSA's labeling requirement for retreaded passenger car tires is set forth in FMVSS No. 117, Pneumatic Retreaded Tires (49 CFR 571.117). FMVSS No. 117 requires that each new retreaded tire have molded into its sidewall information similar to that required in FMVSS No. 109, plus the words ''bias belted'' or ''radial,'' as applicable. FMVSS No. 117 does not, though, require that the name of the manufacturer or brand name and number assigned to the manufacturer be placed on retreaded tires as is required on new passenger car tires by FMVSS No. 109.

NHTSA's labeling requirements for new tires for vehicles other than passenger cars are set forth in FMVSS No. 119, New Pneumatic Tires for Vehicles other than Passenger Cars (49 CFR 571.119). Paragraph S6.5 of FMVSS No. 119 specifies that all tires for vehicles other than passenger cars must have certain markings on the sidewalls. Among other things, these tires must show the actual number of plies in the tire, the composition of the ply cord material (S6.5(f)), and a letter designating the load range (S6.5(j)). S6.5 also provides that the designated information must appear, on at least one sidewall, in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires for which the maximum section width falls in that area, all required labeling must be located between the bead and a point one-half the distance from the bead to the shoulder of the tire. Additionally, S6.5(b) requires that each tire be marked with the ''tire identification number required by part 574 of this chapter'' and that this number ''may be marked on only one sidewall.''

NHTSA's labeling requirements for new temporary spare non-pneumatic tires for passenger cars are set forth in FMVSS No. 129, New non-pneumatic tires for passenger cars (49 CFR 571.129). Paragraph S.4 of FMVSS No. 129 specifies that each non-pneumatic tire must have certain markings on the sidewalls including the non-pneumatic tire identification code (''NPTIC''), the load rating, and the tire identification number. These labeling requirements also specify that the labeling information must appear on both sides of the tire, except that in the case of a tire that has a particular side that must always face outward, the information must appear on the outward-facing side.

B. Tire Identification Number (TIN)

1. Current Requirements

Section 574.5 of Title 49, CFR, Tire Identification Requirements, sets forth the methods by which new tire manufacturers and new tire brand name owners must identify tires for use on motor vehicles. The section also sets forth the methods by which tire retreaders and retreaded tire brand name owners must identify tires for use on motor vehicles. One purpose of these requirements is to facilitate efforts by tire manufacturers to notify purchasers of defective or nonconforming tires and by such purchasers to identify those tires so that purchasers can take appropriate action in the interest of motor vehicle safety.

Specifically, section 574.5 requires each new tire manufacturer and each tire retreader to mold a TIN into or onto the sidewall of each tire produced, in the manner and location specified in the section and as depicted in Figures 1 and 2 of that section. The TIN is composed of four groups of symbols:

1. The first group represents the manufacturer's identification mark assigned to such manufacturer by this agency in accordance with section 574.6;

2. The second group represents the tire size for new tires; for retreaded tires, the second group represents the retread matrix in which the tire was processed or, if no matrix was used, a tire size code;

3. The third group may, at the option of the manufacturer, be used as a descriptive code for identifying significant characteristics of the tire. If the tire is produced for a brand name owner, the third grouping must identify such brand name owner; and

4. The fourth group identifies the week and year of manufacture. The first two symbols identify the week, starting with ''01'' to represent the first full week of the calendar year; the second two symbols represent the year. For example, ''2198'' represents the 21st week of 1998.

NHTSA originally proposed these requirements in response to the May 22, 1970 amendments to the National Traffic and Motor Vehicle Safety Act of 1966.[2] Those amendments, among other things, required manufacturers and brand name owners of new and retreaded motor vehicle tires to maintain records of the names and addresses of the first purchasers of tires (other than dealers or distributors) in order to facilitate notification of such purchasers in the event tires were found to be defective or not to comply with applicable Federal motor vehicle safety standards.

The agency believed that an effective method of tire identification was essential to an effective defect or noncompliance notification system for tire owners. Accordingly, on July 23, 1970, NHTSA published a Notice of Proposed Rulemaking (NPRM) (35 FR 11800) proposing to establish a tire identification system to provide a means to identify the manufacturer of the tire, the date of manufacture, the tire size, and, at the option of the manufacturer, additional information to further describe the type or other significant characteristics of the tire. The agency proposed a TIN composed of four groups of symbols: the first group would contain the manufacturer's identification mark which would be assigned by NHTSA; the second group would identify the tire size; the third group would identify the date of manufacture of the tire; and the fourth group would be the manufacturer's optional description of the tire. The symbols would be a minimum of 6 millimeters (mm) (¼ inch) high and would appear on both sidewalls of the tire.

In a final rule published on November 10, 1970 (35 FR 17257), the agency revised the requirements proposed in the NPRM in response to the suggestions of various commenters. Specifically, NHTSA reversed the order of the manufacturer's optional information and the date of manufacture, so that the latter would appear in the fourth grouping and the manufacturer's optional information would appear in the third grouping. NHTSA also stated that the TIN need only appear on one sidewall in response to concerns relating to worker safety, and that the symbols need only be 4 mm (5/32 inch) high on tires with a bead diameter of less than 13 inches.[3] Many

[2] The National Traffic and Motor Vehicle Safety Act of 1966, Pub. L. 89–563, was originally codified at 15 U.S.C. 1581, *et seq.* However, it was recodified in 1995 and is now found at 49 U.S.C. 30101, *et seq.*

[3] In the preambles to the final rules establishing the location requirements for the safety information to be molded on the sidewall of the tires in FMVSS Nos. 109 and 119, the agency explained that it was establishing location requirements for two reasons.

First, the agency stated that the labeling on retreaded tires should use original casing labeling a much as possible, since this reduces the chances of incorrect labeling. Accordingly, the agency required that new tire labeling appear in an area where it would not be buffed off the tire during recapping and similar retreading (37 FR 23536; November 4, 1972).

commenters requested that the date code be expressed in alpha-numeric form in order to reduce the date symbols to two digits. NHTSA declined to adopt the alpha-numeric system because it could be confusing to the public and because retreaders may not be able to easily determine the age of the casing to be retreaded. In order to shorten the stencil plate, however, NHTSA dropped one of the two digits representing the decade of manufacture, thereby reducing the date of manufacture group from four digits to three. The date of manufacture grouping was later expanded to four digits (64 FR 36807; July 8, 1999).

2. 1980 NPRM

As stated above, the TIN originated with the May 22, 1970 amendments to the National Traffic and Motor Vehicle Safety Act of 1966. Prior to that time, there were no tire labeling requirements in effect. Tire manufacturers simply followed standard industry practices.

In the early 1980's, NHTSA granted a petition for rulemaking filed by the Center for Auto Safety (the Center) requesting that 49 CFR Part 574, Tire Identification and Recordkeeping, be amended to require that the TIN be placed on the outside sidewall (*i.e.*, the sidewall visible when a tire is mounted on a vehicle) of whitewall tires and on both sides of blackwall tires. The Center stated that the current tire industry practice of placing the TIN on the inside sidewall of whitewall tires and on only one side of blackwall tires made it very difficult for most motorists to find and read the TINs on their tires once they are mounted on vehicles.

Prior to publishing an NPRM (45 FR 82293; December 15, 1980), the agency sent special orders to nine tire manufacturers who together represented 84 percent of world tire production and 90 percent of domestic production of tires for use in this country to gather information on the feasibility and costs of implementing the proposed requirements. Among the questions in the special orders were ones asking whether the tire presses were operated 24 hours a day seven days a week and, if so, what measures could be taken to ensure that workers could safely change the identification number plates in the presses. (A tire press generally works like a clam shell. The lower half of the press remains in a fixed horizontal position, while the upper half is movable. The tire mold, which also has upper and lower halves, fits inside the press.) None of the respondents suggested that changing the number plates would present insurmountable safety problems.[4] Further, based on its evaluation of these responses, NHTSA determined that such a requirement would impose costs of between $4.25 million and $5.9 million.

On April 9, 1981, the agency published a notice of intent listing 17 actions that the agency said it intended to take to reduce unnecessary regulatory burdens upon the motor vehicle and related manufacturing industries (46 FR 21203). Among them was terminating rulemaking on the location of the TIN.

Subsequently, the agency terminated the rulemaking (48 FR 19761; May 2, 1983). The agency stated that it was taking that action because it was unable to determine that the adoption of the proposal would significantly contribute to motor vehicle safety and because the compliance costs would be $4.25 to $5.9 million. Although the agency anticipated that the adoption of the amendment would increase the response to tire recall campaigns and that ultimately the action would reduce the chance of potentially unsafe tires being used on public roads, it was not able to provide a quantified estimate of the benefits to be gained from the proposed amendment. The data relied upon by the agency in issuing the proposal consisted solely of anecdotal comments by 13 consumers on difficulties they experienced in locating TINs. These 13 comments were among about 9,500 responses received by the agency in response to a survey in which it sent questionnaires to approximately 100,000 consumers. Thus, only 0.013 percent of the questionnaire recipients and 0.14 percent of the respondents reported this type of difficulty. Prior to issuing the proposal, the agency did not have any data or perform any analysis regarding the extent to which the proposed requirement would increase the number of people who find the identification number on their tires, the number of those people who respond to a tire recall, or the number of defective or noncomplying tires that would be removed from service. No additional data regarding benefits were obtained by the agency as a result of the comment process.

3. 1999 Final Rule

In response to petitions for a rulemaking, the agency amended NHTSA's tire identification and recordkeeping regulation in 1999 to require the date of manufacture to be expressed in four digits, instead of the previously required three, so that consumers would be able to determine the decade of manufacture of their tires (64 FR 36807; July 8, 1999). This rule also reduced the minimum size of the digits from the then-currently required minimum of 6 mm (¼ inch) to 4 mm (5/32 inch) to relieve the manufacturers and retreaders of the burden they might otherwise have incurred by having to redesign their tire molds to accommodate the additional digit.

In that rulemaking, all commenters supported adding a fourth digit to the date code. Two of the commenters, though, opposed reducing the size of the numbers in the TIN on the basis that such reduction would make it more difficult for consumers to see, especially those with visual pathologies. These commenters did not, however, provide any data showing that drivers cannot read 4 mm (5/32 inch) symbols. NHTSA said that its experience to date with 4 mm (5/32 inch) symbols on tires suggest that symbols of that size do not present a problem.[5] As discussed in the final rule, 4 mm (5/32 inch) is approximately the equivalent of font size 16 in Windows 95, which is approximately double the font size used in the **Federal Register** and also approximately double the size of the largest letters found on the U.S. quarters being minted then. Additionally, this agency pointed out that the size of the Uniform Tire Quality Grading Standards tire grades marked on tire sidewalls has always been 4 mm (5/32 inch) and the agency had not received any complaints that those letters or numbers were too small to read. Finally, Part 574 permits tires of less than 13 inches in diameter or those

Second, the agency wanted the safety information to be located in an area where it would not be scuffed off the tire if the tire were rubbed against a curb or other object while parking, loading, etc. By requiring that the safety information appear between the widest part of the tire (the maximum section width) and the bead, NHTSA believed that the information would be less likely to be scuffed off the tire, and thus would be available to the user of the tire.

[4] From the responses to the orders, the agency learned that of the 52 tire plants operated by the respondents in this country, 46 of them operated only five or six days a week. The remaining six plants operated all week. In the case of those 46 plants, workers could safely and easily change the number plates during one of the days when the molds were nonoperational and at room temperature. The practice of the manufacturers was to change the number plates on these molds during their nonoperational day. On that day, workers could as easily change the number plates on the upper mold as on the lower mold. Additionally, the manufacturers operating seven days a week indicated that workers could safely change the number plates on operating upper molds in any of several ways. One way would be to place insulated blankets over the bottom molds. Another way would be to mold the whitewall side of whitewall tires on the lower mold so that the number plates could be placed on the more readily accessible upper molds.

[5] It should be noted that many tire manufacturers actually use symbols larger than 4 mm (5/32 inch) for the date code.

that have less than a 6-inch cross section width to have a letter/number size of 4 mm (5/32 inch). Again, the agency had not received any complaints about the size of those letters/numbers.

C. Other Labeling

Labeling requirements are also contained in 49 CFR part 567, Certification, 49 CFR part 575, Consumer Information Regulations, FMVSS No. 110, Tire Selection and Rims, applicable to passenger cars and to non-pneumatic spare tire assemblies for use on passenger cars, and FMVSS No. 120, Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.

Section 567.4 requires vehicle manufacturers to affix to each vehicle a label bearing, among other things, the Gross Vehicle Weight Rating (GVWR), which must not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicle's rated seating capacity; and the Gross Axle Weight Rating (GAWR), which is the value specified by the manufacturer as the load carrying capacity of a single axle system.

Section 30123(e) of Title 49, U.S. Code, requires the Secretary of Transportation to prescribe a uniform quality grading system for motor vehicle tires to help consumers make an informed choice when purchasing tires. NHTSA implemented this statutory mandate by issuing the Uniform Tire Quality Grading Standards (UTQGS) at 49 CFR 575.104, which are applicable to new passenger car tires.[6] The UTQGS require passenger car and tire manufacturers and tire brand name owners to provide consumers with information with respect to the treadwear, traction, and temperature resistance performance of their tires. Excluded from the UTQGS are deep-tread, winter-type snow tires, space-saver or temporary-use spare tires, tires with nominal rim diameters of 12 inches or less and limited production tires as described in 49 CFR 575.104(c)(2).

Section 575.6(a) of Title 49, CFR, requires that when a motor vehicle is delivered to the first purchaser for purposes other than resale, the vehicle manufacturer must provide, in writing and in the English language, the information specified in section 575.103 applicable to that vehicle, and in the owner's manual, the information specified in section 575.104.[7] Section 575.104(d)(1)(iii) requires vehicle manufacturers to list all possible grades for traction and temperature resistance and restate verbatim the explanation of each of the three graded aspects of performance. The information must also contain a statement referring the reader to the tire sidewall for the specific graded performance of the tires with which the vehicle is equipped. Section 575.6(c) requires that each vehicle manufacturer, brand name owner of tires, and manufacturer of tires for which there is no brand name owner to provide the information specified in subpart B of Part 575 to prospective purchasers at each location at which its vehicles or tires are offered for sale.

Paragraph S4.3 of FMVSS No. 110 requires manufacturers to affix a placard to each passenger car's glove compartment door or an equally accessible location showing the vehicle's capacity weight, designated seating capacity, the manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, the manufacturer's recommended tire size designation, and, for a vehicle equipped with a non-pneumatic spare tire assembly, the non-pneumatic identification code required by FMVSS No. 129, New Non-Pneumatic Tires for Passenger Cars. The required information is intended to promote the vehicle's safe performance by preventing overloading of the tires or the vehicle itself.[8]

Paragraph S5.3 of FMVSS No. 120 requires that each vehicle show, on the label required by section 567.4, or on a tire information label, the following information: the recommended tire size designation appropriate for the GAWR; the size and type designation of rims appropriate for those tires; and the recommended cold inflation pressure for those tires such that the sum of the load ratings of the tires on each axle (when the tires' load carrying capacity at the specified pressure is reduced by dividing by 1.10, in the case of a tire subject to FMVSS No. 109, i.e., a passenger car tire, installed on a multipurpose passenger vehicles (MPVs), truck, bus or trailer) is appropriate for the GAWR. The reduction in load rating is intended to provide a safety margin for the generally harsher treatment, such as heavier loading and possible off-road use, that passenger car tires receive when installed on a MPV, truck, bus or trailer instead of on a passenger car.

III. Questions for Public Comment

To aid the agency in conducting this rulemaking, the agency is seeking answers from the public to the following questions:

A. General Consumer Knowledge and Behavior/Availability of Information to Consumers

(1) Are consumers being given the information they need to maintain their tires properly, to determine how much weight (passengers plus cargo) they can safely place in their vehicles, and to identify tires that have been determined to be defective or noncompliant? What tire information is most important for consumers to have for safety and recall purposes?

[6] The UTQGS is not applicable to retreaded tires.

[7] Prior to May 24, 1999 (64 FR 27921), passenger car manufacturers were required to directly provide general UTQGS information and the information specified in Section 575.104 in writing and the English language to purchasers and potential purchasers at the point of sale of new vehicles. The agency eliminated this requirement, instead requiring that the information be contained within the owner's manual, because it believed that the elimination of the point-of-sale requirement would relieve a significant burden on vehicle manufacturers and dealers and yet would have little effect on consumers (64 FR 27921; May 24, 1999).

[8] Herzlich Consulting (Herzlich) petitioned the agency on March 12, 1992, to amend FMVSS Nos. 110 and 120 to include a requirement that the manufacturers of the vehicles subject to those standards place a warning in the glove compartment or some other accessible/visible location which would state, in high visibility letters: ''Warning: Underinflation, Overloading, or Damage can Cause any Tire to Fail Suddenly.'' In support of the petition, Herzlich argued that although the Federal and state governments and the tire industry continuously communicate tire safety information, such efforts are ''rather unsuccessful.'' Herzlich also argued that tire failure due to road hazard damage, underinflation, or overload continues to be a problem. The petitioner stated that tires are the most important safety component on the vehicle and, perhaps because of their high degree of reliability, they are often taken for granted by consumers. Herzlich also referred to unspecified surveys purporting to show that a ''significant number of vehicles are running on underinflated, overloaded, worn-out or damaged tires,'' which, it contended, indicates that people get careless and need to be reminded over and over again to inspect and properly maintain their tires.''

After a full and careful review of the petition, NHTSA decided to deny it based on several factors (57 FR 45759; October 5, 1992). First, there already existed a vast amount of information on proper tire maintenance. Additionally, the agency stated that there was no reason to believe that requiring the same information be made available in another place would increase consumer's responsiveness to such information. Finally, the petitioner presented no data, and this agency was aware of none, that would support petitioner's assertion that improper maintenance causes the vast majority of tire failures or that a significant number of vehicles are running on underinflated, overloaded, worn out or damaged tires.

In summary, NHTSA believed at that time that the wealth of safety materials already available to the public through industry, government, and consumer sources adequately addressed the issue of proper tire inflation and maintenance; that existing labeling requirements provided sufficient information to enable consumers to maintain tires properly and safely; and that the petitioner had not shown that the amendments it proposed would significantly change the behavior of the public in that respect.

(2) Do consumers read and correctly understand the information that they are currently receiving? For example, do consumers understand the factors that contribute to tire failure (such as speed, tire inflation pressure, and weight) and the steps they can take to reduce the possibility of tire failure? Do consumers know where to locate tire information in their vehicles, particularly recommended cold tire inflation pressure and maximum load information? Do consumers read the information in the owner's manual regarding proper tire care? Are consumers confused when they find a difference between the recommended tire inflation pressure labeled on their vehicle and the maximum inflation pressure labeled on the tire? Which of those two pressures do they follow in inflating their tires? Do consumers understand the relationship/interaction between tire inflation pressure and the load that a vehicle and its tires can safely carry? Do consumers understand how and when to measure cold inflation pressure? Do consumers understand and use the tire labeling information that currently appears on the tires and in the vehicle?

(3) Do consumers routinely use and correctly follow the guidance included in that information? For example, do they typically inflate their own tires? How often? To what level?

(4) What tire information do consumers want, how do they want it expressed, and where would they prefer to see that tire information located on their tires or in their vehicles? If any focus group studies have been conducted by manufacturers or other organizations regarding the consumers' needs in this area, should the agency use them to aid in assessing how to meet those needs? Should the agency supplement these studies by conducting its own focus group study? If so, what questions should be presented to the focus groups?

B. TIN Information

Location

The continued use of tires determined to be unsafe poses a safety risk not only for the occupants of the vehicles equipped with those tires, but also for other highway users near those vehicles. To the extent that it is difficult and inconvenient to check the TINs, the percentage of people who respond to a tire recall campaign may be reduced, and motorists unknowingly could continue to drive their vehicles with unsafe tires.

The side of a tire bearing the TIN is often mounted so that it faces inward. In the case of whitewall tires, this occurs because the TIN is almost always molded on the blackwall (*i.e.,* inside sidewall) of the tire.[9] Whitewall tires account for a small and declining percentage (currently about 5 percent or less) of original equipment tire sales in this country, but about 40 percent of replacement tires. The ratio of original equipment tires to replacement tires is about 1 to 3. Blackwall tires have the TIN on one sidewall. The agency believes that blackwall tires (other than those with white raised lettering) are as likely to be mounted with the number side facing in as out. Thus, it appears that a substantial percentage of tires are mounted with their TINs not readily visible. We would appreciate information from commenters that would help us to estimate the percentage of tires with the TIN facing inward.

When the TINs appear on the inside sidewalls of the tires mounted on vehicles, motorists have three inconvenient ways of finding the TINs. They must either: (1) Slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; (2) remove each tire, find the TIN, and then replace the tire; or (3) enlist the aid of a garage or service station attendant or tire retailer.

Improved access to the TIN would enhance the owner's ability to determine if his or her tires have been recalled. Requiring that the TIN be placed on the outside sidewall of whitewall and raised-letter tires and on both sides of blackwall tires would significantly facilitate finding the TIN and thus should increase the ability of consumers to know whether their tires are covered by recall campaigns.

(5) Based on the above discussion, how should the current requirements regarding the location of the TIN be modified, if at all, to make it easier for consumers to determine whether their tires are covered by a safety recall?

(6) The agency originally proposed in an NPRM published July 23, 1970 (35 FR 11800) that the TIN be marked on both sidewalls. As discussed above in the background section, one of the objections raised by the industry and others to that proposal was a safety hazard said to be associated with positioning the TIN on both sidewalls during the manufacturing process. Ten years later, in its 1980 NPRM, the agency concluded, based on new information from tire manufacturers, that the potential safety hazard had been eliminated or at least reduced to a manageable level. Was this conclusion correct? Is there any remaining significant hazard that is not addressable at reasonable cost? Please describe any manufacturing process changes that have been made that make it safer now than it was in 1970 to position the TIN manufacturing plates during tire assembly. Are there any additional changes that could be made to improve the safety of this operation?

(7) What are the economic costs of requiring that the TIN appear on both sidewalls of some types of tires? Are there alternative available methods of manufacture that would facilitate placing the TIN on both sidewalls? If so, please describe these processes in detail.

(8) Where, in relation to the bead and the shoulder of the tire, should the TIN be positioned on the sidewall to ensure that it can be easily located by consumers? Should the current requirements regarding TIN location in FMVSS Nos. 109 and 119 be changed to improve the visibility of the TIN to consumers? How would your answer to the immediately preceding question be affected by the considerations of manufacturing feasibility and the vulnerability of the TIN to abrasion in certain sidewall locations as a result of contact with curbs and other hard objects?

Content and Readability

(9) Should all of the information currently required in the TIN be retained or should the agency cease to require some of it? Should the agency require that any information be added to the TIN or otherwise be required to be shown on the sidewalls of the tire? For instance, would it be helpful for the plant location, manufacturer's name, date of manufacture or country of manufacture to be shown on the sidewalls of the tire? Should the number, format, and type of symbols be revised? Should any of the information currently required to be included in the TIN be deleted? Please provide examples.

(10) The current labeling requirement allows, at the option of the manufacturer, the use of up to four symbols in the TIN for marketing information. Should these optional symbols be either prohibited or separated from the mandatory portion of the TIN to shorten it? Would this facilitate reading the TIN and identifying recalled tires?

(11) What type of changes to the appearance of the lettering and numbering would make it easier for

[9] Blackwall tires with white raised lettering on one sidewall have their TIN molded on the opposite sidewall. These tires, like whitewall tires, are mounted with their TIN facing inward.

consumers to read the TIN? Should raised letters with contrasting colors be required? If not, should other methods (*e.g.,* reflectivity) be used to increase the readability of the TIN?

(12) What minimum should NHTSA specify for the height of the symbols in the TIN? Currently, the required minimum height for the symbols in the first three groups of the TIN is ¼ inch (0.25 inch or 6.35 mm), while the required minimum height for the symbols in the fourth group of the TIN is 5/32 inch (0.16 inch or 4 mm). Should one height be specified for all four groups of symbols? If so, what height? Please provide data to support your suggestions regarding the appropriate height for the symbols. Please discuss how your answer to this question would be affected by the adoption of any of the types of appearance changes mentioned in the immediately preceding question.

C. Other Tire Labeling Information

Load Ratings

(13) Should the maximum load rating [10] in kilograms (kg)/pounds (lbs) at the maximum permissible inflation pressure in pounds per square inch (psi), as is currently required by FMVSS Nos. 109 and 119, continue to be shown on the tire? If the maximum load rating were replaced by a load index number (a numerical code associated with the maximum load a tire can carry at the speed indicated by its speed symbol under specified service conditions), would it be more effective or less effective in conveying the load limits of the tire to consumers? [11]

(14) Do consumers understand and effectively use the load index values that are now provided on some tires? [12] When purchasing replacement tires, do consumers typically refer to the maximum load rating and/or the load index for their vehicle? Do they sometimes replace extra load capacity tires with standard capacity tires? Please provide data to support your responses to this question.

(15) What assistance do tire retailers provide consumers in selecting a tire with the correct load rating or load index for their vehicle? Is this assistance provided to all customers or only to those customers who ask about the rating or index? How much information do the retailers provide to ensure that a consumer chooses a tire that is right for his or her vehicle? Do the retailers routinely check the certification label information for gross vehicle weight rating (GVWR) or gross axle weight rating (GAWR) to ensure that the load capacity of the tires selected by the purchaser exceeds the GAWR/GVWR of the vehicle?

(16) When motorists load a light vehicle (*i.e.,* a passenger car, pickup truck, sport utility vehicle (SUV) or a minivan with a GVWR of 10,000 lbs. or less), how do they determine whether the vehicle is capable, given the pressure to which the vehicle's tires are inflated, of safely carrying the load? How frequently do they use the load rating information on the tires to make this determination? When they do use it, how do they do so? Do they make the determination correctly?

(17) Do consumers often overload their light vehicles? If so, to what extent? What factors contribute to overloading? Do consumers accurately estimate the loaded weight of their vehicles? If overloading frequently occurs, what allowance for such overloading should be included in passenger car tire load ratings? FMVSS No. 120 currently specifies that if passenger car tires are used on vehicles other than passenger cars, each tire's load rating is to be reduced by dividing by 1.10. The requirement is intended to provide a safety margin for the generally harsher treatment, such as heavier loading and possible off-road use, that passenger car tires receive when installed on a MPV, truck, bus, or trailer, instead of on a passenger car.

Plies and Cord Materials

(18) FMVSS Nos. 109 and 119 currently require that the actual number of plies used in the tread area and in the sidewall be labeled on both sidewalls. FMVSS No. 109 also requires that the generic name of each cord material used in the plies be indicated on the label. Should this information continue to be marked on the tire? What is the safety value of providing consumers with this information? How do they actually make use of the information? Should any descriptive/qualitative information, such as the tire manufacturer's ''mileage warranty,'' [13] be added to tires?

Tread Wear Indicator

(19) FMVSS Nos. 109 and 119 require that tires be equipped with a tread wear indicator that enables motorists to determine visually whether tires have worn to a tread depth of 2/32 inch. [14] Notwithstanding the inclusion of information about the tread wear indicator in the owner's manual, should any information also be placed on a label in the vehicle to inform consumers about the tread wear indicator and its purpose? If so, what information should be provided? Should markings be placed on the sidewall of the tire to pinpoint the location of the tread wear indicator on the tread surface? If yes, what type and size of marking would be most effective?

UTQGS

(20) The UTQGS provides consumer information on the treadwear, traction and temperature performance of passenger car tires. What changes to the UTQGS ratings should the agency consider in order to make the ratings more easily understood and more useful for consumers?

(21) Section 575.104(c) provides that the UTQGS apply to new pneumatic passenger car tires. UTQGS does not apply, however, to deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rims of 12 inches or less, or ''limited production'' tires. Should any of these types of tires, such as deep tread tires which are frequently used on SUVs/MPVs, be required to be labeled with the UTQGS information? Should UTQGS also apply to light truck tires (LT-metric) since these tires are also used on SUVs, MPVs, and light trucks? Please be specific in your response and provide a basis for your answer.

Speed Rating

(22) The speed rating of a tire is generally indicated on the tire although not required by either FMVSS Nos. 109 and 119. Should steps be taken to increase the likelihood that consumers purchase replacement tires with a speed rating at least as high as the rating specified by the vehicle manufacturer? If so, what steps should be taken and why? Do tire retailers routinely assist consumers to ensure that the selected

[10] The maximum load rating is the amount of load that may be carried by the tire at the tire's maximum permissible inflation pressure.

[11] The load index is a part of the labeling required by Economimc Commission for Europe (ECE) Regulation 30 Annex 3, which requires the load index and the speed-category symbol to be placed together near the size designation. For example, the sidedwall would contain the size designation * * *. {P215/65R15 89H} where ''89'' is the load index and ''H'' is the speed-category symbol. Annex 4 of Regulation 30 provides a Tablewith the Load Index and corresponding Load Rating in kilograms.

[12] The load index is not required to be labeled on tires sold in the U.S. However, the maximum load rating is required in the U.S. but no in the ECE Regulation. Often the load index is placed on tires so that manufacturers can simultaneusly comply with both ECE and FMVSS requirements.

[13] Manufacturers often warrant that a tire will last for a specified number of miles, subject to a number of terms and exclusions, *e.g.,* the tire must be rotated at specified intervals.

[14] State inspection systems require that the tread on each tire be not less than 2/32 inch deep. See 49 CFR § 570.9(a).

tires have the correct speed rating for their vehicles?

Run-Flat and Extended Mobility Tires

(23) Should run-flat or extended mobility tires have that capability identified on the tire and/or on the vehicle certification label to ensure that consumers know that a tire is categorized as such? If so, how should that capability be identified?

Retreaded Tires

(24) What changes, if any, should be made in the labeling requirements applicable to retreaded tires? Please provide the basis for your response.

Tire Inflation Pressure

(25) With respect to passenger cars, a placard containing the vehicle manufacturer's recommended cold tire inflation pressure is required by FMVSS No. 110 to be affixed to the glove compartment door or an equally accessible location, *e.g.,* the driver's door pillar. With respect to motor vehicles other than passenger cars, similar information is required by FMVSS No. 120 to appear on the vehicle certification label or on the tire information label. What other pertinent tire information (*e.g.,* tire size and speed rating) should be considered for the placard or the labels? What other locations, such as the inside of the fuel tank access door, should be considered to ensure that the tire information contained on the placard and the labels is conspicuous to vehicle users and why? The fuel tank access door is regularly seen by drivers who fill their own fuel tanks and at such times when an air pump is generally available nearby. Please provide the basis for your responses.

(26) The maximum cold inflation pressure value provided on the sidewalls of the tire appears to mislead some consumers, who use it as the vehicle's recommended inflation pressure.[15] Should the maximum inflation pressure value (and the corresponding maximum load rating for tires subject to FMVSS No. 120) be removed from the tire sidewall? What would be the potential safety impact? If no inflation pressure value appeared on the tire, would users take the time to seek the vehicle manufacturer's recommended cold inflation pressure on the glove compartment door, the door pillar, or the owner's manual?

Dissemination of Tire Safety Information

(27) Maintaining proper inflation pressure in motor vehicle tires is important to the safe and efficient use of motor vehicles. Maintaining tires at their proper inflation pressure, instead of allowing them to become underinflated, reduces heat build up, minimizes tire wear, contributes to good vehicle handling, and improves fuel economy through decreasing the rolling resistance of the tires. In light of the trend toward self-service gasoline stations, the responsibility for maintaining proper inflation pressure falls increasingly on motorists. Surveys indicate that a significant number of vehicles are being operated with underinflated, overloaded and/or damaged tires and that the public needs to be reminded to inspect and properly maintain their tires. What type of tire safety information should be provided? Where and how should it be presented so that it is readily noticed and easily understood? Should a tire inflation warning label be placed in a conspicuous location such as on the exterior of the glove box door? In answering these questions, please consider the requirement in section 13 of the TREAD Act that the agency complete a rulemaking to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly underinflated.

Motorcycles and Trailers

(28) Paragraph S5.1.1 of FMVSS No. 120 specifies that each motor vehicle shall be equipped with tires that meet the requirements of FMVSS No. 109 or 119. What are the merits of including or excluding trailer tires, motorcycle tires, etc., from any amendments to the tire information labeling requirements that may be proposed and adopted in this rulemaking? Please be specific in your response and provide a basis for your answer.

Font Height for Labeling Information

(29) Currently, the various tire labeling requirements specify the height of letters, numbers, etc., used to convey the required information. For instance, FMVSS Nos. 109 and 119 require that symbols be not less than 0.078 inches (1.98 mm) in height, while the date of manufacture symbols for the TIN under Section 574.4 and the UTQGS figures under Section 575.104 are required to be not less than 5/32 inch (0.16 inch or 4 mm) in height. Is there any reason for the agency to continue to specify different minimum heights for different types of required information or should it require one height for all required symbols? What height should be chosen? Please provide a basis for your answer. Please explain how your answer to this question would be affected by the adoption of a requirement to use contrasting colors or other means to increase the readability of the symbols.

D. Harmonization Issues

The agency is participating in the development of a global tire standard as part of a cooperative worldwide effort, through the United Nations Economic Commission for Europe, to establish best safety and environmental practices for motor vehicle regulations. The issue of tire labeling is one of the issues being addressed in ongoing negotiations to develop worldwide labeling requirements.

(30) Are there any voluntary consensus standards or requirements of other countries or regions which address the issues raised in this ANPRM? Do they provide effective ways of accomplishing the purposes of this rulemaking?

(31) What opportunities are there to accomplish the purposes of this rulemaking in ways that minimize any unnecessary differences between NHTSA's requirements and those of other countries and regions?

IV. Regulatory Analyses

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

This advance notice was not reviewed under Executive Order 12866 and under the Department of Transportation's regulatory policies and procedures. Due to the preliminary nature of this document, NHTSA has identified few specific changes that it might propose to its standards and regulations. Further, it has limited current cost information that might be relevant to any potential changes. Accordingly, NHTSA is unable now to evaluate the economic impacts that this rulemaking might ultimately have. At this time, it does not appear that the rule resulting from this rulemaking will be significant. However, NHTSA will reassess this rulemaking in relation to the Executive Order, the DOT Regulatory Policies and Procedures, the Unfunded Mandates Reform Act of 1995 and other requirements for analyzing rulemaking impacts after using the information received in response to this advanced

[15] The maximum cold inflation pressure is labeled on the tire by the tire manufacturer to provide the maximum cold inflation pressure to which a tire may be inflated based upon the maximum load rating for that tire. The recommended inflation pressure is labeled on the vehicle on a placard or the vehicle certification label by the vehicle manufacturer to provide the correct cold tire inflation pressure for the maximum loaded vehicle weight based upon vehicle specifications and operation, as determined by the vehicle manufacturer.

notice to select specific proposed changes. To that end, the agency solicits comments, information, and data useful in assessing the impacts of making changes to the various requirements discussed in this document.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: November 28, 2000.

Stephen R. Kratzke,

Associate Administrator, Safety Performance Standards.

[FR Doc. 00–30647 Filed 11–30–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[I.D. 112400A]

Taking of the Cook Inlet (CI), Alaska, Stock of Beluga Whales by Alaska Natives

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

ACTION: Notice of hearing; final agenda.

SUMMARY: This final agenda governs the formal on-the-record hearing regarding the proposed regulations to limit the taking of CI, AK stock of beluga whales by Alaska Natives.

DATES: The hearing will commence on Tuesday, December 5, 2000, at 9:30 a.m. AKST.

ADDRESSES: The hearing will be held before Judge Parlen L. McKenna of the United States Coast Guard at the United States District Court 222 West 7th Avenue, 2nd Floor Courtroom, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Barbara Mahoney, NOAA/NMFS, Alaska Region, Anchorage Field Office, (907) 271-5006, fax (907) 271-3030, or Michael Payne, NOAA/NMFS, Alaska Region, (907) 586-7235, fax (907) 586-7012, or Thomas Eagle, Office of Protected Resources, (301) 713-2322, ext. 105, fax (301) 713-4060.

SUPPLEMENTARY INFORMATION: In an effort to recover CI beluga whales to its Optimum Sustainable Population, NMFS issued proposed regulations under the Marine Mammal Protection Act (MMPA) that would limit the subsistence harvest of the whales by Alaska Natives. Section 101(b) of the MMPA provides an exemption to the general moratorium on the taking of marine mammals and permits Alaska Natives to harvest marine mammals for subsistence purposes or for the purpose of creating traditional Native handicrafts and clothing. However, the Federal government may regulate Native subsistence harvest of marine mammals if the stock in question is designated as depleted after regulations specific to the depleted stock are issued and an opportunity for notice and hearing on the record has been provided.

After a depleted determination was made on May 31, 2000 (65 FR 34590), NMFS issued a proposed rule on October 4, 2000 (65 FR 59164), to regulate subsistence harvest of CI beluga whales by Alaska Natives. The proposed regulation provides that:

(1) Subsistence harvest can only occur under an agreement between NMFS and an Alaska Native organization pursuant to section 119 of the MMPA;

(2) Subsistence harvest shall be limited to no more than two strikes annually until the stock is no longer considered depleted under the MMPA;

(3) The sale of CI beluga whale products shall be prohibited;

(4) All hunting for subsistence purposes shall occur after July 15 each year; and

(5) The harvest of newborn calves, or adult whales with maternally dependent calves shall be prohibited.

All interested persons or parties have been given an opportunity to file a notice of intent to participate in the hearing that will be conducted in accordance with section 103(d) of the MMPA. Such interested persons or parties have also been given an opportunity to file direct testimony and documentary exhibits. Parties who submitted notice of intent to participate in the hearing were advised to submit rebuttal testimony by Novenber 28, 2000. Pursuant to the procedural regulations governing the formal rulemaking hearing that was reinstated on June 27, 2000 (65 FR 39560), Judge Parlen McKenna issued the following notice identifying the participants and the final agenda as follows:

Participant	Interest
Thomas J. Meyer, Esq., NOAA, Office of General Counsel, Juneau, AK	Represents NMFS (i.e., the proponent of the proposed regulations)
Joel and Debra Blatchford, Kasilof, AK	Represents Eskimo whale hunters. Generally supports the proposed regulations. However, he argues that Eskimos should be a party to any co-management agreement governing the harvest of CI beluga whales and one strike should be allocated to the Eskimos.
Steve Silver, Esq., Robertson, Monagle & Eastaugh, Arlington, VA	Represents the Municipalities of Anchorage, Kenai Peninsula Borough, and Matankuska-Susistna Bourough. Generally supports the proposed regulations.
Judy Brady, Exec. Dir., Alaska Oil and Gas, and Jeffrey W. Leppo, Esq., Stoel Rives, LLP., Seattle, WA	Represents Alaska Oil & Gas Assoc. (''AOGA''). Generally supports the proposed regulations. AOGA expresses concerns regarding (1) the effectiveness of the co-management agreement strategy; (2) the agency's ability to enforce the regulations and manage the subsistence harvest of CI beluga whales; and (3) whether illegal takes will be counted against the two-strike harvest limit.

Participant	Interest
Michael L. Gosliner, Esq., General Counsel, Marine Mammal Commission, Bethesda, MD	Represents the Marine Mammal Commission (''MMC''). Generally supports the proposed regulations. MMC expresses concern about the allocation of the strikes to Native hunters. MMC challenges NMFS authority to adjust the number of annual strikes through notice and comment rulemaking after adoption of the proposed regulations. MMC expresses concern about the broad prohibition against the sale of CI beluga products, and recommends that the prohibition should only apply to edible portions of beluga whale products. MMC recommends expansion of the prohibition to cover purchase, as well as sale, of edible portions of CI beluga whale. MMC further expresses concern on the ability to differentiate between edible portions of CI beluga whales and other beluga whale stocks in the Anchorage area and recommends a broad prohibition against the sale and purchase of all edible portions of beluga whales in the area. MMC also expresses concern regarding the efficiency of the harvest of CI beluga whales and is equally concerned about the extent to which landed whales are fully utilized. In addition, MMC seeks clarification as to whether the proposed regulation limiting Native harvest applies to all maternally dependent calves or just newborn calves.
John M. Starkey, Esq., Homer, AK	Represents the Native Village of Tyonek (''Tyonek''). Tyonek claims to be the only federally recognized Indian tribe, which is historically known for hunting CI beluga whales and argues that 1 whale should be allotted to the tribe each year under the proposed regulations and management agreement.
Jack K. Sterne, Esq., Trustee for Alaska, Center for Marine Conservation, Anchorage, AK	Trustees for Alaska challenges the methodology and enforceability of the proposed regulations.
David Avraham Voluck, Esq., Landye Bennett Blumstein, LLP, Anchorage, AK	Represents Cook Inlet Treaty Tribes (''CITT''). CITT is a federally recognized Indian tribe that criticizes the hearing process and procedures and sees it as a serious barrier to meaningful participation by Alaska Natives, who were given less than 1 month to file an initial notice of intent to participate, together with direct testimony. CITT also opposes the proposed regulations. CITT challenges NMFS scientific methodology for estimating the CI beluga whale stock. CITT argues that a more flexible regulatory regime should be applied to CI beluga whales that would easily provide for increasing the number of subsistence strikes if new information becomes available. CITT also claims that it is the sovereign governing tribes in CI and NMFS must deal directly with all the tribes of CI in their contemplated co-management agreement, and challenges authority and ability of NMFS to enforce the contemplated co-management agreement.

Issues to be Addressed at the Hearing

A. Population Estimates

1. What numbers are appropriate to use for:

a. Carrying capacity (K)

b. Current Population size (N_{2000})

c. Intrinsic rate of growth (R_{max})

d. The lower bound of the optimum sustainable population level (Maximum Net Productivity Level or MNPL) relative to the carrying capacity

2. Whether 2000 Survey Data will be available. If so, why aren't they being used?

3. Whether the recovery times projected by the National Marine Fisheries Service (NMFS) under different harvest regimes are appropriate?

a. Whether recovery factor used by the NMFS is too conservative? If so, what is the appropriate recovery factor?

b. Whether there is a consistent formula for estimating the recovery time?

c. Have past formulas for population been developed? If so, what are the formulas and why weren't they adopted?

4. What factors, other than Native harvest of Cook Inlet beluga whales, possibly contributed to the observed declines or slower than projected potential recovery of the stock?

a. Whether the estimate of annual removals by Alaska Native subsistence hunters in Cook Inlet is accurate? Is the Cook Inlet Marine Mammal Council's report on 1998 harvest levels available?

b. Whether NMFS has adequately accounted for risks to the population from orca predation, strandings, oil spills, and other stochastic events in calculating potential harvest removals and recovery times?

c. Is there an Inlet-based decline in the availability of food or prey for the Beluga? If so, in what way has this affected the decline and potential recovery of the population?

5. Whether a more flexible model that accounts for uncertainty in key population parameters is available? If so, why wasn't it used?

6. What resources are available for monitoring beluga population and harvest?

a. Will the beluga population be evaluated on an annual basis?

b. Whether the regulations should contain a provision for altering the number of Native harvest strikes if new, valid information changes the analysis of Cook Inlet beluga population?

7. Should a more flexible harvest regime be adopted? If so, what should it be?

B. Co-Management and Enforcement

1. What is the definition of the term ''Alaska Native Organization (ANO)?''

a. How is an ANO recognized?

b. Are there any ANOs in Cook Inlet with area-wide tribal authority to enforce laws against all members of the area tribes and enter into agreements on behalf of said tribes? How many exist and who are they? Which ANO(s) can enter into co-management agreement with NMFS?

2. What mechanisms are available to enforce the Native harvest limitation and prohibition on the sale of products and foodstuff from Cook Inlet beluga whales?

a. Who has authority to enforce the proposed regulations, if adopted? Will enforcement authority be shared between NMFS and the ANO(s)?

b. What effect, if any, does the recent ruling in *Alaska* v. *Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998) have on a tribal government's ability to enforce tribal laws on individuals?

c. How will the strikes under the proposed regulation be allocated? Who will monitor the harvest of Cook Inlet beluga whales to ensure that the season is concluded as soon as the second strike has been made? How will the hunters and tribes be notified of season's closure?

3. Are there methods to increase efficiency?

4. Will there be sufficient funding for enforcement and prosecution?

C. Method and Means of Hunting

1. Will illegal takings be counted against the two-strike Native harvest limitation?

2. Will NMFS be able to stop Native harvest of Cook Inlet beluga whales under emergency circumstances by rule making? Will there be a legal mechanism to stop Native harvest of Cook Inlet beluga whales in the event of unrelated mortality that would affect the population recovery?

3. Should juvenile whales be taken instead of mature adults if it is shown to enhance chances of population recovery?

4. Should the proposed July 15 annual commencement date for Native harvest of beluga whales be moved forward to July 1 in view of deteriorating weather conditions?

D. Sale of Cook Inlet Beluga Whale Products

1. Whether the term ''sale'' should include barter and other types of quasi-commercial transactions?

2. Should attempts to sell Cook Inlet beluga whale products and/or foodstuff be deemed a violation? Should the purchase and attempts to purchase Cook Inlet beluga whale products or foodstuff be deemed a violation?

3. For enforcement purposes, should the restriction on the sale of Cook Inlet beluga whale products and/or foodstuff be expanded to prohibit the sale of products and/or foodstuff from other beluga whale stock?

4. Should restrictions be in place for all Cook Inlet beluga whale products, or just edible portions?

E. Cultural Interests

1. Are there ways to encourage full utilization of those belugas taken pursuant to the proposed regulations?

2. Is there sufficient emphasis on the importance of Native subsistence harvest in terms of balancing in favor of permitting the proposed harvest?

These issues are subject to change as a result of stipulations of the participants. NMFS and all parties have submitted various documents and written testimony that bears on these issues.

During the hearing, the NOAA Counsel will present his witnesses and documentary evidence first, and the participants will be given an opportunity to cross-examine the witnesses. The other parties listed above will also be given an opportunity to present witnesses and introduce documentary evidence in the order in which they are listed in this Notice of Final Agenda. Witnesses in the hearing include the following:

(1) For NMFS, Douglas P. DeMaster, Ph.D., Director, National Marine Mammal Laboratory, NMFS; P. Michael Payne, Assistant Regional Administrator for Protected Resources, NMFS;

(2) For Joel and Debra Blatchford: These participants will testify on their own behalf;

(3) For the Municipality of Anchorage, the Mantanuska-Susitna Borough, and the Kenai Peninsula Borough: George Weurch, Mayor, Municipality of Anchorage; John Duffy, Acting Manager, Matanuska-Susitna Borough; and Dale Bagley, Mayor, Kenai Peninsula Borough;

(4) For Alaska Oil and Gas Association (AOGA): Judith M. Brady, Executive Director, AOGA;

(5) For the Marine Mammal Commission: Daniel Goodman, Ph.D., Professor, Montana State University;

(6) For the village of Tyonek: Peter Merryman, Chief, Village of Tyonek;

(7) For the Trustees for Alaska: Not yet identified; and

(8) For Cook Inlet Treaty Tribes: Delice calcote, Secretary, Cook Inlet Marine Mammal Council.

Dated: November 27, 2000.

Don Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–30677 Filed 11–30–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001120324-0324-01; I.D. 110700D]

RIN 0648-AO71

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Extension of Closed Areas

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would extend the closure of the Hudson Canyon South and Virginia Beach Sea Scallop Closed Areas for 180 days or until such time that a controlled area access program for these two areas can be implemented through Framework 14 to the Atlantic Sea Scallop Fishery Management Plan (FMP), whichever is sooner. This action, which is necessary to reduce overfishing, would help ensure that fishing mortality rates do not exceed the target thresholds established in the FMP.

DATES: Comments must be received no later than 5 p.m., eastern daylight time, January 2, 2001.

ADDRESSES: Comments on this proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS,1 Blackburn Drive, Gloucester, MA 01930-2298. Please mark the envelope ''Comments - Extension of Mid-Atlantic Scallop Closed Areas.'' Comments also may be sent via facsimile (fax) to 978-281-9135. Comments will not be accepted if submitted via e-mail or Internet. Comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule should also be sent to Patricia Kurkul. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and any other documents supporting this action are available from the Regional Office at the address specified here.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978-281-9288, fax 978-281-9135, e-mail peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: The 23rd Northeast Regional Stock Assessment Workshop (SAW 23), in March 1997, identified high fishing mortality rates, low stock size, and lack of significant recruitment in the Atlantic sea scallop (scallop) fishery. Based on this finding, scientists involved with SAW 23 determined that fishing effort should be reduced immediately and significantly in the Mid-Atlantic region to preserve spawning stock biomass and improve the yield per recruit. To achieve this, NMFS implemented an interim final rule on April 3, 1998 (63 FR 15324), that established two areas in the Mid-Atlantic region that were closed to all scallop fishing. The closure of these two areas, the Hudson Canyon South and Virginia Beach Closed Areas, was based on a finding that the areas contained large concentrations of small and juvenile scallops that could provide for future recruitment. The interim final rule was subsequently extended for 180 days (63 FR 51862, September 29, 1998) and on March 29, 1999, Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (64 FR 14835)

extended the effective date of the closures through March 1, 2001.

While there are still concentrations of small scallops in the Hudson Canyon South and Virginia Beach Closed Areas, recent surveys by the NMFS Northeast Fisheries Science Center and Virginia Institute of Marine Science indicate that a large portion of the protected scallops have grown and could be of considerable value to the fishing industry. Because of the vulnerability of these scallops to fishing upon the re-opening of the closed areas on March 1, 2001, concern was expressed by scientists in the recent Sea Scallop Stock Assessment and Fishery Evaluation report that a high amount of fishing effort in these areas would increase fishing mortality rates beyond management thresholds, would contribute to overfishing, and would compromise future recruitment of scallops. To address this concern, the New England Fishery Management Council (Council) is currently developing Framework 14 to the FMP, the annual framework adjustment, with the intention of including an area access program for the Mid-Atlantic closed areas. This program would restrict scallop vessels when fishing in the re-opened Mid-Atlantic closed areas to a scallop possession limit and a limited amount of trips, among other measures. Because the Council is preparing a Supplemental Environmental Impact Statement for Framework 14 to assess the impacts of the fishery on the human environment, it is highly unlikely that the framework can be implemented by March 1, 2001, the date that the Mid-Atlantic closed areas are scheduled to re-open. An extension of the closures is therefore necessary to ensure that the areas do not open prior to protective measures being in place. Without such action, overfishing would likely occur before Framework 14 can be implemented, and the ability to maximize scallop yields from the areas and ensure that recruitment potential is maintained could be compromised. If that were to occur, long-term benefits to the scallop fishery could be significantly reduced.

Proposed Action

The proposed rule would delay the re-opening of the Hudson Canyon South and Virginia Beach scallop closed areas for 180 days or until such time that new measures to prevent overfishing in the areas are implemented, whichever is sooner. This action is authorized by section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act and may be extended for an additional 180-day period.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA as part of an RIR that describes the economic impact this action, if adopted, would have on small entities. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the analysis follows:

The IRFA describes this action, sets forth why it is being taken, and the legal basis for it. A description of the action, why it is being considered, and the legal basis for this action appear in the beginning of this section in the preamble and in the **SUMMARY** section and is not repeated here.

The IRFA considered the impacts that this action will have on small entities, which includes all holders of active scallop permits, since none have reported gross annual revenues greater than $3 million. The 1999 fishing season, March 1, 1999, to February 28, 2000, was the last full year of scallop fishing activity available for analysis. During that season, there were 345 qualified permits in the Limited Access fishery. Two-hundred and ninety of these permits were on vessels that landed scallops. The remaining 55 Limited Access permits were in Confirmation of Permit History, a category of permit for vessels that were destroyed or that were sold and the permit eligibility retained by the seller. In addition, 2,095 permits were issued to vessels in the open access General Category, but only 190 of these vessels could be identified in the dealer reports as having landed scallops. The proposed action to extend the closures of the Hudson Canyon South and Virginia Beach Closed Areas for 180 days from March 1, 2001, or until Framework 14 can be implemented (currently estimated to be May 2001), whichever is sooner, should have a positive net impact on small business entities during the next few years and is not expected to impact segments of the fishery differentially. Without this proposed action, the most likely outcome would be that Framework 14 would have to prevent further access to these closed areas during 2001 because the vessels would have exceeded the target fishing mortalities and total allowable catch by the time Framework 14 becomes effective. One alternative considered by NMFS but rejected would have allowed the Hudson Canyon South and Virginia Beach Closed Areas to re-open, as scheduled, on March 1, 2001. Under this alternative, overfishing would likely occur in the areas, and the ability to maximize scallop yields from the areas and ensure that recruitment potential is maintained could be compromised, thereby reducing long-term benefits to the scallop fishing industry. Depending on the amount of fishing that has occurred in the absence of this interim action, access during the 2002 season might also have to be reduced substantially in order to rebuild the stock.

The proposed action is not expected to reduce overall access to the closed areas in 2001 and will protect the growth potential of more young scallops for 2002, provided that Framework 14 is implemented in a timely fashion, as anticipated by the Council. The Scallop Plan Development Team (PDT), in preparing analyses for Framework 14, has estimated that each limited access permit holder will be allocated between three and five trips into the Mid-Atlantic areas, depending on their effort category and the fishing mortality scenario selected by the Council. Although 10 days at sea would be charged to each trip, the scallop resource density in the areas to be re-opened is high enough that trip limits that meet fishing mortality targets may be able to be taken in 3 to 5 days, as estimated by the PDT. Thus, there may still be time in the 2001 season for vessels to fish in the re-opened areas and to take their allotted limits. Moreover, vessels would be free to use their effort allocation outside the closed areas until Framework 14 goes into effect. Thus, any short-term negative impacts caused by delaying the re-opening of the two Mid-Atlantic areas to scallop fishing are expected to be offset by access to those areas in the remainder of 2001 and by future recruitment of scallops.

This proposed rule has no projected reporting, recordkeeping, or compliance requirements. Also, there are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to Patricia A. Kurkul, Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 27, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.57, the first sentence of paragraph (a) and (b) are revised to read as follows:

§ 648.57 Closed areas.

(a) * * * No vessel may fish for, possess, or retain sea scallops in or from the area known as the Hudson Canyon South Closed Area or transit this closed area unless all scallop dredge gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b). * * *

(b) * * * No vessel may fish for, possess, or retain sea scallops in or from the area known as the Virginia Beach Closed Area or transit this closed area unless all scallop dredge gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b). * * *

[FR Doc. 00–30678 Filed 11–30–00; 8:45 am]

BILLING CODE: 3510–22 –S

Notices

Federal Register

Vol. 65, No. 232

Friday, December 1, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Government Owned Invention Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Agriculture and is available for licensing. U.S. Patent Application Serial No. 09/637,031 entitled ''Magnetostrictive Precipitation Gage'' is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of Federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

DATES: (**Federal Register**) Comments must be received on or before January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: Janet I. Stockhausen of the USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398; telephone 608–231–9502; fax: 608–231–9508; or e-mail *jistockh@facstaff.wisc.edu.* Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

June Blalock,

Technology Licensing Coordinator.

[FR Doc. 00–30660 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–114–1]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The General Conference Committee will meet on December 12, 2000, from 9:00 a.m. to 4 p.m. and on December 13, 2000, from 8:00 a.m. to noon.

ADDRESSES: On December 12, 2000, the meeting will be held at the USDA South Building, 14th Street and Independence Avenue SW., Room 3501, Washington, DC; and on December 13, 2000, at the USDA Center at Riverside, 4700 River Road, Room 2D02CN, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 200, Conyers, GA 30094–1231; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan, representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

Topics for discussion at the upcoming meeting include:

1. U.S. Salmonella Clean program for meat-type chicken breeding flocks.
2. *Mycoplasma gallisepticum* epidemiology update.
3. Proposed changes to the provisions of the National Poultry Improvement Plan.
4. *Salmonella enteritidis* in egg-type chicken breeding flocks.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. 00–114–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 21st day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–30598 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–116–1]

Draft Guideline on Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports, VICH Topic GL24

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: A draft guideline titled ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports'' has been developed by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The draft guideline deals with the spontaneous reporting system for identification of possible adverse events following the use of marketed veterinary medicinal products. Because the draft guideline applies, in part, to veterinary biological products regulated by the Animal and Plant Health Inspection Service under the Virus-Serum-Toxin Act, we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

DATES: We invite you to comment on the draft guidelines. We will consider all comments that we receive by January 30, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–116–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.
Please state that your comment refers to Docket No. 00–116–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

You may request a copy of the draft guideline ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports'' by writing to or calling the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Center for Veterinary Biologics-Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245.

SUPPLEMENTARY INFORMATION: The International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) is a unique project conducted under the auspices of the International Office of Epizootics (OIE, the Office International des Epizooties) that brings together the regulatory authorities of the European Union, Japan, and the United States and representatives from the animal health industry in the three regions. The purpose of VICH is to harmonize technical requirements for veterinary products (both drugs and biologics). Regulatory authorities and industry experts from Australia and New Zealand participate in an observer capacity. The World Federation of the Animal Health Industry (COMISA, the Confederation Mondiale de L'Industrie de la Sante Animale) provides the secretarial and administrative support for VICH activities.

The United States Government is represented in VICH by the Food and Drug Administration (FDA) and the Animal and Plant Health Inspection Service (APHIS). The FDA provides expertise regarding veterinary drugs, while APHIS fills a corresponding role for veterinary biological products. As VICH members, APHIS and FDA participate in efforts to enhance harmonization and have expressed their commitment to seeking scientifically based harmonized technical requirements for the development of veterinary drugs and biological products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for veterinary drugs and biologics among regulatory agencies in different countries.

The draft document that is the subject of this notice, ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports'' (VICH Topic GL24), has been made available by the VICH Steering Committee for comments by interested parties. The draft guideline, which defines pharmacovigilance of veterinary medicinal products as the detection and investigation of the effects of veterinary medicinal products, mainly aimed at safety and efficacy in animals and safety in people exposed to these products, deals with the spontaneous reporting system for identification of possible adverse events following the use of marketed veterinary medicinal products. Because the draft guideline applies to some veterinary biological products regulated by APHIS under the Virus-Serum-Toxin Act—particularly with regard to adverse event reports—we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

The draft document reflects current APHIS thinking on the generation and submission of adverse event reports concerning veterinary biological products. (The draft guideline refers to such products as ''veterinary medicinal products.'') In accordance with the VICH process, once a final draft of ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports'' has been approved, the guideline will be recommended for adoption by the regulatory bodies of the European Union, Japan, and the United States. As with all VICH documents, the final guideline will not create or confer any rights for or on any person and will not operate to bind APHIS or the public. Further, the VICH guidelines specifically provide for the use of alternative approaches if those approaches satisfy applicable regulatory requirements.

Ultimately, APHIS intends to consider the VICH Steering Committee's final guidance document for use by U.S. veterinary biologics licensees, permittees, and applicants. In addition, APHIS will consider its use as a basis for the investigation of adverse event reports that raise questions regarding the purity, safety, potency, or efficacy of veterinary biological products under 9 CFR 116.5. APHIS may also use the final guidance document as the basis for proposed additions or amendments to its regulations in 9 CFR chapter I, subchapter E (Viruses, Serums, Toxins, and Analogous Products; Organisms and Vectors). Because we anticipate that applicable provisions of the final version of ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports'' may be introduced into APHIS' veterinary biologics regulatory program in the future, we encourage your comments on the draft version.

Authority: 21 U.S.C. 151 *et seq.*

Done in Washington, DC, this 22nd day of November 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–30599 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest Travel Plan, Helena National Forest, Broadwater, Lewis and Clark, Meagher and Powell Counties, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement on a proposal to update travel management and approximately 390,000 acres of National Forest lands on the Townsend, Helena and Lincoln Ranger Districts. These 390,000 acres are the remaining lands that have not been subject to recent motorized travel management decisions or have decisions pending. The project covers three separate areas in the Blackfoot, Divide/Little Blackfoot and the South Belts areas. Motorized travel activities in these areas are presently subject to the June 30, 1994 Helena National Forest Travel Plan.

DATES: Comments concerning the proposal and scope of the analysis

should be received in writing by January 5, 2001.

ADDRESSES: Send written comments to USDA Forest Service, Helena National Forest, 2880 Skyway Drive, Helena, MT 59601.

FOR FURTHER INFORMATION CONTACT: Charlie Hester, Team Leader, (406) 362–4265.

SUPPLEMENTARY INFORMATION: The current Travel Management Plan for the Helena National Forest was approved in June 1994. Since then, site-specific travel management has been completed or is nearing completion on approximately 500,000 acres. These recent efforts have generally prohibited cross-country motorized travel by restricting motorized vehicles, except snowmobiles, to designated routes. These areas are not affected by this proposal.

The remaining areas that do not have recent decisions or decisions pending are the focus of this proposal. The proposal retains current area and route closures and restrictions except where specific changes are identified. The major change proposed is to limit motorized vehicles, except snowmobiles, to designated Forest Development Road and Forest Developmental trails. Designations will specify the classes of vehicles permitted and the authorized period of use.

Motorized use has increased substantially over most areas in the past 10–15 years as off-highway vehicles have become more stable, maneuverable and powerful and riders have become more skilled. This increased use has resulted in the creation of networks of user-created routes often resulting in undesirable impacts to soils, watersheds, vegetation and wildlife resources. Conflicts between motorized and non-motorized users have also become more common and intense. The intent of this proposal is to provide opportunities for motorized activities without duly impacting other forest resources or uses.

The Forest Service is seeking information and scoping comments from Federal, State and local agencies as well as individuals and organizations that may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions related to the proposal. Information received will be used in preparation of the Draft Environmental Impact Statement. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of the Notice in the **Federal Register**.

The Forest Service expects to release a Draft Environmental Impact Statement in August 2001. A Final Environmental Impact Statement and Record of Decision are expected in April 2002.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978).) Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts. (*Wisconsin Heritage, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).) Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The responsible official is Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, MT 59601.

Thomas J. Clifford,

Helena Forest Supervisor.

[FR Doc. 00–30584 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[00–04–A]

Opportunity for Designation in the Fremont (NE), Muncie (IN), and West Lafayette (IN) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in August 2001. GIPSA is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

- East Indiana Grain Inspection, Inc. (East Indiana)
- Fremont Grain Inspection Department, Inc. (Fremont); and
- Titus Grain Inspection, Inc. (Titus).

DATES: Applications and comments must be postmarked or sent by telecopier (FAX) on or before December 31, 2000.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647–S, 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *janhart@gipsadc.usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official Agency	Main Office	Designation start	Designation end
East Indiana	Muncie, IN	09/01/2000	08/31/2001
Fremont	Fremont, NE	09/01/1998	08/31/2001
Titus	West Lafayette, IN	09/01/1998	08/31/2001

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Indiana and Ohio, is assigned to East Indiana.

In Indiana:

Bounded on the North by the northern and eastern Grant County lines; the northern Blackford, and Jay County lines;

Bounded on the East by the eastern Jay, Randolph, Wayne, and Union County lines;

Bounded on the South by the southern Union and Fayette County lines; the eastern Rush County line south to State Route 244; State Route 244 west to the Rush County line; and

Bounded on the West by the western Rush and Henry County lines; the southern Madison County line west to State Route 13; State Route 13 north to State Route 132; State Route 132 northwest to Madison County; the western and northern Madison County lines; the northern Delaware County line; the western Blackford County line north to State Route 18; State Route 18 west to County Highway 900E; County Highway 900E north to the northern Grant County line.

Darke County, Ohio.

b. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Iowa and Nebraska, is assigned to Fremont.

Carroll (west of U.S. Route 71); Clay (west of U.S. Route 71); Crawford; Dickinson (west of U. S. Route 71); Harrison (east of State Route 183); O'Brien (north of B24 and east of U.S. Route 59); Osceola (east of U.S. Route 59); and Shelby Counties, Iowa.

In Nebraska:

Bounded on the North by U.S. Route 20 east to the Pierce County line; the eastern Pierce County line; the northern Wayne, Cuming, and Burt County lines east to the Missouri River;

Bounded on the East by the Missouri River south-southeast to State Route 91; State Route 91 west to the Dodge County line; the eastern and southern Dodge County lines west to U.S. Route 77; U.S. Route 77 south to the Saunders County line;

Bounded on the South by the southern Saunders, Butler, and Polk County lines; and

Bounded on the West by the western Polk County line north to the Platte River; the Platte River northeast to the western Platte County line; the western and northern Platte County lines east to U.S. Route 81; U.S. Route 81 north to U.S. Route 20.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Cooperative, and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska (located inside Omaha Grain Inspection Service, Inc.'s, area).

Fremont's assigned geographic area does not include the following grain elevators inside Fremont's area which have been and will continue to be serviced by the following official agencies: Hastings Grain Inspection, Inc.: Huskers Cooperative Grain Company, Columbus, Platte County, Nebraska; and Omaha Grain Inspection Service, Inc.: Farmers Coop Business Assn., Rising City, Butler County, Nebraska; and Farmers Coop Business Association (2 elevators), Shelby, Polk County, Nebraska.

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Titus.

Bounded on the North by the northern Pulaski County line;

Bounded on the East by the eastern and southern Pulaski County lines; the eastern White County line; the eastern Carroll County line south to State Route 25; State Route 25 southwest to Tippecanoe County; the eastern Tippecanoe County line;

Bounded on the South by the southern Tippecanoe County line; the eastern and southern Fountain County lines west to U.S. Route 41; and

Bounded on the West by U.S. Route 41 north to the northern Benton County line; the northern Benton County line east to State Route 55; State Route 55 north to U.S. Route 24; U.S. Route 24 east to the White County line; the western White and Pulaski County lines.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Kentland Elevator & Supply, Inc., Boswell, Benton County; ADM, Dunn, Benton County; ADM, Raub, Benton County (located inside Champaign-Danville Grain Inspection Departments, Inc.'s, area); and The Andersons, Delphi, Carroll County; Frick Services, Inc., Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County (located inside Frankfort Grain Inspection, Inc.'s, area).

Titus' assigned geographic area does not include the following grain elevators inside Titus' area which have been and will continue to be serviced by the following official agency: Schneider Inspection Service, Inc.: Cargill, Inc., and Farmers Grain, both in Winamac, Pulaski County.

2. Opportunity for Designation

Interested persons, including East Indiana, Fremont, and Titus, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

DESIGNATION TERMS

East Indiana	09/01/2001 to 06/30/2004
Fremont	09/01/2001 to 06/30/2004
Titus	09/01/2001 to 06/30/2004

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the East Indiana, Fremont, and Titus official agencies. Commenters are encouraged to submit pertinent data concerning the East Indiana, Fremont, and Titus official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 16, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–30499 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[00–02–S]

Designation for the Minnesota, Virginia, Frankfort (IN), and Indianapolis (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

- Minnesota Department of Agriculture (Minnesota);
- Virginia Department of Agriculture and Consumer Services (Virginia);
- Frankfort Grain Inspection, Inc. (Frankfort); and
- Indianapolis Grain Inspection and Weighing Service, Inc. (Indianapolis).

EFFECTIVE DATES: January 1, 2001 for Minnesota; February 1, 2001 for Virginia; and March 1, 2001 for Frankfort and Indianapolis.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *janhart@gipsadc.usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 1, 2000, **Federal Register** (65 FR 11036), GIPSA asked persons interested in providing official services in the geographic areas assigned to Minnesota to submit an application for designation. Applications were due by March 30, 2000. In the June 1, 2000, **Federal Register** (65 FR 35044), GIPSA asked persons interested in providing official services in the geographic areas assigned to Virginia, Frankfort, and Indianapolis to submit an application for designation. Applications were due by June 30, 2000.

Each was the sole applicant for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act and, according to section 7(f)(1)(B), determined that each official agency is able to provide official services in the geographic areas, specified in the March 1, 2000 and June 1, 2000 **Federal Registers**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Designation start	Designation end	Telephone
Minnesota	01/01/2001	09/30/01	612–341–7190
Virginia	02/01/2001	12/31/2003	757–494–2464
Frankfort	03/01/2000	12/31/2003	765–258–3624
Indianapolis	03/01/2000	12/31/2003	317–899–2337

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 16, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–30498 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service—Arizona's Section IV of the Field Office Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS Arizona Section IV of the Field Office Technical Guide for review and comment.

SUMMARY: It is the intention of NRCS Arizona to issue a series of new conservation practice standards in its Section IV of the Field Office Technical Guide. These new standards include Nutrient Management (Code 590) and Waste Management System (Code 312).

DATES: Comments will be received on or before January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Noller Herbert, Natural Resources Conservation Service (NRCS), 3003 N. Central Ave., Suite 800, Phoenix, AZ, 85012–2945.

Copies of these standards are available from the NRCS, attention: Noller Herbert, 3003 N. Central Avenue, Suite 800, Phoenix, AZ 85012–2945 or can be downloaded from the NRCS Arizona ftp site: *ftp://ftp.az.nrcs.usda.gov/fotg/sec4/draft.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture

Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: November 17, 2000.

Michael Somerville,

State Conservationist.

[FR Doc. 00–30596 Filed 11–30–00; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: January 2, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740

SUPPLEMENTARY INFORMATION: On August 4, September 1, October 6 and 13, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 47949, 53267, 59821, 60903) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Protective Worksuit, General Purpose
8410–00–NSH–0025
8410–00–NSH–0026
8410–00–NSH–0027
8410–00–NSH–0028
8410–00–NSH–0029
8410–00–NSH–0030
8410–00–NSH–0031
8410–00–NSH–0032

Services

Administrative Support Services
(Recreational Aide)
Altus AFB, Oklahoma
Janitorial/Grounds Maintenance
Portsmouth Federal Building
431 Crawford Street
Portsmouth, Virginia
Food Service Attendant
Oceana Naval Air Station
Virginia Beach, Virginia
Food Service Attendant
Naval Weapons Station
Yorktown, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodities are hereby deleted from the Procurement List:

Commodities

Pallet, Wood
3990–00–X77–1721
Pallet, Wood
3990–00–NSH–0005
Ribbon, Typewriter
7510–01–233–0033

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–30658 Filed 11–30–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be Received on or Before: January 2, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on

the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and the service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and the service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

Proposed Additions

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Toner, Cartridges, New

7510–01–417–1220
7510–01–417–1222
7510–01–443–2121
NPA: Alabama Industries for the Blind, Talladega, Alabama

Janitorial/Grounds Maintenance

Nininger U.S. Army Reserve Center, Fort Lauderdale, Florida
NPA: Goodwill Industries of Broward County, Inc., Ft. Lauderdale, Florida

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–30659 Filed 11–30–00; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 8, 2000, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minute of November 3, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. Alleged Voting Improprieties During the Presidential Election
VI. Future Agenda Items
11:00 a.m. Briefing on Crossing Borders: An Examination of Civil Rights Issues Raised by Current Immigration Laws, Policies and Practices.

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–30760 Filed 11–29–00; 11:18 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Opportunity to Apply for Membership on the U.S. Automotive Parts Advisory Committee (APAC)

SUMMARY: The Department of Commerce is currently seeking applications for membership on the APAC. The purpose of the APAC is to advise Department of Commerce officials on issues related to U.S.-made automotive parts and accessories sales in Japanese and other Asian markets. The APAC's functions include: (1) reporting to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviewing and considering data collected on sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (3) advising the Secretary of Commerce during consultations with other governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; (4) assisting in establishing priorities for the initiative by the Secretary of Commerce to increase the sale of U.S.-made automotive parts and accessories to Japanese markets, and to otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that initiative; and (5) assisting the Secretary in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to the Fair Trade in Automotive Parts Act of 1998, § 3803 and 3804 of Public Law 105–261.

FOR FURTHER INFORMATION CONTACT: Henry P. Misisco, U.S. Department of Commerce, International Trade Administration, Trade Development, Office of Automotive Affairs, (202) 482–0554.

SUPPLEMENTARY INFORMATION: The APAC was originally established pursuant to the Fair Trade in Auto Parts Act of 1988, sections 2121 to 2125 of Public Law 100–418, to advise the Secretary of Commerce on issues related to sales of U.S.-made auto parts to Japanese markets. The Committee was reauthorized by the Fair Trade in Auto Parts Act of 1998, sections 3803 and 3804 of Public Law 105–261, to advise the Secretary of Commerce on issues related to sales of U.S.-made auto parts in Japanese and other Asian markets. The APAC functions as an advisory committee in accordance with the Federal Advisory Committee Act, 15 U.S.C. App. 2 and Department of Commerce policies on advisory committees.

The Office of Automotive Affairs is accepting applications for private sector members to begin serving after the Committee's charter is renewed. An existing member may be reappointed only if he or she has reapplied and has been accepted through the normal recruitment and selection process. An existing member may reapply for membership by submitting a letter requesting that he or she be considered for a membership position, and any supplemental information necessary to update his or her previous application for membership. Private sector representatives will be appointed to serve until the APAC charter expires in 2003. Members will be selected who will best carry out the objectives of the Fair Trade in Automotive Parts Act of 1998. Each APAC member must also serve as the representative of a ''U.S. entity'' engaged in the manufacture of automotive parts or the provision of a related service (including retailing and other distribution services), or an association of such entities. A U.S. entity is a firm incorporated in the United States (or an unincorporated

U.S. firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

Secondary selection criteria will ensure that the committee has a balanced representation of the auto parts industry in terms of point of view, demographics, geography and company size. APAC members are selected on the basis of their experience and knowledge of conditions and problems in automotive parts markets. Members will serve at the discretion of the Secretary.

Private sector members will serve in a representative capacity presenting the views and interests of the particular automotive sector in which they operate. Private sector members are not special government employees, and will receive no compensation for their participation in APAC activities. Members participating in APAC meetings and events will be responsible for their travel, living and other personal expenses. Meetings are held approximately four times a year, usually in Washington, DC. The next APAC meeting date has not yet been determined.

To be considered for membership, please provide the following: name and title of the individual requesting consideration; a letter of recommendation containing a brief statement of why each candidate should be considered for membership on the APAC that includes the individual's export experience, along with a personal resume; a statement that the applicant is a not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended; the company's product or service line and major markets; and the size and ownership of the company. All APAC members must obtain a U.S. Government security clearance.

Dated: November 17, 2000.

Thomas Sobotta,

Acting Director, Office of Automotive Affairs.

[FR Doc. 00–30585 Filed 11–30–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–535–001]

Cotton Shop Towels from Pakistan: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of extension of time limit of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on cotton shop towels from Pakistan. This review covers eleven manufacturers/producers and the period January 1, 1999, to December 31, 1999.

EFFECTIVE DATE: December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Mark Young, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3338 or (202) 482–6397, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930 (the Act), as amended, requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the Date of publication of the preliminary determination.

Background

On May 1, 2000, the Department published a notice of initiation of administrative review of the countervailing duty on cotton shop towels from Pakistan, covering the period January 1, 1999 through December 31, 1999 (65 FR 25303). The preliminary results are currently due no later than December 1, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than March 31, 2001. *See* Decision Memorandum from Melissa G. Skinner, Office Director for AD/CVD Office VI, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated concurrently with this notice, which is on public file in the Central Records Unit, Room B–099 of the Department of Commerce. We intend to issue the final results no later than 120 days after the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 21, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–30683 Filed 11–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program; Announcement of Public Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on ''Advanced Technology Development and Commercialization Opportunities.'' The Advanced Technology Program (ATP) partners with industry on high-risk, high technology research in technologies ranging from advanced manufacturing to medicine and from advanced materials to microelectronics. This conference will bring together entrepreneurs, researchers, business specialists and program managers from business, universities and federal agencies to discuss R&D funding opportunities for taking a new product from the lab to the marketplace. This meeting is targeted to minority entrepreneurship.

DATES: The Conference will be held on December 4–5, 2000. The meeting begins at 9:00 am on December 4 and

the meeting adjourns at 12:30 pm on December 5, 2000.

ADDRESSES: The meeting will be held at the Conference Center at Clark Atlanta University, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: For further information, you may telephone Rex Pelto at (301) 975–3918 or e-mail: rex.pelto@nist.gov.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418, 15 U.S.C. 278n), amended by the American Technology Preeminence Act of 1991 (Public Law 102–245), directed the establishment of ATP. The purpose of the ATP is to assist United States businesses to carry out research and development on high-risk, high-pay-off, emerging and enabling technologies.

The workshops that will be offered at this meeting will help bridge each step along the high-risk technology development and commercialization path. In addition, minority entrepreneurs will present success stories. A number of federal agencies will be represented at this meeting, and corporations and federal agencies will also be available.

Information on the meeting agenda and registration requirements can be found at the following website: *http://www.seeport.com/Conference/conferences.htm.* The registration fee is $125.00 when received by November 28, 2000. (After November 28, the fee is $150.00). Registration includes bus transportation from the hotel to the university, coffee breaks, lunch and conference materials.

November 27, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–30629 Filed 11–30–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090]

Proposed Collection; Comment Request Entitled Rights in Data and Copyrights

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0090).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights. The clearance currently expires on March 31, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before January 30, 2001.

FOR FURTHER INFORMATION CONTACT: John Blumenstein, Federal Acquisition Policy Division, GSA (202) 501–2373.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

Rights in Data is a regulation which concerns the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories.

(a) A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data-General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if

ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

Respondents: 1,100.
Responses per respondent: 1.
Total responses: 1,100.
Hours per response: 2.7.
Total burden hours: 2,970.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows:
Recordkeepers: 9,000.
Hours per recordkeeper: 3.
Total recordkeeping burden hours: 27,000.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: November 28, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 00–30684 Filed 11–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0135]

Proposed Collection; Comment Request Entitled Subcontractor Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0135).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontractor Payments. The clearance currently expires on March 31, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before January 30, 2001.

ADDRESSES: Comments including suggestions for reducing this burden should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John Blumenstein, Federal Acquisition Policy Division, GSA (202) 501–2373.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 28 of the FAR contains guidance related to obtaining financial protection against damages under Government contracts (e.g., use of bonds, bid guarantees, insurance etc.). Part 52 contains the texts of solicitation provisions and contract clauses. These regulations implement a statutory requirement for information to be provided by Federal contractors relating to payment bonds furnished under construction contracts which are subject to the Miller Act (40 U.S.C. 270a–270d). This collection requirement is mandated by Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. Law 102–190), as amended by section 2091 of the Federal Acquisition Streamlining Act of 1994 (Pub. Law 103–335). The clause at 52.228–12, Prospective Subcontractor Requests for Bonds, implements section 806(a)(3) of Pub. Law 102–190, as amended, which specifies that, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a construction contract for which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly provide a copy of such payment bond to the requestor.

In conjunction with performance bonds, payment bonds are used in Government construction contracts to secure fulfillment of the contractor's obligations under the contract and to assure that the contractor makes all payments, as required by law, to persons furnishing labor or material in performance of the contract. This regulation provides prospective subcontractors and suppliers a copy of the payment bond furnished by the contractor to the Government for the performance of a Federal construction contract subject to the Miller Act. It is expected that prospective subcontractors and suppliers will use this information to determine whether to contract with that particular prime contractor. This information has been and will continue to be available from the Government. The requirement for contractors to provide a copy of the payment bond upon request to any prospective subcontractor or supplier under the Federal construction contract is contained in Section 806(a)(3) of Pub. Law 102–190, as amended by sections 2091 and 8105 of Pub. Law 103–355.

B. Annual Reporting Burden

Respondents: 12,000.
Responses per respondent: 5.
Total responses: 60,000.
Hours per response: .5.
Total burden hours: 30,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0135, Subcontractor Payments, in all correspondence.

Dated: November 28, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 00–30685 Filed 11–30–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting

AGENCY: Defense Intelligence Agency, Joint Military Intelligence College, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, 9 January 2001, 0800 to 1700; and Wednesday, 10 January 2001, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington , DC 20340–5100

FOR FURTHER INFORMATION CONTACT: Mr. A Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: November 27, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–30588 Filed 11–30–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

National Commission on the Use of Offsets in Defense Trade, and President's Council on the Use of Offsets in Commercial Trade

AGENCY: Department of Defense, National Commission on the Use of Offsets in Defense Trade, and President's Council on the Use of Offsets in Commercial Trade.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of the President's Council on the Use of Offsets in Commercial Trade, a federal advisory committee that is being established by Executive Order. The Council will meet jointly with the parallel National Commission on the Use of Offsets in Defense Trade, established by Public Law 106–113. ''Offsets'' are conditions that a foreign government often negotiates with a U.S. company seeking to export a major defense or commercial system to its county (*e.g.,* military or commercial aircraft), under which the country's firms (a) participate in the production of the system and/or its subsystems, or (b) obtain other technological or economic benefits from the U.S. exporter. The purpose of the meeting is to assist the effect of offsets in both defense and commercial trade on U.S. jobs, U.S. economic competitiveness, and U.S. national security. Due to the expedited set up to this Commission, this posting is being made is less than 15 days before the first meeting date.

DATES: December 4, 2000, 9:30 a.m.–12 p.m.

ADDRESSES: Truman room of the White House Conference Room, 726 Jackson Place, NW., across from the White House on the other side of Pennsylvania Avenue.

FOR FURTHER INFORMATION CONTACT: Jangela Shumskas, phone 703/253–0929, email *jshumska@brtrc.com,* fax 703/204–9447.

SUPPLEMENTARY INFORMATION: The meeting will be open to members of the public, who should register in advance through the following web site: *http://www.offsets.brtrc.net.* Although the meeting schedule does not allow oral presentations from the public, we encourage written comments from the public on the issues before the Council and Commission. Please send comments to Jangela Shumskas (*jshumska@brtrc.com,* fax 703/203–9447) prior to the meeting or within two weeks following the meeting. The meeting agenda will be posted on the Council/Commission web site (*http://www.offsets.brtrc.net*) during the week of November 27.

Dated: November 27, 2000.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–30587 Filed 11–30–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to 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 January 2, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary 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 proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 20, 2000, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P47

SYSTEM NAME:

OSD Military Personnel Files.

SYSTEM LOCATION:

Military Personnel Division, Personnel and Security Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel assigned or attached to or on temporary duty with the Office of the Secretary of Defense (OSD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personnel information that has been extracted from the individual's Official Military Personnel Files (OMPF). File contains, but is not limited to, name, grade, Social Security number; service job title; expected date of arrival for duty with OSD; expected date of departure from OSD; home and address of record; general and special orders; and details pertaining to duties, assignment, promotion, and training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense and E.O. 9397 (SSN).

PURPOSE(S):

To administer and centrally manage personnel functions of Department of Defense military personnel prior to their assignment and during their assignment to OSD. Uses include, but are not

limited to, knowing when an individual will arrive, what agency they will be assigned to, who they will replace and when an individual will depart. The records are maintained as a local repository of documents generated during the service member's assignment and are used to manage, administer, and document the assignment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE 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 OSD's compilation of systems of records notices 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, paper cards and ringed binders; electronic records are stored on magnetic media.

RETRIEVABILITY:

Paper records are filed by branch of Service and within Service, alphabetically by last name of individual. Electronic records are retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Access to the electronic portion of the system is controlled by user passwords that are periodically changed. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Both paper and electronic files are maintained in active status until individual departs OSD. Upon departure, the individual's files are moved to inactive status. Inactive files are retained for one year and then destroyed or deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Military Personnel Division, Personnel and Security Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Room 4A948, Washington, DC 20301–1155.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Personnel and Security Directorate, ATTN: Military Personnel Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Personnel and Security Directorate, ATTN: Military Personnel Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should contain the full name of the individual, current address and telephone number.

For personal visits, the individual should be able to provide some acceptable identification.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources of information are the individual, the individual's Official Military Personnel File; PCS Orders; and SD Form 37, 'Request for Nomination and Position Description of Military Personnel'.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–30471 Filed 11–30–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to 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 January 2, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4725.

SUPPLEMENTARY INFORMATION: The Office of the Secretary 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 proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 13, 2000, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DGC 20

SYSTEM NAME:

DoD Presidential Appointee Vetting File.

SYSTEM LOCATION:

Department of Defense, Office of the General Counsel, Standards of Conduct Office, 1600 Defense Pentagon, Washington, DC 20301–1600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are prospective nominees to positions within DoD which require Senate confirmation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of White House Personal Data Statement Questionnaire, Senate Armed Services Committee Questionnaire, Questionnaire for National Security Positions (Standard Form 86), Supplement to Standard Form 86, Senior Appointee Pledge, internal memoranda concerning the potential nominee, published works including books, newspaper, magazine articles, speeches and treatises by the potential nominee, newspaper and magazine articles written about the potential nominee, financial information to include that contained on Financial Disclosure Reports (Standard Form 278), various consent and release forms

which include but is not limited to Acknowledgment and Consent Regarding Intent to Nominate or Appoint, Disclosure and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act, FBI consent forms for a name check and full field investigation, and tax check waiver, and other correspondence or documents relating to the selection of political appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 140, General Counsel and E.O. 9397 (SSN).

PURPOSE(S):

Files are used to facilitate the White House Presidential Appointee vetting process by assisting potential nominees as they complete the vetting documents.

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:

In the event that this system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

A record from this system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

A record from this system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

A record from this system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

A record from this system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

To the White House and Committees on Armed Services for vetting purposes.

The DoD 'Blanket Routine Uses' do not apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence and forms in file folders.

RETRIEVABILITY:

Information is retrieved by individual's last name and Social Security Number.

SAFEGUARDS:

Building employs security guards. Data is kept in locked cabinet and is accessible to authorized personnel only.

RETENTION AND DISPOSAL:

Destroy at the end of the Presidential Administration during which the individual is employed. For individuals who are not appointed to a DoD position, destroy one year after the file is closed, but not later than the end of the Presidential administration during which the individual is considered.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Standards of Conduct Office, Department of Defense, Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquiries to Department of Defense, Office of the General Counsel, Standards of Conduct Office, 1600 Defense Pentagon, Washington, DC 20301–1600.

Requests for information should contain individual's full name, any former names used, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Directorate for Freedom of Information and Security Review, Washington Headquarters Services, 1400 Defense Pentagon, Room 2C757, Washington, DC 20301–1400.

Requests for information should contain individual's full name, any former names used, and Social Security Number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81); 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Submitted by individuals themselves. Other sources may include the White House, Committee on Armed Services, and other correspondence and public record sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 00–30473 Filed 11–30–00; 8:45 am]

BILLING CODE 5001–10–U

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice of a new system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 2, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline E. Korpanty at (703) 607–3743.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service records system 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 proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on November 13, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7290

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System.

SYSTEM LOCATION:

Director, Defense Finance and Accounting Service-Indianapolis Center, Director for Support Activity, 8899 East 56th Street, Indianapolis, IN 46249–2130.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past users of nonappropriated fund instrumentalities (NAFI) whose accounts show balances other than zero; persons using Post billeting facilities on a fee paid basis (bachelor officer quarters, visitor officer quarters and guest house facilities) and persons no longer using such facilities whose accounts have other than zero balances; any individual having a statement of account for the billing period, individuals occupying government housing at any military installation; individual class B telephone subscribers; members, customers or civilians having 30-day credit terms for charge sales and/or dues obligations to NAF activities; all persons whose accounts have been dishonored by banking institutions and their checks returned to NAF activities; and individuals who have cash loans charged to their accounts and any other debtor to a nonappropriated fund instrumentality (NAFI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, and rank; amount of charges, billings of items or services furnished; subsidiary ledgers containing detail of services billed and paid by individual; work order forms; invoice listings; monthly receipt vouchers; date and method of payment; file of billings associated with returned/dishonored checks; and other documents relevant for agency purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5514; 26 U.S.C. 6103(m)(2); 31 U.S.C. 3511, 3512, 3513, 3514, 3701, 3711, 3716, 3720; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain current rosters as subsidiary records for accounts receivable and cash accountability control; to provide monthly statements to customers; to provide ledger balances for activity financial statements; to prepare aged listing of accounts receivable, 30, 60, and 90 days; to answer inquiries of members on account status and specific transactions; to permit collection of debts owed to a nonappropriated fund instrumentality.

Records in this system of records are subject to use in authorized approved computer matching programs regulated under the Privacy Act of 1974 (5 U.S.C. 552a), as amended, for debt collection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

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:

To the General Accounting Office, the Department of the Treasury, Financial Management, and the Department of Justice for collection action for any delinquent account when circumstances warrant.

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of a debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to a DoD nonappropriated fund instrumentality.

To any other Federal agency for the purpose of effecting salary offset procedures under the provisions of 5 U.S.C. 5514, against a person employed by that agency when any creditor DoD nonappropriated fund instrumentality has a claim against the person.

To any other Federal agency including, but not limited to, the Internal Revenue Service and Office of Personnel Management for the purpose of effecting an administrative offset as defined at 31 U.S.C. 3701, of a debt.

To the Internal Revenue Service under the provision of 31 U.S.C. 3711(g)(9) to offset a tax refund due the taxpayer to collect or to compromise a Federal claim against the taxpayer.

To the Internal Revenue Service under the provisions of 26 U.S.C. 6103(m)(2) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim against the taxpayer.

Note: Disclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DoD purpose or disclosed to another Federal, state or local agency which seeks to locate the same individual for its own debt collection purpose.

To any other Federal, state or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for recoupment of debts owed a DoD nonappropriated fund instrumentality.

Any information in this system concerning an individual may be disclosed to a creditor Federal agency requesting assistance for the purpose of initiating debt collection action by way of a salary or administrative offset or tax refund offset against the individual.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DFAS compilation of system of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay

delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING AND REPORTING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes and/or discs by account in numerical and alphabetical order; computer hard copy printouts filed in binders; copies of statements filed in folders.

RETRIEVABILITY:

By customer name and Social Security Number.

SAFEGUARDS:

Records are maintained in lock-type cabinets within storage areas accessible only to authorized personnel. Personnel having access are limited to those having an official need-to-know who have been trained in handling personal information subject to the Privacy Act.

RETENTION AND DISPOSAL:

Disposition pending (until NARA has approved the retention and disposal schedule, treat records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director for Support Activity, Defense Finance and Accounting Service—Indianapolis Center, ATTN: DFAS–IN/AQ, COL #337R, 8899 East 56th Street, Indianapolis, IN 46249–2130.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the custodian of nonappropriated funds activities at the installation where record is believed to exist. Official mailing addresses are available from the System manager.

Individual should furnish their full name, Social Security Number, and account number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the custodian of nonappropriated funds activities at the installation where record is believed to exist. Official mailing addresses are available from the System manager.

Individual should furnish their full name, Social Security Number, and account number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

From daily transaction registers/journals received from billeting officer, signal officer, and/or club officers; from the Department of the Treasury and the Defense Manpower Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–30476 Filed 11–30–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Threat Reduction Agency (DTRA); Membership of the Defense Threat Reduction Agency Performance Review Board

AGENCY: Department of Defense, Defense Threat Reduction Agency.

ACTION: Notice of membership of the Defense Threat Reduction Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Threat Reduction Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance ratings and performance awards to the Director, Defense Threat Reduction Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DTRA PRB is on or about November 28, 2000.

FOR FURTHER INFORMATION CONTACT: D. DIAL-ALFRED, Civilian Personnel Office, (703) 767–5811, Defense Threat Reduction Agency, Fort Belvoir, Virginia 22060–6201.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the officials appointed to serve as members of the DTRA PRB are set forth below.

PRB Chair: Robert P. Bongiovi, Major General, USAF
Mr. Robert L. Brittigan
Mr. Myron K. Kunka

The following DTRA officials will serve as alternate members of the DTRA PRB, as appropriate.

Mr. Douglas M. Englund
Mr. Michael K. Evenson
Mr. Joe P. Golden
Mr. Richard L. Gullickson
Dr. Don A. Linger
Mr. Clifton B. McFarland
Mr. Clifton B. McFarland
Mr. Vayl S. Oxford
Mrs. Joan Ma Pierre
Dr. I. Gary Resnick
Dr. Michael J. Shore
Ms. Ann Bridges Steely
Dr. Leon A. Wittwer

Dated: November 27, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–30589 Filed 11–30–00; 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 alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notices 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 January 2, 2001 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 proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on [date], to the House Committee on Government Reform, the Senate Committee on Governmental

Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.,

Deletions

A0070–25 DASG

SYSTEM NAME:

Research Volunteer Registry (February 22, 1993, 58 FR 10002).

REASON:

Records have been incorporated into the system of records A0070–25 DASG, Medical Scientific Research Data Files.

A0070–16 DASG

SYSTEM NAME:

Special Immunization System (July 14, 1999, 64 FR 37939).

REASON:

Records have been incorporated into the system of records A0070–25 DASG, Medical Scientific Research Data Files.

A0070–45 DASG

SYSTEM NAME:

Sandfly Fever Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Medical Scientific Research Data Files'.

SYSTEM LOCATION:

Delete entry and replace with 'Primary locations: U.S. Army Medical Research and Development Command, 504 Scott Street, Fort Detrick, MD 21701–5009.

U.S. Army Chemical Research, Development, and Engineering Center, Aberdeen Proving Ground, MD 21010–5423;

Secondary locations: Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800;

Walter Reed Army Institute of Research, Washington, DC 20307–5104;

U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL 36362–5000;

U.S. Army Institute of Dental Research, Washington, DC 20307–5300;

U.S. Army Institute of Dental Research, Fort Sam Houston, TX 78234–6200;

U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, MD 21701–5010;

U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425;

U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011;

U.S. Army Research Institute of Environmental Medicine, Natick, MA 01760–5007; and

U.S. Army Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Volunteers who participate in the Sandfly Fever (Clinical Research Data) studies at the U.S. Army Medical Research Institute of Infectious Diseases; individuals who participate in research sponsored by the U.S. Army Medical Research and Development Command and the U.S. Army Chemical Research, Developments, and Engineering Center; and individuals at Fort Detrick who have been immunized with a biological product or who fall under the Occupational Health and Safety Act or Radiologic Safety Program.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Participant's name, Social Security Number, age, race, date of birth, occupation, titers, body temperature, pulse, blood pressure, respiration, urinalysis, immunization, schedules, blood serology, amount of dosage, reaction to immunization radiologic agents, exposure level, health screening result, health test schedule, test protocols, challenge materials, inspection, after action reports, medical support plans, summaries of pre and post test physical exams parameter and other related documents.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55, Medical and Dental Care; Army Regulation 70–25, Use of Volunteers as Subjects of Research; Army Regulation 70–45, Scientific and Technical Information Program; Occupational Safety and Health Administration Act of 1970; and E.O. 9397 (SSN).

PURPOSE(S):

Delete entry and replace with 'To create a database of immunological or vaccinal data for research purposes.

To answer inquiries and provide data on health issues of individuals who participated in research conducted or sponsored by U.S. Army Medical Research Institute of Infectious Diseases, U.S. Army Medical Research and Development Command, and U.S. Army Chemical Research, Development, and Engineering Center.

To provide individual participants with newly acquired information that may impact their health.

To maintain and manage scheduling of health screening tests immunizations, physicals, safety and immunogenicity and other special procedures for a given vaccine or biosurveillance program, radiologic safety program and occupational health safety program.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add new paragraph as follows 'To the Department of Veteran Affairs to assist in making determinations relative to claims for service connected disabilities and other such benefits.'

STORAGE:

Delete entry and replace with 'Paper records in file cabinets and automated computer systems that are backed up daily.'

SAFEGUARDS:

Delete entry and replace with 'Computerized and paper records are maintained in controlled areas. Access is restricted to authorized personnel only.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Special Immunization System Records are permanent; Research Volunteer Registry records are maintained for 65 years then destroyed; and Clinical Records Data records are maintained until they have no further research value then destroyed.

SYSTEMS MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011 for special immunization records.

Office of The Surgeon General, Headquarters, Department of Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258 for all other records maintained in this system of records.

NOTIFICATION PROCEDURES:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in the Special Immunization System and Clinical Research Data systems should address written inquiries to the U.S. Army

Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011.

All others should address their written inquiries to Office of The Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

For verification purposes the individual should provide full name, Social Security Number, military status or other information verifiable from the record itself.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer, or other individually identifying number, and building pass.

Individual should provide his/her full name, address and telephone number, Social Security Number, date of birth, and any other personal data which would assist in identifying records pertaining to him/her.

RECORD AND ACCESS PROCEDURES:

Change to read:

Individuals seeking access to information about themselves contained in the Special Immunization and System Clinical Research Data systems should address written inquiries to the U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011. All others should address their written inquiries to Office of The Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

For verification purposes the individual should provide full name, Social Security Number, military status or other information verifiable from the record itself.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer, or other individually identifying number, and building pass.

Individual should provide his/her full name, address and telephone number, Social Security Number, date of birth, and any other personal data which would assist in identifying records pertaining to him/her.

RECORD SOURCE CATEGORIES:

Change to read:

From quantitative data obtained from investigative staff, research/test results, individuals concerned, interviews, clinical laboratory results/reports, immunization results, records and other relevant tests.

* * * * *

A0070–45 DASG

SYSTEM NAME:

Medical Scientific Research Data Files.

SYSTEM LOCATION:

Primary locations: U.S. Army Medical Research and Development Command, 504 Scott Street, Fort Detrick, MD 21701–5009.

U.S. Army Chemical Research, Development, and Engineering Center, Aberdeen Proving Ground, MD 21010–5423;

Secondary locations: Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800;

Walter Reed Army Institute of Research, Washington, DC 20307–5104;

U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL 36362–5000;

U.S. Army Institute of Dental Research, Washington, DC 20307–5300;

U.S. Army Institute of Dental Research, Fort Sam Houston, TX 78234–6200;

U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, MD 21701–5010;

U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425;

U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011;

U.S. Army Research Institute of Environmental Medicine, Natick, MA 01760–5007; and

U.S. Army Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers who participate in the Sandfly Fever (Clinical Research Data) studies at the U.S. Army Medical Research Institute of Infectious Diseases; individuals who participate in research sponsored by the U.S. Army Medical Research and Development Command and the U.S. Army Chemical Research, Developments, and Engineering Center; and individuals at Fort Detrick who have been immunized with a biological product or who fall under the Occupational Health and Safety Act or Radiologic Safety Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Participant's name, Social Security Number, age, race, date of birth, occupation, titers, body temperature, pulse, blood pressure, respiration, urinalysis, immunization, schedules, blood serology, amount of dosage, reaction to immunization radiologic agents, exposure level, health screening result, health test schedule, test protocols, challenge materials, inspection, after action reports, medical support plans, summaries of pre and post test physical exams parameter and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55, Medical and Dental Care; Army Regulation 70–25, Use of Volunteers as Subjects of Research; Army Regulation 70–45, Scientific and Technical Information Program; Occupational Safety and Health Administration Act of 1970; and E.O. 9397 (SSN).

PURPOSE(S):

To create a database of immunological or vaccinal data for research purposes.

To answer inquiries and provide data on health issues of individuals who participated in research conducted or sponsored by U.S. Army Medical Research Institute of Infectious Diseases, U.S. Army Medical Research and Development Command, and U.S. Army Chemical Research, Development, and Engineering Center.

To provide individual participants with newly acquired information that may impact their health.

To maintain and manage scheduling of health screening tests immunizations, physicals, safety and immunogenicity and other special procedures for a given vaccine or biosurveillance program, radiologic safety program and occupational health safety program.

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:

To the Department of Veteran Affairs to assist in making determinations relative to claims for service connected disabilities; and other such benefits.

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 cabinets and automated computer systems that are backed up daily.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Computerized and paper records are maintained in controlled areas. Access is restricted to authorized personnel only.

RETENTION AND DISPOSAL:

Special Immunization System Records are permanent; Research Volunteer Registry records are maintained for 65 years then destroyed; and Clinical Research Data records are maintained until they have no further research value then destroyed.

SYSTEMS MANAGER(S) AND ADDRESS:

Commander, U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011 for special immunization records.

Office of The Surgeon General, Headquarters, Department of Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258 for all other records maintained in this system of records.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

For verification purposes the individual should provide full name, Social Security Number, military status or other information verifiable from the record itself.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer, or other individually identifying number, and building pass.

Individual should provide his/her full name, address and telephone number, Social Security Number, date of birth, and any other personal data which would assist in identifying records pertaining to him/her.

RECORD SOURCE CATEGORIES:

From quantitative data obtained from investigative staff, research/test results, individuals concerned, interviews, clinical laboratory results/reports, immunization results, records and other relevant tests.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From quantitative data obtained from investigative staff and clinical laboratory reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–30469 Filed 11–30–00; 8:45 am]

BILLING CODE 5001–10–U

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 amending systems of records notices 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 January 2, 2001. 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 records systems 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 a new or altered system report.

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351b TRADOC

SYSTEM NAME:

Army Correspondence Course Program (ACCP) (December 23, 1997, 62 FR 67055).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Commander, U.S. Army Training Support Center, 3306 Wilson Avenue, Fort Eustis, VA 23604–5166.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Use of individual user identification and passwords are required to access the system. Access is granted to designated personnel at the Army Institute for Professional Development responsible for the administration and processing of non-resident students. Access is also granted to students and former students for the purpose of enrolling, testing, monitoring status, and reviewing academic history.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Student records indicating courses attended, course length, extent of completion, results, aptitudes and personal qualities, grade, rating attained, and related information destroy after 40 years. Cut off annually. Records of extension courses, however, will be held for 3 years in current file area and 2 years in records holding area before retirement to National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.'

* * * * *

A0351b TRADOC

SYSTEM NAME:

Army Correspondence Course Program (ACCP).

SYSTEM LOCATION:

Commander, U.S. Army Training Support Center, 3306 Wilson Avenue, Fort Eustis, VA 23604–5166.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army, Navy, Marine Corps, and Air Force, Reserve Officer Training Corps and National Defense Cadet Corps students, Department of Defense civilian employees, and approved foreign military personnel enrolled in a non-resident course administered by the Army Institute for Professional Development.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain name, grade/rank, Social Security Number, address, service component, branch, personnel classification, military occupational specialty, credit hours accumulated, examination and lesson grades, student academic status, curricula, course description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Department of the Army Pamphlet 350–59, Army Correspondence Course Program Catalog; and E.O. 9397 (SSN).

PURPOSE(S):

To record lessons and/or exam grades; maintain student academic status; course and subcourse descriptions; produce course completion certificates and reflect credit hours earned; and produce management summary reports.

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:

Magnetic tapes, discs, paper printouts, and microfiche.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

Use of individual user identification and passwords are required to access the system. Access is granted to designated personnel at the Army Institute for Professional Development responsible for the administration and processing of non-resident students.

Access is also granted to students and former students for the purpose of enrolling, testing, monitoring status, and reviewing academic history.

RETENTION AND DISPOSAL:

Student records indicating courses attended, course length, extent of completion, results, aptitudes and personal qualities, grade, rating attained, and related information destroy after 40 years. Cut off annually. Records of extension courses, however, will be held for 3 years in current file area and 2 years in records holding area before retirement to National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army Training Support Center, 667 Monroe Avenue, Fort Eustis, VA 23604–5040.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, 3306 Wilson Avenue, Fort Eustis, VA 23604–5166.

Individual should provide full name, Social Security Number, and signature for identification.

Individual making request in person must provide acceptable identification such as driver's license and military identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, 3306 Wilson Avenue, Fort Eustis, VA 23604–5166.

Individual should provide full name, Social Security Number, and signature for identification.

Individual making request in person must provide acceptable identification such as driver's license and military identification.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting content, 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:

From individual upon enrollment, from class records and instructors, and from graded examinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351c TRADOC

SYSTEM NAME:

Standardized Student Records System (February 2, 1996, 61 FR 3918).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Persons who have been enrolled for foreign language training at the Defense Language Institute Foreign Language Center.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, Social Security Number, and military administrative data, together with academic data generated at Defense Language Institute Foreign Language Center.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders stored in file cabinets, magnetic tapes, discs, CD–ROM and computer.''

RETRIEVABILITY:

Delete entry and replace with ''By Social Security Number, name, service number, class number, language and year.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

* * * * *

A0351c TRADOC

SYSTEM NAME:

Standardized Student Records System.

SYSTEM LOCATION:

Commandant, Defense Language Institute Foreign Language Center, 1330 Plummer Street, Monterey, CA 93944–3326.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been enrolled for foreign language training at the Defense Language Institute Foreign Language Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, and military administrative data, together with academic data generated at Defense Language Institute Foreign Language Center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 350–20, Management of the Defense Foreign Language Program; and E.O. 9397 (SSN).

PURPOSE(S):

To establish a permanent student record used for issuing official grade transcripts and preparing statistical studies to improve training and testing methods.

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 stored in file cabinets, magnetic tapes, discs, CD-ROM and computer.

RETRIEVABILITY:

By Social Security Number, name, service number, class number, language and year.

SAFEGUARDS:

Records are accessible via remote terminal only by authorized personnel citing established user identifier and password.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Defense Language Institute Foreign Language Center and Presidio of Monterey, 360 Patton Avenue, Monterey CA 93944–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant, Defense Language Institute Foreign Language Center, Academic Records, 1330 Plummer Street, Monterey, CA 93944–3326.

Individual should provide the full name, current address and telephone number, Social Security Number, class attended, and year graduated.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant, Defense Language Institute Foreign Language Center, Academic Records, 1330 Plummer Street, Monterey, CA 93944–3326.

Individual should provide the full name, current address and telephone number, Social Security Number, class attended, and year graduated.

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:

From the individual; staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–30470 Filed 11–30–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds three new categories of individuals covered, a new categories of records being maintained, and three new routine uses.

DATES: This action will be effective without further notice on January 2, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records 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 proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 13, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S700.10 FO

SYSTEM NAME:

Travel Record (October 4, 1994, 59 FR 50579).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete ''FO'' and replace it with ''DSS.''

SYSTEM NAME:

Delete entry and replace with ''Travel Input Record.''

SYSTEM LOCATION:

Delete the first sentence and replace with ''Records are maintained at HQ Defense Logistics Agency (DLA) and at the DLA Primary Level Field Activities (PLFAs).''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''All DLA military members, civilian employees, and dependents who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS); individuals of other DoD agencies serviced by DLA under an interservice support agreement; and public and private sector individuals traveling under invitational travel orders.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete and replace with: ''Consists of name; logon identifiers; Social Security Number; work and home addresses; work and home telephone numbers; government and personal credit card account numbers and expiration dates; bank name and address, and banking data such as bank routing number, account number, and type of account; job title; security clearance level; order number; travel itinerary; planned leave; frequent flyer data; travel preferences; and claim data. The files may also include details of real estate transactions and dependent data.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Chapter 57, 5 U.S.C., Travel, Transportation, and Subsistence; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and E.O. 9397 (SSN).''

PURPOSE:

Delete entry and replace with ''Records are used in administering the travel program, managing and tracking

funds, and accounting for employee status for pay and leave tracking purposes. Data is also used to determine that expenses relating to the sale or purchase of a residence for a Permanent change of Station are reasonable and customary for the locality of the transaction. Statistical data, with all personal identifiers removed, is used to assess trends, manage funds, and forecast future expenses.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Add three new paragraphs as follows: ''To banking establishments for the purpose of facilitating direct deposit and to confirm billing or expense data.

To Federal, State, and Local government agencies for taxing, audit, or oversight purposes.

To Government and private sector entities to provide for or facilitate transportation, lodging, relocation or related travel services.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in areas that are accessible only to individuals who must service the record in the performance of their official duties. Electronic records are password protected with access restricted to authorized users.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Paper records are retained for 6 years and then destroyed. Electronic records are retained on line for 15 months and then removed to disk where they are retained for an additional 4 years and 9 months.''

* * * * *

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RECORD SOURCE CATEGORIES:

Insert ''and the individual's supervisor'' after the word ''individual.''

* * * * *

S700.10 DSS

SYSTEM NAME:

Travel Input Records.

SYSTEM LOCATION:

Records are maintained at HQ Defense Logistics Agency (DLA) and at the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA military members, civilian employees, and dependents who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS); individuals of other DoD agencies serviced by DLA under an interservice support agreement; and public and private sector individuals traveling under invitational travel orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of name, Social Security Number, security clearance level, order number, travel itinerary, claim data, and financial details of real estate transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 57, 5 U.S.C., Travel, Transportation, and Subsistence; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used in administering the travel program, managing and tracking funds, and accounting for employee status for pay and leave tracking purposes.

Data is also used to determine that expenses relating to the sale or purchase of a residence for a Permanent change of Station are reasonable and customary for the locality of the transaction.

Statistical data, with all personal identifiers removed, is used to assess trends, manage funds, and forecast future expenses

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:

Federal agency or private sector organization employing the traveler for funds control, personnel administration, or program management purposes.

To banking establishments for the purpose of facilitating direct deposit and to confirm billing or expense data.

To Federal, State, and Local government agencies for taxing, audit, or oversight purposes.

To Government and private sector entities to provide for or facilitate transportation, lodging, relocation or related travel services.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in both paper and electronic form.

RETRIEVABILITY:

By name, Social Security Number or order number.

SAFEGUARDS:

Records are maintained in areas that are accessible only to individuals who must service the record in the performance of their official duties. Electronic records are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Paper records are retained for 6 years and then destroyed. Electronic records are retained on line for 15 months and then removed to disk where they are retained for an additional 4 years and 9 months.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Defense Logistics Agency Travel Coordinator, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and Financial Liaison Offices of the DLA PLFA's. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the Privacy Act Officer of the DLA activity sponsoring the travel. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals should provide full name and Social Security Number.

DLA employees and military members with direct access to the on-line database may query the database by providing their name and password.

To determine if records older than 15 months are contained within the electronic system, individuals should address a written inquiry to the Privacy Act Officer at HQ DLA, ATTN: DSS–C, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the DLA field activity sponsoring the travel. Official mailing

addresses are published as an Appendix to DLA's compilation of systems of records notices.

Individuals should provide full name and Social Security Number. For access to electronic records created at HQ DLA within the past 15 months, DLA employees and military members with online access to the database may query the database by providing their name and password. For access to archived electronic records stored off-line, address written inquiries to the HQ DLA Privacy Act Officer, HQ DLA, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, providing name and Social Security Number.

Individuals who do not have access to the HQ DLA database should submit written inquiries to the HQ DLA Privacy Act Officer, HQ DLA, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, providing name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is collected from the individual and the individual's supervisor, from the hiring activity's personnel office, and from travel and expense forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–30475 Filed 11–30–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact for Transfer of the Naval Ammunition Support Detachment Property, Vieques Island, Puerto Rico

AGENCY: Department of Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing the procedural provisions of NEPA, the Department of the Navy (the Navy) gives notice that an Environmental Assessment (EA) has been prepared and an Environmental Impact Statement (EIS) is not required for transfer of the Naval Ammunition Support Detachment (NASD) property on Vieques Island, Puerto Rico. The Navy intends to transfer the majority of the property to the Municipality of Vieques by December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Sixto Escobar, Public Affairs Officer, COMUSNAVSO, San Juan Detachment, Federico Degetau Federal Building, 150 Carlos Chardon Avenue, Room 354, Hato Rey, Puerto Rico 00918, or by e-mail at *escobars@nvastarr.navy.mil*

SUPPLEMENTARY INFORMATION: The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law (PL) 106–398, directed the Navy to transfer the NASD property (except for approximately 100 acres [40 hectares]) to the Municipality of Vieques, Puerto Rico Conservation Trust (PRCT), and United States Department of Interior (DOI). While this legislation differed from the draft legislation used as a basis for preparing the draft EA, the purposes of the land transfer and the proposed management and reuse of the property are essentially the same. The action evaluated in the EA is the conveyance of approximately 4,250 acres (1,700 hectares) of the NASD property to the Municipality of Vieques, which would be available for development as generally described in the proposed Vieques Land Use Plan prepared by the Puerto Rico Planning Board (PRPB) on behalf of the Municipality of Vieques; the transfer of approximately 3,050 acres (1,220 hectares) to DOI to be administered as a national wildlife refuge; the conveyance of 800 acres (320 hectares) to PRCT to be managed as a wildlife refuge; and the retention of easements needed for continued access and operation and maintenance of the Relocatable Over-the-Horizon Radar (ROTHR) and Monte Pirata telecommunication facilities, which are being retained by the Navy. The DOI and PRCT wildlife refuges will be managed pursuant to cooperative agreement among DOI, PRCT, and the Commonwealth of Puerto Rico to protect and preserve their natural and cultural resources in perpetuity for the benefit of the general public.

The analysis conducted in the EA focused on the following resources: Land Use and Aesthetics, Soils, Water Quality, Air Quality, Noise, Terrestrial and Marine Environments, Threatened and Endangered Species, Socioeconomics Conditions, Cultural Resources, Environmental Contamination, and Coastal Zone Management. The analysis concluded that implementation of the Proposed Action will have no significant adverse impacts on the environment and that an EIS is not warranted.

The Final EA and FONSI, in either English or Spanish, may be obtained from: Sixto Escobar, Public Affairs Officer, COMUSNAVSO, San Juan Detachment, Federico Degetau Federal Building, 150 Carlos Chardon Avenue, Room 354, Hato Rey, Puerto Rico 00918, or by e-mail at *escobars@nvastarr.navy.mil*

A limited number of copies of the EA and FONSI are available to fill single copy requests. In addition, copies of the Final EA are available for public review at the following repositories:

Biblioteca Publica Jose Gautier Benitez, Municipio de Vieques, Calle Carlos Lebrun, No. 449, Vieques, Puerto Rico 00765

Museo Fuerte Conde de Mirasol, Barriada Fuerte, Magnolia No. 471, Vieques, Puerto Rico 00765

Biblioteca Publica Municipal Alejandrina Quinonez Rivera, Urbanizacion Rossy Valley No. 816, Calle Francisco Gatier, Cieba, Puerto Rico 00735

Biblioteca Publica Carnegie, 7 Ponce de Leon Avenue, San Juan, Puerto Rico 00901

Dated: November 28, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

The text of the entire Finding of No Significant Impact is provided as follows:

Department of Defense

Department of the Navy

Finding of No Significant Impact for Transfer of the Naval Ammunition Support Detachment Property, Vieques Island, Puerto Rico

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing the procedural provisions of NEPA, the Department of the Navy (the Navy) gives notice that an Environmental Assessment (EA) has been prepared and an Environmental Impact Statement (EIS) is not required for transfer of the Naval Ammunition Support Detachment (NASD) property on Vieques Island, Puerto Rico.

The proposed action is to comply with the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law (PL) 106–398, directing the Navy to transfer the NASD property (except for approximately 100 acres [40 hectares]) to the Municipality of Vieques, Puerto Rico Conservation Trust (PRCT), and United States Department of Interior (DOI). The Navy prepared and issued a draft EA on August 25, 2000, based on the draft legislation that was being considered at that time by the U.S. Congress. The final legislation, which is reflected in PL 106–398, differed from the draft legislation regarding the parties to whom the land is to be transferred and the potential timing of the transfer. Nonetheless, the purposes of the land transfer and the proposed management and reuse of the property are essentially the same as proposed in the original legislation. Thus, the Navy has completed this final EA based on the final legislation as reflected in PL 106–398.

The proposed action evaluated in the EA is the transfer of approximately 4,250 acres (1,700 hectares) of the NASD property to the Municipality of Vieques, which would be available for development as generally described in the proposed Vieques Land Use Plan prepared by the Puerto Rico Planning Board (PRPB) on behalf of the Municipality of Vieques; the transfer of approximately 3,050 acres (1,220 hectares) to DOI to be administered as a national wildlife refuge; the transfer of 800 acres (320 hectares) to PRCT to be managed as a wildlife refuge; and the retention of easements needed for continued access and operation and maintenance of the Relocatable Over-the-Horizon Radar (ROTHR) and Monte Pirata telecommunication facilities, which are being retained by the Navy. The wildlife refuges will be managed pursuant to a cooperative management Agreement among DOI, PRCT, and the Commonwealth of Puerto Rico to protect and preserve their natural and cultural resources in perpetuity for the benefit of the general public. The statute requires all the land to be transferred not later than May 1, 2001; however, individual transfers could occur separately and independently prior to that date. The proposed action does not include, nor is it related to, any actions by the Navy regarding continued operation of the Navy's Atlantic Fleet Weapons Training Facility (AFWTF) or the Eastern Maneuver Area, which are located on the eastern half of Vieques.

The EA considers only the No Action and Proposed Action alternatives. Under the No Action alternative, the Navy would retain all the NASD property. Because PL 106–398 explicitly directs the Navy to transfer the NASD property, the Navy does not have the legal authority to consider alternative means for disposal or reuse of the property. Because the No Action alternative would not satisfy the congressional mandate contained in the proposed legislation, the No Action alternative is not a reasonable course of action.

The EA evaluates the direct environmental impacts of the proposed land transfer, as well as the potential indirect environmental impacts of the reasonably foreseeable reuse and redevelopment of the land conveyed to the Municipality. Following a phased approach, the Municipality-owned land would be made available for low-density residential development, tourism-related commercial and residential development, and mixed-use development as conceptually proposed in the Vieques Land Use Plan. Wildlife-dependent recreational uses, such as fishing, hunting, wildlife observation and photography, environmental education, and interpretation, would be allowed within the DOI and PRCT-owned wildlife refuges; however, construction or development would be limited to basic visitor facilities.

The Navy has completed consultation with the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service regarding compliance with the Endangered Species Act. In response to USFWS concerns about potential adverse effects to federally listed species from the proposed development of the property to be transferred to the Municipality of Vieques, the PRPB modified the proposed Vieques Land Use Plan to prohibit development in areas where federally threatened and endangered species are known to occur. Potential adverse impacts to federally endangered hawksbill and leatherback sea turtles will be avoided by designation of ''no development'' zones along beaches that provide suitable nesting habitat. Similarly, ''no development'' areas are designated surrounding four locations where federally listed tree species (cobana negra and beautiful goetzea) are known to occur. The USFWS concluded that the proposed action is not likely to adversely effect any federally protected species or associated habitat.

The EA demonstrates that there will be no significant direct or indirect impacts to cultural resources associated with the transfer or conveyance of NASD property. Cultural resources located on the property transferred to the Department of the Interior will continue to come under the purview of federal cultural resource protection laws. No undertaking, as defined in the National Historic Preservation Act (NHPA), could proceed on the property transferred to DOI until DOI has met the requirements of Section 106 of the NHPA. While the property conveyed to the Municipality of Vieques or the PRCT will not be subject to the provisions of federal laws such as the NHPA, there are Commonwealth laws and regulations that expressly protect and preserve cultural resources. These laws and regulations require, among other things, that the Puerto Rico Planning Board approve all actions affecting cultural resources. As a part of the PRPB approval process, the Puerto Rico Institute of History and Culture reviews the proposed action regarding impacts on historic and cultural resources. Commonwealth law also restricts the ability of municipalities to alter PRPB regulations and zoning restrictions that relate to historic or cultural resources.

Notwithstanding the protection provided under Commonwealth laws and regulations, the Puerto Rico State Historic Preservation Officer (SHPO) and the President's Advisory Council on Historic Preservation (ACHP) expressed concern over potential impacts to cultural resources. The Navy has attempted to address these concerns through discussions of a Programmatic Agreement under section 106 of the NHPA. In addition to the SHPO and the ACHP, the U.S. Department of the Interior, the Puerto Rico Department of Natural Resources, the Puerto Rico Planning Board, the Municipality of Vieques, and the PRCT also participated in the section 106 consultation process.

At this time, agreement on a proposed Programmatic Agreement has not been achieved. Perceiving an inability to reach agreement, Navy gave notice of termination of the consultation process to the ACHP on November 27, 2000. The absence of a Programmatic Agreement under the NHPA does not affect the application of Commonwealth laws and regulations to cultural resources. The Navy will continue to work with the interested parties in an effort to ensure that cultural resources are protected under applicable laws and regulations. As a result of Navy's efforts, the Puerto Rico Planning Board has already issued a directive requiring that the SHPO be provided the opportunity to review and comment on all projects affecting cultural resources on the NASD property transferred to PRCT or the Municipality of Vieques.

The draft EA was prepared concurrently with the performance of relevant Comprehensive Environmental

Response, Compensation, and Liability Act (CERCLA) hazardous substance studies and investigations. Some of the ongoing CERCLA studies (*e.g.*, site investigations, remedial studies and designs, risk assessments) will not be completed until after the transfer of the property. The EA is based on the most currently available data and information, and reasonable assumptions regarding land use and other restrictions, which may be implemented to protect human health and the environment prior to completion of site remediation. The ongoing investigation and remediation of contaminated areas are not subject to consideration within this EA.

The analysis conducted in the EA focused on the following resources: Land Use and Aesthetics, Soils, Water Quality, Air Quality, Noise, Terrestrial and Marine Environments, Threatened and Endangered Species, Socioeconomic Conditions, Cultural Resources, Environmental Contamination, and Coastal Zone Management. The analysis concluded that implementation of the Proposed Action will have no significant adverse impacts on the environment and that an EIS is not warranted.

Based on information gathered during preparation of the EA, the Navy finds that the transfer of the NASD property will not significantly impact human health or the environment. The EA and FONSI prepared by the Navy addressing this action may be obtained from: Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia, 23511–2699, (Attn: Mr. Bob Waldo, Code 2032RW), e-mail: waldorh@efdlant.navfac.navy.mil or telephone (757) 322–4895. A limited number of copies of the EA and FONSI are available to fill single copy requests.

November 28, 2000.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 00–30751 Filed 11–30–00; 8:45 am]

BILLING CODE 3810–FFP

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend records systems.

SUMMARY: The Department of the Navy proposes to amend 14 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 amendments will be effective on January 2, 2001 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: Mrs. 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 amend 14 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 changes to the system of records 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 or altered systems reports. The records systems being amended are set forth below, as amended, published in their entirety.

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05000–1

SYSTEM NAME:

General Correspondence Files (September 9, 1996, 61 FR 47483).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

N05000–1

SYSTEM NAME:

General Correspondence Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have initiated correspondence with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a record of correspondence received and responses made.

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' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, organization, and date of correspondence.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in

which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The request should contain full name and date individual wrote to the activity or received a response. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the activity or received a response. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned and records collected by the activity to respond to the request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05000–2

SYSTEM NAME:

Administrative Personnel Management System (March 18, 1997, 62 FR 12806).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.''

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N05000–2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence needed to manage personnel and projects, such as Name, Social Security Number, date of birth, photo id, grade and series or rank/rate, etc., of personnel; location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, access to secure spaces and issuance of keys, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs; retirement category; awards; biographical data; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual aid association memberships; union memberships; qualifications; computerized modules used to track personnel data; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to

terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications, duty officer, investigations, OPM officials, and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05000–3

SYSTEM NAME:

Organization Locator and Social Roster (June 29, 1999, 64 FR 34793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

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N05000–3

SYSTEM NAME:

Organization Locator and Social Roster.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel attached to the activity, Departments of the Navy and Defense, or other government agencies; family members; and guests or other invitees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual or mechanized records. Includes information such as names, addresses, telephone numbers; official titles or positions and organizations; invitations, acceptances, regrets, protocol, and other information associated with attendants at functions. Locator records of personnel attached to the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To notify personnel of arrival of visitors; recall personnel to duty station when required; locate individuals on routine matters; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; and locate individuals during medical emergencies, facility evacuations, and similar threat situations.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated records.

RETRIEVABILITY:

Name, Social Security Number, and/or organization code.

SAFEGUARDS:

Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.

RETENTION AND DISPOSAL:

Records are destroyed upon update of roster to add/delete individuals who have arrived/departed the organization.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained

in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and records of the activity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05100–3

SYSTEM NAME:

Safety Equipment Needs, Issues, Authorizations (September 9, 1996, 61 FR 47483).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

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N05100–3

SYSTEM NAME:

Safety Equipment Needs, Issues, Authorizations.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel whose work requires them to wear, or are issued, protective clothing or equipment, including prescription safety lenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listings, cards, and other records which list individuals requiring, authorized, or issued prescription or other safety equipment. Such listings may include name, Social Security Number, organization code, date equipment issued, date equipment returned, equipment I.D. number, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To determine who needs, is eligible, or has been authorized or issued prescription or other safety equipment for protection.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, or date equipment was issued.

SAFEGUARDS:

File areas are accessible only to authorized persons who are properly screened, cleared, and trained. Computer terminals/personal computers are password protected.

RETENTION AND DISPOSAL:

Destroy when equipment is returned or inventoried.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests should contain full name, Social Security Number, and date equipment was assigned (if known), and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests should contain full name, Social Security Number, and date equipment was assigned (if known), and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05380–1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society (September 9, 1996, 61 FR 47483).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

N05380–1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security Numbers, payroll identifying data, contributor cards and lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.Os 10927 and 12353, E.O. 9397 (SSN).

PURPOSE(S):

To manage the Combined Federal Campaign and Navy Relief Society Fund drives and provide the respective campaign coordinator with necessary information.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and computerized records.

RETRIEVABILITY:

Name, Social Security Number, and organization.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; payroll files; personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05512–1

SYSTEM NAME:

Vehicle Control System (February 22, 1993, 58 FR 10760).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

N05512–1

SYSTEM NAME:

Vehicle Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have registered their vehicles, boats, or trailers at a Navy/combatant command installation; individuals who have applied for a Government Motor Vehicle Operator's license; and individuals who possess a Government Motor Vehicle Operator's license with authority to operate government vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration and identification. Applications may contain such information as name, date of birth, Social Security Number, Driver's license information (*i.e.,* height, weight, hair and eye color), place of employment, driving record, Military I.D. information, etc.

File also contains records/notations of traffic violations, citations, suspensions, applications for government vehicle operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for a Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle's accidents, and information on student driver training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of each individual who has registered a vehicle in an installation to include a record on individuals authorized to operate official government vehicles.

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' that appear at the beginning of the Navy's compilation of systems of records notices 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, card files, computerized data base and on magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, case number, and organization.

SAFEGUARDS:

Limited access provided on a need-to-know basis only. Information maintained on computers is password protected. Files maintained in locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name and Social Security Number, and request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name and Social Security Number, and requests must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, driving record, insurance papers, activity correspondence, investigators reports, and witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05512–2

SYSTEM NAME:

Badge and Access Control System (July 22, 1997, 62 FR 39225).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

N05512–2

SYSTEM NAME:

Badge and Access Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy/combatant command and any visitor (military, civilian, or contractor) requiring access to a controlled facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visit requests for permission to transact commercial business, visitor clearance data for individuals to visit a naval base/activity/contractor facility; barring lists and letters of exclusion, and badge/pass issuance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; OPNAVINST 5530.14C, DON Physical Security and Loss Prevention; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain all aspects of proper access control; to issue badges; replace lost badges; to retrieve passes upon separation; to maintain visitor statistics; and collect information to adjudicate access.

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:

To designated contractors, Federal agencies and foreign governments for the purpose of granting Navy officials access to their facility.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, magnetic tape, personal computers, and electronic badging system.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization, and company name.

SAFEGUARDS:

Access is provided on a need-to-know basis only. Manual records are

maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Badges and passes are destroyed three months after return to issuing office. Records of issuance are destroyed six months after new accountability system is established or one year after final disposition of each issuance record is entered in retention log or similar record, whichever is earlier. Visit request records are destroyed two years after final entry or two years after date of document, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official for Security Badges: Chief of Naval Operations (N09N2), 2000 Navy Pentagon, Washington, DC 20350–2000.

RECORD HOLDER:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Visit requests; individual; records of the activity; investigators; witnesses; contractors; companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05527–2

SYSTEM NAME:

Security Inspection and Violation System (March 2, 1994, 59 FR 9972).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05500–1'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are destroyed 2 years after completion of final corrective or disciplinary action.''

* * * * *

N05500–1

SYSTEM NAME:

Security Inspection and Violation System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in security violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security violation reports, security inspection reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To identify problem areas in security indoctrination, to alert command management officials to areas which present larger than normal security problems and identify personnel who are cited as responsible for non-compliance with procedures.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, personal computers, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Access provided on a need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after completion of final corrective or disciplinary action.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are

published as an appendix to the Navy's compilation of systems of records notices.

Requests must be signed and contain the individual's name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Requests must be signed and contain the individual's name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; records of the activity; investigator's reports; witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05370–2

SYSTEM NAME:

Financial Interest Disclosure Statements (May 22, 1996, 61 FR 25637).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper and automated records.''

* * * * *

N05370–2

SYSTEM NAME:

Financial Interest Disclosure Statements.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

Categories of individuals covered by the system: Individuals required to file SF 450, SF 278, and/or DD Form 1787.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF 450, Confidential Statement of Affiliations and Financial Interests; SF 278, Financial Disclosure Report; DD Form 1787, Report of DOD and Defense Related Employment; Position Descriptions; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Public Law 95–521, Ethics in Government Act of 1978; E.O. 11222; and E.O. 9397 (SSN).

PURPOSE(S):

To permit supervisors, counselors, and other responsible DON officials to determine whether there are actual or apparent conflicts of interests between members' or employees' present and prospective official duties and their nonfederal affiliations and financial interests.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Information is locked in a file cabinet accessible to authorized personnel only.

RETENTION AND DISPOSAL:

SF 450 and a complete record of all action taken thereon are retained for a period of six years in a central location within the command or activity to which the reporting official was assigned at the time of filing, after which they will be destroyed.

SF 278 and DD Forms 1787 are retained for six years from the date of filing, and then destroyed unless needed for any investigation in which case they shall be held pending completion of the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: General Counsel of the Navy, 720 Kennon Street SE, Room 214, Washington Navy Yard, DC 20374–5012 and Judge Advocate General, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20375–5066.

RECORD HOLDER:

Commanding Officer or head of the organization in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms. Written requests should contain full name and must be signed by the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms. Written requests should contain full name and must be signed by the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, his/her supervisor, and ethics counselor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05800–1

SYSTEM NAME:

Legal Office Litigation/ Correspondence Files (February 4, 1999, 64 FR 5645).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Associate General Counsel of the Navy, 720 Kennon Street SE, Room 214, Washington Navy Yard, DC 20374–5012.''

* * * * *

N05800–1

SYSTEM NAME:

Legal Office Litigation/ Correspondence File.

SYSTEM LOCATION:

Associate General Counsel of the Navy, 720 Kennon Street SE, Room 214, Washington Navy Yard, DC 20374–5012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in litigation which requires Navy action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements; affidavits/declarations; investigatory and administrative reports, including background investigations to determine suitability for service; personnel, financial, medical and business records; promotion/evaluation information; test or evaluation materials; hotline complaints and responses thereto; discovery and discovery responses; motions; orders; rulings; letters; messages; forms; reports; surveys; audits; summons; English translations of foreign documents; photographs; legal opinions; subpoenas; pleadings; memos; related correspondence; briefs; petitions; court records involving litigation; and, related matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To prepare correspondence and materials for litigation.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets and computerized docket system.

RETRIEVABILITY:

Name of individual and the year litigation commenced.

SAFEGUARDS:

Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

After closure, records are sent to Federal Records Center where they are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel of the Navy, 720 Kennon Street SE, Room 214, Washington Navy Yard, DC 20374–5012.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the naval activity involved in the litigation or to the Office of the General Counsel of the Navy, 720 Kennon Street SE, Room 214, Washington Navy Yard, DC 20374–5012.

Written requests should include name and date litigation was filed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the naval activity involved in the litigation or to the Office of the General Counsel of the Navy, 720 Kennon Street SE, Room 214, Washington Navy Yard, DC 20374–5012.

Written requests should include full name and year litigation commenced.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Court records, records from the individual, personal interviews and statements, departmental records such as personnel files, medical records, State and Federal records, police reports and complaints, general correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N06150–4

SYSTEM NAME:

DoD Birth Defects Registry (November 4, 1999, 64 FR 60184).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''DoD beneficiary infants born in both military and civilian medical facilities beginning October 1, 1993, and their parents.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Demographic data and health data potentially related to a birth defect.''

* * * * *

N06150–4

SYSTEM NAME:

DoD Birth Defects Registry.

SYSTEM LOCATION:

Naval Health Research Center, Emerging Illness Division, PO Box 85122, San Diego, CA 92186–5122.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD beneficiary infants born in both military and civilian medical facilities beginning October 1, 1993, and their parents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic data and health data potentially related to a birth defect.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; E.O. 9397 (SSN); and OASD/HA Policy for National Surveillance for Birth Defects Among Department of Defense (DoD) Health Care Beneficiaries Clinical Policy 99–006 dated November 17, 1998.

PURPOSE(S):

To determine those birth defects that are most common within this population; to provide information regarding increases, if any, in the incidence of specific malformations; to compare rates stratified by beneficiary status (military or dependent) and among active-duty personnel, by occupation; to identify geographical or military service-related areas of reproductive concern for cluster analysis; to identify any correlation of rates of defects with changing trends in cultural, social, and environmental factors; and to provide a data repository that future investigators and policy makers might use to study militarily important birth defects hypotheses.

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:

To the Social Security Administration (SSA) for considering individual claims for benefits for which SSA is responsible.

To the Department of Veterans Affairs (DVA) for considering individual claims for benefits for which that DVA is responsible, and for use in scientific, medical and other analysis regarding reproductive outcomes research associated with military service.

To the Department of Health and Human Services, Centers for Disease Control and Prevention and state birth defect registries for use in scientific, medical and other analysis regarding reproductive outcomes research associated with military service.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized and paper records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access provided on a need-to-know basis only. Computerized information is password protected and maintained in a locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are destroyed when three years old or discontinuance of function, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief, Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5300. System manager: Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records contained in this system of records should address written inquiries to the commanding officer of the activity where assigned. The request should contain full name, Social Security Number, and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, American Red Cross, blood donors, hospitals, persons seeking replacement of blood.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07320–1

SYSTEM NAME:

Property Accountability Records (September 9, 1996, 61 FR 47483).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

N07320–1

SYSTEM NAME:

Property Accountability Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who receives and signs for government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

The receipts maintained are any of the following: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge cards, or any other statement of individual accountability for receipt of government property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To identify individuals to whom government property has been issued.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The receipts may be maintained in any of the following formats: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, computerized data base, charge out cards or any other statement of individual accountability for receipt of government property.

RETRIEVABILITY:

Retrievability may be by any of the following: Name, Social Security Number, badge number, tool number, property serial number, or any other locally determined method of property receipt accountability.

SAFEGUARDS:

Access is limited and provided on a need-to-know basis only. Computerized data bases are password protected.

RETENTION AND DISPOSAL:

Property accounting records are destroyed when two years old. Custody receipts are destroyed when material or equipment is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the commanding officer or officer in charge of the activity where the property accountability records are maintained.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is collected directly from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N08370–1

SYSTEM NAME:

Weapons Registration (February 22, 1993, 58 FR 10811).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

PURPOSE(S):

In line 2, delete ''Naval''.

* * * * *

N08370–1

SYSTEM NAME:

Weapons Registration.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals registering firearms or other weapons with station security officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Weapon registration records, weapon permit records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To assure proper control of weapons on installations and to monitor and control purchase and disposition of weapons.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Access provided on a need-to-know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per Secretary of the Navy Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are

published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of activity, investigators, witnesses, and correspondents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12610–1

SYSTEM NAME:

Hours of Duty Records (September 9, 1996, 61 FR 47483).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.''

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N12610–1

SYSTEM NAME:

Hours of Duty Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains such information as name, grade/rate, Social Security Number, organizational code, work center code, grade code, pay rate, labor code, type transaction, hours assigned. Data base includes scheduling and assignment of work; skill level; tools issued; leave; temporary assignments to other areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To effectively manage the work force.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computerized records.

RETRIEVABILITY:

Name, organization code, Social Security Number, and work center.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed when three years old.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, correspondence, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–30474 Filed 11–27–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY.

Notice of Competitive Financial Assistance Solicitation.

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking applications from U.S. institutions of higher learning, whether private or public, for cost shared research, which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of the domestic aluminum industry. This solicitation seeks proposals for fundamental research in support of the development and implementation of energy efficiency technologies for the aluminum industry. Applicants are encouraged to utilize the widest possible range of creative and technically feasible approaches to address research priorities identified by the aluminum industry in the Aluminum Industry Technology Roadmap and the Inert Anode Roadmap.

DATES: The deadline for receipt of applications is 5:00 p.m. EST on March 7, 2001.

ADDRESSES: The formal solicitation document will be disseminated electronically as Solicitation Number DE–PS07–01ID14014, University-Industry Partnerships for Aluminum Industry of the Future Program, through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov.* IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. An IIPS ''User Guide for Contractors'' can be obtained by going to the IIPS Homepage at the following URL:*http://e-center.doe.gov* and then clicking on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPSHelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Carol Van Lente, Contract Specialist, at *vanlencl@id.doe.gov.*

SUPPLEMENTARY INFORMATION: The statutory authority for this program is the Federal Non-Nuclear Energy Research & Development Act of 1974 (P.L. 93–577). Approximately $600,000 in federal funds is expected to be available to fund the first year of selected research efforts. DOE anticipates making approximately six cooperative agreement awards each with a budget of $100,000 a year or less and a project performance period of three years or less.

Issued in Idaho Falls on November 24, 2000.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 00–30638 Filed 11–30–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 01–03; Nanoscale Science, Engineering, and Technology

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for innovative research on the topic of nanoscale science, engineering and technology. Opportunities exist for research with primary focus in materials sciences, chemical sciences, and engineering sciences. More specific information is outlined in the supplementary information section below.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 01–03, should be received by DOE by 4:30 p.m., E.S.T., January 12, 2001. A response to the preapplications encouraging or discouraging a formal application generally will be communicated to the applicant within 21 days of receipt. The deadline for receipt of formal applications is 4:30 p.m., E.S.T. March 14, 2001, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001.

ADDRESSES: All preapplications referencing Program Notice 01–03 should be sent to Dr. Jerry J. Smith, Division of Materials Sciences and Engineering, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown MD 20874–1290. Formal applications referencing Program Notice 01–03 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 01–03. This address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For questions concerning research topics in specific technical areas, contact the following individuals in the appropriate area of interest:

Materials Sciences: Dr. Jerry J. Smith, Division of Materials Sciences and Engineering, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4269, e-mail: jerry.smith@science.doe.gov.

Chemical Sciences: Dr. Paul H. Smith, Division of Chemical Sciences, Geosciences, and Biosciences, SC–14, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–5806, e-mail: paul.h.smith@science.doe.gov.

Engineering Sciences: Dr. Robert Price, Division of Materials Sciences and Engineering, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–3565, e-mail: bob.price@science.doe.gov.

SUPPLEMENTARY INFORMATION: Controlling and manipulating matter at the atomic and molecular scale is the essence of nanoscale science, engineering, and technology (NSET). The BES program has worked with the National Science and Technology Council's Interagency Working Group on Nanotechnology, with the Basic Energy Sciences Advisory Committee (BESAC), and with the broad scientific community from academia, industry, and the National Laboratories to define and articulate the goals of this research.

The BES program in NSET has the following overarching goals: (1) Attain a fundamental scientific understanding of nanoscale phenomena; (2) achieve the ability to design and synthesize materials at the atomic level to produce materials with desired properties and functions; (3) attain a fundamental understanding of the natural processes for the creation of materials and functional systems to serve as a guide and a benchmark by which to measure progress in synthetic design and synthesis; and (4) develop experimental characterization tools and theory/

modeling/simulation tools necessary to understand, predict, and control nanoscale phenomena.

Two recent reports prepared by the BES program, which address both NSET research and broader program goals that are dependent on nanoscale understanding, are available on the internet. These reports are Complex Systems: Science for the 21st Century (1999) available at: *http://www.sc.doe.gov/production/bes/complexsystems.htm* and Nanoscale Science, Engineering and Technology Research Directions (1999) available at: *http://www.sc.doe.gov/production/bes/nanoscale.html.* These reports detail current topics supported by BES in the area of NSET, describe future research directions, and should be used as a guide to appropriate proposal topics. Applications in these areas will be accepted from individual investigators or groups of 2–4 investigators.

Program Funding

It is anticipated that up to $18 million will be available for grant awards during FY 2001, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, also contingent upon the availability of appropriated funds, progress of the research and continuing program need. Applications received by the Office of Science, Office of Basic Energy Sciences, under its current competitive application mechanisms may be deemed appropriate for consideration under this notice and may be funded under this program.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, principal investigator name, address, telephone, fax and e-mail address, title of the project, and the field of scientific research. The preapplication should consist of no more than a three-page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Nanoscale Science, Engineering, and Technology initiative and DOE programmatic needs. Preapplications are strongly encouraged but not required prior to submission of a formal application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR Part 605.10(d) (*www.sc.doe.gov/production/grants/605index.html*):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution. Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel invitation with a similar potential total amount of funds has been sent to DOE FFRDCs. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* On the grant face page, form DOE F 4650.2, block 15, provide the principal investigator's phone number, fax number and e-mail address. The research description must be 20 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on November 17, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–30640 Filed 11–30–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Sustainable Energy Fund for Africa

AGENCY: Office of International Affairs, DOE.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) and the Overseas Private Investment Corporation (OPIC) announce the creation of the U.S.-Africa Sustainable Energy Program. Using $400,000.00 in grants and loans to U.S. not-for-profit entities, non-governmental organizations, and small businesses, the program will facilitate investment in sustainable energy projects in Africa. Interested parties should submit applications to OPIC. Applications will be reviewed by OPIC and DOE and applicants that meet OPIC Requirements and the Program's Selection Criteria, will be considered for the program. Specific information on OPIC Requirements and Program's Selection Criteria is available on the OPIC website *(http://www.opic.gov).*

FOR FURTHER INFORMATION CONTACT: Michelle Billig, IA–32, International Affairs Specialist, U.S. Department of Energy, Office of American and African Affairs, 1000 Independence Ave., SW, Washington, DC 20585, Phone: (202) 586–3209; Sam Smoots, Investment Development, Overseas Private Investment Corporation 1100 New York Avenue, NW., Washington, DC 20527, Phone: (202) 336–8645.

SUPPLEMENTARY INFORMATION: At the DOE-sponsored U.S.-Africa Energy Ministers conference in Tucson, Arizona, in December 1999, U.S. Energy Secretary Bill Richardson and Overseas Private Investment Corporation's President and CEO George Munoz unveiled the U.S. Africa Sustainable Energy Program. This program promotes U.S. clean energy technologies and services in an effort to bring private capital and skills to Africa in a partnering relationship. Using $400,000.00 in grants and loans to U.S. not-for-profit entities, non-governmental organizations, and small businesses, the program will facilitate investment in sustainable energy projects in Africa. Interested parties should submit

applications to OPIC. Applications will be reviewed by OPIC and DOE and applicants that meet OPIC Requirements and the Program's Selection Criteria, will be considered for the program. Specific information on OPIC Requirements and Program's Selection Criteria is available on the OPIC website *(http://www.opic.gov).*

Dated: November 9, 2000.

Theresa Fariello,

Deputy Assistant Secretary, Office of International Energy Policy, Office of International Affairs.

[FR Doc. 00–30639 Filed 11–30–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board's Laboratory Operations Board (LOB). The Federal Advisory Committee Act (Public Law 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—Laboratory Operations Board.

DATES: Thursday, December 7, 2000, 8:30 a.m.–3:15 p.m., Eastern Standard Time.

ADDRESSES: Hilton Washington Embassy Row Hotel, 2015 Massachusetts Ave., NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, or Laurie Keaton, LOB Staff Director, Office of Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7162 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide independent external advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Thursday, December 7, 2000

8:30 a.m.–9 a.m.—Co-Chairs Opening Remarks

9 a.m.–9:45 a.m.—Budget and Appropriations Update

9:45 a.m.–10 a.m.—Break

10 a.m.–11 a.m.—Presentation on Hamre Commission: Study of the Science and Security Functions of the Department

11 a.m.–12 p.m.—Presentation on Transition Planning at DOE

12 p.m.–1 p.m.—Lunch

1 p.m.–3 p.m.—LOB Work Plan—Status Reports

—Implementation of Performance Based Management at DOE

—LOB Retrospective

—Laboratory Profile Report Update

3 p.m.–3:15 p.m.—Public Comment Period

3:15 p.m.—Adjourn

This tentative agenda is subject to change.

Public Participation: In keeping with procedures, members of the public are welcome to monitor the business of the Laboratory Operations Board and to submit written comments or comment during the scheduled public comment period. The meeting will be conducted in a fashion that will, in the Co-Chairs' judgment, facilitate the orderly conduct of business. During its open meeting, the Laboratory Operations 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, US 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 Laboratory Operations Board is available at the Secretary of Energy Advisory Board's web site, located at *http://www.hr.doe.gov/seab.*

Issued at Washington, DC, on November 28, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–30681 Filed 11–30–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Bonneville Power Administration's Proposed Amendments to 2002 Wholesale Power Rate Adjustment Proposal

AGENCY: Bonneville Power Administration, DOE.

ACTION: Notice of proposed amendments to 2002 wholesale power rate adjustment proposal: public hearing, and opportunity for public review and comment proposal BPA File No: WP–02.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that Bonneville Power Administration (BPA) must establish and periodically review its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. By this notice, BPA announces a proposed amendment to the 2002 rate proposal (BPA Docket WP–02), consideration of which has been stayed by Federal Energy Regulatory Commission (FERC) in Docket No. EF00–2012–000. The 2002 rates replace the current 1996 rates, which expire on October 1, 2001, at the same time that most of BPA's current power supply contracts terminate.

DATES: Proposed hearing dates are supplied in the Supplementary Information Section I.C. below. Close of public comments is February 14, 2001.

ADDRESSES: Written comments should be submitted to: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Documents will be available for public viewing after December 12, 2000, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor; 905 NE. 11th, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on December 12, 2000, from 9 a.m. to 12 p.m., Room 223, 911 NE.

11th, Portland, Oregon. The documents will also be available on BPA's web site at www.bpa.gov/power/ratecase. Mr. Barney Keep, Acting Power Manager, Power Products, Pricing and Rates, is the official responsible for the development of BPA's rates.

FOR FURTHER INFORMATION CONTACT: Interested persons may call (503) 230–4328 or call toll-free 1–800–622–4519.

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Part I—Introduction and Procedural Background

A. Relevant Statutory Provisions Governing This Rate Proceeding

Section 7 of the Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides in part that:

> [s]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Rates established by BPA are effective on an interim or final basis when approved by FERC. 16 U.S.C. 839e(a)(2). Similar rate directives may also be found in the Bonneville Project Act, 16 U.S.C. 832 *et seq.*, the Federal Columbia River Transmission System Act, 16 U.S.C. 838 *et seq.*, and the Flood Control Act of 1944, 16 U.S.C. 825 *et seq.*

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be set according to procedures which include:

- Issuance of a **Federal Register** notice announcing the proposed rates;
- One or more hearings;
- The opportunity to submit written views, supporting information, questions, or arguments; and
- A decision by the Administrator based on the record developed during the hearing process.

This notice is intended to advise parties that BPA will be conducting additional hearings in WP–02 for the purpose of amending the proposal currently before FERC. This proceeding will be governed by BPA's ''Procedures Governing Bonneville Power Administration Rate Hearings,'' 51 FR 7611 (March 5, 1986). Special rules governing the proceeding may also be adopted at the prehearing conference.

B. Background

On August 13, 1999, BPA filed a notice in the **Federal Register**, 64 FR 44318 (1999), proposing new wholesale power rates to be effective on October 1, 2001. BPA's initial rate proposal, along with written testimony and studies, was filed on August 26, 1999. Parties to the proceeding filed their direct testimony on November 2, 1999. On December 17, 1999, litigants filed rebuttal to the Parties' direct cases. The Parties also filed prehearing briefs on December 17, 1999. Cross-examination began on January 24, 2000. Parties submitted initial briefs on February 28, 2000. Oral argument before the BPA Administrator was held on March 2, 2000.

A Draft Record of Decision (ROD) was published on April 10, 2000. Parties filed briefs on exceptions on April 24, 2000. BPA published its Final ROD on May 15, 2000. BPA then filed its proposed rates with the FERC on July 6, 2000. BPA requested approval of the rates and General Rate Schedule Provisions (GRSPs) effective October 1, 2001, through September 30, 2006.[1] BPA requested interim approval of its proposed rates by September 15, 2000, and final approval by January 19, 2001. On July 17, 2000, FERC issued notice of BPA's rate filings. See U.S. Department of Energy, Bonneville Power Admin., 65 FR 44041. In the notice FERC established Docket No. EF00–2012–000 to review BPA's proposed rates. On August 7, 2000, BPA requested a 30-day stay of proceedings at FERC. On September 4, 2000, BPA filed an additional motion with FERC requesting a stay of the proceedings through April 30, 2001.

C. Proposed Schedule Concerning This Rate Proceeding

BPA will release its proposed 2002 amendments on December 12, 2000, and expects to publish a final Record of Decision by June 2001. The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference on December 12, 2000.

December 18: Clarification.
January 3: Motions to Strike.
January 5: Data Request Deadline.
January 10: Answers to Motions to Strike.
January 12: Data Response Deadline.
February 1: Parties File Direct Case.
February 8: Clarification.
February 16: Motions to Strike.
February 14: Close of Participant Comments.
February 20: Data Request Deadline.
February 23: Answers to Motions to Strike.
February 27: Data Response Deadline.
March 6: Litigants File Rebuttal.
March 14: Clarification.
March 19: Motions to Strike.
March 19: Data Request Deadline.
March 26: Answers to Strike.
March 26: Data Response Deadline.
April 4–6: Cross-Examination.
April 16: Initial Briefs Filed.
April 26: Oral Argument.
May 25: Draft ROD issued.
June 5: Briefs on Exception.
June 20: Final ROD—Final Studies.

Part II—Purpose and Scope of Hearing

BPA's proposed amendments are necessary because market prices are expected to be much higher and more volatile than assumed in the 2002 rate proposal. BPA's cost-based rates are now further below market price expectations for the FY 2002–2006 rate period. As a result of high market prices, BPA now expects much greater demand for service from customers, demand that BPA is required to serve and that exceeds the generating capability of the FCRPS. To meet this

[1] BPA also requested approval of the methodology used to calculate the rate for the Slice product sold under the Priority Firm (PF) rate schedule for a period from October 1, 2001, to September 30, 2011.

increased load obligation, BPA will need to make substantially greater power purchases in the market at substantially higher and more uncertain prices than anticipated in revenue requirements for the 2002 rate proposal. An adjustment to BPA's 2002 proposal is, therefore, necessary to ensure rates and revenue will be sufficient to recover the costs with a high degree of certainty.

BPA's proposal deals with this cost recovery problem by amending certain risk mitigation tools contained in the 2002 General Rate Schedule Provisions (GRSPs), which apply to the base rates. BPA views this approach as a reliable and prudent means of assuring cost recovery while maintaining the basic underpinnings of BPA's Subscription Strategy for marketing power in the coming rate period. This hearing provides Parties and Participants an opportunity to respond to BPA's proposal.

A. Procedural Background

On July 6, 2000, BPA submitted for filing to FERC the proposed rate adjustments for its wholesale power rates pursuant to section 7(a)(2) of the Northwest Power Act. 16 U.S.C. 839e(a)(2). On August 4, 2000, BPA filed a motion with FERC requesting that FERC stay for 30 days any determination regarding the adequacy of the rate filing. The motion was granted. Thereafter, BPA reviewed events during the summer months which indicated that power markets on the West Coast had become more volatile than previously anticipated.

BPA concluded that, in light of the unprecedented price spikes during the summer months, BPA's cost-based rates for 2002–2006 would be far more attractive to prospective customers than market alternatives. As a result, preference customers could be expected to purchase significantly more power than originally anticipated. Due to higher market prices, there was both an increase in demand and higher augmentation purchases than previously expected. During the initial phase of the rate case, BPA's load forecast exceeded BPA's forecast of generation resources by 1,732 average megawatts (aMW). BPA now expects loads will exceed the original rate case forecast by an additional 1,522 aMW. Moreover, the difficulty of forecasting the expense of serving the increased load obligations is magnified by the fact that prices are escalating in an extraordinarily volatile market.

The combination of an unanticipated increase in loads with higher and more uncertain market prices greatly diminishes the probability that the rates proposed in the initial phase will fully recover generation function costs. Absent a change to proposed rates, Treasury Payment Probability (TPP) is significantly reduced. By law, BPA's payments to Treasury are the lowest priority of revenue application, meaning that such payments are the first to be missed if reserves are insufficient to pay all bills on time. For this reason, BPA expresses its cost recovery goal in terms of probability of being able to make Treasury payments on time. A TPP that is too low reflects an unacceptable degree of financial risk for BPA and the Treasury.

The increased load obligations that BPA will be meeting through market purchases in a currently escalating and volatile market environment have decreased TPP to just such an unacceptable level. BPA is implementing the Fish and Wildlife Principles (Principles) in this rate proposal. Among other provisions, the Principles call for a TPP goal of 88 percent, and an acceptable range of 80 to 88 percent for the 5-year, 2002–2006 rate period. The rates and risk mitigation tools were initially developed to achieve the TPP goal of 88 percent in full. After the rates were filed at FERC, increases and uncertainty surrounding augmentation purchase costs drove the TPP estimate to well below 70 percent.

To remedy the cost recovery problems so that TPP fell within the acceptable range, BPA began in early August to explore its options. On August 1, 2000, BPA suspended the signing of any new power contracts with customers and initiated a separate public process to examine the problem and explore potential solutions. On August 3, 2000, BPA wrote a letter to rate case parties and other interested entities in the region, outlining two possible options for dealing with the problem. The first option entailed modifying a five-year rate lock provision in BPA's power contracts, to give BPA the ability to reset rates if necessary after September 30, 2003. The second option involved modifying the 2002 rate filing to address the problem. The letter requested written comment regarding the proposed options or any other ideas the parties had for addressing the problem.[2] In addition, BPA set August 9, 2000, for a technical discussion of the issues facing BPA and August 21, 2000, for a public meeting to discuss the range of options.

BPA received over 60 written comments in response to the August 3 letter. On August 31, 2000, after the public meeting, BPA wrote a second letter to rate case and other interested parties. After consideration of all the comments and BPA's own internal analysis, a decision was made to explore some specific rate adjustments to deal with the cost recovery problem, rather than proposing modifications to the contract. BPA concluded that it could maintain an acceptable TPP level by revising the CRAC contained in the proposed 2002 GRSPs and by making some corresponding changes to the Slice methodology.

BPA set aside the following weeks to engage the rate case parties in settlement discussions aimed at resolving the cost recovery problem in a mutually agreeable way. These discussions centered on four major issues presented by the option proposed by BPA:

1. How should the CRAC be redesigned to provide BPA with the necessary financial protection?

2. How should the Slice product be modified to insure that Slice customers pay an equitable share of BPA's augmentation costs?

3. What changes, if any, are necessary to the proposed settlement of the IOUs Residential Exchange benefits, as a consequence of the revision to the CRAC?

4. How would the proposed changes to the CRAC impact customers who had already signed contracts?

BPA notified FERC on September 4, 2000, of its decision to pursue modifications to the CRAC and requested that the stay be extended through April 30, 2001, so that settlement discussions could be continued and a limited 7(i) proceeding could be conducted. During the month of September, BPA and rate case parties engaged in a series of meetings to discuss ways of resolving the four major issues described above. Despite this effort, the parties were unable to reach a consensus.

On October 6, 2000, BPA notified rate case parties that it intended to initiate a limited 7(i) proceeding to revise the CRAC; make adjustments to the Slice methodology; adjust the Residential Exchange Settlement; and address the Subscription contracts signed earlier this summer in order to deal with the issues facing BPA. The Administrator

[2] BPA initially asked for all written comment by August 24, 2000, but during the August 21, 2000, meeting, extended the time for customers to provide any comments while settlement discussions occurred. In her October 6, 2000, letter to customers, the Administrator requested all comments be sent to BPA by October 16, 2000.

set the close of business on October 16, 2000, as the start of *ex parte.*[3]

B. Scope of Proceeding

This additional hearing will address the problems created by increased purchase power costs created due to increased loads resulting from higher prices in a volatile market environment. In this second phase of the 2002 rate case, the Administrator will not open issues previously determined to be outside the scope of the first phase of the rate case, as described in the original 1999 **Federal Register** notice[4] and in the phase one WP–02 ROD. BPA's proposal to amend the risk mitigation tools, rather than revise the base rates, does not require that BPA reexamine in this proceeding every issue that was debated and decided in the earlier phase of this proceeding. Many of those issues are not germane to the cost recovery problem that this amended proceeding has been initiated to address.

Therefore, the scope of this second phase of the proceeding is limited only by those guidelines the Administrator established during the first phase of this proceeding, a summary which is described below, and the parameters of the specific problem that is being addressed in this phase of the proceeding.

C. Previous Limitations on Scope

On August 13, 1999, pursuant to Rule 1010.3(f) of BPA's Procedures, the Hearings Officer was directed to exclude from the record any evidence or arguments related to five specific areas.

The first area of exclusion concerns the Cost Review recommendations and BPA's planned implementation of those recommendations which received extensive public review. This rate proceeding will not revisit the methodology used to develop the Cost Review recommendations, the policy merits or wisdom of the specific recommendations, or BPA's implementation plans.

The second area of exclusion concerns decisions made in the Subscription Strategy. The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit decisions that were made in BPA's Subscription Strategy, including both the ROD and Supplemental ROD for the Strategy.

The third area of exclusion concerns decisions made in the context of the Fish and Wildlife Funding Principles. The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit the policy merits or wisdom of the strategy to ''keep the options open'' or of the Fish and Wildlife Funding Principles.

The fourth area of exclusion concerns transmission issues not part of the rate case or included in the settlement agreement reached in BPA's transmission rate case.

The fifth area of exclusion concerns adjustments to the PF–96 Rate.[5]

For this second phase of the proceeding, the Administrator again directs the Hearings Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek in any way to address the five areas noted above. Also, the Targeted Adjustment Charge, for Uncommitted Loads has been approved on a final basis by FERC in Docket No. EF00–2013–000. Therefore, the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to make which seek to change the outcome of that proceeding or which would have such an effect.

Part III—BPA's Proposed Solution to Cost Recovery Problem

To address cost recovery issues caused by the additional load and escalating market, BPA is proposing changes to the CRAC and some corresponding modifications to the Slice methodology. This solution provides sufficient assurance of cost recovery while achieving other goals, as outlined below.

A. The Subscription Strategy

The WP–02 rate proposal was designed to implement the decisions made in BPA's Subscription Strategy. The Subscription Strategy was the result of a lengthy public process that began with the Comprehensive Regional Review. The Subscription Strategy was fundamentally a blueprint for how BPA should go about filling the void that would be left after the vast majority of its contracts expire in 2001. The Strategy provided a structure around which BPA could offer new contracts and meet its statutory obligations while responding to the myriad of changes that had occurred since enactment of the Northwest Power Act.

Some of these changes were due to deregulation of the wholesale power market that began in the 1990s. These changes forced BPA to become more competitive and to unbundle its power products consistent with the open access to transmission and the more competitive climate in the wholesale power markets. The Subscription Strategy also mapped out a general plan for how the benefits of the FCRPS would be distributed in this new climate, consistent with the requirements and obligations created by the Northwest Power Act. In part, this meant attempting to strike a delicate balance between a wide range of competing interests, including customer groups, governmental entities, tribal representatives, and public interest groups.

In sum, the Subscription Strategy reflected the varied and complex interests in the Pacific Northwest and laid the groundwork for an equitable distribution of the benefits of the FCRPS consistent with legal requirements. The four principal goals of the Subscription Strategy are:

- Promote the spread of the benefits of the FCRPS as broadly as possible, with special attention given to the residential and rural customers of the region.
- Avoid rate increases through a creative and businesslike response to markets and additional aggressive cost reductions.
- Fulfill BPA's fish and wildlife obligations while assuring a high level of Treasury payment.
- Provide market incentives for the valuation of conservation and renewable resources.

Of course, the primary purpose of this proceeding is to determine how to deal effectively with the cost recovery risk associated with higher and more uncertain purchase power costs. This increased uncertainty is being caused by expected increases in rising prices in a volatile market and resultant increases in load obligations. However, this phase of the proceeding begins, as did the initial phase, with the basic assumption that a solution to the problem should, as much as possible, be designed to preserve the basic principles underlying the Subscription Strategy. That basic framework has been developed over a period of several years, reflects a wide range of public processes, and is predicated on the input of all regional interests and stakeholders. It continues to provide reasonable direction and structure for the rights and corresponding obligations that have

[3] *On the effective date, ex parte* communications regarding the merits of this proposal with any BPA or DOE employee are prohibited.

[4] The details of the elements that were excluded from the earlier proceeding are described in detail at 64 FR 44318–44323 (Aug. 13, 1999).

[5] FERC granted final approval of TACUL on October 26, 2000, in docket EF00–2013–000. 93 FERC ¶ 62,062 (2000).

been embodied in contracts for service beginning October 1, 2001.

B. Status of Subscription Contracts

All of BPA's regional customers have signed either a Subscription contract or a settlement agreement prior to the October 31, 2000, contract-signing deadline.[6] The Subscription contracts translated the Subscription Strategy into product offerings and formalized the proposed distribution of power and benefits developed through the Subscription Strategy. The proposed WP–02 rates establish the price for those contracts. The contracts were offered to customers and all of BPA's regional customers have already signed, indicating their commitment to subscribing for power during the next rate period. BPA's proposal to amend the WP–02 rate filing through adjustments to the CRAC will preserve the proposed WP–02 rates, except for the few specific changes noted below.

C. Proposed Modifications to Cost Recovery Adjustment Clause (CRAC)

The proposed three-stage CRAC, described in detail below, addresses the cost recovery uncertainty caused by the unanticipated developments in the market. In the Subscription Strategy, BPA stated that a CRAC was an integral part of BPA's risk mitigation package in the development of its power rates. Subscription Strategy, at 14. The CRAC proposed, and eventually adopted in the ROD, was an adjustment to posted rates for all net firm power load requirements customers. *Id.* BPA's final proposal contained a CRAC that, when combined with Planned Net Revenues for Risk (PNRR) and other risk mitigation tools, produced a TPP that met BPA's stated objectives.

The CRAC was designed to trigger when BPA's accumulated net revenues were reduced to below certain threshold levels. If the accumulated net revenues fell below these established thresholds, a financial adjustment would be made to the base rates. The amount of the annual adjustment was capped at preestablished levels. The values used for the initial proposal had the accumulated net revenue equivalents of reserve thresholds of $300 million in FY 2001–2002 and $500 million in FY 2003–2005. The proposal also provided that if BPA's accumulated net revenues are reduced to below the threshold levels, the annual cap for the rate adjustment for FY 2001 was $125 million, FY 2002 was $135 million, FY 2003–2004 was $150 million, and FY 2005 was $87.5 million.

In the first phase of the proceeding, BPA forecasted a need to augment its system with market purchases to meet its obligations. However, the existing rate proposal contemplated a lesser amount of augmentation purchases in a far less volatile market. Because the difference between BPA's rates and the market prices has increased dramatically, BPA's customers are not diversifying their sources of power as anticipated. Therefore customers have placed a greater portion of their load on BPA and BPA expects that the price BPA will pay for the power needed to serve that additional load will be higher than originally forecast.

To be specific, in the rates now before FERC BPA assumed it would need to augment the system by 1,732 aMW at a price of $28.10/megawatthour (MWh) for the power, while current estimates have BPA augmenting the system by 3254 aMW (an additional 1,522 aMW) at a market price in excess of $40.00/MW. As a consequence of these interrelated factors, the assumptions used in the original rate filing no longer adequately account for the anticipated expenses and financial risks in the next rate period. The risks, however, are fundamentally associated with three assumptions: market price, market volatility, and resultant increase in the load forecast. These three factors can be managed effectively and accurately by adjusting the CRAC to achieve a sufficient assurance of cost recovery.

D. CRAC Redesign

In its earlier ROD, BPA proposed a single CRAC that triggered upon accumulated net revenues (ANR) dropping to pre-identified levels. The amendment now being proposed envisions a three-stage CRAC, with each stage designed to deal with a different aspect of the problem. The three stages are referred to as the Load-Based CRAC (LB CRAC), Financial-Based CRAC (FB CRAC), and Safety-Net CRAC (SN CRAC).

The LB CRAC is primarily designed to address the problem of loads exceeding the forecast from the WP–02 Final Studies. The LB CRAC will be based on MW amounts in contracts already signed by customers. As a consequence, the load projection used for the LB CRAC will provide a very accurate indication of how much load BPA will actually be required to serve in the upcoming rate period. Therefore, BPA's risk of unforeseen exposure to the market, in terms of the amount of augmentation purchases required to serve load, is effectively mitigated by the LB CRAC.

Potential exposure to higher market prices and increased volatility as well as other risks, are addressed by the FB CRAC. The uncertainties surrounding the current market make it difficult to project, with a high degree of certainty, the prices that BPA may be required to pay for the power needed to augment the system. The result is that BPA will be purchasing in a volatile market to a much greater extent, increasing the risk of exposure to higher than projected market prices. The proposed FB CRAC makes it possible for BPA to mitigate the risk of forecasting error related to market prices. This is accomplished by allowing BPA to maintain a stable and sufficient level of financial reserves that will enable it to fulfill its load obligations in the face of variability and unpredictability in market prices.

The level of uncertainty presented by the current market volatility may under some circumstances cause BPA to forecast a deferral of its Treasury payment. The SN CRAC provides BPA with a tool to temporarily adjust posted power rates for Subscription sales upward in the event that a Treasury deferral will occur despite implementation of the LB CRAC and the FB CRAC. The SN CRAC would likely not trigger soon enough to avoid an initial deferral, but would help to avoid a second deferral.

1. Load-Based CRAC (LB CRAC)

The LB CRAC is designed to address the problem of recovering the costs associated with additional augmentation caused by unanticipated load placed on BPA, in large part by high market prices. The LB CRAC will be implemented if the actual augmentation for the five-year rate period exceeds the amount of augmentation forecasted in the WP–02 Final Studies (1,732 aMW). Based upon the signed Subscription contracts, BPA will exceed the forecast augmentation amounts contained in the WP–02 Final Studies by 1,522 aMW. BPA is proposing to impose the LB CRAC based on the additional (1,522 aMW) amount of augmentation along with that portion of the augmentation forecasted in the May 2000 WP–02 Final Studies but not purchased as of August 1, 2000.

The total amount collected under the LB CRAC will be calculated in three different ways depending upon whether the MWs of augmentation were forecast in the May 2000 WP–02 Final studies. For the 1,522 aMW of augmentation not forecast in the WP–02 the amount of revenue to be collected is determined by

[6] BPA offered its IOU customers a Settlement Agreement as an alternative to the benefits under the standard Residential Power Sales Agreement (RPSA). Customers who did sign contracts prior to the close of the signing window may still do so but they will be subject to the Targeted Adjustment Clause (TAC).

multiplying this additional amount of augmentation by the difference between the assumed flat purchase price of $34/megawatthour (MWh) and the flat PF rate of $19.26/MWh. For the MWs of augmentation forecasted but not purchased by August 1, 2000, the amount of revenue to be collected is determined by multiplying those MWs by the difference between $34/aMW and $28.1/aMW. There are, however, 46 aMW in the WP–02 Final Studies that had a forecasted augmentation cost of $23/MWh. These MWs will be assessed the difference between $34 and $23. The sum of these revenue amounts will then be multiplied by the percentage of Non-Slice Load to Total Requirements Load, to arrive at the total revenue amount to be collected from those customers subject to the LB CRAC. The total revenue amount under the LB CRAC will be converted into a percentage increase to the base rate for the entire rate period and would apply to the total charge for energy, demand, and load variance.

The LB CRAC applies to power customers under the following firm power rate schedules:

1. PF Preference [(PF excluding Slice), Exchange Program, and Exchange Subscription];
2. Industrial Firm Power (IP–02), including power sold under the Industrial Firm Power Targeted Adjustment Charge (IPTAC) and Cost-Based Index Rate;
3. Residential Load (RL–02);
4. New Resource Firm Power (NR–02); and
5. Subscription purchases under Firm Power Products and Services (FPS).

The LB CRAC does not apply to:

1. PreSubscription rates;
2. the financial portion of the Residential Exchange settlement; or
3. Slice purchases.

2. Financial-Based CRAC (FB CRAC)

The FB CRAC is designed to address the problem presented by market prices for augmentation being forecasted to be significantly higher and more volatile than what was originally expected. It would also trigger in the event that other events, such as low water conditions or WNP outages, sufficiently deplete financial reserves. The FB CRAC has a similar design to the CRAC in the May 2000 WP–02 Final Studies. It entails a temporary, upward adjustment to posted power rates for Subscription sales if ANR in the generation function are forecasted to fall below preestablished threshold levels. If the ANR at the end of any FY 2002–2006 is forecast to fall below the FB CRAC threshold applicable to that FY, the FB CRAC triggers, and a cost recovery adjustment rate increase will go into effect.

The FB CRAC applies to power customers under these firm power rate schedules:

1. PF Preference [(PF excluding Slice), Exchange Program, and Exchange Subscription];
2. Industrial Firm Power (IP–02), including under the Industrial Firm Power Targeted Adjustment Charge (IPTAC) and Cost-Based Index Rate;
3. Residential Load (RL–02);
4. New Resource Firm Power (NR–02); and
5. Subscription purchase under Firm Power Products and Services (FPS).

The FB CRAC does not apply to:

1. PreSubscription contracts;
2. the Slice purchases; or
3. the financial portion of the Residential Exchange Settlement.

The FB CRAC would be based on a forecast of end-of-year ANR and would result in a percentage increase in rates to restore ANR to the lower of the threshold level or the maximum amount of the annual cap. Unlike the LB CRAC, the FB CRAC would trigger only in those years when ANR is forecasted to fall below the threshold and any collection under the FB CRAC would occur only in those years when it is triggered. The threshold levels and the annual caps for the CRAC in this proposal would also differ from those proposed in the WP–02 ROD. The ANR threshold levels for the five years of the rate period in 2002 are $98M; in 2003 are $41M; and in 2004, 2005 and 2006 are $7M. The annual cap is $330M.

Under BPA's earlier CRAC proposal, BPA's determination of whether the threshold level was reached was based upon audited actual financial data. This approach was an after-the-fact determination of whether BPA's ANR dropped below the threshold levels. Under the FB CRAC, rather than basing the determination on audited actual financial data, the trigger will be based upon a forecast of ANR. One of the originally stated objectives for the CRAC was to achieve cap and threshold levels that did not make implementation impractical. Basing the determination on a forecast helps to achieve this objective by allowing BPA to collect any money due under the FB CRAC sooner. Relying on audited actual financial data, as envisioned earlier, would require BPA to have a CRAC with a higher threshold and cap levels to maintain the same TPP level. Therefore in order to keep the CRAC threshold and cap levels lower and more manageable, BPA is proposing to base the FB CRAC on a winter forecast of end-of-year ANR.

A potential problem with basing the FB CRAC trigger of ANR on a forecast, rather than audited actual financial data, is the possibility of forecasting error. To remedy this possibility, BPA is proposing that the forecast be trued-up to actual financial data once it is available. Therefore, if BPA over or under collects, an adjustment would be made to correct the problem.

A second difference between the CRAC in the WP–02 ROD and the FB CRAC is the manner in which the CRAC amount is collected. The original CRAC was designed to be assessed and collected monthly over 12 months, based upon the percent of the adjustment. Under this proposal the FB CRAC would be assessed and collected in 4 monthly payments rather than 12. The payments would be assessed beginning in March, and all funds would be collected by June 30 of the year. As mentioned above, the intent in collecting the funds in a short period of time before June 30 is to make the FB CRAC thresholds and cap lower and therefore the total revenues collected under the FB CRAC lower. Payments to BPA after June 30 by many public customers become ''net billing'' assets and must be made to Energy Northwest under the terms of the bond agreements. BPA can achieve lower thresholds and caps and maintain the same TPP level, if the amounts due under the FB CRAC are collected before the end of June.

3. Safety-Net CRAC (SN CRAC)

The third stage, or SN CRAC, is designed to trigger when BPA is forecasting a 50 percent probability of a missed Treasury payment, or there is an actual miss. If, after triggering the LB and FB CRACs, BPA is still projecting a Treasury miss, or has actually missed a Treasury payment, the SN CRAC would allow BPA to propose an upward adjustment to posted power rates for Subscription sales through modification of the same parameters used in the FB CRAC. A public process will be conducted to determine the extent to which the SN CRAC changes could have an amount to be collected, the duration and the timing different from the FB CRAC. At the end of the public process the Administrator will make a final decision on the SN CRAC. The SN CRAC gives BPA a flexible mechanism to deal with a wide scope of potential financial problems, even those unrelated to market effects.

E. Other Issues

1. Slice

The Slice of the System product (Slice) offered as part of BPA's Subscription Strategy is exempt from the application of CRAC. Slice is exempt from the CRAC because Slice purchasers assume a proportionate

share of BPA's financial risks and receive a proportionate share of the benefits of the Federal system. Slice customers bear financial risk through the product design. Under BPA's rate design, certain types of risks are mitigated by tools such as PNRR and CRAC. However, Slice customers assume the risks PNRR and CRAC are designed to remedy, directly through the type of product they purchase. Because Slice customers assume the risks directly, neither the original CRAC nor the proposed modifications in this proposal apply to the Slice product.

Slice purchasers pay a percentage of BPA's actual costs in return for a percentage of system generation. One of the costs Slice purchasers were obligated to assume was a percentage of BPA's augmentation expenses. These costs are referred to as the Inventory Solution in the Slice contract. To determine the Inventory Solution under the Slice contract, BPA calculated the annual average number of MWs necessary to augment the system to meet the total Subscription load. Under their contract, Slice purchasers were expected to bear responsibility for the net cost of the augmentation purchases. The net cost of the Inventory Solution was calculated by multiplying the annual average amount of augmentation by the difference between the market forecast of $28.10/MW for augmentation purchases and the revenue from sale of the augmentation power. This Net Inventory Cost solution also includes the cost of Conservation Augmentation as well as transmission loss underrecovery associated with 1732aMW of augmentation. This net amount was added to the Slice purchasers base rate under the WP–02 ROD for all five years of the rate period. The Net Cost of the Inventory Solution contained in WP–02 is one part of the Net Cost of the Inventory Solution contained in this proposal. A second piece of the Net Cost of the Inventory Solution is the Net Cost of additional augmentation for which the Slice contract provides for a one time MW true up to loads. This increment to the Net Cost identified in WP–02 is determined in exactly the same manner as was used to determine the Net Cost of the Inventory Solution contained in WP–02. When these two Net Costs are added, they then form the baseline from which to determine how much the Net Cost of the Inventory Solution will change, positive or negative, once the assumption of a fixed cost for augmentation of $28.10 is removed. However, because the market forecast of $28.10 is well below current estimates for the market price for power, relying entirely on this mechanism to insure Slice purchasers to pay their pro rata share of the augmentation cost will result in a cost shift to non-slice customers if an adjustment is not made.

The financial impacts of purchasing the unanticipated augmentation in a market where prices are significantly higher and more volatile are; not accounted for in the WP–02 ROD. In this rate proceeding, BPA is proposing changes to the manner in which the augmentation costs are calculated to insure purchasers proportionately share the additional financial risk associated with the increased augmentation requirements, market prices, and market volatility.

Under the revised proposal, BPA would calculate its augmentation costs based upon a combination of actual purchases and an index of market prices. The actual costs of purchases will be calculated after the fact on a monthly basis and will be denoted in dollars per percent of Slice and then be applied to the Slice purchaser's bill in the next month. To calculate the dollar amount, BPA will use the flat annual average augmentation of 2,460aMW as the foundation for this calculation. The 2,460aMW equals the 3,254aMW flat annual augmentation minus augmentation purchases made by August 1, 2000, which are deemed to have been purchased at $28.10, and which amount to 794aMW. To calculate the Slice purchaser's share of the cost, BPA would use the advanced market purchases made by BPA to meet this augmentation requirement. To the extent that BPA also relies upon its own generation or short-term market purchases to meet the augmentation, those costs or avoided costs will also be factored into the charge to Slice purchasers. These costs will be priced at the weighted average of the 50 percent of the firm Dow Jones COB flat price and 50 percent of the firm Mid-Columbia flat price for heavy and light load hours. BPA is proposing to define the baseline Net Inventory Costs as the sum of the Net Inventory Costs included in WP–02 plus the additional Net Inventory Costs associated with the increment in augmentation attributable to the one time MW true up to loads contain in the Slice contract. Slice customers will pay the sum of these Net Inventory Costs in the base Slice rate. The second step in the process will be an after the fact adjustment to the base Slice rate to reflect the actual costs of the augmentation. When the adjustment is greater or less than the Net Inventory Costs in the base Slice rate, there will be a debit or credit on Slice customer monthly bills.

2. IOU Settlement

The Residential Exchange Settlements with regional IOUs provide benefits in the form of both power and cash. The monetary portion of the benefits is calculated based on the difference between the RL or PF-Exchange Subscription rate and BPA's rate case market price forecast. Originally, BPA adopted $28.10/MW as the rate case market forecast for calculation of the monetary benefits. After reconsidering the appropriateness of that number, given the escalating and volatile market now being experienced, BPA is proposing to calculate the financial aspect of the settlements using BPA's $34/MW rate case market forecast for the monetary benefits component of the IOU Settlement. In addition, the financial aspect of the settlement benefits will be exempt from the FB CRAC and LB CRAC.

3. Early Signers

On August 1, 2000, BPA temporarily suspended the signing of any new power contracts, because of the uncertainty created by the projections of increased loads and greater market volatility. Prior to that date, BPA and a number of its customers had already signed new Subscription power contracts for the upcoming rate period that would price power at the PF–02 rate. The timing of the contract signing does not, under BPA's proposal, provide a sufficient basis to exempt these contracts from the application of the three-stage CRAC in this proposal.

4. Change to the DDC Timing

BPA is proposing two changes to the Dividend Distribution Clause (DDC) as it was described in the May 2000 WP–02 Final Proposal. The first change is that the DDC would not be available in the first year (2002) of the rate period. The second change is that BPA intends to conduct the public process by April 1, 2002, rather than by October 2001, to determine how any distribution will be allocated among stakeholders during the rate period. The first $15 million will continue to be allocated to qualifying Conservation and Renewable purposes.

5. The National Environmental Policy Act

BPA has assessed the potential environmental effects of this rate adjustment, as required by the National Environmental Policy Act (NEPA), as part of BPA's Business Plan Environmental Impact Statement (EIS). The analysis includes an evaluation of

the environmental impacts of a range of rate design alternatives for BPA's power services and an analysis of the environmental impacts of the rate levels resulting from the rates for such services under the business structure alternatives. BPA's proposal to adjust the WP–02 rate filing falls within the range of alternatives evaluated in the Final Business Plan EIS. Comments on the Business Plan EIS were received outside the formal rate hearing process. The comments have been included in the rate case record and will be considered by the Administrator in making a final decision amending BPA's revisions to the 2002 rate schedules. The Business Plan EIS was completed in June 1995.

Part IV—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA will receive comments, views, opinions, and information from ''participants,'' who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before February 14, 2001. Participants' written views, supporting information, questions, and arguments should be submitted to the address noted in the **ADDRESSES** section. The second category of interest is that of a ''party'' as defined in Rules 1010.2 and 1010.4 of the BPA Procedures. 51 FR 7611 (1986). Parties who intervened in the original phase of this proceeding may participate in any aspect of the amended hearing process.

All written submissions by parties should be directed to:

Anne C. Kunkel, Hearing Clerk—LP–7, Bonneville Power Administration, 905 NE. 11th Avenue, P.O. Box 12999, Portland, OR 97212.

The address for the Hearing Clerk is different from the BPA contact information listed in the **ADDRESSES** section of this notice given the Hearing Clerk is the contact for materials to be submitted to the Administrative Law Judge.

B. Developing the Record

Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, and discovery. Parties will have the opportunity to file initial briefs at the close of any cross-examination. After the close of the hearings, and following submission of initial briefs, BPA will issue a Draft ROD that states the Administrator's tentative decision(s). Parties may file briefs on exceptions, or when all parties have previously agreed, oral argument may be substituted for briefs on exceptions. When oral argument has been scheduled in lieu of briefs on exceptions, the argument will be transcribed and made part of the record. The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final adjustments to WP–02 based on the entire record, as amended in this proceeding. The basis for the final adjustments will be described in the Administrator's Final ROD. The Administrator will serve copies of the ROD on all parties and will file the final proposed rate correction, together with the record, with FERC for confirmation and approval. See generally, 18 CFR Pt. 300.

Part V—The Amended 2002 GRSPs

A. Introduction

The following section (Part B below) contains BPA's proposed amendments to BPA's proposed 2002 GRSPs for power rates.

The proposed GRSPs were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act (Transmission System Act), 16 U.S.C. 838 (1982); and the Northwest Power Act, 16 U.S.C. 839 (1982).

BPA's 2002 proposed amendments to the GRSPs will supersede BPA's 1996 rate schedules, except for the FPS–96 rate schedule. The FPS–96 rate schedule continues in effect as modified in Docket No. FPS–96R. BPA proposes that its amended GRSPs become effective upon interim approval or upon final confirmation and approval by FERC. BPA currently anticipates that it will request FERC approval of its revised GRSPs effective October 1, 2001.

B. Summary of 2002 Wholesale Power Rate Schedules, 2002 GRSPs, and New 1996 GRSPs

BPA'S Amended 2002 General Rate Schedule Provisions for Power Rates

Index of Amendments to the General Rate Schedule Provisions

Section II: Adjustments, Charges, and Special Rate Provisions

F. Cost Recovery Adjustment Clause (CRAC)
  1. Load-Based CRAC (LB CRAC)
  2. Financial-Based CRAC (FB CRAC)
  3. Safety-Net CRAC (SN CRAC)
H. Dividend Distribution Clause (DDC)
J. Five-Year Flat Block Price Forecast for Monetary Benefit Component of IOU Settlements
S. Slice True-Up Adjustment
X. Slice Augmentation Cost Adjustment (ACA)

F. Cost Recovery Adjustment Clause (CRAC)

There are three sets of conditions under which rate increases under CRAC may trigger. The first is the Load-Based CRAC (LB CRAC), which triggers based on unanticipated augmentation load. The second is the Financial-Based CRAC (FB CRAC), which triggers based on the generation function's forecasted level of accumulated net revenues. The third is the Safety-Net CRAC (SN CRAC), to be implemented if the financial situation falls to a point where the first two components are not sufficient to avoid missing a Treasury payment.

1. Load-Based CRAC (LB CRAC)

A LB CRAC is triggered if the final forecasted augmentation load for the five-year rate period, based on signed contracts, exceeds the amount forecast in the May 2000 WP–02 Final Studies. To the extent the five-year PF augmentation load exceeds that forecast, the CRAC amount will equal that excess load priced at the difference between an assumed flat purchase price of $34/megawatthour (MWh) and the flat PF rate. Forty-six (46) average megawatts (aMW) of additional Industrial Firm Power (IP) load, resulting from Alcoa's inclusion in the compromise approach, will be assessed the difference between $34/MWh and $23/MWh. If the LB CRAC triggers, the CRAC amount will also include the cost of that portion of augmentation originally forecasted in the May 2000 WP–02 Final Studies (1732 aMW) which had not been purchased as of August 1, 2000, priced

at the difference between $34/MWh and $28.1/MWh.

The LB CRAC applies to power customers under these firm power rate schedules: Priority Firm Power (PF) Preference [(PF excluding Slice), Exchange Program, and Exchange Subscription], Industrial Firm Power (IP–02), including under the Industrial Firm Power Targeted Adjustment Charge (IPTAC) and Cost-Based Index Rate, Residential Load (RL–02), New Resource Firm Power (NR–02), and Subscription purchases under Firm Power Products and Services (FPS). The CRAC does not apply to Pre-Subscription rates, the financial portion of the Residential Exchange settlement, or Slice purchases.

a. *Formula for Calculation of the LB CRAC.* If actual augmentation load for which BPA has signed contracts, as determined in the Amended WP–02 Final Study, exceeds the amount forecast in the May 2000 WP–02 Final Studies (five-year average of 1,732 aMW, or 75,861,600 MWh for the five-year rate period), the LB CRAC triggers, and a CRAC rate increase will go into effect beginning October 2001.

The LB CRAC will be determined as follows:

First, the revenue amount will be calculated in three steps, by the following formula:

(1) The revenue amount reflecting the increase in augmentation required beyond the amount forecasted in the May 2000 Studies is calculated using the following formula:

[($34/MWh minus $19.26/MWh)
times
(difference between PF augmentation load for the five-year rate period, as determined in the Amended WP–02 Final Study, and the augmentation load for the five-year rate period as forecasted in the May 2000 WP–02 Final Studies)]

This equals
($14.74/MWh)
times
(actual augmentation PF load for the five-year rate period, currently expected to be 142,525,200 MWhs, or 3,254 aMW per year,)
minus
75,861,600 MWh).
equals $14.74 times 66,663,600 MWh
equals $982,621,464

(2) The revenue amount reflecting the increased cost of augmentation on the amount forecast in the May 2000 Studies is calculated using the following formula:

[($34/MWh minus $28.1/MWh)
times
(total augmentation load forecast for the five-year rate period in May 2000 WP–02 Final Studies minus total augmentation for the five-year rate period purchased by August 1, 2000)]

This equals
($5.9/MWh)
times
(75,861,600 MWh
minus
34,790,600 MWh)
=$5.9/MWh times 41,071,000 MWh
=$242,318,900

(3) The revenue amount related to the additional 46 aMW of IP load is calculated using the following formula:

[($34/MWh minus $23/MWh)
times
(46 aMW times 8,760 hours times 5 years)]

This equals
($11/MWh)
times 2,014,800 MWh
equals $22,162,800

The total Five-Year Revenue Amount is calculated by adding the results of calculations 1, 2, and 3.

Where the Five-Year Revenue Amount is the amount of additional revenue that an increase in rates under LB CRAC is intended to generate in the rate period.

Where the actual augmentation load is defined as the Amended WP–02 Final Study amount of Subscription load for which BPA has signed contracts for service, which exceeds BPA's forecasted available firm resources.

The Five-Year Revenue Amount is then multiplied by (Non-Slice Load divided by total load subject to LB CRAC plus Slice load) to determine the Pro-Rated Five-Year Revenue Amount. Once the Pro-Rated Five-Year Revenue Amount is determined, that amount will be converted to the LB CRAC Percentage.

The LB CRAC Percentage will be determined by the following formula:

LB CRAC Percentage =
Pro-Rated Five-Year Revenue Amount
Divided by
LB CRAC Five-Year Revenue Basis

Where LB CRAC Revenue Basis is the five-year total forecast of generation revenue from the loads subject to LB CRAC, for the rate period, based on the forecast in the WP–02 Amended Final Proposal.

The LB CRAC Percentage is the percentage increase in each of the firm power rate schedules listed above. This percentage will be applied to energy, demand, and load variance charges subject to the LB CRAC to generate the additional LB CRAC revenue.

b. *Timing of LB CRAC.* The LB CRAC will be assessed in monthly power bills beginning with the bill for delivery of power in October 2001, and continuing through the bill for delivery of power in September 2006.

2. Financial-Based CRAC (FB CRAC)

The FB CRAC is a temporary, upward adjustment to posted power rates for non-Slice Subscription sales if end-of-year Accumulated Net Revenues (ANR) in the generation function are forecasted to fall below a threshold level.

The FB CRAC applies to power customers under these firm power rate schedules: PF Preference [(PF excluding Slice), Exchange Program, and Exchange Subscription], Industrial Firm Power (IP–02), including under the Industrial Firm Power Targeted Adjustment Charge (IPTAC) and Cost-Based Index Rate, Residential Load (RL–02), New Resource Firm Power (NR–02), and Subscription purchases under Firm Power Products and Services (FPS). The CRAC does not apply to Pre-Subscription rates, Slice purchases, or the financial portion of any Residential Exchange Settlement.

a. *Formula for Calculation of the FB CRAC.* By mid-February of each FY of the rate period, FY 2002–2006 a forecast of that end-of-year ANR will be completed. If the ANR at the end of any the forecast year falls below the FB CRAC Threshold applicable to that FY, the FB CRAC triggers, and a CRAC rate increase will go into effect beginning the following March.

The Revenue Amount will be determined by the following formula:

Revenue Amount is the lower of:

FB CRAC Threshold minus forecasted ANR;

or

The annual Maximum Planned Recovery Amount, shown in Table B below, multiplied by (loads subject to FB CRAC divided by [loads subject to FB CRAC plus Slice load]).

Where Revenue Amount is the amount of additional revenue that an increase in rates under FB CRAC is intended to generate during the period that the rate increase is effective;

Where FB CRAC Threshold is the ''trigger point'' for invoking a rate increase under the FB CRAC. The threshold is pre-specified for the end of FY 2002, 2003, 2004, 2005, and 2006 in Table B.

Where ANR is generation function net revenues, as accumulated since 1999, at the end of each of the FY 2002–2006. Audited Actual Accumulated Net Revenues (AANR), confirmed by BPA's independent auditing firm, will be used

for FY 1999, 2000, 2001, and any subsequent year for which they are available. Unaudited AANR will be used to the extent audited actuals are not available.

The expected value of a probabilistic forecast of ANR through the end of each FY will be calculated and used to determine if the threshold has been reached, and what the Revenue Amount is. Net revenues for any given FY are accrued revenues less accrued expenses, in accordance with Generally Accepted Accounting Practices, with the following two exceptions. First, for purposes of determining if the FB CRAC threshold has been reached, actual and forecasted expenses will include BPA expenses associated with Energy Northwest debt service as forecasted in the WP–02 Final Studies. Second, the impact of adopting Financial Accounting Standard 133, Accounting for Derivative Instruments and Hedging Activities, will not be considered in determining if the CRAC threshold has been reached. Only generation function revenues and expenses, which is to say revenues and forecasted expenses that are associated with the production, acquisition, marketing, and conservation of electric power, will be included in determinations under the FB CRAC. Accrued revenues and expenses of the transmission function are excluded.

Where Maximum Planned Recovery Amount is the maximum annual amount planned to be recovered through the FB CRAC. Rate increases under the FB CRAC will be due in four equal monthly payments from March through June. All revenues will be paid to BPA prior to June 30 preceding the end of a FY in which the ANR is forecasted to fall below the FB CRAC Threshold.

TABLE B

Fiscal year	FB CRAC threshold (ANR, $ Millions)	Maximum planned recovery amount (Beginning following March)
2002	98	$330 M
2003	41	330 M
2004	7	330 M
2005	7	330 M
2006	7	330 M

Once the Revenue Amount is determined, that amount will be converted to the FB CRAC Percentage. The FB CRAC Percentage is the percentage increase in customers' rate (not including LB CRAC) in each of the firm power rate schedules listed above. This percentage will be applied to generate the additional FB CRAC revenue.

The FB CRAC Percentage will be determined by the following formula:

FB CRAC Percentage =
Revenue Amount
Divided by
FB CRAC Revenue Basis

Where FB CRAC Revenue Basis is the total generation revenue (not including LB CRAC) for the loads subject to FB CRAC for the FY in which the FB CRAC implementation begins, based on the then most current revenue forecast.

The FB CRAC Percentage is then applied to each customer's forecasted bill for that year (not including LB CRAC), to determine the customer-specific FB CRAC amount. Each customer's FB CRAC amount is then billed to that customer, in four equal amounts, in bills mailed in March through June (for February through May billing periods).

b. *FB CRAC Adjustment Timing.* In February of each year of the rate period, the Administrator will determine whether the expected value of the ANR forecast at the end of that current FY is below the FB CRAC Threshold. If the ANR is forecasted to fall below the FB CRAC Threshold, the Administrator will propose, in February, to assess a cost recovery adjustment increase to applicable rates to be billed in March. The payment is due to BPA prior to June 30.

Each customer will be notified, on or about March 1, of the revenue amount of FB CRAC they will be billed. Each customer will be sent a bill for ¼ of the customer's total FB CRAC obligation for that year, in each of months March, April, May, and June.

c. *FB CRAC Notification Process.* BPA shall follow the following notification procedures:

(1) Financial Performance Status Reports

Each quarter, BPA shall post on its electronic information access (World Wide Web) site preliminary, unaudited year-to-date aggregate financial results for generation, including ANR.

By January of each year, BPA shall post on its web site the audited AANR attributable to the generation function for the FY ending September 30.

By May, and August of each year, BPA shall post on its web site an end-of-year forecast of ANR attributable to the generation function.

(2) Notice of FB CRAC Trigger

BPA shall complete and adopt a probabilistic forecast of end-of-year ANR prior to mid-February. BPA shall notify all customers and rate case parties prior to mid-February, in each of the FY 2002–2006, if the expected value of ANR is forecasted to fall below the FB CRAC Threshold for that FY and the extent to which BPA intends to adjust rates under the FB CRAC. Notification will include the audited AANR for the prior FY, the forecast of end-of-year ANR, the calculation of the Revenue Amount, and the FB CRAC Percentage. The notice shall also describe the data and assumptions relied upon by BPA, as well as the cost management and other risk mitigation steps that BPA has considered and those it is taking. Such data, assumptions and documentation, if non-proprietary and/or non-privileged, shall be made available for review at BPA upon request. The notice shall also contain the tentative schedule for the remainder of the FB CRAC implementation process.

Prior to mid-February of any of the FY 2002–2006 in which the ANR is forecasted to fall below the FB CRAC Threshold, BPA staff shall conduct a public forum to explain the ANR forecast, the calculation of the Revenue Amount and the FB CRAC Percentage, and demonstrate that the FB CRAC has been implemented in accordance with the General Rate Schedule Provisions (GRSPs). The forum will provide an opportunity for public comment.

On or about March 1 of any of the FY 2002–2006 in which the ANR is forecasted to fall below the FB CRAC Threshold, the BPA Administrator shall notify all customers to whom the FB CRAC applies of the calculation of the adjustment and the resulting rate increase (as a percentage) applicable to each rate schedule.

d. True-up

There will be two opportunities for truing-up the FB CRAC Revenue Amount and each customer's portion of it, based on updated data. When audited actuals are available, in January in the year subsequent to the FB CRAC being implemented, the AANR will be compared to the ANR forecast used to implement the FB CRAC. If the forecasted amount is within $20 million of the AANR (the tolerance), no true-up will be made. If AANR is higher than the forecasted ANR and the difference is greater than the tolerance, BPA will provide refunds of all revenues collected under the CRAC that are in excess of the amount that would be collected using the AANR. Refunds will be in the form of billing credits, shown as reductions on February through May bills. However, if FB CRAC has again triggered at the time of the true-up, no refund will be given. However, the

Revenue Amount for the new FB CRAC will be reduced by the amount over-collected through the prior year FB CRAC.

If AANR is lower than the forecasted ANR, and the difference is greater than the tolerance, BPA will collect from customers the difference in equal installments in the February through May billing period. The total amount collected, however, will not exceed the Maximum Planned Recovery Amount.

BPA also has the option of following the same process to true-up to updated forecasts in June of any year the FB CRAC is implemented.

3. Safety-Net CRAC (SN CRAC)

If the Administrator determines that the financial condition of BPA's generation function has deteriorated to such an extent that even with the implementation of the FB CRAC:

- BPA forecasts a 50 percent or greater probability that it will nonetheless miss its next Treasury payment, or
- BPA has missed a Treasury payment,

this component of the CRAC will be triggered. If the SN CRAC process is triggered, BPA will propose an SN CRAC that, to the extent market and other risk factors allow, achieves a high probability that the remainder of Treasury payments during the rate period will be made timely.

The SN CRAC applies to power customers under these firm power rate schedules: PF Preference [(PF excluding Slice), Exchange Program, and Exchange Subscription], Industrial Firm Power (IP–02), including under the Industrial Firm Power Targeted Adjustment Charge (IPTAC) and Cost-Based Index Rate, Residential Load (RL–02), New Resource Firm Power (NR–02), Subscription purchases under Firm Power Products and Services (FPS), and the financial portion of the Residential Exchange Settlement. The CRAC does not apply to Pre-Subscription rates or Slice purchases.

The SN CRAC will be an upward adjustment to posted power rates for Subscription sales through modification of the same parameters used in the FB CRAC. A public process will be conducted to demonstrate the need for such an adjustment, and determine the extent to which the SN CRAC changes could have an amount to be collected, the duration and the timing different from the FB CRAC.

Where Revenue Amount is the amount of additional revenue that an increase in rates under CRAC is intended to generate during the period that the rate increase is effective.

BPA will propose how the Revenue Amount is to be applied to rate schedules to produce an increase in customers rates.

SN CRAC Notification Process

At the time BPA determines that it will not have sufficient funds to make its next payment to Treasury on time and in full, even with full implementation of the FB CRAC, BPA will send notification of the determination to customers and interested parties. BPA will conduct a workshop at which it will identify the amount of shortfall, and present its proposal to achieve a high probability that the remainder of Treasury payments during the rate period will be made timely. The proposal will give priority to prudent cost management and other options that enhance Treasury Payment Probability (TPP) without raising CRAC.

A public process will be conducted. Any interested person shall be provided an adequate opportunity to submit written views, data, questions, and arguments, which shall be made a part of the administrative record. After close of the public process, the Administrator shall make a final decision establishing a CRAC adjustment.

H. Dividend Distribution Clause (DDC)

The DDC is a clause establishing criteria and public process requirements that the Administrator will use to decide whether dividends should be distributed and the dividend amount that should be distributed. The DDC enables BPA to distribute dividends to customers and other stakeholders. The DDC also establishes the mechanism to be used to make a distribution to certain firm power customers.

The DDC applies to power customers under these firm power rate schedules: PF Preference [(PF excluding Slice), Exchange Program, and Exchange Subscription], Industrial Firm Power (IP–02), including under the Industrial Firm Power Targeted Adjustment Charge (IPTAC) and Cost-Based Index Rate, Residential Load (RL–02), New Resource Firm Power (NR–02), and Subscription purchases under Firm Power Products and Services (FPS). The DDC does not apply to Pre-Subscription rates, Slice purchases, or the financial portion of any Residential Exchange Settlement under this rate schedule.

The DDC does not apportion, or establish criteria for apportioning, dividends to customers under the above firm power rate schedules or to other customers and stakeholders, other than to qualifying power customers participating in the Conservation and Renewables Discount (C&R Discount).

''Stakeholders'' are groups or public purposes that have a fundamental policy or financial interest in BPA's generation function. These groups include, but are not limited to, customers subject to the posted firm power rate schedules cited above.

1. Formula for the Calculation of the Dividend Distribution Amount

The DDC process will be implemented if audited actual accumulated net revenues for the end of any of the FY 2002–2005 are above the DDC Threshold value.

Actual Accumulated Net Revenues (AANR) are generation function net revenues, as accumulated since 1999, at the end of each of the FY 2002–2005. Net revenues are accrued revenues less accrued expenses, in accordance with Generally Accepted Accounting Practices, with the following two exceptions. For purposes of determining if the DDC threshold has been reached, actual and forecasted expenses will include BPA expenses associated with Energy Northwest debt service as forecasted in the May 2000 WP–02 Final Studies. The impact of adopting Financial Accounting Standard 133, Accounting for Derivative Instruments and Hedging Activities, will not be considered in determining if the CRAC threshold has been reached. Only generation function revenues and expenses, which is to say accrued revenues and accrued expenses that are associated with the production, acquisition, marketing, and conservation of electric power, are included in determinations under the DDC; accrued revenues and expenses of the transmission function are excluded. The determination of AANR will be confirmed by BPA's independent outside auditing firm.

DDC Threshold is the minimum level of AANR that must be realized before a dividend distribution is considered. The DDC Threshold is $388 million for the end of FY 2002, $331 million for the end of FY 2003, and $297 million for the end of FYs 2004, and 2005.

DDC Amount is the aggregate amount that is available to be distributed to customers and stakeholders. The DDC Amount may be equal to zero and will be determined by the following formula:

DDC Amount is the lower of:
AANR – DDC Threshold; or
Cash in excess of that needed to meet the TPP Standard, based on the Five-Year Forecast.

Where the TPP Standard is an 88 percent probability that all planned payments to the U.S. Treasury will be

paid on time and in full over the Five-Year Forecast period (or equivalent financial criterion in the event that BPA replaces its TPP Standard); and

Where the Five-Year Forecast is the forecast of accrued revenues and expenses, and the risk analysis and assessment of TPP or any replacement financial criterion, for the current year and subsequent four years that the Administrator prepares and subjects to public review and comment if the DDC Threshold has been met.

The portion of the DDC Amount allocated to power customers (the Power Customers' DDC Amount) will be determined according to a plan to be adopted in a public process BPA will conduct (see section 3 below). The Power Customer DDC Amount will be converted to a percentage (the Power Customer DDC Percentage), which will be applied to all power customer rates subject to the DDC to arrive at the amount to be rebated on power bills for each of the included power customers.

The Power Customer DDC Percentage will be determined by the following formula:

Power Customer DDC Percentage equals:
Power Customer DDC Amount
Divided by the DDC Revenue Basis

Where DDC Revenue Basis is the total generation revenue for the loads subject to the DDC for the FY in which the DDC implementation begins, based on the then most current revenue forecast.

Each covered power customer will receive a rebate equal to the Power Customer DDC Percentage applied to their total charge for energy, demand and load variance. For any customer or stakeholder entitled to a dividend who is not a power customer, the Administrator will convert the DDC Percentage to a dollar figure.

2. Determination and Timing of a Dividend Distribution

In January of each year of the rate period (FY 2003–2006), the Administrator will determine whether the AANR exceeds the DDC Threshold. If the AANR exceeds the DDC Threshold: (a) customers and rate case parties will be so notified; and (b) the Administrator will prepare a Five-Year Forecast. On or about March 1, the Administrator will propose to distribute or not distribute dividends. The Administrator will issue a final decision on the proposal on or about April 15.

Dividends distributed to customers are included in energy deliveries beginning May 1, and, for any FY 2003–2005, remain in effect for 12 months i.e., through April 30 of the following year. In the last year of the rate period (FY 2006), the rebate would expire on September 30, 2006.

3. Determining How the Distribution is Allocated

The first $15 million of the DDC Amount, if the DDC Amount exceeds $15 million, or the entire DDC Amount if it equals $15 million or less, will be allocated to qualifying customers' participating in the C&R Discount. The C&R Discount is a rate mechanism designed to encourage incremental conservation and renewable resource development by BPA's power purchasers under PF, IP, RL, and NR rate schedules. See C&R Discount GRSPs, Section II.A.

BPA intends to conduct a separate public consultation process by April 1, 2002, to develop the criteria for allocating any remaining DDC Amount (exceeding the $15 million for the C&R Discount) among customers and stakeholders.)

4. Dividend Distribution Notification Process

BPA shall follow the following notification procedures:

a. *Financial Performance Status Reports.* By no later than August 31 of each year, BPA shall post on its electronic information access site (World Wide Web) a forecast of AANR attributable to the generation function for the FY ending September 30.

b. *Notice of DDC Trigger.* On or about January 15 in each of the FY 2003–2006, BPA will notify all power customers and rate case parties if the AANR exceeds the DDC Threshold. (If the December unaudited AANR report for the generation function indicated that the DDC Threshold might be exceeded, and the audited actuals show that it was not exceeded, customers will also be notified). Notification will include the AANR for the prior FY, the DDC Amount, the calculation of the DDC Amount, and the estimated resulting Power Customer DDC Percentage for each applicable rate schedule. The notice shall also describe the data and assumptions relied upon by BPA. Such data, assumptions, and documentation, if non-proprietary and/or non-privileged, shall be made available for review at BPA upon request. The notice shall also contain the tentative schedule for the remainder of the DDC implementation process.

(1) On or about March 1 of any of the FY 2003–2006 in which the AANR exceeds the DDC Threshold, the Administrator will post the Five-Year Forecast on BPA's website and will propose to distribute or not distribute dividends. During March, BPA will conduct a public review and comment process on the proposal.

(2) On or about April 15 of any of the FY 2003–2006 in which the AANR exceeds the DDC Threshold, BPA shall notify customers to which the DDC applies of the decision on the proposal, the final calculation of the DDC Amount, the allocation of the DDC Amount, and, if applicable, the resulting level of the Power Customer DDC Percentage to be applied to each applicable firm power rate schedule.

J. Five-Year Flat Block Price Forecast for Monetary Benefit Component of IOU Settlements

The risk-adjusted Five-Year Flat Block Price Forecast is BPA's price estimate of the market price for five-year block purchases for the 2002–2006 period. This forecast is used in calculating the cash component of the proposed settlement of the Residential Exchange Program with regional IOUs as described in BPA's Power Subscription Strategy. The risk-adjusted Five-Year Flat Block Price Forecast is $34 per megawatthour (MWh).

S. Slice True-Up Adjustment

Each year, when the audited actual Slice Revenue Requirement for the previous fiscal year is available, BPA will calculate the final true-up for the previous fiscal year. BPA will calculate the final true-up for the previous fiscal year based on the difference between the Slice Revenue Requirement's audited actual expenses (and credits) and those expenses (and credits) forecasted in the 2002 Power rate case. This true-up will be the True-Up Adjustment Charge and will be applied to the customer's bills. See the Slice Product Costing and True-Up Table (Table D). Adjustments to the MWs used in the Inventory Solution will be trued up using the formula in Table E. Section X contains the methodology BPA will rely on to adjust Inventory Solution costs to fluctuations in BPA's augmentation costs.

X. Slice Augmentation Cost Adjustment (ACA)

a. Application of the ACA

The ACA applies to the Slice Rate in the PF–02 rate schedule.

(1) This adjustment will reconcile the difference between the Slice purchasers pro rata share of BPA's augmentation costs and the forecast of the augmentation costs that is a part of the Slice Revenue Requirement prior to this adjustment. The adjustment will result in a credit or charge to the Slice purchaser's bill as described in the methodology below.

b. For purposes of calculating and applying the ACA, the following definitions will apply:

(1) ''Adjusted Augmentation Costs'' (AAC) means the dollar cost of meeting AAMT separately for the HLH and LLH in the month.

(2) ''Augmentation Amount'' (AAMT) means the total amount of augmentation in flat annual aMWs forecasted by BPA in its Amended ROD for the 2002 rate case to serve public, DSI, IOU, and Preexisting Contracts less augmentation purchases made by BPA prior to August 1, 2000.

(3) ''Augmentation Cost Adjustment'' (ACA) means the adjustment to the slice rate to recognize the difference between the cost of acquiring the AAMT at 28.1, and the adjusted cost basis of acquiring the AAMT that is described herein.

(4) ''Augmentation Pre-Purchase'' (APP) means a contract or other binding obligation entered into by BPA for the delivery of energy and/or capacity necessary to meet AAMT for that month with purchases prior to that month.

(5) ''Baseline Net Augmentation Costs'' (BNAC) means the cost of augmentation for the month that slice customers already bear in the Slice rate to meet AAMT, and for purposes of calculating ACA, shall be determined as follows:

BNAC=(AAMT * 28.1 * Hours in the month)

(6) ''INDEX'' means the weighted average of 50 percent of Firm Dow Jones COB flat and 50 percent of Firm Mid-Columbia Flat for HLH, and separately, for LLH for the month. If one or more of these indexes are abolished or are determined to no longer provide a reasonable measure of market cost, BPA and Slice purchasers shall establish replacement index(s).

(7) ''Net Adjusted Augmentation Cost Calculation'' (NAAC) means the TAAC for the month minus the BNAC for the month

(8) ''Total Cost of Augmentation Pre-Purchases'' (TCAPP) means the cost in dollars for the APP made to meet AAMT for the month.

(9) ''Total Adjusted Augmentation Cost'' (TAAC) means the gross adjusted cost of meeting AAMT for the month as determined below.

c. Frequency of ACA Calculation

The adjustment frequency is monthly during the rate period for each month in the rate period. The first month for which an ACA will be determined will be October 2001 and the last month for which an ACA will be determined is September 2006.

d. Determining APP Quantity and Cost for the Month

BPA will maintain records of APP made to meet AAMT identified in (d) noting the amounts (in MWh's and/or MW's and/or aMW's) for each month by Heavy Load Hour (HLH)) and Light Load Hour (LLH) and the cost. BPA will keep separate tallies of HLH and LLH, and will report these results in an aggregate form for HLH and LLH separately.

e. Calculation of the Adjusted Augmentation Cost (AAC)

These calculations will be separately performed for the HLH in the month and the LLH in the month.

1. If APP for the month is greater than AAMT for the month,

AAC = [(AAMT/APP) * TCAPP]

2. If APP for the month is equal to AAMT for the month,

AAC = TCAPP

3. If APP for the month is less than AAMT for the month,

AAC = [TCAPP] + [(AAMT–APP) * INDEX * Hours]

f. Calculation of Total Adjusted Augmentation Costs (TAAC)

Once a separate AAC has been calculated for the HLH and LLH for the month, these will be summed to determine the TAAC for the month.

g. Calculation of the Net Adjusted Augmentation Cost (NAAC)

NAAC for the month shall be determined as follows:

NAAC = TAAC–BNAC

h. Calculation of ACA

ACA for the month shall be determined as follows:

ACA = NAAC/100

i. Adjusting Customer's Bill

A credit to a customer's bill shall occur if ACA is negative. A debit shall occur if ACA is positive.

The amount of credit or debit to appear on an individual customer's bill shall be determined using the ACA for that month and the customer's slice share.

The resulting dollar adjustment shall appear on the bill as a separate line item on the first bill following the calculation of ACA.

Issued in Portland, Oregon, on November 22, 2000.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer, Bonneville Power Administration.

[FR Doc. 00–30682 Filed 11–30–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–412–000]

Cross Bay Pipeline Company, L.L.C. and Transcontinental Gas Pipe Line Corporation; Notice of Site Visit

November 22, 2000.

On November 30, 2000, staff from the Office of Energy Projects (OEP) will conduct a pre-certification site visit of the proposed Cross Bay Project at Cross Bay Pipeline Company, L.L.C.'s (Cross Bay) proposed and alternative sites for the Cross Bay Compressor Station in Middlesex County, New Jersey, Representatives of Cross Bay will accompany the OEP staff.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

David P. Boergers,

Secretary.

[FR Doc. 00–30594 Filed 11–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–580–002]

Southern LNG Inc.; Notice of Site Visit

November 22, 2000.

On December 6, 2000, staff from the Office Energy Projects (OEP) will conduct a pre-certification site visit of the proposed Sendout Modification Project at Southern LNG Inc.'s (Southern LNG) existing liquefied natural gas import terminal on Elba Island near Savannah, Georgia. Representatives of Southern LNG will accompany the OEP staff.

All Interested parties may attend the site visit. Those planning to attend must provide their own transportation. For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

David P. Boergers,

Secretary.

[FR Doc. 00–30593 Filed 11–30–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6613–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–FTA–K40241–HI, Rating LO, Oahu Primary Corridor Transportation Project, Improvements from Kapolei in the west to the University of Hawaii-Manoa and Waikiki in the east, Major Investment Study, In the City and County of Honolulu, HI.

Summary: EPA has no objection to the proposed action.

ERP No. D–NOA–L91011–AK, Rating NS, Cook Inlet Beluga Whale Stock, Federal Actions Associated with the Management and Recovery, Implementation, Cook Inlet, AK.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore EPA will not be conducting a detailed review.

Final EISs

ERP No. F–AFS–L65349–ID, Warm Springs Ridge Vegetation Management Project, Improve Forest Condition, Boise National Forest, Cascade Resource Area, Boise County, ID.

Summary: The final EIS responded to EPA's previous comments on the draft EIS. Therefore, EPA has no objection to the action as proposed.

ERP No. FS–FHW–L40198–WA, North Spokane Corridor (formerly known as the North Spokane Freeway) New Information Concerning Transportation Improvements through the City of Spokane and Spokane County and between I–90, Funding, Spokane County, WA.

Summary: EPA still has concerns regarding two issues. The FSEIS does not adequately describe relevant Best Management Practices for potential impacts to surface and groundwater resources in the area. Secondly, the EIS should contain information identifying the contents of the drums associated with the fertilizer plant located in the alignment right-of-way and describe how the drums will be disposed.

Dated: November 28, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–30686 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6613–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *hHp://www.epa.gov/oeca/ofa*.

Weekly receipt of Environmental Impact Statements

Filed November 20, 2000 Through November 24, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000407, FINAL EIS, AFS, WA, Stimson Alaska National Interest Lands Conservation Act (ANILCA) Access Easement Project, Easement Authorization Grant for Construction, Reconstruction and Use of Seven Road Segments for Hauling Logs and Resource Management, Colville National Forest, Sullivan Ranger District, Pend Oreille County, WA, Due: January 05, 2001, Contact: Fred C. Gonzalez (509) 446–7500.

EIS No. 000408, DRAFT EIS, AFS, CA, Mammoth Creek Revised Instream Flow Requirements, Implementation for Point of Measurement and Place of Use, Mammoth Lakes, Mono County, CA , Due: January 31, 2001, Contact: Jeff Bailey (760) 873–2400.

EIS No. 000409, FINAL SUPPLEMENT, NOA, FL, Florida Keys National Marine Sanctuary (FKNMS) Comprehensive Management Plan, Updated Information concerning a Proposal to Establish a No-Take Ecological Reserve in the Tortugas Region, FL , Due: January 02, 2001, Contact: Bill Causey (305) 743–2437.

EIS No. 000410, DRAFT EIS, HUD, NY, 1105–1135 Warburton Avenue, River Club Apartment Complex Development and Operation, Funding, City of Yonkers, Westchester County, NY , Due: January 16, 2001, Contact: Lee Ellman (914) 377–6557.

EIS No. 000411, DRAFT EIS, FHW, OH, OH–7 (LAW–7) Relocation, OH–7 and OH–527 to a point Northeast of Rome Township and OH–607 from East Huntington Bridge to an Interchange with proposed OH–7 and OH–775, Funding, Lawrence County, OH , Due: January 16, 2001, Contact: Andy Garnes (614) 280–6856.

EIS No. 000412, FINAL SUPPLEMENT, FHW, NB, US Highway 75 Roadway Improvement, Murray, Nebraska (Highway N–1) to Bellevue, Nebraska (Fairview Road), Updated Information concerning Project Changes and Changes to the Existing Environmental Setting, Funding, Cass and Sarpy Counties, NB, Due: January 02, 2001, Contact: Edward W. Kosola (402) 437–5521.

EIS No. 000413, DRAFT EIS, JUS, TX, Immigration and Naturalization Service (INS) Detention Facility Construction in the Houston Area, TX, Due: January 16, 2001, Contact: Kevin Feeney (202) 353–9412.

EIS No. 000414, DRAFT EIS, BLM, NM, Santo Domingo Pueblo and Bureau of Land Management Proposed Land Exchange Project, Sandoval and Santa Fe Counties, NM , Due: January 16, 2001, Contact: Debby Lucero (505) 761–8787.

EIS No. 000415, FINAL EIS, SFW, CA, San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, Issuance of Incidental Take Permit, San Joaquin County, CA , Due: January 02, 2001, Contact: Ben Harrison (503) 231–2068.

Dated: November 28, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities

[FR Doc. 00–30687 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6900–9]

Sole Source Aquifer Determination for Western Uinta Arch Paleozoic Aquifer System, Oakley, UT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator of the U.S. Environmental Protection Agency (EPA) in Region VIII has determined that the Western Uinta Arch Paleozoic Aquifer System at Oakley, Utah and the immediately adjacent recharge area is the sole or principal source of drinking water for the region. The region is

located in central Utah extending from near the City of Oakley, Utah east encompassing approximately 23,000 acres in Townships 1 South and 1 North and Ranges 6 to 8 East SLB&M. The area is irregularly shaped with maximum dimensions of about 14 miles from southwest to northeast and approximately 3 miles from northwest to southeast. The entire area is within Summit County, Utah. No viable alternative sources of drinking water with sufficient supply exist. If this aquifer is contaminated, a significant hazard to public health would occur.

The boundaries of the designated area have been reviewed and approved by EPA. As a result of this action, federal financially assisted projects constructed in the approximately 40 square mile area mentioned above will be subject to EPA review to ensure that these projects are designed and constructed in a manner which does not create a significant hazard to public health. For the purposes of this designation the Aquifer Service Area and the Project Review Area are the same as the Designated Area.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Mountain Standard Time on December 1, 2000.

ADDRESSES: The data upon which these findings are based, and a map of the designated area are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: William J. Monheiser, Regional Sole Source Aquifer Coordinator, Ground Water Program, 8P–W–GW, USEPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Phone: 303.312.6271, Fax: 303.312.7084, e-mail: *monheiser.william@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300f, 300h–3(e), Public Law 93–523 as amended, the Regional Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Western Uinta Arch Paleozoic Aquifer System is the sole or principal source of drinking water for the Oakley area of central Utah described above. Pursuant to section 1424(e), federal financially assisted projects constructed anywhere in the Oakley, Utah area described above will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to the U.S. EPA Regional Administrators.

On August 26, 1999, a petition was received from the City of Oakley, Utah, P.O. Box 129, Oakley, Utah 84055, requesting that EPA designate the ground water resources of the Western Uinta Arch Paleozoic Aquifer System near the City of Oakley as a Sole Source Aquifer. In response to this petition, EPA published a notice of a Public Meeting held at the Oakley City offices on May 10, 2000. This notice was published in the Park City Record, a newspaper of general circulation in the area. EPA also sent copies of the notice with descriptive information to all postal patrons in the Oakley area. This notice announced receipt of the petition and requested public comment in writing or oral comments at the public meeting held May 10, 2000 and for a 30 day comment period following the meeting. Comments received by telephone, Fax and e-mail were also accepted. The public comment period extended from May 11, 2000 to June 15, 2000.

Subsequently, EPA determined that the petition is both administratively and technically complete and adequate.

II. Basis for Determination

Among the factors considered by the Regional Administrator for designation of a Sole Source Aquifer under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water, (2) if the designated area has been adequately delineated and, (3) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to EPA, the Regional Administrator has made the following findings of fact, which are the basis for this determination:

1. The Western Uinta Arch Paleozoic Aquifer System serves as the ''sole source'' of drinking water for approximately 1,005 permanent residents within the City of Oakley. There is no existing alternative drinking water source or combination of sources which could provide fifty percent or more of the drinking water to the designated area, nor is there any projected future alternative source capable of supplying the area's drinking water needs at an economical cost.

2. Although the Paleozoic Aquifer System underlies much of central Utah, in the Oakley area the aquifer is isolated, of very high quality, able to be used as a drinking water source with minimal treatment required by the State of Utah. This constitutes a resource limited to this immediate area that if contaminated would create a significant hazard to public health. Potential sources of contamination include: (1) Petroleum, mineral exploration, and geophysical drilling, (2) accidental spills along roadways, (3) abandoned but unplugged petroleum, mineral and geophysical wells, tunnels and (4) non-sustainable forestry practices.

III. Description of the Petitioned Aquifer

The designated area of the Paleozoic Aquifer System near the City of Oakley encompasses about 23,000 acres in an irregularly shaped area approximately 14 miles long by approximately 3 miles wide. Drinking water production is from three developed springs in the Park City Formation and one drilled artesian well in the Doughnut and Humbug Formations. Combined production can be greater than 1000 gallons per minute. Flow is from fractures located within the limestones of the Park City, Doughnut and Humbug Formations. The Paleozoic Aquifer System is composed of the Park City, Weber, Morgan, Round Valley, Doughnut, and Humbug Formations of Permian and Mississippian ages. The boundaries of the aquifer were determined by hydrogeologic mapping of the area, which is interpreted to contribute water to the springs and well.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition from the City of Oakley, review of available literature, and the results of ground water investigations conducted to date on the ground water resources of the area. These data are available to the

public and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 330, Denver, Colorado 80202–2466.

V. Project Review

EPA, Region VIII, will work with the Federal Agencies that may, in the future, provide financial assistance to projects in the designated area. Interagency procedures will be developed in which EPA will be notified of proposed commitments by federal agencies for projects which could contaminate the aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should EPA determine that a project may contaminate the aquifer, so as to create a significant hazard to public health, no commitment for federal assistance may be entered into. However, a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated to state or local agencies, the EPA will rely upon any existing or future state and local control mechanisms to the maximum extent possible in protecting the ground-water quality of the aquifer. Included in the review of any federal financially assisted project will be coordination with local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support state and local ground water quality protection mechanisms.

VI. Summary and Discussion of Public Comments

In response to the Public Notice and Public Meeting, three questions were asked during the public meeting, all requesting clarification of ''federal financial assistance.'' Further clarification of ''federal financial assistance'' was contained in the Responsiveness Summary. No questions or comments were received during the 30 day comment period. No comments objecting to designation were received during any portion of public participation phase of the petition review process.

No data were presented during the public comment period regarding aquifer characteristics, boundary delineation or potential errors of fact presented in the petition.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this designation will not have a significant impact on a substantial number of small entities. For purposes of this Certification, ''small entity'' shall have the same meaning as given in section 601 of the RFA. This action is only applicable to projects with the potential to impact the Western Uinta Arch Paleozoic Aquifer System Sole Source Aquifer as designated.

The only affected entities will be those businesses, organizations or governmental jurisdictions that request federal financial assistance for projects which have the potential for contaminating the Sole Source Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Many projects subject to this review will be preceded by a ground water impact assessment required pursuant to other federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with sole source aquifer review will allow EPA and other federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effects on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Western Uinta Arch Paleozoic Aquifer System in Summit County, Utah. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request federal financial assistance.

Dated: November 16, 2000.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 00–30634 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 21, 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 January 2, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th 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 Control Number: 3060–0392.

Title: 47 CFR 1 Subpart J, Pole Attachment Complaint Procedures.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal government.

Number of Respondents: 1,381.

Estimate Time Per Response: 0.5 to 35 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 3,047.

Total Annual Costs: $267,000.

Needs and Uses: Licensees/permittees/applicants use FCC Form 346 when applying for authority to construct or make changes in a Low Power Television, TV Translator, or TV Booster broadcast station. Applicants are subject to the third party disclosure requirement of 47 CFR Section 73.3580. Within 30 days of tendering of the application, applicants are required to publish a notice in a newspaper of general circulation when filing all applications for new or major changes in facilities'the notice to appear at least twice weekly for two consecutive weeks in a three week period. In addition, a copy of the notice must be maintained along with the application. The Commission uses FCC Form 346 to determine if an applicant is qualified, meets basic statutory and treaty requirements, and will not cause interference to other authorized broadcast services.

OMB Control Number: 3060–0757.

Title: FCC Auctions Customer Survey.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Individuals or households.

Number of Respondents: 2,000.

Estimate Time Per Response: 0.25 hours (15 mins.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 500.

Total Annual Costs: None.

Needs and Uses: Section 309(j) of the Communications Act requires that FCC, under appropriate circumstance, to test various methodologies for conducting competitive bidding. By seeking input from auction participants through the use of the FCC Auction Customer Survey, the Commission expects to gather information to evaluate the operation of competitive bidding methodologies used to date, and to improve the competitive bidding methodologies used in future auctions.

OMB Control Number: 3060–0599.

Title: Implementation of Sections 3(n) and 332 of the Communications Act.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal government.

Number of Respondents: 45.

Estimate Time Per Response: 1.66 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 75 hours.

Total Annual Costs: None.

Needs and Uses: This information collection will create regulatory symmetry among similar mobile services. This symmetrical regulatory structure will promote competition in the mobile services marketplace and will serve the interests of consumers while also benefiting the national economy.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–30642 Filed 11–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.–December 6, 2000.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the People's Republic of China.

2. Docket No. 99–19—William J. Brewer v. Saeid B. Maralan (a/k/a Sam Bustani) and World Line Shipping, Inc.

3. Docket No. 96–05—Rose International, Inc. v. Overseas Moving Network International.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–30789 Filed 11–29–00; 2:05 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 6, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 29, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–30759 Filed 11–30–00; 11:19 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Commercial Activities Panel

AGENCY: General Accounting Office.

ACTION: Notice and request for comments.

SUMMARY: Under section 832 of the National Defense Authorization Act for Fiscal Year 2001, the Comptroller General is required to convene a panel of experts to study the transfer of commercial activities currently performed by government employees to federal contractors, a procedure commonly known as ''contracting out'' or ''outsourcing.'' To ensure a broad array of views on the panel, this notice seeks suggestions on the panel's composition. The panel must include representatives from the Department of Defense, private industry, federal labor

organizations, and the Office of Management and Budget, although other representatives or individuals may be selected as well. All interested parties, including federal government agencies, federal employees or their representatives, contractors, industry groups, labor unions, and individuals are encouraged to submit suggestions on the composition of the panel. The Comptroller General will consider all submissions prior to appointing the panel. The formation of the panel will be announced in a subsequent **Federal Register** notice early in 2001. The authorization act requires the Comptroller General to submit the report of the panel on the results of the study to Congress by May 1, 2002.

DATES: Submit comments and submissions on or before January 2, 2001.

ADDRESSES: Send comments and submissions to the General Accounting Office, Office of General Counsel, Room 7476, 441 G St. NW., Washington, DC 20548, Attention: William T. Woods. Submit electronic comments via e-mail to: *A76panel@gao.gov.* See **SUPPLEMENTARY INFORMATION** for other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: William T. Woods, Project Director, (202) 512–8214; e-mail: *woodsw@gao.gov.*

SUPPLEMENTARY INFORMATION: Section 832 of the National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, October 30, 2000, directs the Comptroller General of the United States to convene a panel of experts to study the policies and procedures governing the transfer of commercial activities for the federal government from government personnel to a federal contractor. The panel's study is to include a review of (1) procedures for determining whether functions should continue to be performed by government personnel, (2) procedures for comparing the costs of performing functions by government personnel with the costs of performing those functions by federal contractors, (3) implementation by the Department of Defense of the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270, 112 Stat. 2382, 31 U.S.C. 501 note), and (4) procedures of the Department of Defense for public-private competitions under Office of Management and Budget Circular A–76. By May 1, 2002, the Comptroller General must submit to Congress a report of the panel on the results of the study, including recommended changes with regard to implementing policies and enactment of legislation.

The Act requires the Comptroller General or a person within GAO designated by him to serve as the panel's chairman. The Comptroller General must appoint highly qualified and knowledgeable persons to serve on the panel and must ensure that the following entities receive fair representation on the panel: (1) The Department of Defense, (2) persons in private industry, (3) federal labor organizations, and (4) the Office of Management and Budget.

The GAO is in the initial stages of forming a panel to conduct this study. To ensure the entities specified in the Act and others receive fair representation on the panel, the GAO seeks public input on the panel's composition. The GAO invites interested parties to submit suggestions on who should serve on the panel, specific agencies and organizations that should be represented, and the qualifications of panel members. Nominations of particular individuals who should be considered for the panel also may be submitted. Please include the name and phone number of the person to be contacted for clarification or additional information. GAO anticipates that the panel, once formed, will solicit substantive comments on the issues to be reviewed through public hearings or other means. Therefore, substantive comments on the issues to be addressed are not solicited at this time.

Electronic Access and Filing

This notice is available on GAO's website at *http://www.gao.gov* under ''Commercial Activities Panel.'' Comments and suggestions on the panel's composition may be submitted by sending e-mail to: *A76panel@gao.gov.*

Dated: November 27, 2000.

Jack L. Brock, Jr.,

Managing Director, Acquisition and Sourcing Management, General Accounting Office.

[FR Doc. 00–30676 Filed 11–30–00; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–01–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Validation of Self-Reported Arthritis Case Definitions in a Managed Care Setting—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). It is difficult to estimate the burden of arthritis on the American public because many patients with arthritis do not seek treatment from a health care provider for the condition. The Behavioral Risk Factor Surveillance System (BRFSS) is an ongoing telephone survey that is being used by individual states and the CDC to measure the burden of arthritis. The BRFSS collects a wide variety of self-reported health information, including 6 questions on arthritis. A BRFSS case of arthritis is defined as any person who reports chronic joint symptoms or recalls a diagnosis of arthritis by a health care provider. However, the BRFSS case

definition has not been validated, meaning it is unclear if patients who report arthritis symptoms or a diagnosis of arthritis truly have arthritis based on a clinical evaluation by a health care provider. It is also not known if persons who deny chronic joint symptoms and do not recall a diagnosis of arthritis are free of the condition. It is essential to know the validity of the BRFSS case definition because this survey is currently being used to estimate the burden of arthritis on the population.

To assess whether the BRFSS case definition of arthritis is valid, patients aged 45 and older who are enrolled in the Fallon Clinic, (a health maintenance organization in central and eastern Massachusetts), and have an upcoming annual physical examination with a primary care physician will be identified through the computerized appointment system. A letter will be sent to 2,100 patients aged 45 to 64 and 2,900 patients aged 65 and older two weeks prior to their scheduled visit informing them of this study and that a research assistant will be calling to conduct a 10 minute interview in the next few days. The telephone survey will identify patients in each age group (aged 45 to 64 and aged 65 and older), who fall into the four following categories: (1) Chronic joint symptoms without a diagnosis of arthritis from a health care provider; (2) a diagnosis of arthritis by a health care provider without chronic joint symptoms; (3) both chronic joint symptoms and a diagnosis of arthritis by a health care provider; and (4) no chronic joint symptoms and no diagnosis of arthritis by a health care provider. A standardized history and physical examination will be performed on at least 50 persons in the two age groups who fall in the 4 categories described above. Those patients who complete the examination will receive a $20.00 gift certificate. Results of this clinical evaluation will be compared to the telephone survey responses and also to data derived from ambulatory encounters to assess the validity of the arthritis case definition. There are no cost to respondents.

Respondents	Number of responndents	Responses per respondents	Average burden (in hours)	Total burden (in hours)
Patients—phone survey	3,000	1	10/60	500
Patients—physical exam	500	1	30/60	250
Total				750

Dated: November 27, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 00–30651 Filed 11–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–07–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Racial and Ethnic Approaches to Community Health (REACH) Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). The REACH 2010 Demonstration Program is a part of the Department of Health and Human Services' response to the President's Race Initiative and to the Healthy People 2010 goal to eliminate disparities in the health status of racial and ethnic minorities. The purpose of REACH 2010 is to demonstrate that adequately funded community-based programs which are designed and led by the communities they serve can reduce health disparities in infant mortality, deficits in breast and cervical cancer screening and management, cardiovascular diseases, diabetes, HIV/AIDS, and deficits in childhood and adult immunizations. The communities served by REACH 2010 include: African American, American Indian, Hispanic American, Asian American, and Pacific Islander. Thirty-two communities were funded in Phase I to construct Community Action Plans (CAP). In Phase II, seventeen of those communities will receive continued funding to implement their CAP.

As part of the President's Race Initiative, it is imperative that REACH 2010 demonstrate success in reducing health disparities among racial and ethnic minority populations. Toward that end, it is of critical importance that CDC collect uniform survey data from each of the seventeen communities funded for the Phase II REACH 2010 Demonstration Program. The same survey will be conducted in each community; it will contain questions that are standard public health performance measures for each health priority area. Surveys will be administered by either telephone or household interview. These surveys will be administered annually for four years using a different sample from each community.

The total annualized burden hours for this project is 5358 hours.

Respondents	Number of respondents	Responses per respondent	Hours per response
Introductory Call	31,058	1	1/60
Questionnaire	26,400	1	10/60

Respondents	Number of respondents	Responses per respondent	Hours per response
Respondent Reliability Assessment	2,640	1	10/60

Dated: November 27, 2000.

Nancy E. Cheal,

Acting Associate Director for Policy Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–30612 Filed 11–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Request for State Data to Determine the Tribal Family Grant Amount.

OMB No.: 0790–0173.

Description: This information collection will be used to request data from States that will be used to determine the amount of Tribal Family Assistance Grants. The data requested is the data required to be used by section 412(a)(1)(B) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request	18	1	42	756
Estimated Total Annual Burden Hours				756

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 27, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–30646 Filed 11–30–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1309]

Agency Information Collection Activities; Announcement of OMB Approval; Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 2000 (65 FR 59853), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0455. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: November 24, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30579 Filed 11–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Microbiology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 8, 2000, 9:30 a.m. to 4:30 p.m.

Location: Marriott Washingtonian Center, Salons A, B, C, and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on issues concerning the types of information necessary to determine the effectiveness of in vitro diagnostic devices that detect human papilloma virus (HPV) in women 30 years or older when these devices are used: (1) In conjunction with Pap smear to increase the effectiveness of Pap smear screening for cervical cancer, and (2) without Pap smear to determine a woman's risk of cervical cancer. Additionally, the committee will discuss and make recommendations on issues concerning the use of self-collection and alternative specimen sources for the above indications.

The following draft questions are proposed for discussion and may be subject to changes prior to the committee meeting:

1. What criteria should be developed to support the safety and effectiveness of HPV assays used in conjunction with Pap smears and without Pap smears, in women 30 years or older, for predicting risk for cervical cancer?

2. What would be the appropriate interpretation of results from HPV assays used in conjunction with Pap smear in women 30 years or older intended for use as predictors of risk for cervical cancer?

3. What type(s) of clinical studies would be appropriate to establish the safety and effectiveness of human papilloma virus testing used in conjunction with Pap smear and without Pap smear, in women 30 years or older, for the determination of risk for cervical cancer in the U.S. population?

4. What types of studies would be appropriate to establish performance characteristics for alternate specimen sources, e.g., urine or home collected cervical swabs, when used to test for HPV as an indication of risk for cervical cancer?

FDA will consider these recommendations in the future development of review criteria for in vitro diagnostic devices, for the detection of HPV as valid scientific evidence to determine whether there is reasonable assurance that these devices are safe and effective for their intended uses.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 1, 2000. On December 8, 2000, oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m., and between approximately 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 1, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the December 8, 2000, Microbiology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Microbiology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 22, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–30692 Filed 11–28–00; 4:29 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–48]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 21, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–30216 Filed 11–30–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Comprehensive Conservation Plan and Summary for Tewaukon National Wildlife Refuge Complex, Cayuga, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Tewaukon National Wildlife Refuge Comprehensive Conservation Plan and Summary. This Plan describes how the FWS intends to manage the Tewaukon Complex for the next 10–15 years.

ADDRESSES: A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, Tewaukon National Wildlife Refuge, 9754 143½ Avenue SW., Cayuga ND 58013; or download from *http://www.r6.fws.gov/larp.*

FOR FURTHER INFORMATION CONTACT: Allison Banks, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225, 303/236–8145 extension 626; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Tewaukon NWR Complex is located in southeast North Dakota. Implementation of the Plan will focus on adaptive resource management of glaciated prairie wetlands, tall and mixed-grass prairie grasslands, riparian woodlands, and opportunities for wildlife-dependent recreation. Habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

Dated: November 27, 2000.

Elliott Sutta,

Regional Director, Denver, Colorado.

[FR Doc. 00–30614 Filed 11–30–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Environmental Impact Statement/Environmental Impact Report for the Proposed Issuance of an Incidental Take Permit for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a final environmental impact statement/environmental impact report.

SUMMARY: This notice advises the public of the availability of the Final Environmental Impact Statement/Environmental Impact Report on the application to incidentally take 16 federally listed species and 26 currently unlisted species should any of them become listed under the Endangered Species Act of 1973, as amended (Act), during the life of the permit. The San Joaquin Council of Governments (Council of Governments) has applied to the Fish and Wildlife Service (Service) for a 50-year incidental take permit pursuant to section 10(a)(1)(B) of the Act. The Council of Governments has applied for itself and on behalf of the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy; San Joaquin County; the East Bay Municipal Utility District; California Department of Transportation-District 10 within San Joaquin County; San Joaquin Area Flood Control Agency; Stockton East Water District; and the South San Joaquin Irrigation District (Applicants). This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act Regulation (40 CFR 1506.6).

DATES: A Record of Decision and permit decision will occur no sooner than January 2, 2001.

ADDRESSES: Copies of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (Plan), Implementation Agreement, and Final Environmental Impact Statement/Environmental Impact Report are available for review at the following government offices and libraries:

Government Offices—Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825, (916) 414–6600 and San Joaquin Council of Governments, 6 S. El Dorado St., Suite 400, Stockton, California 95202, (209) 468–3913. The Plan, Implementation Agreement, and Final Environmental Impact Statement/Environmental Impact Report are also available at the website for the San Joaquin Council of Governments at *http://www.sjcog.org.*

Libraries—California State Library, Information and Reference Center, 914 Capital Mall, Room 301, Sacramento, California 95814, (916) 654–0261; Escalon Branch Library, 1540 Second St., Escalon, California 95320, (209) 838–2478; Tracy Branch Library, 20 E. Eaton Ave., Tracy, California 95376, (209) 831–4250; Cesar Chavez Central Library, 605 N. El Dorado St., Stockton, California 95202, (209) 937–8415; Fair Oaks Branch Library, 2370 E. Main St., Stockton, California 95205, (209) 937–7700; Lodi Library, 201 West Locust Street, Lodi, California 95240, (209) 333–8507; Manteca Branch Library, 320 W. Center St., Manteca, California 95336, (209) 825–2380; Ripon Branch Library, 430 W. Main St., Ripon, California 95366, (209) 599–3326; Margaret Klausner Troke Branch Library, 502 W. Benjamin Holt (at Inglewood), Stockton, California 95207, (209) 937–7000; Maya Angelou Southeast Branch Library, 2324 Pock Lane, Stockton, California 95205, (209) 937–7700.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Conservation Planning Division Chief, Sacramento Fish and Wildlife Office, Sacramento, California, at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service, may issue permits to authorize ''incidental take'' of listed animal species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 17.22, 17.23, and 17.32.

The Applicants seek an incidental take permit for the following federally listed species: threatened Aleutian Canada goose (*Branta canadensis leucopareia*), giant garter snake (*Thamnophis gigas*), California red-legged frog (*Rana aurora draytonii*), delta smelt (*Hypomesus transpacificus*), Sacramento splittail (*Pogonichthys macrolepidotus*), vernal pool fairy shrimp (*Branchinecta lynchi*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), fleshy owl's-clover (*Castilleja campestris* ssp. *succulenta*), and endangered San Joaquin kit fox (*Vulpes macrotis mutica*), Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), riparian woodrat (*Neotoma fucipes riparia*), riparian brush rabbit (*Sylvilagus bachmani riparius*), large-flowered fiddleneck (*Amsinckia grandiflora*), and Greene's tuctoria (*Tuctoria greenei*). This take would be incidental to the

applicants' conversion of open space to non-open space uses within the 900,000+ acre planning area in San Joaquin County (County) in California. The proposed permit also would authorize future incidental take of 26 species that are not currently federally listed, should any of them become listed under the Act during the life of the permit. The 26 currently unlisted species include 13 plant species, 3 amphibian species, 1 reptile species, and 9 bird species. The Plan erroneously identifies the mountain plover (*Charadrius montanus*) as a federally-listed threatened species. However, the status of this species is still proposed for listing as threatened. This error in the Plan does not change or alter coverage for the mountain plover; incidental take for this species would be authorized should the species become listed under the Act during the life of the permit.

In the Plan, the applicants have proposed the conversion of approximately 109,302 acres from open space to non-open space uses throughout the life of the permit, primarily by activities already addressed in adopted plans of the local cities and County. These activities include residential, commercial, and industrial development; aggregate mining; construction and maintenance of transportation facilities, public utilities, schools, and parks and trails; minor dredging, non-federal flood control and irrigation district projects; agricultural conversions of vernal pool grasslands; managing reserves; and other anticipated projects. A more detailed description of covered activities is provided in the Plan.

The Plan classifies the County's land uses into four general categories: Natural Lands, Agricultural Lands, Multi-Purpose Open Space, and Urban Lands. Habitat preservation and/or creation will be required to mitigate for loss of Natural and Agricultural Lands. For Agricultural Land (*e.g.,* row and field crops), 1 acre will be preserved for each acre impacted. For Natural Lands, mitigation varies according to habitat type: (a) For non-wetland habitat (*e.g.,* grasslands, oak woodlands, scrub), 3 acres will be preserved for each acre lost; (b) for vernal pools in the designated ''Vernal Pool Zone'', 2 acres will be preserved and 1 acre will be created for each acre lost; and (c) for wetlands other than vernal pools (*e.g.,* channel islands, riparian creeks, sloughs), each acre lost will be mitigated through 3 acres of preservation, at least 1 acre of which will be created. Up to 71,837 acres of Natural and Agricultural Lands could be converted under the plan, requiring approximately 100,241 acres of habitat preservation and/or creation. Additionally, up to 37,465 acres of Multi-Purpose Open Space are expected to be converted, requiring mitigation in the form of fee payments to help finance enhancement, management, and administration costs associated with the preserve system. The amount of land that will actually be converted during the life of the permit is unknown, but maximum acreage limits have been set based on existing local land use plans.

An additional 600 acres will be preserved under the Plan to compensate for potential impacts to covered species which stray from preserve lands onto neighboring lands. At the election of landowners within 0.5 mile of preserve land, agricultural and aggregate mining activities will receive incidental take authorization for covered species, except for foraging Swainson's hawks, that become established on the property after the adjacent land has been preserved. For foraging Swainson's hawks, landowners within 10 miles of established preserves may receive neighboring land protections at their discretion. Exceptions to this coverage and other details regarding these neighboring land protections are provided in the Plan.

Preservation is anticipated to be achieved primarily through the purchase of conservation easements (approximately 90 percent) with some purchase of lands in fee title (approximately 10 percent). Conservation easements would stress the preservation of existing agricultural practices which are deemed compatible with the conservation of the covered species. It is anticipated that about 100,841 acres of Preserve will be acquired (about 100,241 to mitigate loss of Natural and Agricultural Lands and 600 acres to mitigate for neighboring land protections) during the 50-year term of the Plan. These lands would be preserved and managed for wildlife values in perpetuity.

The Plan includes measures to avoid and minimize incidental take for each of the covered species, emphasizing project design modifications to protect both habitats and species individuals. A monitoring and reporting plan will gauge the Plan's success, based on biological success criteria, and ensure that compensation keeps pace with open space conversions. The Plan also includes adaptive management which allows for changes in the conservation program if the biological success criteria are not met, or new information becomes available to improve the efficacy of the Plan's conservation strategy.

In addition to incidental take avoidance measures, the Plan includes requirements for conserving corridors for the San Joaquin kit fox and for avoiding the creation of linear barriers to species dispersal. The Plan also establishes limits on Natural Land conversions and for particular species covered by the Plan. Details of avoidance and minimization measures, and preserve design and management are presented in the Plan.

The Plan would be implemented by a Joint Powers Authority which would be advised by a Technical Advisory Committee including representatives from the Fish and Wildlife Service, California Department of Fish and Game, and other agencies or parties. Additional assistance will be provided to the Joint Powers Authority by conservation, agricultural, and business interests, and other stakeholders in the County.

Funding for the Plan is anticipated to be provided by multiple sources including development fees (to fund 67 percent of the Plan); local, state and Federal funding sources (16 percent of Plan funding); Plan-generated income (*e.g.,* through lease revenues—approximately 5 percent of funding); conservation bank revenues (2 percent); and revolving funds (10 percent).

The Council of Governments has requested incidental take authorization from the California Department of Fish and Game for a total of 97 species protected under the California Endangered Species Act and/or California Environmental Quality Act. The California Department of Fish and Game intends to use this Final Environmental Impact Statement/Environmental Impact Report and the Plan as a basis for issuing state permits for incidental take of state-protected species resulting from implementation of the Plan.

In October 1, 1999, a notice was published in the **Federal Register** (64 FR 53401) announcing that the Service had received an application for an incidental take permit from the Council of Governments for implementation of the Plan and the availability of a Draft Environmental Impact Statement/Environmental Impact Report for the application. The Draft Environmental Impact Statement/Environmental Impact Report analyzed the potential environmental impacts that may result from the Federal action of authorizing incidental take anticipated to occur with implementation of the Plan, and identified various alternatives. Twelve comment letters were received on the

Draft Environmental Impact Statement/ Environmental Impact Report. A response to each comment received in these letters has been included in Final Environmental Impact Statement/ Environmental Impact Report.

The Draft Environmental Impact Statement/Environmental Impact Report considered five alternatives, including the Proposed Action and the No-Action Alternatives. Under the No-Action Alternative, landowners within the County would continue to apply for individual incidental take permits on a case-by-case basis, resulting in piecemeal planning that would establish isolated patches of mitigation land scattered throughout the County. This could result in cumulatively significant adverse impacts to those species which would benefit from larger tracts of interconnected habitats.

Under the Reduced Land Acquisition/ Increased Preserve Enhancement Alternative, mitigation would focus on habitat enhancement which could interfere substantially with agricultural activities, creating significant adverse impact to agricultural productivity in the County. This alternative would have questionable benefits to the covered species because habitat enhancement is unpredictable and may be unsuccessful.

Under the No Wetlands Coverage Alternative, landowners within the County would continue to apply for individual permits pursuant to the Federal Clean Water Act, which is expected to result in piecemeal planning. Mitigation lands would likely consist of smaller and more widely scattered habitat blocks than would occur with the Proposed Action, resulting in cumulatively significant adverse impacts to those wetland-dependent species which would benefit from larger tracts of interconnected habitats.

Under the Preserve Location Outside of the County Alternative, significantly less habitat within the County would be preserved than with the Proposed Action, adversely impacting some covered species by creating gaps in the species' range and potentially disrupting the genetic integrity of some populations. This alternative could also adversely impact relatively immobile species that are unable to relocate to distant newly created habitats.

The analysis provided in the Final Environmental Impact Statement/ Environmental Impact Report is intended to accomplish the following: inform the public of the proposed action; address public comments received on the Draft Environmental Impact Statement/Environmental Impact Report; disclose the direct, indirect, and cumulative environmental effects of the proposed actions; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

Dated: November 20, 2000.

John Engbring,

Acting Deputy Manager, Region 1, California/ Nevada Operations Office, Sacramento, California.

[FR Doc. 00–30080 Filed 11–30–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–690–01–5101–01–B109; CACA–CACA–40467]

Notice of Extension of the Public Comment Period on the Supplement to the Draft Environmental Impact Report/ Environmental Impact Statement for the Proposed Cadiz Groundwater Storage Dry-Year Supply Program

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the public comment period on the Supplement to the Draft Environmental Impact Report/Environmental Impact Statement for the Proposed Cadiz Groundwater Storage Dry-Year Supply Program has been extended to Monday, January 8, 2001. The original public comment was scheduled to close on Monday, December 4, 2000.

The Bureau of Land Management (BLM), Department of the Interior, the Federal lead agency, and Metropolitan Water District (MWD) of Southern California, the State lead agency, developed the supplement in response to public and agency concerns about groundwater management and potential air quality impacts associated with the project, proposed by Metropolitan in partnership with Cadiz, Inc. Cooperating agencies in developing the supplement were the National Park Service (NPS) and the U.S. Geological Survey (USGS).

The Supplement provides more information on the proposed project and includes a Groundwater Monitoring and Management Plan (Plan). The Plan would govern water storage and extraction operations, including the amount of indigenous groundwater that may be extracted over the 50-year life of the proposed project.

The project proposes to utilize the groundwater basins under a portion of the Cadiz and Fenner Valleys, about 60 miles southwest of Needles, Calif., to store water imported from Metropolitan's Colorado River Aqueduct during years with surplus water and extract the stored water and available indigenous groundwater for use by Metropolitan to serve its customers. Some of the necessary facilities involved would be located on Cadiz, Inc. private land, while a 35-mile-long pipeline and other facilities would be on public lands administered by BLM.

The supplement is available online at *www.ca.blm.gov/needles/nepa01.html.* Review copies are available at BLM offices in Needles (101 West Spikes Road) and Riverside (6221 Box Springs Blvd.), and Metropolitan's Los Angeles headquarters (700 North Alameda Street), as well as local public libraries.

Comments on the Supplement to the Draft Environmental Impact Report/ Environmental Impact Statement for the Proposed Cadiz Groundwater Storage Dry-Year Supply Program should be addressed to the Bureau of Land Management, Attn: James Williams, 6221 Box Springs Blvd., Riverside, CA 92507 or Metropolitan Water District, Attn: Jack Safely, P.O. Box 54153, Los Angeles, CA 90054.

FOR FURTHER INFORMATION CONTACT: James Williams at (909) 697–5390 or Jack Safely at (213) 217–6981.

Dated: November 27, 2000.

Bruce Shaffer,

Associate District Manager.

[FR Doc. 00–30613 Filed 11–30–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–2001–1060–JJ]

Notice of Intent to Extend the Time Period for Removal of Excess and Stray Wild Horses

AGENCY: Bureau of Land Management, Interior.

SUMMARY: On June 21, 2000, notice was published in the **Federal Register** at Vol. 65, No 120, pgs 38572–38573, which stated in part, ''* * * the Rawlins and Lander Field Offices of the Bureau of Land Management plan to remove 500–600 excess and stray horses from three contiguous areas of the Rawlins and Lander Field Offices known as the Lost Creek HMA, an area designated as I–80 North, and the Antelope Hills HMA * * * The removal is scheduled to begin after September 30, 2000, and conclude prior to January 1, 2001. The Appropriate Management Level for these three contiguous areas is 140. At least 140 horses will remain in the area after the removal is completed.''

Due to weather and logistical considerations, it was not possible to complete the action described in the notice in the time period originally envisioned; therefore the BLM will complete the action as soon after January 1, 2001, as is practical. The action will take place in the same manner, in the same places, employ the same practices for safe and humane treatment of the horses, and have the same effects as discussed in EA# WY–030–EA0–181.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Chuck Reed, Resource Advisor, Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301, (307) 328–4200; electronic mail at *Chuck—Reed@blm.gov*.

Kurt J. Kotter,

Field Manager.

[FR Doc. 00–30586 Filed 11–30–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Extension of Expiring Contracts Up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year.

Concessioner identification No.	Concessioner name	Park
ANIA903	Katmai Guide Service	Aniakchak National Monument and Preserve
ANIA904	King Guiding Service	Aniakchak National Monument and Preserve
ANIA906	Cinder River Lodge	Aniakchak National Monument and Preserve
ACAD001	The Acadia Corp.	Acadia National Park
AMIS002	Lake Amistad Resort & Marina	Amistad National Recreation Area
AMIS003	Rough Canyon Marina, 1144	Amistad National Recreation Area
BADL001	Oglala Sioux Tribe (Cedar Pass Lodge)	Badlands National Park
BAND001	Bandelier Trading, Inc.	Bandelier National Monument
BEOL001	Bent's Old Fort Historical Assn.	Bent's Old Fort National Historic Site
BICA003	Horseshoe Bend Marina	Bighorn Canyon National Recreation Area
BICA007	Lucon Corp.	Bighorn Canyon National Recreation Area
BISC002	Biscayne National Underwater Park Co	Biscayne National Park
BISO001	LeConte Lodge Limited Partnership	Big South Fork National Recreation Area
BLCA001	Rim House	Black Canyon of the Gunnison National Monument
BLRI001	Southern Highland Handicraft Guild	Blue Ridge Parkway
CACA001	The Cavern Supply Co., Inc.	Carlsbad Caverns National Park
CACO003	Town of Truro	Cape Cod National Seashore
CACO004	Charles W. Silva	Cape Cod National Seashore
CAHA001	Avon-Thornton Limited Partnership	Cape Hatteras National Seashore
CAHA002	Cape Hatteras Fishing Pier, Inc.	Cape Hatteras National Seashore
CAHA004	Oregon Inlet Fishing Center, Inc.	Cape Hatteras National Seashore
CALO003	Morris Marina, Kabin Kamps & Ferry Service	Cape Lookout National Seashore
CALO005	Alger G. Willis Fishing Camps, Inc	Cape Lookout National Seashore
CANY024	Tag-A-Long Tours, Ltd.	Canyonlands National Park
CANY025	Lin Ottinger Tours	Canyonlands National Park
CANY026	Tag-A-Long Tours, Ltd.	Canyonlands National Park
CANY027	Tex's Riverways	Canyonlands National Park
CANY031	Holiday River Expeditions, Inc.	Canyonlands National Park
CANY032	Kaibab Mountain Bike Tours	Canyonlands National Park
CANY033	Nichols Expeditions, Inc.	Canyonlands National Park
CANY034	Rim Tours	Canyonlands National Park
CANY035	Western Spirit Cycling, Inc.	Canyonlands National Park
CHAT001	Chattahoochee Outdoor Center, Inc	Chattahoochee River National Recreation Area
CHIS002	Channel Islands Aviation, Inc.	Channel Islands National Park
CHOH001	Fletcher's Boat House, Inc.	Chesapeake & Ohio Canal National Historical Park
COLM001	Colorado National Monument Assn	Colorado National Monument
COLO001	Yorktown Shoppe	Colonial National Historical Park
COLO003	Period Designs	Colonial National Historical Park
CRMO001	Craters of the Moon Natural History Assn	Craters of the Moon National Monument
CUIS001	Lang Seafood, Inc.	Cumberland Island National Seashore
CURE001	Elk Creek Marina, Inc.	Curecanti National Recreation Area
DENA005	Rainier Mountaineering, Inc.	Denali National Park and Preserve
DENA006	Mountain Trip, Inc.	Denali National Park and Preserve
DENA008	Alaska-Denali Guiding	Denali National Park and Preserve
DENA009	Fantasy Ridge Alpinism, Inc.	Denali National Park and Preserve
DENA010	American Alpine Institute	Denali National Park and Preserve
DENA011	National Outdoor Leadership School	Denali National Park and Preserve
DENA013	Wallace and Jerryne Cole (Camp Denali and North Face Lodge).	Denali National Park and Preserve
DENA015	Kantishna Roadhouse Company	Denali National Park and Preserve
DENA016	Denali Backcountry Lodge, Inc.	Denali National Park and Preserve
DENA901	Alaska Remote Guide Service	Denali National Park and Preserve
DENA904	Kichatna Guide Service	Denali National Park and Preserve
DEVA001	Amfac Hotels & Resorts, Inc.	Death Valley National Monument
DEVA002	Amfac Hotels & Resorts, Inc.	Death Valley National Monument

Concessioner identification No.	Concessioner name	Park
DEWA002	Dingman's Campground	Delaware Water Gap National Recreation Area
DINO010	Faron & Wayne Wilkins	Dinosaur National Monument
EVER002	Everglades National Park Boat Tours, Inc	Everglades National Park
FIIS001	Howard T. Rose	Fire Island National Seashore
FIIS004	Davis Park Ferry	Fire Island National Seashore
FOMC001	Evelyn Hill, Inc.	Fort McHenry National Monument and Historic Site
GAAR001	Richard Guthrie, Reg. Guide	Gates of the Arctic National Park and Preserve
GAAR002	Highlander Guide Service	Gates of the Arctic National Park and Preserve
GATE001	Jamaica Bay Riding Academy	Gateway National Recreation Area
GATE002	Shields & Dean (Jamaica Bay)	Gateway National Recreation Area
GATE005	Beverly Parking, Inc.	Gateway National Recreation Area
GATE013	Shields & Dean (Riis Park)	Gateway National Recreation Area
GETT001	Gettysburg Tours, Inc.	Gettysburg National Military Park
GLAC001	Glacier Park Boat Company, Inc.	Glacier National Park
GLAC003	Mule Shoe Outfitters, Inc.	Glacier National Park
GLAC004	Glacier Wilderness Guides (Interim)	Glacier National Park
GLAC004A	Belton Chalets	Glacier National Park
GLAC006	Glacier Wilderness Guides, Inc.	Glacier National Park
GLAC010	Edward Desrosier, dba Sun Tours	Glacier National Park
GLBA008	Alaska Discovery, Inc.	Glacier Bay National Park and Preserve
GLBA016	Grand Pacific Charters	Glacier Bay National Park and Preserve
GLBA009	Alaska Discovery, Inc.	Glacier Bay National Park and Preserve
GLBA010	Gary C. Gray, Reg. Guide	Glacier Bay National Park and Preserve
GLBA011	Chilkat Guides	Glacier Bay National Park and Preserve
GLBA012	Colorado River/Trail Exp., Inc.	Glacier Bay National Park and Preserve
GLBA013	James Henry River Journeys	Glacier Bay National Park and Preserve
GLBA014	Mountain Travel/Sobek	Glacier Bay National Park and Preserve
GLBA015	Chicagaof Charters	Glacier Bay National Park and Preserve
GLBA017	Wilderness River Outfitters	Glacier Bay National Park and Preserve
GLBA018	Glacier Guides	Glacier Bay National Park and Preserve
GLBA019	Marine Adventure Sailing Tours	Glacier Bay National Park and Preserve
GLBA021	Seawind Charters	Glacier Bay National Park and Preserve
GLBA025	Princeton Hall, Ltd.	Glacier Bay National Park and Preserve
GLBA026	Lisianski Charters	Glacier Bay National Park and Preserve
GLBA027	Gustavus Marine Charters	Glacier Bay National Park and Preserve
GLBA028	Elfin Cove Sportfishing Lodge	Glacier Bay National Park and Preserve
GLBA030	Dolphin Charters	Glacier Bay National Park and Preserve
GLBA031	Glacier Bay Country Inn	Glacier Bay National Park and Preserve
GLBA032	Sea Wolf Wilderness Adventures	Glacier Bay National Park and Preserve
GLBA033	Gary C. Gray, Reg. Guide	Glacier Bay National Park and Preserve
GLBA035	Glacier Bay Sea Kayaks	Glacier Bay National Park and Preserve
GLBA037	Clipper Cruise Line	Glacier Bay National Park and Preserve
GLBA038	Special Expeditions	Glacier Bay National Park and Preserve
GLBA039	Alaska Sightseeing/Cruise West	Glacier Bay National Park and Preserve
GLBA041	Glacier Bay Park Concessions	Glacier Bay National Park and Preserve
GLBA901	Gary C. Gray, Reg. Guide	Glacier Bay National Park and Preserve
GLBA902	John H. Latham, Reg. Guide	Glacier Bay National Park and Preserve
GLBA044	Glacier Bay Adventures	Glacier Bay National Park and Preserve
GLCA001	Wilderness River Adventures, Inc.	Glen Canyon National Recreation Area
GLCA003	ARAMARK (Wahweap Lodge & Marina)	Glen Canyon National Recreation Area
GLCA017	Arizona Dept. of Economic Security	Glen Canyon National Recreation Area
GLCA021	Samaritan Health System	Glen Canyon National Recreation Area
GOGA001	Blue & Gold Fleet, L.P.	Golden Gate National Recreation Area
GOGA002	Council of American Youth Hostels (Fort Mason)	Golden Gate National Recreation Area
GOGA003	Council of American Youth Hostels (Fort Barry)	Golden Gate National Recreation Area
GOGA004	Park Host	Golden Gate National Recreation Area
GOGA006	Giant Camera	Golden Gate National Recreation Area
GOGA008	Louis' Restaurant	Golden Gate National Recreation Area
GOSP001	McFarland Distributing	Golden Spike National Historic Site
GRCA004	Grand Canyon Trail Rides	Grand Canyon National Park
GRCA005	Verkamps, Inc.	Grand Canyon National Park
GRSA002	The Oasis	Great Sand Dunes National Monument
GRSM001	Cades Cove Campground Store, Inc	Great Smoky Mountains National Park
GRSM004	Cades Cove Riding Stables, Inc.	Great Smoky Mountains National Park
GRSM006	McCarter's Riding Stables, Inc.	Great Smoky Mountains National Park
GRSM007	Smokemont Riding Stables of N.C., Inc	Great Smoky Mountains National Park
GRSM008	Smoky Mountain Riding Stables, Inc	Great Smoky Mountains National Park
GRSM010	Great Smoky Mountains Natural History Assn	Great Smoky Mountains National Park
GRTE003	Rex G. & Ruth G. Maughan (Signal Mountain Lodge)	Grand Teton National Park
GRTE009	Exum Mountain Guide Service	Grand Teton National Park
GRTE012	Jackson Hole Mountain Guides, Inc	Grand Teton National Park
GRTE041	Jackson Hole Trail Rides	Grand Teton National Park
GUIS001	Dudley Food & Beverage, Inc.	Gulf Islands National Seashore

Concessioner identification No.	Concessioner name	Park
GUIS003	Pan Isles, Inc.	Gulf Islands National Seashore
GWMP003	Belle Haven Marina, Inc.	George Washington Memorial Parkway
HAVO002	Hawaii Natural History Assn.	Hawaii Volcanoes National Park
HOSP001	City of Hot Springs Advertising And Promotions Comm	Hot Springs National Park
HOSP004	Libbey Memorial Physical Medicine Center	Hot Springs National Park
IMFA001	Southwest Parks and Monuments Assn	Multiple parks within Intermountain Region
INDU003	LaPorte Co. Sheltered Workshop	Indiana Dunes National Recreation Area
ISRO001	The Royale Line, Inc.	Isle Royale National Park
ISRO006	Isle Royale Seaplane Service, Inc.	Isle Royale National Park
ISRO007	Grand Portage-Isle Royale Transportation, Line	Isle Royale National Park
JEFF002	Jefferson National Expansion Historical Assn.	Jeffferson National Expansion Memorial
JODR003	Cache Creek Snowmobile Tours	John D. Rockefeller Memorial Parkway
JODR004	Heart 6 Snowmobile Tours	John D. Rockefeller Memorial Parkway
JODR005	Hidden Basin dba Old Faithful Snowmobile Tours	John D. Rockefeller Memorial Parkway
JODR006	High Country Snowmobile Tours	John D. Rockefeller Memorial Parkway
JODR007	Mountain High Adventures	John D. Rockefeller Memorial Parkway
JODR008	Best Adventures	John D. Rockefeller Memorial Parkway
JODR009	Jackson Hole Snowmobile Tours	John D. Rockefeller Memorial Parkway
JODR010	National Park Adventures, Inc.	John D. Rockefeller Memorial Parkway
JODR012	Togwotee Mountain Lodge	John D. Rockefeller Memorial Parkway
JODR013	Rocky Mountain Tours	John D. Rockefeller Memorial Parkway
JODR014	Yellowstone Snowmobile Tours	John D. Rockefeller Memorial Parkway
KALA001	Molokai Mule Ride, Inc.	Kalaupapa National Historical Park
KATM901	Rainbow River Lodge	Katmai National Park and Preserve
KATM902	King Guiding Service	Katmai National Park and Preserve
LABE001	Lava Beds Natural History Assn.	Lava Beds National Monument
LAME001	Forever Resorts, Inc. (Cottonwood Cove Resort)	Lake Mead National Recreation Area
LAME002	Lakeshore Trailer Village	Lake Mead National Recreation Area
LAME003	Seven Resorts, Inc. (Lake Mead Resort)	Lake Mead National Recreation Area
LAME005	Forever Resorts, Inc. (Callville Bay Resort)	Lake Mead National Recreation Area
LAME006	Las Vegas Boat Harbor, Inc.	Lake Mead National Recreation Area
LAME008	Overton Beach Resort	Lake Mead National Recreation Area
LAME010	Seven Resorts, Inc. (Echo Bay Resort)	Lake Mead National Recreation Area
LAME014	Black Canyon, Inc.	Lake Mead National Recreation Area
LAMR002	Marina at Lake Meredith	Lake Meredith National Recreation Area
MACA001	Miss Green River Boat Concession, Inc	Mammoth Cave National Park
MEVE002	Mesa Verde Museum Assn.	Mesa Verde National Park
MORA004	John P. Squires	Mount Rainier National Park
MORU001	Amfac Recreational Services, Inc.	Mount Rushmore National Memorial
MUWO001	ARAMARK Leisure Services, Inc.	Muir Woods National Monument
NATR001	Little Mountain Service Center, Inc	Natchez Trace Parkway
NATR004	Craftsmen's Guild of Mississippi, Inc	Natchez Trace Parkway
OLYM001	ARAMARK Corp.	Olympic National Park
OLYM005	Crescent West, Inc.	Olympic National Park
OLYM008	Langsen L.L.C.	Olympic National Park
OLYM048	Wildwater River Tours	Olympic National Park
OLYM057	Olympic Raft & Guide Service	Olympic National Park
OZAR001	Alley Spring Canoe Rental	Ozark National Scenic Riverways
OZAR012	Akers Ferry Canoe Rental, Inc.	Ozark National Scenic Riverways
OZAR015	Big Spring Lodge	Ozark National Scenic Riverways
OZAR037	Akers Ferry Tube Rental, Inc.	Ozark National Scenic Riverways
PAIS001	Padre Island Park Company	Padre Island National Seashore
PEFO001	Amfac	Petrified Forest National Park
PORE001	Drakes Beach Snack Bar	Point Reyes National Seashore
PORE002	Five Brooks Stables	Point Reyes National Seashore
PRWI001	Prince William Travel Trailer Village, Inc	Prince William Forest Park
REDW001	American Youth Hostels, Inc.	Redwoods National Park
ROCR003	Golf Course Specialists, Inc.	Rock Creek Park
ROLA003	Ross Lake Resort, Inc.	Ross Lake National Recreation Area
ROMO001	Rex G. & Ruth G. Maughan (Trail Ridge Store)	Rocky Mountain National Park
ROMO002	Hi Country Stables, Inc.	Rocky Mountain National Park
ROMO003	Colorado Mountain School	Rocky Mountain National Park
ROMO005	Rocky Mountain Nature Assn.	Rocky Mountain National Park
ROMO007	Sun Valley Guest Ranch	Rocky Mountain National Park
ROMO008	Wild Basin Lodge	Rocky Mountain National Park
ROMO009	Meeker Park Lodge	Rocky Mountain National Park
ROMO010	Silver Lane Enterprises	Rocky Mountain National Park
ROMO011	YMCA of the Rockies	Rocky Mountain National Park
ROMO012	Aspen Lodge and Guest Ranch Livery	Rocky Mountain National Park
ROMO013	Wind River Ranch	Rocky Mountain National Park
ROMO016	National Park Village Livery	Rocky Mountain National Park
ROMO017	Sombrero Ranches, Inc.	Rocky Mountain National Park
ROMO018	Winding River Resort Village Campground	Rocky Mountain National Park

Concessioner identification No.	Concessioner name	Park
ROMO019	Cheley Colorado Camp	Rocky Mountain National Park
ROMO021	Lane Guest Ranch	Rocky Mountain National Park
ROMO022	Mountain Prairie Girl Scout Council	Rocky Mountain National Park
SAAN001	Los Compadres de San Antonio	San Antonio Missions National Historical Park
SERO001	Eastern National Parks & Monuments Assn	Various parks within the Southeast Region
SLBE005	Manitou Island Transit	Sleeping Bear Dunes National Lakeshore
SLBE008	Blough Firewood	Sleeping Bear Dunes National Lakeshore
TICA001	Carl J. & Betsy R. Wagner	Timpanogos Cave National Monument
USAR001	Division of Vocational Rehabilitation	U.S.S. Arizona Memorial
WHIS001	Oak Bottom Marina	Whiskeytown-Shasta-Trinity National Recreation Area
WICA001	State of South Dakota, Dept. of Human Resources	Wind Cave National Park
WRBR001	Kitty Hawk Aero Tours, Inc.	Wright Brothers National Monument
YELL002	Hamilton Stores, Inc.	Yellowstone National Park
YELL102	Beardsley Outfitting and Guiding Service	Yellowstone National Park
YELL103	Triangle X Ranch	Yellowstone National Park
YELL104	Horse Creek Ranch	Yellowstone National Park
YELL105	Bear Paw Outfitters	Yellowstone National Park
YELL106	Jackson Hole Llamas	Yellowstone National Park
YELL107	Wyoming Wilderness Outfitters	Yellowstone National Park
YELL108	Fox Creek Pack Station	Yellowstone National Park
YELL110	Diamond J Ranch	Yellowstone National Park
YELL113	7D Ranch	Yellowstone National Park
YELL114	Wilderness Connection	Yellowstone National Park
YELL115	Gary Fales Outfitting	Yellowstone National Park
YELL116	Rimrock Ranch	Yellowstone National Park
YELL117	Mountain Trails Outfitters	Yellowstone National Park
YELL118	Yellowstone Mountain Guides	Yellowstone National Park
YELL120	Slough Creek Outfitters	Yellowstone National Park
YELL121	Yellowstone Llamas	Yellowstone National Park
YELL122	Sheep Mesa Outfitters	Yellowstone National Park
YELL123	Castle Creek Outfitters & Guide Service	Yellowstone National Park
YELL124	Jake's Horses	Yellowstone National Park
YELL125	Big Bear Lodge, Inc.	Yellowstone National Park
YELL126	Heimer Outfitting	Yellowstone National Park
YELL127	Medicine Lake Outfitters	Yellowstone National Park
YELL128	North Yellowstone Outfitters	Yellowstone National Park
YELL130	Skyline Guest Ranch	Yellowstone National Park
YELL131	Hell's A Roarin' Outfitters	Yellowstone National Park
YELL132	Nine Quarter Circle Ranch	Yellowstone National Park
YELL134	John Henry Lee Outfitters	Yellowstone National Park
YELL135	Linn Brothers Outfitting	Yellowstone National Park
YELL137	Wilderness Pack Trips	Yellowstone National Park
YELL138	Rendevous Outfitters	Yellowstone National Park
YELL139	Triple Tree Ranch	Yellowstone National Park
YELL140	Black Otter Guide Service	Yellowstone National Park
YELL141	Lost Fork Ranch	Yellowstone National Park
YELL142	JR Outfitting & Guide Service	Yellowstone National Park
YELL144	Lone Mountain Ranch	Yellowstone National Park
YELL145	Thorofare Outfitting	Yellowstone National Park
YELL146	K Bar Z Guest Ranch	Yellowstone National Park
YELL147	Press Stephens	Yellowstone National Park
YELL148	Teton Ridge Ranch	Yellowstone National Park
YELL149	Tom Toolson	Yellowstone National Park
YELL150	Buffalo Horn Outfitters	Yellowstone National Park
YELL152	Crossbow Outfitters	Yellowstone National Park
YELL154	Star Valley Llama	Yellowstone National Park
YELL156	John R. Winter Outfitter & Guide	Yellowstone National Park
YELL157	Beartooth Plateau Outfitters	Yellowstone National Park
YELL158	Wilderness Trails	Yellowstone National Park
YELL159	Bear Track Outfitters	Yellowstone National Park
YELL160	MJ Outfitters	Yellowstone National Park
YELL162	Grizzly Ranch	Yellowstone National Park
YELL163	Bar Diamond G	Yellowstone National Park
YELL164	Gallatin Way Ranch	Yellowstone National Park
YELL165	Gunsel Horse Adventures	Yellowstone National Park
YELL166	Elkhorn Ranch	Yellowstone National Park
YELL168	Llamas of West Yellowstone	Yellowstone National Park
YELL169	Shoshone Lodge Outfitters	Yellowstone National Park
YELL170	Diamond K Outfitters	Yellowstone National Park
YELL171	Swift Creek Outfitters	Yellowstone National Park
YELL300	Yellowstone Expeditions	Yellowstone National Park
YELL301	Moonlight Enterprises	Yellowstone National Park
YELL302	Yellowstone Tour and Travel	Yellowstone National Park

Concessioner identification No.	Concessioner name	Park
YELL303	Yellowstone Alpen Guides	Yellowstone National Park
YELL304	International Leisure Hosts	Yellowstone National Park
YELL400	Ace Snowmobile Rentals	Yellowstone National Park
YELL401	Gary Fales Outfitting	Yellowstone National Park
YELL402	Backcountry Adventures	Yellowstone National Park
YELL403	Yellowstone Arctic-Yamaha	Yellowstone National Park
YELL404	Loomis Enterprises, Inc.	Yellowstone National Park
YELL405	Pahaska Tepee	Yellowstone National Park
YELL406	Yellowstone Adventures	Yellowstone National Park
YELL407	Targhee Snowmobile Tours	Yellowstone National Park
YELL408	Two Top Snowmobile Rental, Inc.	Yellowstone National Park
YELL409	Three Bears Lodge, Inc.	Yellowstone National Park
YOSE006	Robert F. & John D. Bevington	Yosemite National Park
YUCH001	E.A. Adventures	Yukon-Charley Rivers National Preserve.
ZION001	Bryce/Zion Trail Rides	Zion National Park

EFFECTIVE DATE: January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone (202) 565–1210.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2000. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new longer-term concession contracts covering these operations.

Dated: November 22, 2000.

Cynthia Orlando,

Acting Associate Director, Park Operations and Education.

[FR Doc. 00–30657 Filed 11–30–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–894 (Preliminary)]

Certain Ammonium Nitrate From Ukraine

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from Ukraine of certain ammonium nitrate [3] provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On October 13, 2000, a petition was filed with the Commission and the Department of Commerce by the Committee For Fair Ammonium Nitrate Trade (''COFANT'') whose members include Air Products & Chemicals, Inc., Allentown, PA; Mississippi Chemical Corp., Yazoo City, MS; El Dorado Chemical Co., Oklahoma City, OK; La Roche Industries, Inc., Atlanta, GA; and Nitram, Inc., Tampa, FL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain ammonium nitrate from Ukraine. Accordingly, effective October 13, 2000, the Commission instituted antidumping duty investigation No. 731–TA–894 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 20, 2000 (65 FR 63093). The conference was held in Washington, DC, on November 3, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 27, 2000. The views of the Commission are contained in USITC Publication 3374 (December 2000), entitled *Certain Ammonium Nitrate*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Askey finds a reasonable indication that an industry in the United States is threatened with material injury.

[3] The product covered by this investigation is solid, fertilizer grade ammonium nitrate, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this investigation is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).

from Ukraine: Investigation No. 731–TA–894 (Preliminary).

Issued: November 27, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30672 Filed 11–30–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–197 (Review), 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review), and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty orders and antidumping duty orders on the following certain carbon steel products from the specified countries would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time:

Country	Cut-to-length plate	Corrosion-resistant
Australia		731–TA–612
Belgium	701–TA–319 731–TA–573	
Brazil	701–TA–320 731–TA–574	
Canada		731–TA–614
Finland	731–TA–576	
France		701–TA–348 731–TA–615
Germany	701–TA–322 731–TA–578	701–TA–349 [2] 731–TA–616 [2]
Japan		731–TA–617
Korea		701–TA–350 731–TA–618
Mexico	701–TA–325 731–TA–582	
Poland	731–TA–583	
Romania	731–TA–584	
Spain	701–TA–326 731–TA–585	
Sweden	701–TA–327 731–TA–586	
Taiwan	AA1921–197 [2]	
United Kingdom	701–TA–328 [3] 731–TA–587 [3]	

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Askey dissenting.

[3] Chairman Koplan and Commissioner Askey dissenting.

The Commission determines that revocation of the countervailing duty orders and antidumping duty orders on the following certain carbon steel products from the specified countries would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time:

Country	Cut-to-length plate	Corrosion-resistant
Canada	731–TA–575	
Germany		701–TA–340 [4] 731–TA–604 [4]
Korea		701–TA–342 [4] 731–TA–607 [4]
Netherlands		731–TA–608 [4]
Sweden		701–TA–231

[4] Commissioners Bragg and Miller dissenting.

Background

The Commission instituted these reviews on September 1, 1999 (64 FR 47862) and determined on December 3, 1999, that it would conduct full reviews (64 FR 71494, December 21, 1999). Notice of the scheduling of the Commission's reviews and of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on April 18, 2000 (65 FR 20833). The hearings were held in Washington, DC, on September 12, 13, and 15, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 21, 2000. The views of the Commission are contained in USITC Publication 3364 (November 2000), entitled *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom: Investigations Nos. AA1921–197 (Review), 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review), and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review).*

Issued: November 27, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30673 Filed 11–30–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sanction for Breaches of Commission Protective Order

AGENCY: International Trade Commission.

ACTION: Sanction for breaches of Commission protective order.

SUMMARY: Notice is hereby given of the sanction imposed by the Commission for breaches of the administrative protective order (''APO'') issued in Crawfish Tail Meat From China, Inv. No. 731–TA–752 (Final). The Commission found that Steven B. Lehat, Esq., and Surjit P. Soni, Esq., breached the APO by (1) delegating primary responsibility for APO compliance to a junior attorney and then failing to provide appropriate supervision of that attorney, which resulted in two APO breaches, (2) repeatedly failing to remedy obvious flaws in their firm's procedures for protecting business proprietary information (''BPI'') released to the firm under APO, and (3) failing to certify to the return or destruction of the BPI obtained under the APO. As a sanction, the Commission is issuing this public reprimand and barring them from access to BPI for a period of six months

from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: In connection with the Crawfish investigation, Messrs. Lehat, Soni, and several other attorneys filed applications for APOs with the Commission. In the applications, they swore (i) not to disclose without written permission any of the information obtained under the APO except to certain enumerated categories of approved persons, (ii) to serve all materials containing BPI disclosed under the APO as directed by the Secretary, and (iii) to otherwise comply with the terms of the APO and the Commission's regulations regarding access to BPI. They also acknowledged in the APO that violation of the APO may subject them, and their firm, to debarment from practice before the Commission, referral to the U.S. Attorney or appropriate professional association, or ''such other administrative sanctions determined to be appropriate * * *.'' The Commission granted their applications.

The firm had little experience with practice before the Commission. Early in the investigation, one of the firm's attorneys breached the APO by releasing BPI obtained from the Commission to the Commerce Department. Commerce personnel were not authorized to have access to such materials under the Commission APO. As a result, the firm decided to place Mr. Soni and Mr. Lehat in charge of the investigation. They delegated primary responsibility for APO compliance to a junior attorney. Mr. Soni and Mr. Lehat each deny that they had responsibility for supervising the junior attorney.

After finalizing the prehearing brief, the junior attorney mistakenly served it on individuals who were not subject to the APO. Those copies of the brief were retrieved before any unauthorized person saw the BPI. The junior attorney was admonished to be more careful, but the firm did not make any additional effective changes in its procedures for protecting BPI from public release. In finalizing the public version of the post-hearing brief, the junior attorney failed to redact BPI from one page. Again, copies of the erroneous public version were retrieved before any unauthorized person saw the BPI. In both instances, the breaches were inadvertent and the attorneys made prompt efforts to prevent the dissemination of BPI to the public.

Both Mr. Soni and Mr. Lehat argued that they should bear limited blame for the breaches because they either did not supervise the junior attorney's compliance with APO compliance or were not present during the finalization of the briefs. This argument evinces a failure to understand that their noninvolvement is the problem, not an exculpation. By remaining removed, they effectively left the junior attorney with the ultimate responsibility for protecting BPI. Such a delegation might be reasonable if made to a junior attorney who had extensive experience with Commission practice or to a senior attorney who had a longer experience with the general practice of law, but the junior attorney in this case had neither.

Therefore, the Commission found that Mr. Soni and Mr. Lehat breached their obligation to take reasonable steps to prevent the release of BPI at the time of the prehearing brief. They committed a second, more egregious breach in continuing to allow the junior attorney to operate unsupervised in the preparation of the post-hearing brief when they knew that the junior attorney's inexperience had already resulted in one breach. They committed an additional breach in failing to remedy the problems with the firm's APO compliance procedures that were exposed by the earlier breaches. Finally, Mr. Soni and Mr. Lehat again breached the APO by failing to certify to the return or destruction of the BPI obtained under the APO. This breach came about, in part, by the reliance on the same inexperienced junior attorney to prepare and transmit the certifications without appropriate supervision.

The breaches outlined above show a serious disregard for the protection of BPI that ''rise[s] to the level of willful misbehavior or gross negligence characteristic of investigations where the Commission has issued public letters of reprimand.'' Summary of Commission Practice Relating to Administrative Protective Orders, 62 FR 13164, 13167 (Case 8). The Commission did not place great weight on the fact that none of the breaches resulted in a widespread dissemination of sensitive information, since it viewed that circumstance as purely fortuitous. *See* Investigations Relating to Potential Breaches of Administrative Protective Orders, Sanctions Imposed for Actual Violations, 56 FR 4846, 4849 (Case 5).

In light of the foregoing, the Commission determined to issue Mr. Lehat and Mr. Soni this public reprimand and to bar them from access to BPI for six months, starting with date of the publication of this notice in the **Federal Register**. In addition, the Commission will require that the next application, if any, that Mr. Lehat or Mr. Soni files with the Commission for access to materials released under APO must be accompanied by a detailed description of the procedures of his firm for protecting APO materials.

Steven B. Lehat and Surjit P. Soni are reprimanded for (1) delegating primary responsibility for APO compliance to a junior attorney and then failing to provide appropriate supervision of that attorney, which resulted in two APO breaches, (2) failing to remedy obvious flaws in procedures for protecting BPI released to the firm under APO, and (3) failing to certify to the return or destruction of the BPI obtained under the APO. They are also barred from access to BPI for six months, starting with the date of publication of this notice in the **Federal Register**.

The authority for this action is conferred by section 777(c)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1677f(c)(1)(B)) and by section 207.7(d) of the Commission's Rules of Practice and Procedure (19 CFR 207.7(d)).

Issued: November 27, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30671 Filed 11–30–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–355 (Review) and 731–TA–659–660 (Review)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: International Trade Commission.

ACTION: Revised schedule for full five-year reviews concerning the countervailing duty and antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan.

EFFECTIVE DATE: November 27, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: On August 10, 2000, the Commission established a schedule for the conduct of the subject full five-year reviews (**Federal Register** 65 FR 50004, August 16, 2000). On November 16, 2000, the Commission received a request from a party to the full five-year reviews to postpone the hearing date. The Commission, therefore, is revising its schedule to make the appropriate adjustments in the scheduling of these reviews.

The Commission's new schedule for these reviews is as follows: the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on January 11, 2001; the deadline for filing posthearing briefs is January 19, 2001; the Commission will make its final release of information to parties on February 6, 2001; and final party comments are due on February 8, 2001.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30675 Filed 11–30–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–434]

In the Matter of Certain Magnetic Resonance Injection Systems and Components Thereof; Notice of Decision to Extend the Deadline for Determining Whether To Review an Initial Determination Granting a Motion for Summary Determination of Invalidity

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the deadline for determining whether to review an initial determination (ID) (Order No. 16) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation until 30 days after it has ruled on a motion filed by complainant to stay the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 26, 2000, based on a complaint filed by Medrad, Inc. of Indianola, Pennsylvania. The complaint alleged a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on infringement of U.S. Letters Patent Re. 36,648, (the '648 patent) owned by complainant. The respondents named in the investigation are Nemoto Kyorindo Co., Ltd. of Tokyo, Japan; Liebel-Flarshiem Co. of Cincinnati Ohio; and Mallinckrodt Inc., of Hazelwood, Mo. 65 FR 34231. On September 26, 2000, the ALJ issued an ID finding the '648 patent invalid due to certain omissions that occurred during patent reissue proceedings at the U.S. Patent and Trademark Office. On request of the parties, the ALJ suspended the procedural schedule of the investigation while the ID was before the Commission. Petitions for review of the ID were filed on October 6, 2000, by complainant and by the Commission investigative attorney. Responses were filed on October 19, 2000. On October 16, 2000, the Commission determined to extend the date for determining whether to review the ID until December 6, 2000. 65 FR 63096 (October 20, 2000). On November 17, 2000, complainant Medrad filed a motion to stay the investigation pending completion of reissue proceedings before the U.S. Patent and Trademark Office. Medrad argued that the reissue proceedings would rectify the defect found by the ALJ.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42(h)(3) of the Commission of Practice and Procedure, 19 CFR 210.42(h)(3).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Copies of these documents may also be downloaded from the Commission's Internet server at (*http://www.usitc.gov*). Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–205–1810.

Issued: November 27, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30674 Filed 11–30–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: extension of a currently approved collection: foreign agents registration act form (registration statement) as required by rule 200(b) of the act.

The Department of Justice, Criminal Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 30, 2001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Registration Unit, Internal Security Section, Department of Justice, PO Box 27800 Washington, DC 20038. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Overview of This Information Collection

(1) *Type of information collection:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Foreign Agents Registration Act Form (Registration Statement) as required by Rule 200(b) of the Act.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–153. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* 54 respondents at 1.5 hours per response.

(6) *As estimate of the total public burden (in hours) associated with the collection:* 81 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., National Place Building, Washington, DC 20530.

Dated: November 22, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–30570 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: extension of a currently approved collection: foreign agents registration act from (short-form registration statement) as required by rule 200(b) of the act.

The Department of Justice, Criminal Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 30, 2001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Registration Unit, Internal Security Section, Department of Justice, P.O. Box 27800, Washington, DC 20038. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Overview of This Information Collection

(1) *Type of information collection:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Foreign Agents Registration Act Form (Short-form Registration Statement) as required by Rule 200(b) of the Act.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–156. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. Form is used to register foreign agents as required by 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* 388 respondents at 0.429 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 166.45 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., National Place Building, Washington, DC 20530.

Dated: November 27, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–30571 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Extension of a Currently Approved Collection: Foreign Agents Registration Act Form (Supplemental Registration Statement) as required by Rule 200(b) of the Act.

The Department of Justice, Criminal Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 2, 2001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your

comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Registration Unit, Internal Security Section, Department of Justice, P.O. Box 27800, Washington, DC 20038. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Overview of This Information Collection

(1) *Type of information collection:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Foreign Agents Registration Act Form (Supplemental Registration Statement) as required by Rule 200(b) of the Act.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–154. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. Form contains supplemental registration and information used in registering foreign agents under 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* 517 respondents at 1.375 hours per response (2 responses annually).

(6) *As estimate of the total public burden (in hours) associated with the collection:* 1,421.75 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., National Place Building, Washington, DC 20530.

Dated: November 27, 2000.

Robert B. Briggs,

Department Clearance Officer; Department of Justice.

[FR Doc. 00–30572 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: extension of a currently approved collection: foreign agents registration act form (exhibit A) as required by rule 200(b) of the act.

The Department of Justice, Criminal Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 30, 2001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Registration Unit, Internal Security Section, Department of Justice, P.O. Box 27800, Washington, D.C. 20038. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Overview of this Information Collection

(1) *Type of information collection:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Foreign Agents Registration Act Form (Exhibit A) as required by Rule 200(b) of the Act.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–157. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. Form is used to register foreign agents as required by 22 U.S.C. 611, *et seq.,* and must be utilized within 10 days of date contract is made or when initial activity occurs, whichever is first.

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* 127 respondents at .49 hours per response.

(6) *As estimate of the total public burden (in hours) associated with the collection:* 62.23 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., National Place Building, Washington, DC 20530.

Dated: November 27, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–30573 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; extension of a currently approved collection; foreign agents registration act form (exhibit B) as required by rule 200(b) of the Act.

The Department of Justice, Criminal Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 30, 2000.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Registration Unit, Internal Security Section, Department of Justice, P.O. Box 27800, Washington, D.C. 20038. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Overview of this Information Collection

(1) *Type of information collection:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Foreign Agents Registration Act Form (Exhibit B) as required by Rule 200(b) of the Act.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–155. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. Form is used for registering foreign agents under 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of responses and the amount of time estimated for average responses:* 127 respondents at .33 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 41.91 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., National Place Building, Washington, DC 20530.

Dated: November 27, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–30574 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: extension of a currently approved collection: foreign agents registration act form (Amendment) as required by rule 200(b) of the act.

The Department of Justice, Criminal Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 30, 2001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Registration Unit, Internal Security Section, Department of Justice, P.O. Box 27800, Washington, D.C. 20038. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Overview of this Information Collection

(1) *Type of information collection:* Extension of currently approved information collection.

(2) *The title of the Form/Collection:* Foreign Agents Registration Act Form (Amendment) as required by Rule 200(b) of the Act.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–156. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. For is used in registration of foreign agents when changes are required under provisions of 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* 175 respondents at 1.5 hours per response.

(6) *As estimate of the total public burden (in hours) associated with the collection:* 262.5 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., National Place Building, Washington, DC 20530.

Dated: November 27, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–30575 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amendment to the Modification of the Work Schedule Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 14, 2000, a proposed First Amendment to the Modification of the Work Schedule (''Work Schedule Modification'') in *United States and the State of New Hampshire* v. *City of Dover, et al*, Civil Action No. 1:92–CV–406–M, was lodged with the United States District Court for the District of New Hampshire. This Work Schedule Modification revises a Consent Decree that was entered by the Court in 1993 (''1993 Consent Decree'').

In the 1993 Consent Decree the settling defendants agreed to implement the Record of Decision (''ROD'') for the Dover Municipal Landfill Superfund Site (''Site'') in Dover, New Hampshire. The ROD required the settling defendants to construct a cap and pump and treat the groundwater. The proposed Work Schedule Modification amends the 1993 Consent Decree by extending the completion date of the final Remedial Design and commencement of the Remedial Action until November 30, 2001. During this additional time, the settling defendants will complete a field study of a bioremediation technology at the Site. Continuing the bioremediation study and delaying the commencement of the cap allows the parties to continue exploring a significantly less expensive innovative technology while continuing to protect the environment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Work Schedule Modification. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States and the State of New Hampshire* v. *City of Dover, et al.*, DOJ Ref. #90–11–2–735.

The Work Schedule Modification may be examined at the office of the United States Attorney, District of New Hampshire, U.S. Department of Justice, 55 Pleasant Street, Room 352, Concord, New Hampshire, 03301–3904, and at U.S. EPA New England (Region 1), 1 Congress Street, Suite 1100, Boston, Massachusetts, 02114. A copy of the Work Schedule Modification may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Principal Deputy Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 00–30605 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Feinstein Family Partnership, et al.,* Case No. 96–232–CIV–FTM–24D (M.D. Fla.) was lodged with the United States District Court for the Middle District of Florida on November 17, 2000.

The proposed consent decree concerns violations of the Clean Water Act, 33 U.S.C. 1311, resulting from the unauthorized discharge of dredged or fill materials into waters of the United States at the Colonial Properties site, a development in Lee County, Florida. The consent decree requires the preservation of wetlands at the site and the purchase of credits in a wetlands mitigation bank.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: S. Randall Humm, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States of America* v. *Feinstein Family Partnership, et al.,* DJ Reference No. 90–5–1–6–626.

The proposed consent decree may be examined at the Clerk's Office, United States District Court for the Middle District of Florida, Room 2–194, United States Courthouse and Federal Building, 2110 First Street, Fort Myers, FL 33901.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 00–30604 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Environment and Natural Resources Division; Notice of Lodging Proposed Consent Decree

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Portrait Homes Construction Co.,* Civil Action No. 4:00–3581–12, (D.S.C.), was lodged with the United States District Court for the District of South Carolina on November 15, 2000. This proposed Consent Decree concerns a complaint filed by the United States against Portrait Homes Construction Co., pursuant to sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344 and imposes civil penalties against the Defendant for the unauthorized discharge of dredged or fill material into waters of the United States in connection with the construction of a subdivision development on a portion of Kaminski Tract, located off Highway 707, approximately 1.5 miles from the intersection of Highway 17 and 707, near Murrells Inlet, in Horry County, South Carolina.

The proposed Consent Decree requires the payment of civil penalties in the amount of $10,000 and prohibits the discharge of pollutants into the waters of the United States.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Joseph P. Griffith, Jr., United States Attorney's Office, 170 Meeting Street, Suite 300, P.O. Box 978, Charleston, South Carolina 29402 and refer to *United States* v. *Portrait Homes Construction Co.*

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, Hollings Judicial

Center, Meeting Street at Broad, Charleston, S.C. 29401.

Joseph P. Griffith, Jr.,

Assistant United States Attorney, United States Attorneys Office, Charleston, South Carolina.

[FR Doc. 00–30603 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

Under 28 CFR 50.7, notice is hereby given that on November 13, 2000, a proposed Consent Decree (''the Decree'') in *United States* v. *Russell Wilkey,* Civil Action No. 4:97 CV–239–M, was lodged with the United States District Court for the Western District of Kentucky.

The Defendent was the owner and operator of four underground injection wells located in Daviess County, Kentucky. The Complaint filed by the United States alleged that Defendent violated the Safe Drinking Water Act (''the SDWA''), an Administrative Order on Consent (''AOC'') issued by the United States Environmental Protection Agency to Dependent under the SDWA, and regulations contained in the Underground Injection Control (''UIC'') program for Kentucky in his operation of those injection wells. The Decree will resolve all of the United States' claims against the Dependent. Dependent has agreed to pay the United States a civil penalty of $20,000 for the violations. Dependent has already plugged and abandoned all of the injection wells.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States* v. *Russell Wilkey,* DOJ No. 90–5–1–1–4487.

The Decree may be examined at the Office of the United States Attorney for the Western District of Kentucky, 510 W. Broadway, 10th Fl., Louisville, Kentucky, and also at the U.S. Environmental Protection Agency, Region 4, Environmental Accountability Division, 61 Forsyth Street, S.W., Atlanta, Georgia.

A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy of the Decree, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost), made payable to the ''Consent Decree Library.''

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 00–30606 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 209–2000]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the 94 United States Attorneys' offices nationwide and the Executive Office for United States Attorneys (EOUSA) in Washington, D.C.

The United States Attorneys' Office, *Giglio* Information Files, JUSTICE/USA 018, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552(e)(4) and (11) has been published. This system has been established to enable the United States Attorneys' offices to maintain and disclose records of potential impeachment information received from the Department's investigative agencies, in accordance with the United States Supreme Court case of *Giglio* v. *United States,* 405 U.S. 150 (1972). It permits the United States Attorneys' offices to acquire, maintain, and disclose for law enforcement purposes, records obtained from federal and state agencies' personnel records relating to impeachment information that is material to the defense.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the proposed new system. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by January 2, 2001. The public, OMB, and the Congress are invited to submit written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: November 21, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/USA–018

SYSTEM NAME:

United States Attorney's Office, *Giglio* Information Files.

SYSTEM LOCATION:

Ninety-four United States Attorney's offices (see Appendix identified as Justice/USA–999, last published 2–3–93 (58 FR 6983)) and offices posted on the Internet web site of the Executive Office for United States Attorneys (EOUSA) at http://www.usdoj.gov/eousa; and the EOUSA, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may serve as affiants or testify as witnesses in criminal proceedings brought by the ninety-four United States Attorneys' offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains potential witness impeachment information including records of disciplinary actions. Records will include, but are not limited to: (a) Specific instances of witness conduct that may be used for the purpose of attacking the witness' credibility or character for truthfulness; (b) evidence in the form of opinion as to a witness' character or reputation for truthfulness; (c) prior inconsistent statements; and (d) information that may be used to suggest that a witness is biased. The system may also contain any judicial rulings, related pleadings, correspondence, or memoranda pertaining to the relevant criminal case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 5 U.S.C. 516 and 547.

PURPOSE OF THE SYSTEM:

This system has been established to enable the Department of Justice's prosecuting offices to maintain and disclose records of potential impeachment information from the Department's investigative agencies, in accordance with *Giglio* v. *United States,* 405 U.S. 150 (1972).

It permits the United States Attorneys' offices to obtain information from federal and state agencies and to maintain and disclose for law enforcement purposes records of impeachment information that is material to the defense of federal criminal prosecutions.

Primary users of this system will be Requesting Officials, who are senior officials serving as the points of contact concerning potential impeachment information within each of the United States Attorneys' offices, and Assistant United States Attorneys who are prosecuting cases and have an obligation to disclose impeachment material under the *Giglio* decision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in the system of records may be disseminated as a routine use of such record as follows:

(a) A record will be provided to a court and/or defense attorney in satisfaction of the Department's obligations under the *Giglio* decision.

(b) A record, or facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the United States Attorney's office or the Executive Office for United States Attorneys is authorized to appear when (i) the United States Attorney's office or the Executive Office for United States Attorneys, or any subdivision thereof, or (ii) any employee of the United States Attorney's office or the Executive Office for United States Attorneys in his or her official capacity, or (iii) any employee of the United States Attorney's office or the Executive Office for United States Attorneys in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv) the United States, or any agency or subdivision thereof, where the United States Attorney's office or the Executive Office for United States Attorneys determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's office or the Executive Office for United States Attorneys to be arguably relevant to the litigation;

(c) In any case in which there is an indication of a violation or potential violation of law, criminal or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing the law;

(d) In the course of investigating any potential or actual violation of any law, criminal, civil, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(e) A record relating to a case or matter may be disseminated in connection with a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(f) A record relating to a case or matter may be disseminated in an appropriate federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(g) A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(h) Subject to the limitations of 28 CFR 50.2 and after a determination that release of the specific record in the context of a particular case would not constitute an unwarranted invasion of personal privacy, a record may be disseminated to the news media and public;

(i) Records not otherwise required to be released pursuant to 5 U.S.C. 552a may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests information on behalf of and at the request of the individual who is the subject of the record;

(j) A record may be disclosed as a routine use to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Generally, all records are recorded on basic paper/cardboard material and stored in file folders in file cabinets. Some offices also may maintain the records in electronic format available through the Requesting Official's computer terminal.

RETRIEVABILITY:

Records are retrieved primarily by the name of the prospective witness. A record within this system of records may be accessed within a United States Attorney's office by the Requesting Official or appropriate Assistant United States Attorney.

SAFEGUARDS:

Records in the system are confidential and are located in file cabinets in the United States Attorneys' offices. Offices are locked during non-working hours and are secured by either the Federal Protective Service, the United States Postal Service, or in a private building with controlled access to the various United States Attorneys' offices and the Executive Office for United States Attorneys. The ability to access electronically is restricted to those who have a valid ID and password. Authorized access is limited to those with a need-to-know and for the appropriate functions.

RETENTION AND DISPOSAL:

Records are to be retained and disposed of in accordance with agency retention plans. All records will also be maintained in accordance with the Attorney General's *Giglio* Policy found in the United States Attorney's Manual, Title 9, paragraph 5.100. Potential impeachment information, together with any judicial rulings, related pleadings, and related correspondence or memoranda, will be placed in the office's *Giglio* Information File; copies will be provided to the agency official that provided the information and to the employing agency official for retention. When an employee has retired and any litigation pending in the prosecuting office in which the employee could be an affiant or witness is resolved, the Requesting Official shall remove any record that can be accessed by the identity of the employee.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager for the system in each office is the *Giglio* Requesting Official, as defined in the United States Attorney's Manual, Title 9, paragraph 5.100, for the United States Attorney for each district (see Appendix USA–999 or EOUSA Internet addresses at http://www.usdoj.gov/eousa).

NOTIFICATION PROCEDURES:

Address inquiries to the System Managers listed above.

RECORD ACCESS PROCEDURES:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this record system has been exempted from the access provisions in 5 U.S.C. 552a(d).

CONTESTING RECORDS PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this record system has been exempted from the record contesting provisions in 5 U.S.C. 552a(d)(3)–(4).

RECORD SOURCE CATEGORIES:

Sources of records contained in this system include, but are not limited to, reports of federal, state and local law enforcement agencies; client agencies of the Department of Justice; other non-Department of Justice investigative agencies; data, memoranda and reports from the Court and agencies thereof; and the work product of Assistant United States Attorneys, Department of Justice attorneys and staff, and legal assistants working on particular cases.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(4), (e)(2), (e)(5), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2) and exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f), pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). These exemptions apply to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register** as of this date and proposed as additional to Title 28 Code of Federal Regulations (28 CFR part 16.81).

[FR Doc. 00–30609 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–07–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection; Application for Registration (DEA Form 363); and Application for Registration Renewal (DEA Form 363a).

The Department of Justice, Drug Enforcement Administration has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 30, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. James A. Pacella, 202–307–7250, Registration and Program Support Section, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537.

Written comments and 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. *The title of the form/collection:* Application for Registration (DEA Form 363); and Application for Registration Renewal (DEA Form 363a).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers: DEA Form 363 and DEA Form 363a. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions and State, Local or Tribal Government. Abstract: Practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment must register with the DEA under the Narcotic Addict Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversion.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 1,114 respondents, .5 hours per response. A respondent will take an estimate of 30 minutes to complete each form.

6. *An estimate of the total public burden (in hours) associated with the collection:* 557 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, 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: November 27, 2000.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 00–30611 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility in Yuma and/or Tucson, AZ

AGENCY: Bureau of Prisons, DOJ.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The United States Department of Justice, Bureau of Prisons, has determined that in order to meet increasing demands for additional inmate capacity a new federal correctional facility is needed in its system. The Bureau of Prisons proposes to construct and operate a high-security United States Penitentiary (USP) or a medium-security Federal Correctional Facility (FCI). The USP would have a rated capacity of approximately 1,000 inmates and an FCI would have a rated capacity of approximately 1,200 inmates. The Bureau has identified potential sites that could meet our needs in both the Yuma and Tucson, Arizona areas and they will be considered in the DEIS. If one or more of these potential sites are selected, they would also be

used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating potential sites, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts. This notice also initiates the Federal Bureau of Prisons responsibilities under the National Historic Preservation Act of 1966, as amended.

Alternatives

In developing the DEIS, the options of ''no action'' and ''alternative sites'' for the proposed facility will be fully and thoroughly examined.

Scoping Process

Informal discussions and meetings with local officials and economic development staff have already been held on the proposed project, and during the preparation of the DEIS, there will be other opportunities for public involvement. There will be two public scoping meetings held and the first one will begin at 7 p.m. on Wednesday December 13, 2000, at the Woodard Junior High School in Yuma, Arizona. The second will be held on Thursday December 14, 2000, at 7 p.m. at the Craycroft Elementary School in Tucson, Arizona. The meetings have been well publicized and are scheduled at a time that will make it possible for the public and interested agencies or organizations to attend.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Attention: Rodney Anderson, Telephone: (202) 514–6470, Telefacsimile: (202) 616–6024, E-mail: *siteselection@BOP.gov.*

Dated: November 21. 2000.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 00–30240 Filed 11–30–00; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMBV Review; Comment Request

November 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) on or before January 2, 2001.

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: Employment Standards Administration (ESA).

Title: Claimant Medical Reimbursement Form.

OMB Number: 1215–0193.

Affected Public: Federal Government and Individuals or households.

Frequency: On occasion.

Number of Respondents: 41,907.

Number of Annual Responses: 41,907.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 6,957.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $15,087.

Description: The Claimant Medical Reimbursement Form (CA–915) is used to collect information necessary to document and adjudicate claims for reimbursement of medical costs paid by an injured employee for services covered under the Federal Employees' Compensation Act (FECA). Without this documentation, proper reimbursement cannot be accomplishment.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: The NCPDP Universal Pharmacy Billing Form.

OMB Number: 1215–0194.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government; and Individuals or households.

Frequency: On occasion.

Number of Respondents: 594,974.

Number of Annual Responses: 594,974.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 49,382.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services: $0.

Description: The National Council for Prescription Drug Programs (NCPDP) Universal Pharmacy Billing Form (Form 79–1A) is the standard form used by pharmacies throughout the country to request reimbursement for prescription drugs covered under the Federal Employees' Compensation Act (FECA) or the Federal Black Lung Benefits Act (FBLBA).

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–30616 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–47–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 11, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 11, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of November, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/06/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,275	American Garment Finisher (Co.)	El Paso, TX	10/30/00	Garment Finishing and Laundry.
38,276	Coach Leather (Wkrs)	Medley, FL	10/24/00	Sew Leather Goods.
38,277	Camp International (UNITE)	Jackson, MI	10/23/00	Specialty Bras and Athletic Braces.
38,278	Brezi Originals (Wkrs)	New York, NY	10/23/00	Dresses.
38,279	Elmer's Products, Inc. (IAM)	Bainbridge, NY	10/23/00	Plastic Bottles, Woodfillers, Caulk.
38,280	Snyder Walls Industries (Co.)	Snyder, TX	10/25/00	Pants.
38,281	Taylor White, Five River (Wkrs)	Greenville, TN	10/23/00	TV's and Components.
38,282	Weeks Textile Co. (Co.)	Quitman, GA	10/20/00	Comforters, Spreads, Window Treatments.
38,283	Fernbrook #2 (UNITE)	Palmerton, PA	10/23/00	Ladies' Sportswear.
38,284	NRB Industries (Co.)	Radford, VA	10/24/00	Broadwoven Fabrics.
38,285	Fairfield Manufacturing (Wkrs)	Lafayette, IN	10/16/00	Torque Hub.
38,286	American Bag Corp. (Wkrs)	Stearns, KY	10/28/00	Automotive Airbag Restraints.
38,287	Poland Spring Bottling (UFCW)	Poland Spring, ME	10/18/00	Bottled Spring Water.
38,288	Middleby Marshall, Inc. (Wkrs)	Fuquary Varaina, NC	10/23/00	Fryers, Fryer Pots, Steamers.
38,289	Grant Western Lumber Co. (Wkrs)	John Day, OR	10/26/00	Lumber and Chips.
38,290	Sara Campbell Ltd (Co.)	Boston, MA	10/20/00	Ladies' Dresses and Sportswear.
38,291	Hager Hinge Companies (Wkrs)	Montgomery, AL	10/24/00	Door Hinges.
38,292	Carolina Mills, Inc. (Co.)	St. Pauls, NC	10/21/00	Textile Yarns.
38,293	Dresser Rand (Wkrs)	Painted Post, NY	10/23/00	Reciprocating, Steam & Turbo Products.
38,294	Cyprus Thompson Creek (Co.)	Englewood, CO	10/25/00	Molybdenum Sulfide Concentrates.
38,295	Bobst Group (Wkrs)	Roseland, NJ	10/10/00	Corrugated Board.

[FR Doc. 00–30621 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,132]

Christina Coat & Suit Corporation, Brooklyn, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 25, 2000, in response to a worker petition which was filed on behalf of workers at Christina Coat & Suit Corporation, Brooklyn, New York.

The Department of Labor has been unable to locate officials of the subject firm in order to obtain the information necessary to issue a determination regarding eligibility to apply for worker adjustment assistance. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–30618 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,158]

Cookson Semiconductor Packaging Material, a Division of Alpha-Fry Technologies, Warwick, RI; Notice of Termination of Investigation

Pursuant to section 21 of the Trade Act of 1974, an investigation was initiated on October 2, 2000, in response to a petition filed on behalf of workers at Cookson Semiconductor Packaging Material, a division of Alpha-Fry Technologies, Warwick, Rhode Island.

The three workers submitting the petition have 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, DC this 7th day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–30619 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,997]

Louisiana Pacific Corporation Western Division Hayden Lake, Idaho; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 21, 2000 in response to a worker petition which was filed by the company on behalf of workers at Louisiana Pacific Corporation, Western Division, Hayden Lake, Idaho.

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, DC this 1st day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–30623 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,149]

Plum Creek Timber, Pablo, Montana; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 2, 2000 in response to a worker petition which was filed by the company on behalf of workers at Plum Creek Timber, Pablo, Montana.

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, DC this 2nd day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–30625 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,231]

S.I. Cutting, Inc., Opalocka, Florida; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 4, 2000 in response to a petition filed on behalf of workers at S.I. Cutting, Incorporation, Opalocka, Florida.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–38, 116). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 2nd day of November, 2000.

Linda G. Poole,

Certifying Officer, Division, Trade Adjustment Assistance.

[FR Doc. 00–30624 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,271]

Shipley Ronal, Inc. Freeport, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 30, 2000, in response to a petition filed on behalf of workers at Shipley Ronal, Inc., Freeport, New York.

A negative determination applicable to the petitioning group of workers was issued on October 4, 2000 (TA–W–38,050). No new information is evident which would result in a reversal of the Department's previous determination (the company closed December 21, 1999). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 7th day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–30620 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–50–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003919]

Jenny K. Fashions, Meriden, Connecticut; Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–132) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA 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), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

In order to make an affirmative determination and issue a certification of eligibility to apply for NAFTA–TAA, the following group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) and that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

The investigation was initiated on May 11, 2000 in response to a petition filed on behalf of workers at Jenny K. Fashions, Meriden, Connecticut. Workers produced ladies' blazers and jackets.

The investigation revealed that criteria (3) and (4) were not met.

The subject firm closed in April 2000. Prior to the closure, the subject firm experienced declines in production and employment in 1999 compared to 1998 and in January–April 2000 compared to the same period in 1999.

U.S. imports of wool women's and girls' coats from Mexico decreased in the year ending April 2000 compared to the same period in 1999. In the year ending April 2000, the ratio of imports from Canada and Mexico to total world imports were less than 13%.

The company itself had no imports from Canada or Mexico of articles that are like or directly competitive with articles produced by the subject firm. Nor does it plan to import such articles from Canada or Mexico. Also, there was no shift of production from the subject firm to Canada or Mexico.

The U.S. Department of Labor conducted a survey of the manufacturer for whom the subject firm performed contract work in 1998 and 1999. The survey revealed that none of the customers had any imports of these products from Canada or Mexico during the relevant period.

Conclusion

After careful review, I determine that all workers at Jenny F. Fashions, Meriden, Connecticut are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

As a result of the Department's denial for transitional adjustment assistance on the subject petition, an investigation will be instituted for Trade Adjustment Assistance under Section 223 of the Trade Act (19 U.S.C. 2273) to determine whether increased imports contributed importantly to worker separations and declines in sales or production at the workers' firm or appropriate subdivision of the workers' firm. The petition number assigned to the TAA investigation is TA–W–38,025.

Signed in Washington, DC, this 25th day of July 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–30622 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA 4132]

Nova Bus, Inc., Roswell, New Mexico; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 1, 2000, in response to a petition filed by the company on behalf of workers at Nova Bus, Inc., Roswell, New Mexico.

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, DC this 20th day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–30617 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this

notice, the following General Wage Determinations:

ND000027—See ND000029
ND000049—See ND000029
ND000051—See ND000029
ND000052—See ND000029

Contract for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Hampshire
NH000001 (Feb. 11, 2000)
NH000005 (Feb. 11, 2000)
NH000007 (Feb. 11, 2000)
NH000008 (Feb. 11, 2000)
New Jersey
NH000002 (Feb. 11, 2000)
NH000003 (Feb. 11, 2000)

Volume II

Pennsylvania
PA000005 (Feb. 11, 2000)
PA000006 (Feb. 11, 2000)
PA000025 (Feb. 11, 2000)
PA000026 (Feb. 11, 2000)
PA000031 (Feb. 11, 2000)

Volume III

Alabama
AL000008 (Feb. 11, 2000)
Florida
FL000002 (Feb. 11, 2000)
FL000015 (Feb. 11, 2000)
FL000032 (Feb. 11, 2000)
Georgia
GA0000032 (Feb. 11, 2000)
GA0000033 (Feb. 11, 2000)
GA0000036 (Feb. 11, 2000)
GA0000093 (Feb. 11, 2000)
Kentucky
KY000001 (Feb. 11, 2000)
KY000002 (Feb. 11, 2000)
KY000003 (Feb. 11, 2000)
KY000004 (Feb. 11, 2000)
KY000006 (Feb. 11, 2000)
KY000007 (Feb. 11, 2000)
KY000029 (Feb. 11, 2000)
KY000035 (Feb. 11, 2000)
KY000049 (Feb. 11, 2000)

Volume IV

Illinois
IL000001 (Feb. 11, 2000)
IL000002 (Feb. 11, 2000)
IL000004 (Feb. 11, 2000)
IL000005 (Feb. 11, 2000)
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Wisconsin
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WI000039 (Feb. 11, 2000)
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Volume V

Iowa
IA000005 (Feb. 11, 2000)
IA000012 (Feb. 11, 2000)
IA000014 (Feb. 11, 2000)
IA000016 (Feb. 11, 2000)
IA000080 (Feb. 11, 2000)
Kansas
KS000006 (Feb. 11, 2000)
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KS000035 (Feb. 11, 2000)
KS000061 (Feb. 11, 2000)
Louisiana
LA000001 (Feb. 11, 2000)
LA000005 (Feb. 11, 2000)
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CA000001 (Feb. 11, 2000)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-

Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 22nd day of November 2000.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–30226 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Appointment of New Members

This is to announce the appointment of two new members to the Federal Economic Statistics Advisory Committee (FESAC), established under the provisions of the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App. 2, 6(c)). These appointments will fill two positions that are currently vacant. The names and institutional affiliations of the new Committee members are as follows:

Professor Timothy F. Bresnahan, Stanford University;

Professor Robert M. Groves, University of Michigan.

The Committee presents advice and makes recommendations to the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census (the Agencies) from the perspective of the professional economics and statistics communities. The Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze the issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Agencies. These appointments are for one-, two-, or three-year terms, to provide staggered three-year terms overall. Professor Ernst R. Berndt of the Massachusetts Institute of Technology serves as Committee Chairperson.

Signed at Washington, DC this 27th day of November 2000.

Katharine G. Abraham,

Commissioner of Labor Statistics.

[FR Doc. 00–30626 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The second meeting of the Federal Economic Statistics Advisory Committee will be held on December 14–15, 2000 in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.

The meeting will be held in Meeting Rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

Thursday, December 14

9:30 a.m.—Opening Session
1. Introduction of new members and statements of their research interests
2. Report of working group on establishment list project

10:00 a.m.—Business Surveys: The response task and quality of collected data

1:15 p.m.—Expert Practitioner: Employee stock options

2:45 p.m.—Related issues in compensation measurement

4:15 p.m.—Priorities for future meetings, Part I

4:45 p.m.—Conclude (approximate time)

Friday, December 15

9:00 a.m.—Service sector measurement
1. Overview
2. Service sector priorities
3. Challenging cases for service sector price and output measurement

Noon—Priorities for future meetings, Part II

12:30 p.m.—Conclude (approximate time)

The meeting is open to the public. It is suggested that persons planning to attend the meeting as observers contact Margaret Johnson, Federal Economic Research Advisory Committee, on Area Code (202) 691–5600. Persons needing special assistance such as sign language interpretation or other special accommodations in order to attend the meeting are asked to contact Ms. Johnson at least two days prior to the meeting date.

Signed at Washington, D.C. the 27th day of November 2000.

Katharine G. Abraham,

Commissioner of Labor Statistics.

[FR Doc. 00–30627 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0238(2000)]

Standard on Portable Fire Extinguishers; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Request

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed increase in, and extension of, the information collection requirements contained in paragraph (e)(3) of the standard on Portable Fire Extinguishers, 29 CFR 1910.157.

REQUEST FOR COMMENT: The Agency seeks comments on the following issues:

- Whether the information collection requirement is necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirement, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information transmission and collection techniques.

DATE: Submit written comments on or before January 30, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0238(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information collection Request (ICR) supporting the need for the information collection requirement contained in paragraph (e)(3) of the standard is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov/comp-links.html*, and click on ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and government agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.)

Paragraph (e)(3) of the standard on Portable Fire Extinguishers (29 CFR 1910.157) specifies that employers must subject each portable fire extinguisher to an annual maintenance inspection and record the date of the inspection. In addition, this provision requires employers to retain the inspection record for one year after the last entry or for the life of the shell, whichever is less, and to make the record available to OSHA on request. This recordkeeping requirement assures employees and Agency compliance officers that portable fire extinguishers located in the workplace will operate normally in case of fire; in addition, this requirement provides evidence to OSHA compliance officers during an inspection that the employer performed the required maintenance checks on the portable fire extinguishers.

II. Proposed Actions

OSHA proposes to increase the existing burden hour estimate, and to extend OMB's approval, of the collection-of-information requirement specified by paragraph (e)(3) of its standard on Portable Fire Extinguishers (29 CFR 1910.157). In this regard, the Agency is increasing the burden hours associated with the collection of information requirement by 2,250 hours (from the current total of 63,750 burden hours to a new total of 66,000 burden hours). This adjustment resulted from an increase in the estimated number of employers (and, therefore, the number of portable fire extinguishers) covered by the requirement. An adjustment also occurred in the cost of servicing portable fire extinguishers under contract; accordingly, the contract-servicing cost increased from the current estimate of $9,180,000 to a new estimate of $19,008,000. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirement contained in the standard on Portable Fire Extinguishers.

Type of Review: Extension of currently approved information collection requirement.

Title: Portable Fire Extinguishers (29 CFR 1910.157).

OMB Number: 1218–0238.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal governments

Number of Respondents: 132,000.

Frequency: Annually.

Average Time per Response: 30 minutes (0.50 hour).

Estimated Total Burden Hours: 66,000.

Estimated Cost (Operation and Maintenance): $19,008,000.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on November 21, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–30644 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–26–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0237(2000)]

Standard on Additional Requirements for Special Dipping and Coating Operations; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Request

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed extension of the information collection requirement contained in paragraph (g)(4) of the standard on Additional Requirements for Special Dipping and Coating Operations, 29 CFR 1910.126.

Request for Comment: The Agency seeks comments on the following issues:

• Whether the information collection requirement is necessary for the proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirement, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information transmission and collection techniques.

DATES: Submit written comments on or before January 30, 2001.

ADDRESSES: Submit written comments to the OSHA Docket Office, Docket No. ICR–1218–0237(2000), Occupational

Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information collection Request (ICR) supporting the need for the information collection requirement contained in the standard is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov/comp-links.html,* and click on ''Information collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and government agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.)

Paragraph (g)(4) of the standard on Additional Requirements for Special Dipping and Coating Operations, 29 CFR 1910.126, requires employers to post a conspicuous sign near each piece of electrostatic-detearing equipment that notifies employees of the minimum safe distance they must maintain between goods undergoing electrostatic detearing and the electrodes or conductors of the equipment used in the process. Doing so reduces the likelihood of igniting the explosive chemicals used in electrostatic-detearing operations.

II. Proposed Actions

OSHA proposes to retain its earlier estimate of zero burden hours for the information collection requirement specified by 29 CFR 1910.126(g)(4). Based on past discussions with organizations dealing with dip tanks, OSHA determined that employers affected by this provision previously collected the necessary information and provided the required signs for the 12 or fewer pieces of this equipment still in use.[1] Therefore, assuming that the signs are permanent fixtures that will remain indefinitely with each piece of equipment, the Agency concludes that this paperwork requirement currently imposes no burden hours or cost on the employers who operate this equipment. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of this information collection requirement.

Type of Review: Extension of currently approved information collection requirement.

Title: Additional Requirements for Special Dipping and Coating Operations. (29 CFR 1910.126).

OMB Number: 1218–0237.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal governments.

Number of Respondents: 0.

Frequency: Continuous.

Average Time per Response: 0.

Estimated Total Burden Hours: 0.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on November 21, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–30645 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–26–P

[1] These discussions indicate that employers are replacing electrostatic-detearing equipment with newer technology; therefore, no need exists for additional signs.

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (1754).

Date/Time: January 10–12, 2001, 8 a.m.–5 p.m. daily.

Place: Room 340, NSF, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Ms. Carter Kimsey, Program Director, Postdoctoral Research Fellowship in Microbial Biology Program, Division of Biological Infrastructure, Room 615, NSF, 4210 Wilson Boulevard, Arlington, VA 22230, (703) 292–8470.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowship in Microbial Biology Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: November 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–30578 Filed 11–30–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Physics (1208).

Date/Time: December 7–8, 2000; 8 a.m.–5:30 p.m.

Contact Person: Dr. Eugene Loh, Program Director for Elementary Particle Physics, Division of Physics, 4201 Wilson Boulevard, Room 1015, Arlington, VA 22230. Telephone: (703) 292–7379.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Elementary Particle Physics Program for financial support.

Name: Special Emphasis Panel in Astronomical Sciences (1186).

Date/Time: December 7–8, 2000; 8:30 a.m.–5:30 p.m.

Contact Person: Dr. Richard Barvainis, Program Director, Division of Astronomical Sciences, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. Telephone: (703) 292–8820.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Division of Astronomical Sciences for financial support.

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date/Time: January 8–9, 2001; 8:30 a.m.–5:30 p.m.

Contact Person: Ms. Mary Poats, Program Manager, Engineering Education and Centers Division, 4201 Wilson Boulevard, Room 585, Arlington, VA 22230. Telephone: (703) 292–8380.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Research Experiences for Undergraduates Program for financial support.

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: January 11, 2001; 8 a.m.–5:30 p.m.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Surfaces Engineering and Material Design, Division of Civil and Mechanical Systems, 4201 Wilson Boulevard, Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the FY'01 Surface Engineering and Material Design Review Panel for financial support.

Name: Special Emphasis Panel in Biological Sciences (1754).

Date/Time: December 12, 2000; 8 a.m.–3 p.m.

Contact Person: Dr. Gerald Selzer, Program Director, Living Stock Collections, Division of Biological Infrastructure, 4201 Wilson Boulevard, Room 615, Arlington, VA 22230. Telephone: (703) 292–8470.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Living Stock Collections for financial support.

Name: Special Emphasis Panel in Astronomical Sciences (1186).

Dates/Times:

December 5–6, 2000, 8:30 a.m.–5 p.m.
December 7–8, 2000, 8:30 a.m.–5 p.m.
December 12–13, 2000, 8:30 a.m.–5 p.m.
December 14–15, 2000, 8:30 a.m.–5 p.m.
December 18–19, 2000, 8:30 a.m.–5 p.m.
December 19–20, 2000, 8:30 a.m.–5 p.m.

Contact Person: Ms. Claudette Merrick, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. Telephone: (703) 292–8820.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Division of Astronomical Sciences for financial support.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date/Time: January 25–27, 2001; 8:30 a.m.–5:00 p.m.

Contact Person: Dr. Alvin Thaler, Program Director, 4201 Wilson Boulevard, Room 1025, Arlington, VA 22230. Telephone: (703) 292–4863.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Algebra and Number Theory, and Combinatorics Program for financial support.

Name: Advisory Panel for Social and Political Sciences (1761).

Date/Time: December 5–7, 2000; 9:00 a.m.–7:00 p.m.

Contact Person: Dr. Doris Marie Provine, Program Director for Law and Social Science, and Dr. Patricia White, Program Director for Sociology, 4201 Wilson Boulevard, Room 980, Arlington, VA 22230. Telephone: (703) 292–8762.

Purpose of Meeting: To provide advice and recommendations concerning political science proposals submitted for financial support.

Name: Advisory Committee for Computer and Information Science and Engineering (1115).

Date/Time: December 1, 2000; 8:00 a.m.–5:00 p.m.

Contact Person: Aubrey M. Bush and Thomas J. Greene, Division of Advanced Networking and Infrastructure Research, 4201 Wilson Boulevard, Room 1175, Arlington, VA 22230. Telephone: (703) 292–8948.

Purpose of Meeting: To provide advice and recommendations concerning Middleware Program initiative for ANIR.

Name: Special Emphasis Panel in Materials Research (1203).

Date/Time: December 14–15, 2000; 8:00 a.m.–6:00 p.m.

Contact Person: Dr. Ulrich Strom, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, 4201 Wilson Boulevard, Room 1065, Arlington, VA 22230. Telephone: (703) 292–4938.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the FY'01 Nanoscale Science and Engineering Centers Competition for financial support.

Type of Meetings: Closed.

Place of Meetings: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Agenda: Review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–30577 Filed 11–30–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

U.S. National Assessment Synthesis Team; Notice of Final Report

The National Science Foundation (NSF) announces that the following advisory committee, established pursuant to the Federal Advisory Committee Act (FACA) (Public Law 92–463, as amended), completed its work and issued its final report on October 31, 2000. As this committee was established under the auspices of the interagency Subcommittee on Global Change Research (SGCR), see 63 Fed. Reg. 9267 (Feb. 24, 1998), its final report (which followed a 6-day public comment period) was provided to the SGCR Chair and a copy sent to the NSF.

Name: U.S. National Assessment Synthesis Team (#5219).

Availability of Report: The report is viewable and downloadable on the Worldwide Web at www.gcrio.org/NationalAssessment/. Publication is in progress and information on ordering a copy of the report is also provided on the Website. The report is also available for public inspection and use at the Library of Congress in accordance with section 13 of the FACA.

Contact Person: Tom Spence, National Science Foundation, 4201 Wilson Blvd., Suite 705, Arlington, VA 22230. Telephone: (703) 292–8500.

Dated: November 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–30576 Filed 11–30–00; 8:45 am]

BILLING CODE 7555–01–M

PENSION BENEFIT GUARANTY CORPORATION

Information Collection; OMB Review; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB review and approval.

SUMMARY: A final rule appearing elsewhere in today's **Federal Register** adopts amendments to regulations of the Pension Benefit Guaranty Corporation (''PBGC'') on Premium Rates (29 CFR Part 4006) and Payment of Premiums (29 CFR Part 4007) and affects the collection of information under the premium payment regulation (OMB control number 1212–0009). The PBGC is submitting the revised collection of information, including revised premium forms and instructions reflecting these amendments, to the Office of Management and Budget (''OMB'') for

review and approval under the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

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

Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA'') requires the Pension Benefit Guaranty Corporation (''PBGC'') to collect premiums from pension plans covered under Title IV pension insurance programs. ERISA section 4006 prescribes the premium rates. Pursuant to ERISA sections 4006 and 4007, the PBGC has issued its regulations on Premium Rates (29 CFR Part 4006) and Payment of Premiums (29 CFR Part 4007). Part 4007 requires among other things that plans use PBGC forms and instructions in paying premiums. (The forms also include a certification of compliance with requirements under the PBGC's regulation on Disclosure to Participants (29 CFR Part 4011).) The control number assigned to this collection of information by the Office of Management and Budget (''OMB'') is 1212–0009. On October 23, 2000, the PBGC published a notice that it was requesting extension of OMB approval of this collection of information.

A final rule appearing elsewhere in today's **Federal Register** adopts amendments to Parts 4006 and 4007 of the PBGC's regulations and affects this collection of information. This notice informs the public that the PBGC is supplementing its pending request for extension of OMB approval of this collection of information by submitting to OMB for review and approval the revised collection of information, including revised premium forms and instructions reflecting these amendments.

Issued in Washington, DC, this 22nd day of November, 2000.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 00–30325 Filed 11–30–00; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Office of Inspector General

Privacy Act of 1974; Computer-Matching Program

AGENCY: Office of Inspector General, Postal Service.

ACTION: Notice of computer-matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advance notice of any proposed or revised computer-matching program for comment. The United States Postal Service (Postal Service), Office of Inspector General (OIG) is issuing notice of its intent to conduct a computer-matching program with the United States Department of Labor Office of Workers' Compensation Programs. The primary purpose of this matching agreement is to determine whether the current Postal Service automated and manual procedures for monitoring Federal Employees' Compensation Act (FECA) benefits payments made to employees returning to work are operating effectively. A secondary purpose of this matching agreement is to identify those Postal Service employees who may have received dual benefits in violation of section 81161(a) of the FECA. Except as otherwise provided by law, the Department of Labor Office of Workers' Compensation Programs has the exclusive authority to administer, interpret, and enforce the provisions of the FECA.

DATES: Comments must be received no later than January 2, 2001. Unless comments are received that result in a contrary determination, the matching program covered by this notice will begin as stated in the paragraph ''Dates of the Matching Program'' in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Comments may be mailed to the Director, Legal Services, United States Postal Service, Office of Inspector General, 1735 N. Lynn Street, Arlington, VA, 22209–2020; or delivered to Room 10.006 at the above address between 9 a.m. and 4 p.m., Monday through Friday. Comments received may also be inspected during the above hours in the 10th floor reception area.

FOR FURTHER INFORMATION CONTACT: Gladis Griffith, Director, Legal Services, at 703–248–2100.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the OIG and the Department of Labor Office of Workers' Compensation Programs will enter into an agreement to conduct a computer-matching program. The computer-matching program, described below, will be conducted in accordance with paragraph 4d of Appendix I to the Office of Management and Budget (OMB) Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, February 8, 1996 (61 FR 6427).

a. *Participating Agencies:* OIG (recipient agency) and Department of Labor Office of Workers' Compensation Programs.

b. *Purpose of the Matching Program:* The primary purpose of this matching agreement is to determine whether the current Postal Service automated and manual procedures for monitoring FECA benefits payments made to employees returning to work are operating effectively. A secondary purpose of this matching agreement is to identify those Postal Service employees who may have received dual benefits in violation of section 8116(a) of the FECA. The names and other identifying information of employees suspected of receiving dual benefits will be given to the Postal Service Injury Compensation Offices to determine whether appropriate action has in fact been taken regarding the propriety of the dual payments. If no action has been taken, appropriate steps will be followed to remedy the failure to act.

c. *Legal Authorities Authorizing Operation of the Match:* 39 U.S.C. 404 (Postal Reorganization Act); the Inspector General Act, as amended, 5 U.S.C. Appendix 3; and the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. *Categories of Individuals Matched and Identification of Records Used:* (1) Postal Service employee data records within the Privacy Act system of records, United States Postal Service 050.020, Finance Records-Payroll System (57 FR 57515), and (2) Department of Labor Office of Workers' Compensation Programs system of records published as DOL/GOVT–1, entitled Office of Workers' Compensation Programs, Federal Employees' Compensation File (58 FR 49548), as amended (59 FR 47361).

e. *Dates of the Matching Program:* This matching program is expected to begin in December 2000 and to continue in effect for 18 months unless terminated earlier by either party. Matching activity under this program will begin no sooner than 40 days after the last of the following occurs: (1) Publication of this notice, (2) transmittal of this matching agreement to Congress,

or (3) report of the matching program to OMB and to Congress.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–30583 Filed 11–30–00; 8:45 am]

BILLING CODE 7710–12–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43617; File No. 4–436]

Notice of Order Exempting American Express Travel Related Services Company, Inc., From Broker-Dealer Registration

November 24, 2000.

On July 24, 2000, the Commission issued an order (Exemptive Order) pursuant to section 15(a) of the Securities Exchange Act of 1934 exempting American Express Travel Related Services Company, Inc. (TRS) from broker-dealer registration. That same day, TRS's request for confidential treatment was granted in a separate order (Confidential Treatment Order) until the earlier of (a) 120 days from the date of the issuance of the Exemptive Order; or (b) the date that any information contained in the application by TRS for exemption or the Exemptive Order was made publicly available by TRS. The Exemptive Order is attached as Exhibit A. The Confidential Treatment Order is attached as Exhibit B.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Securities and Exchange Commission

[FILE NO. 4–436]

July 24, 2000.

Order Exempting American Express Travel Related Services Company, Inc., From Broker-Dealer Registration

I. Background

American Express Travel Related Services Company, Inc. (TRS), a wholly owned subsidiary of American Express Company, has requested an exemption, pursuant to section 15(a)(2) of the Securities Exchange Act of 1934 (the Act), from the broker-dealer registration requirement of section 15(a)(1) of the Act.

TRS offers individual customers (Cardmembers) a variety of products and services, including charge cards such as the American Express® Card, the American Express® Gold Card, and the American Express Platinum Card® (collectively, Charge Cards). TRS states that Charge Cards are primarily designed as a method of payment or a bill paying mechanism and not as a means of financing purchases of goods or services.

TRS proposes to establish and operate a processing arrangement (Arrangement or Program) for its Cardmembers who invest or who wish to invest in mutual funds and variable products [1] distributed by three of TRS's affiliates that are registered broker-dealers.[2] Under the Program, individual Cardmembers may appoint TRS as a processing agent to collect and promptly remit to the appropriate registered broker-dealer their voluntary, periodic payments for mutual fund shares or variable products.

A Cardmember must open a brokerage account with one of the registered broker-dealers in order to participate in the Program,[3] and a Cardmember must advise the broker-dealer of the amount he or she intends to invest on a monthly basis, the specific mutual funds or variable products that he or she would like to purchase, and the allocation of investment amounts to each investment. The Cardmember may increase, decrease, or suspend investment contributions under the Arrangement at his or her discretion.

Cardmembers participating in the Program will send a single check to a TRS payment processing center in Chicago, Illinois (Processing Center) to cover both regular Charge Card purchases and the purchase of mutual fund shares or variable products. TRS will promptly forward the designated part of the payment to the appropriate broker-dealer. With respect to mutual fund shares, the Cardmembers will receive the price that is computed by the registered broker-dealer after receipt of the order.

The registered broker-dealers will be responsible for all securities-related activities, questions and services, including: opening accounts, entering orders, executing transactions, setting up and maintaining customer files, and distributing order confirmations and statements after each payment is processed. The registered broker-dealers will also have the exclusive responsibility for marketing and distributing information about the availability of TRS's services to Cardmembers. The registered broker-dealers will disclose to Cardmembers that they, and not TRS, are offering the mutual funds or variable products, and that the intended investment amount is not covered by the Securities Investor Protection Corporation while it is in the possession of TRS. TRS, its employees, and its other unregistered affiliates will not market the availability of the Program or the underlying products and services offered by the registered broker-dealers.

Moreover, TRS represents that its Processing Center has elaborate security and internal control safeguards. TRS has adopted a number of safeguards and procedures to ensure the adequate protection of Cardmembers' funds designated for remittance to the respective broker-dealers, including: (i) automation of the payment processing procedures; (ii) electronic surveillance and human supervision of all sensitive areas of the processing center at all times; (iii) background checks of all personnel in special processing areas to assure that such persons are not statutorily disqualified as that term is defined under the securities laws; and (iv) accessibility to TRS's books and records for the Commission and other appropriate regulatory authorities. TRS notes that not a single check has been stolen in the Processing Center's seventeen years of operation.

In addition, to guarantee the safety of investors' funds from the time of receipt by TRS until remittance to the registered broker-dealers, TRS will obtain a surety bond from an unaffiliated insurance company with a Best rating of A or better. The bond will be increased as necessary so that it equals or exceeds the amount of the funds TRS collects and remits to the registered broker-dealers under this proposal at all times.

TRS will not receive a referral fee from the registered broker-dealers nor will it receive any compensation that is based upon the total dollar amount invested by a Cardmember. Instead, IRS will charge the registered broker-dealers a fee designed to offset the expenses it incurs for providing this service.

TRS represents that its Cardmembers have used a similar processing arrangement to purchase fixed annuity products offered by AESC and that over the past ten years, $1.65 billion in payments for fixed annuity products have been processed without a single investor complaint. TRS indicates that its Cardmembers have requested this service for several years because it would give them an additional choice in how they can invest and gain access to the securities markets. TRS represents that approximately twenty percent of persons who call AESC's service representatives to inquire about investment-related issues also make unsolicited requests to invest in connection with paying the balance due on their Charge Cards. Moreover, according to TRS, in a survey of Cardmembers making fixed annuity payments through the Charge Cards, approximately 63% identified ease of payment and convenience as key reasons for using this payment method.

II. Discussion

Section 3(a)(4) of the Act defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others.'' An entity meets this definition if it participates in a meaningful way in any of the key phases of a securities transaction. One factor used to determine if an entity's participation is meaningful is whether it controls investors' funds. IRS proposes to collect and remit funds to the broker-dealers as agent for its Cardmembers. In other words, TRS will control Cardmembers' funds from the time of receipt until time of remittance to the broker-dealers. The Commission believes that this

[1] Variable products include variable annuities and life insurance products.

[2] These broker-dealers are American Express Services Corporation (AESC), which is a wholly owned subsidiary of TRS, the American Express Financial Advisors Inc. and IDS Life Insurance Company, both indirect wholly-owned subsidiaries of American Express Company, (collectively, the registered broker-dealers).

[3] This Arrangement will be available only for Charge Card customers and not for customers of TRS's revolving credit card products. TRS will not be extending credit to Cardmembers in the Program.

proposed activity encompasses a level of control sufficient to constitute ''effecting transactions in securities.'' Because TRS would conduct this activity on an ongoing basis, the Commission would deem TRS to be ''in the business.'' Therefore, TRS's proposal would require TRS to register as a broker-dealer with the Commission.

Section 15(a)(2) of the Act authorizes the Commission to exempt any broker or dealer or class of brokers or dealers, either conditionally or unconditionally, from the registration requirements of section 15(a)(1) of the Act, if the Commission deems the exemption consistent with the public interest and the protection of investors. The Commission believes that granting TRS's request for exemption meets this standard.

The Commission finds that granting this exemptive order is consistent with the protection of investors. The registered broker-dealers will have exclusive responsibility for opening accounts, entering orders, executing transactions, transferring investment monies to the appropriate mutual fund companies, and distributing transaction confirmations and account statements. TRS employees and unregistered affiliates will be strictly prohibited from recommending, endorsing, responding to questions about, or engaging in any negotiations involving brokerage accounts or related securities-transactions. TRS will guarantee the safety of investors' funds by obtaining a surety bond, automating the processing procedures, and surveilling all sensitive areas at all times. Moreover, TRS will provide accessibility to its books and records for the Commission and other appropriate regulatory authorities.

The Commission also finds that the requested exemption is consistent with the public interest. The Arrangement will allow many investors to invest through a payment process with which they are already familiar. TRS states that its proposal is in direct response to requests from Cardmembers for this type of service.

It Is Therefore Ordered, pursuant to section 15(a)(2) of the Act, that the application by TRS for exemption from the registration requirements of Section 15(a)(1) of the Act be, and hereby is, granted effective forthwith. This exemption is conditioned on the representations made by TRS, as outlined above, and on TRS not engaging in the business of buying and selling securities other than as described herein.

It Is Further Ordered, pursuant to section 36 of the Act, that TRS shall be exempt, with respect only to the services relating to the Arrangement described above, from the reporting and other requirements specifically imposed by the Act and the rules and regulations thereunder, on a broker or a dealer that is not registered with the Commission.[4]

By the Commission.

Jonathan G. Katz,
Secretary.

[4] TRS remains subject to all other applicable provisions of the federal securities laws, including without limitation Section 10(b) of the Act and Rule 10b–5 thereunder.

Exhibit B

Securities and Exchange Commission

[FILE NO. 4–436]

July 24, 2000

Order Granting Confidential Treatment for the Exemption of American Express Travel Related Services Company, Inc., From Broker-Dealer Registration

The Commission has issued an order (Exemptive Order) pursuant to section 15(a) of the Securities Exchange Act of 1934 exempting American Express Travel Related Services Company, Inc. (TRS) from broker-dealer registration. The Exemptive Order is attached as Exhibit A.

In a letter dated May 31, 2000, TRS requested confidential treatment pursuant to Rule 81(b) of the Commission's Regulation Concerning Information and Requests,[5] for 120 days from the issuance of any written response by the staff. TRS represents that their request for an exemption and the Commission's response to such request includes sensitive, proprietary, and confidential information, which is not available to the public from any other source.

The Division of Market Regulation has determined that the request for confidential treatment is reasonable and appropriate. Therefore, the request for confidential treatment has been granted until the earlier of (a) 120 days from the date of issuance of the Exemptive Order; or (b) the date that any information contained in the application by TRS for exemption or the Exemptive Order is made publicly available by TRS.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 00–30662 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.81(b).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27281]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 22, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 18, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 18, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–9755)

Northeast Utilities (''NU''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, its service company subsidiary, Northeast Utilities Service Company (''Service''), P.O. Box 270, Hartford, Connecticut 06141–0270, and its public utility subsidiary companies, Western Massachusetts Electric Company (''WMECO''), 174 Brush Hill Avenue, West Springfield, Massachusetts, 01090–0010; The Connecticut Light and Power Company (''CL&P''), Northeast Nuclear Energy Company (''NNECO'') and Yankee Energy System, Inc. (''YES''), all located at 107 Selden Street, Berlin, Connecticut 06037; Yankee Gas Services Company (''Yankee Gas''), 599 Research Parkway, Meriden, Connecticut 06450; Holyoke Water Power Company (''HWP''), Canal Street, Holyoke, Massachusetts 01040; and Public Street Company of New Hampshire (''PSNH'') and North Atlantic Energy Corporation (''NAEC''), both located at 1000 Elm Street, Manchester, New Hampshire 03015; (together, ''Applicants'') have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13, 32 and 33 of the Act and rules 43, 45, 52, 90 and 91 under the Act.

By order dated December 28, 1994 (HCAR No. 26207) and Supplemental Orders dated November 20, 1996 (HCAR 26612), February 11, 1997 (HCAR 26665), March 25, 1997 (HCAR 26692), May 29, 1997 (HCAR 26721), January 16, 1998 (HCAR 26816), May 13, 1999 (HCAR 27022), November 17, 1999 (HCAR 27103) and November 13, 2000 (HCAR No. 27275) (collectively, the ''Prior Orders''), the Commission authorized through December 31, 2000 (''Authorization Period''), among other

things, (1) NU to issue and sell unsecured short-term notes and commercial paper and to make loans to participants in the NU system money pool (''Money Pool''); (2) Service to administer the Money Pool in accordance with the authority granted in the Prior Orders; (3) WMECO, CL&P, NNECO, YES, Yankee Gas, HWP, PSNH and NAEC (together, the ''Utility Subsidiaries'') to issue and sell unsecured short-term notes; (4) WMECO, CL&P, Yankee Gas and PSNH to issue and sell commercial paper; and (5) WMECO, CL&P, NNECO, YES, Yankee Gas and HWP to borrow from NU and each other, and to lend to each other, all under the Money Pool (''Short-Term Debt Authority''). The Prior Orders limited the Applicants' Short-Term Debt Authority, as appropriate, to any combination of notes, commercial paper or Money borrowings outstanding at any one time in aggregate amounts of $400 million for NU, $250 million for WMECO, $375 million for CL&P, $75 million for NNECO, $50 million for YES, $100 million for Yankee Gas, $5 million for HWP, $225 million for PSNH and $260 million for NAEC (''Debt Limitation'').[1]

The Applicants now request that the Commission modify and supersede the Prior Orders to extend the Authorization Period from December 31, 2000 to June 30, 2003 (''New Authorization Period'').[2] The Applicants request further that the Short-Term Debt Authority, subject to the Debt Limitation, be extended through the New Authorization Period. The Applicants propose that short-term borrowings will take the form of notes to banks and other financial institutions (''Notes''), commercial paper (''Paper''), loans and open-account advances from NU to the Utility Subsidiaries and Money Pool borrowings.

In particular, the Applicants propose that any Notes issued by NU or the Utility Subsidiaries will bear interest at a rate not exceeding 500 basis points over the base rate in effect from time to time of the lending institutions or the base rate of a representative institution. The Notes may be secured or unsecured and will mature no later than 364 days from the date of their issuance. The Applicants further propose that Paper issued by NU, WMECO, CL&P, Yankee Gas and PSNH (''Issuers'') will be issued at rates not exceeding the annual rate prevailing at the time of issuance for commercial paper of comparable qualities and maturities. The Paper will mature no later than 270 days from the date of issuance and will not be repayable prior to maturity. The Applicants state that each of the Issuers will not issue Paper unless the effective cost of Paper will be equal to or less than that for the issuance of Notes in an amount at least equal to the principal amount of Paper proposed to be issued.

The Applicants finally propose, through the New Authorization Period, that the Utility Subsidiaries be authorized to borrow from NU and each other, and to lend each other, all under the Money Pool and subject to the Debt Limitation.[3] Service will continue to administer the Money Pool under the same terms and conditions approved by the Commission in the Prior Orders. The Applicants state that all other terms, conditions, limitations and reporting obligations contained in the Prior Orders will apply to the proposed transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30663 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

[1] CL&P, WMECO, PSNH and NAEC are currently subject to charter limitations and/or state laws that would prevent them from incurring short-term debt up to their Debt Limitation.

[2] On January 20, 2000 (S.E.C. File 70–9613), NU and Consolidated Edison, Inc. (''CEI'') requested that the Commission approve the terms of an Agreement and Plan of Merger to merge the two companies, resulting in NU becoming a wholly owned subsidiary of CEI. Subsequently, on June 30, 2000 (S.E.C. File 70–9711) (''Financing Order''), NU and CEI requested that the Commission approve certain financing activities for the combined companies, including authority for NU system companies to issue and sell short-term debt and participate in the Money Pool. The Applicants propose that the authority granted in the Prior Orders, as modified and extended in this matter, be superseded by the authority requested in the Financing Order.

[3] Currently, an order of the Massachusetts Department of Telecommunications and Energy limits WMECO's authority to make loans under the Money Pool to CL&P and HWP and three nonutility subsidiaries. WMECO has requested that the Commission reserve jurisdiction over its authority to lend to other Money Pool participants, pending completion of the record. PSNH may not lend to the Money Pool participants under a New Hampshire Public Utilities Commission (''NHPUC'') order authorizing such lending, subject to the elimination of certain write-offs associated with restructuring mandated by the NHPUC. WMECO and PSNH may borrow from the Money Pool.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43605; File No. 4–208]

Intermarket Trading System; Order Approving Sixteenth Amendment to the ITS Plan Relating to Decimal Pricing in Listed Securities

November 21, 2000.

On August 24, 2000, the Intermarket Trading System (''ITS'') submitted to the Securities and Exchange Commission (''Commission'') an amendment to the restated ITS Plan (''Plan'') pursuant to section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 11A3a3–2 thereunder.[2] The Participants filed the amendment to: (1) Recognize the transition from quoting in fractions to decimal pricing; (2) reduce the pre-opening price change parameter for certain securities; and (3) expand the pre-opening price change parameters for certain stocks. Notice of the proposal appeared in the **Federal Register** on September 8, 2000 to solicit comments on the amendment from interested persons.[3] The Commission made the proposed amendment summarily effective upon publication of the notice for a period of 120 days.[4] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

The proposal amends section 6(a)(ii) of the Plan to recognize the transition from fractions to decimal pricing, the new method of pricing for equity securities and options. In addition, the proposal amends section 7(a) of the Plan

[1] U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2. The ITS is a National Market System (''NMS'') plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS participants include the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''PHLX'') (''Participants'')

[3] Securities Exchange Act Release No. 43236 (August 31, 2000), 65 FR 54571 (September 8, 2000).

[4] *See* 17 CFR 240.11Aa3–2(c)(4) (allowing the Commission to summarily put into effect on a temporary basis a Plan amendment ''if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purpose of the Act'').

to reduce the pre-opening price change parameter for certain securities from ⅛ point ($0.125) to $0.10, as well as change pricing references to decimal pricing. Finally, the proposal expands the pre-opening price change parameters for certain stocks, which are reported on Network B of the Consolidated Tape Association, similar to those stocks reported on Network A.

The Commission finds that the proposed amendment is consistent with the Act in general, and in particular, with section 11A(a)(1)(C)(ii),[5] which provides for fair competition among the Participants and their members, and section 11A(a)(1)(D),[6] which provides for linking of markets for qualified securities through communications and data processing facilities that foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. The Commission also finds that the amendment is consistent with Rule 11Aa3–2(c)(2),[7] which requires the Commission to determine that the amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

On June 8, 2000, the Commission ordered the self-regulatory organizations (''SROs'') to submit a plan that would begin phasing in decimal pricing in equity securities and options on or before September 5, 2000, and complete this phase-in no later than April 9, 2001.[8] On July 24, 2000, the SROs submitted a phase-in plan to the Commission. On August 7, 2000, the SROs filed proposed rule changes necessary to implement decimal pricing. The Commission believes that the proposed amendment to the ITS Plan is another required adjustment in the process of the market-wide conversion to decimal pricing that may improve the efficiency and reliability of ITS. Lastly, the proposed amendment is necessary to accommodate decimal pricing, the new method of pricing for equity securities among the Participants, and therefore is consistent with ITS's purpose: to facilitate intermarket trading in listed equity securities.

[5] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[6] 15 U.S.C. 78k–1(a)(1)(D).

[7] 17 CFR 240.11Aa3–2(c)(2).

[8] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

For the foregoing reasons, the Commission finds that the proposed amendment is consistent with Act and the rules and regulations thereunder applicable to the ITS and, in particular, sections 11A(a)(1)(C)(ii) and (D) of the Act[9] and Rule 11Aa3–2(c)(2) thereunder.[10]

It is Therefore Ordered, pursuant to section 11A(a)(3)(B) of the Act,[11] that the proposed amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30668 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78k–1(a)(1)(C)(ii) and (D).

[10] 17 CFR 240.11Aa3–2(c)(2).

[11] 15 U.S.C. 78k–1(a)(3)(B).

[12] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the closed meeting scheduled for Thursday, November 30, 2000 at 11:00 a.m. time has been changed to Thursday, November 30, 2000 at 10:30 a.m.

Commissioner Carey, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 28, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30763 Filed 11–29–00; 11:17 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43592; International Series Release No. 1235; File No. 601–01]

Self-Regulatory Organizations; Morgan Guaranty Trust Company, Brussels Office, as Operator of the Euroclear System and Euroclear Bank, S.A.; Notice of Filing of Application To Modify an Existing Exemption From Clearing Agency Registration

November 17, 2000.

I. Introduction

On September 21, 2000, Morgan Guaranty Trust Company of New York, Brussels office (''MGT-Brussels''), as operator of the Euroclear System,[1] and Euroclear Bank, S.A., (''Euroclear Bank'') filed pursuant to Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 17Ab2–1 thereunder[3] with the Securities and Exchange Commission (''Commission'') an application on Form CA–1[4] to modify MGT-Brussels' existing exemption from clearing agency registration (''Modification Application''). MGT-Brussels' current exemption allows it to perform, with certain limits, the functions of a clearing agency with respect to U.S. government and agency securities for its U.S. participants without registering as a clearing agency. The purpose of the Modification Application is to have Euroclear Bank substituted for MGT-Brussels as operator of the Euroclear System with respect to the Commission's exemption. The Commission is publishing this notice to solicit comment from interested persons.

II. Background

A. 1998 Exemption Order

On February 11, 1998, the Commission granted MGT-Brussels an exemption from registration as a clearing agency, subject to certain conditions, to the extent MGT-Brussels performs the functions of a clearing agency with respect to transactions involving U.S. government and agency securities for its U.S. participants (''1998 Exemption Order'').[5] Specifically, the 1998 Exemption Order

[1] MGT-Brussels presently operates the Euroclear System pursuant to an operating agreement with Euroclear Bank.

[2] 15 U.S.C. 78q–1.

[3] 17 CFR 240.17Ab2–1.

[4] Copies of the application for exemption are available for inspection and copying at the Commission's Public Reference Room.

[5] Securities Exchange Act Release No. 39643 (February 11, 1998), 63 FR 8232.

permitted MGT-Brussels to provide clearance, settlement, and collateral management services for its U.S. participants' transactions in ''eligible U.S. government securities'' which was defined as: (1) Fedwire-eligible U.S. government securities,[6] (2) mortgage-backed pass through securities that are guaranteed by the Government National Mortgage Association (''GNMAs''), and (3) any collateralized mortgage obligation whose securities are Fedwire-eligible U.S. government securities or GNMA guaranteed mortgage-backed pass through securities and which are depository eligible securities.

The 1998 Exemption Order imposed two conditions on MGT-Brussels' ability to provide clearance and settlement services.[7] First, the average daily volume of eligible U.S. government securities that can be settled through MGT-Brussels for U.S. participants is limited to five percent of the total average daily dollar volume of the aggregate volume in eligible U.S. government securities.[8] Second, the 1998 Exemption Order allows the Commission access to a variety of information related to MGT-Brussels' role as operator of the Euroclear System.[9]

B. Changeover From MGT-Brussels to Euroclear Bank

On January 1, 2000, owners and operators decided that MGT-Brussels should be replaced by Euroclear Bank as operator of the Euroclear System. In May 2000, Euroclear Bank was created. On July 27, 2000 the Belgian Banking and Finance Commission (''CBF'') granted Euroclear Bank a Belgian banking license. MGT-Brussels will continue to operate the Euroclear System until the changeover, which is scheduled to occur on December 31, 2000. At the changeover, the business and related assets and liabilities of the Euroclear System will vest in and virtually all of the MGT-Brussels staff will be transferred to Euroclear Bank.

As a result of the changeover, Euroclear Clearance System Public Limited Company (''Euroclear PLC''), a limited liability company organized under the laws of the United Kingdom, will own 59.5% of Euroclear Bank. Calar Investments, a wholly-owned subsidiary of Euroclear PLC, will own 35.5% of Euroclear Bank. The remaining five percent of Euroclear Bank will be owned by the former members of Euroclear Clearance System Societe Cooperative, the predecessor of Euroclear Bank.

III. Proposed Modification of the 1998 Exemption Order

Euroclear Bank has requested modification of the 1998 Exemption Order by replacing MGT-Brussels with Euroclear Bank as operator of the Euroclear System. The 1998 Exemption Order provides that ''the Commission may modify by order the terms, scope, or conditions of MGT-Brussels' exemption from registration as a clearing agency if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act'' [10]

Euroclear Bank will operate the Euroclear System in the manner that MGT-Brussels currently operates the Euroclear System. Euroclear Bank will use the same personnel, operating systems, procedures, and risk management as MGT-Brussels currently uses. Euroclear Bank represents that it will substantially satisfy, just as MGT-Brussels currently does, each of the conditions for registration set forth in Section 17A(b)(3) of the Exchange Act, that relate to ''safe and sound clearance and settlement'' in the U.S., which the Commission has identified in the 1998 Exemption Order as the fundamental goal of Section 17A. Accordingly, Euroclear Bank requests the identical exemption granted to MGT-Brussels. Therefore, the Modification Application does not seek to have any changes made to the ''Scope of the Exemption,'' as described in Section IV.C. of 1998 Exemption Order with respect to the conditions and limitations of the 1998 Exemption Order.

As described in the 1998 Exemption Order, MGT-Brussels is a division of the foreign branch of a U.S. bank and accordingly is subject to the comprehensive supervision and regulation of the Federal Reserve Bank of New York.[11] The Federal Reserve Bank of New York conducts annual on-site examinations in Brussels and otherwise regulates MGT-Brussels' operations, including its operation of the Euroclear System. Because there will be no similar U.S. regulation of Euroclear Bank, the Commission will require the execution of a satisfactory Memorandum of Understanding (''MOU'') with the CBF [12] to facilitate the provision of information by Euroclear Bank to the Commission and to continue to facilitate the Commission's monitoring of the impact of Euroclear Bank's operation under this exemption.[13]

Section 17A(b)(1) of the Exchange Act authorizes the Commission to exempt applicants from some or all of the requirements of Section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[14] Therefore, the Commission invites commenters to address whether modifying the 1998 Exemption Order as requested by Euroclear Bank and as described above, subject to the continuation of the conditions and limitations set forth in that order, would further the goals of Section 17A.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by December 22, 2000, including whether the exemption is consistent with the Exchange Act. Such written data, views, and arguments will be considered by the Commission in deciding whether to grant the Modification Application. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Reference should be made to File No. [601–01]. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room,

[6] As described in footnote 64 of the 1998 Exemption Order, U.S. government securities means ''U.S. government securities'' as defined in Section 3(a)(42) of the Exchange Act, 15 U.S.C. 78c(a)(42), except that it shall not include any (i) foreign-targeted U.S. government or agency securities or (ii) securities issued or guaranteed by the International Bank for Reconstruction and Development (*i.e.*, the ''World Bank'') or any other similar international organization.

[7] The conditions in the 1998 Exemption Order reflected the Commission's determination to take a gradual approach toward permitting an international, unregistered clearing organization to perform clearing agency functions for transactions involving U.S. government and agency securities for U.S. participants. 1998 Exemption Order at 63 FR 8239.

[8] The scope of the 1998 Exemption Order is limited to U.S. eligible government securities and does not apply to other U.S. debt or equity securities. For a more complete description of the volume limit, refer to Section IV.C.2. of the 1998 Exemption Order at 63 FR 8239.

[9] For a more complete description of the Commission's access to information refer to Section IV.C.3. of the 1998 Exemption Order at 63 FR 8240.

[10] 1998 Exemption Order at 63 FR 8240.

[11] 1998 Exemption Order at 63 FR 8237.

[12] Euroclear Bank is subject to regulation by the CBF.

[13] Euroclear Bank also continues to agree to provide information to the Commission as described in the 1998 Exemption Order.

[14] 15 U.S.C. 78q–1(b)(1).

450 Fifth Street, NW., Washington, DC 20549.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30666 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43611; File No. SR–CBOE–99–14]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change Relating to Listing Criteria for Index Warrants

November 22, 2000.

I. Introduction

On April 6, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 31.5.E to add an alternative set of distribution criteria for stock index warrants. Notice of the proposed rule change was published in the **Federal Register** on May 13, 1999.[3] On August 2, 1999, and September 20, 2000, the CBOE filed Amendment Nos. 1 and 2 to the proposal, respectively.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, accelerates approval of Amendments Nos. 1 and 2, and solicits comments from interested persons on the amendments.

II. Description of the Proposal

Currently, before a stock index warrant may be listed for trading on the CBOE, certain public distribution requirements must be met. These criteria are enumerated in CBOE Rule 31.5.E(2):

1. The issue must include at least one million warrants outstanding.
2. The principal amount/aggregate market value must be at least $4,000,000.
3. There must be at least 400 public holders.

In addition, according to the CBOE, industry practice has been to discourage the listing of instruments of this kind that are priced below $4 per unit. The CBOE states that it finds this practice appropriate, although Rule 31.5E does not specifically impose this restriction.

The proposed rule change would establish an alternative set of distribution criteria, eliminating the minimum public holder requirement. To list a stock index warrant under this alternative, the following requirements would need to be satisfied:

1. The issue would need to include at least two million warrants outstanding—double the current requirement.
2. The principal amount/aggregate market value would need to be at least $12,000,000—triple the current requirement.
3. The minimum initial price would need to be set at $6 per warrant—one and one-half times the minimum initial price as would be required under current informal guidelines.
4. A minimum number of public holders would be required as determined on a case by case basis.

The CBOE states that it is seeking to eliminate the 400-holder requirement so that it can be more competitive with the overseas and over-the-counter (OTC) derivatives markets in the listing of index warrants.

As explained by the Exchange, offerings of stock index warrants—unlike offerings of common stock and common stock warrants—are limited to options-approved accounts and are primarily directed to institutional and high net worth clients. Finding 400 initial holders thus may entail an extensive and time-consuming marketing effort. As a result, member firms have told the Exchange that they often find it considerably more cost effective to offer stock index warrants either offshore or in the OTC derivatives market.

The proposed rule change would create an alternative set of public distribution criteria under which no minimum number of public holders would be defined, but would be determined by the Exchange on a case-by-case basis. At the same time, this alternative set of criteria would require the issue to be significantly larger in terms of number of warrants outstanding and their aggregate market value, besides imposing a minimum initial price for each warrant that reflects a substantial increase from the minimum initial price currently required for listing on the CBOE.

III. Discussion

After careful review, the Commission finds the proposed rule change to be consistent with the provisions of the Act applicable to a national securities exchange, particularly those of section 6(b)(5) [5] of the Act, and with the rules and regulations thereunder.[6] The Commission believes that the proposal is reasonably designed to enable the CBOE to better compete with the overseas and OTC derivatives markets for the trading of stock index warrants, while raising no significant investor protection issues.

In lieu of the requirement that there be 400 public holders, the Exchange proposes to double to two million the minimum number of warrants that must be outstanding for the CBOE to list and trade a stock index warrant. In addition, the Exchange proposes to triple to $12 million the principal amount/aggregate market value of the warrants and increase to $6 the minimum initial price for listing the warrant. In addition, the Exchange on a case by case basis will specify a minimum number of public holders of the warrant.

These additional protections should serve to assure that there are adequate thresholds for the Exchange to list and trade a particular stock index warrant that does not otherwise satisfy the requirement of 400 public holders. Thus, the Commission believes the ability of market makers to maintain markets in such instruments should not be impaired.[7]

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[15] 17 CFR 200.30–3(a)(16).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41376 (May 6, 1999), 64 FR 25937.

[4] Amendment No. 1 elaborates upon the rationale for the proposal and how liquidity may be insured when the current, 400-holder requirement is deleted. *See* Letter from Stephanie C. Mullins, Attorney, the CBOE, to Mandy Cohen, Special Counsel, Division of Market Regulation (''Division''), the Commission, dated July 29, 1999. Amendment No. 2 clarifies the intent of the CBOE to apply the proposed rule change to apply to narrow-based index warrants, in addition to broad-based index warrants. *See* Letter from Angelo Evangelou, Attorney, the CBOE, to Ira Brandriss, Attorney, Division of Market Regulation, the Commission, dated September 19, 2000. *See also* Section III below.

[5] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade and protect investors and the public interest.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] The Commission notes that for new narrow-based stock index warrants that it lists for trading, the CBOE may be able to file a Form 19b–4(e) pursuant to the provisions of Rule 19b–4(e) under the Act, 17 CFR 240.19b–4(e), in fulfillment of its rule change filing requirements. *See* CBOE Rule 24.2(b), which has been made applicable to narrow-based index warrants by CBOE Rule 31.5E, Interpretation .01.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 merely elaborates on the rationale for the proposal. Amendment No. 2 makes clear that the proposed rule change will apply to narrow-based index warrants as well as broad-based index warrants. Although the descriptive section of the original filing referred to broad-based index warrants, the actual text of the proposed rule change in that filing made no distinction between the two. The purpose of the proposal as it relates to broad-based index warrants relates equally to narrow-based index warrants: to enable the CBOE to compete with the overseas and OTC derivative markets in the trading of these instruments. The Commission's belief that elimination of the 400 public holder requirement would not significantly impact investors also applies equally to narrow-based index warrants. Acceleration of the amendment will allow the Exchange to implement the proposed rule change to all stock index warrants at once.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 and 2, including whether Amendment Nos. 1 and 2 are 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 CBOE. All submissions should refer to File No. SR–CBOE–99–14 and should be submitted by December 22, 2000.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–99–14), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30670 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43618; File No. SR–EMCC–00–05]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Seeking To Increase the Minimum Clearing Fund Requirement for All EMCC Members to $3,000,000 and To Establish Two Tiers of Inter-Dealer Broker Membership Standards

November 27, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 14, 2000, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') and on August 16, 2000, and November 1, 2000, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change (1) would increase the minimum clearing fund requirement for all EMCC members to $3,000,000 and (2) would establish two tiers of inter-dealer broker (''IDB'') membership standards.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to (i) increase the minimum clearing fund requirement for all EMCC members to $3,000,000 from the current required minimum of $1,000,000 and (ii) provide two tiers of IDB membership standards.[3]

With respect to the proposed increased minimum clearing fund requirement, EMCC's risk advisory subgroup reviewed EMCC's two years of operations, including trade files and daily margin calculations. The subcommittee concluded that, generally, members' calculated clearing fund requirements did not go below $3,000,000. Moreover, raising the minimum requirement from $1,000,000 to $3,000,000 is consistent with the clearing fund requirements imposed on IDBs by other clearing corporations,[4] and it addresses the fact that IDB members have a potential clearing fund loss liability that could well exceed the current $1,000,000 clearing fund minimum. Accordingly, EMCC has determined that it would be more appropriate to have a greater amount of IDB funds on hand to cover the potential exposure than to have to request such a deposit if needed due to a loss. Therefore, EMCC has decided to increase IDB's minimum clearing fund requirement to $3,000,000 and has determined that it is appropriate to have this standard apply to all members.

The rule change also proposes to separate IDBs into two membership categories based on excess net capital or excess financial resources. Those IDBs with excess net capital, or excess financial resources for a broker or dealer regulated by the Securities and Futures Authority Limited, of between $10,000,000 and $20,000,000 would be margined using an ''event factor'' of 1.5 instead of the factor of 1.25 currently used in EMCC's base margining formula. This factor is representative of the volatilities experienced during the last three emerging market events.[5] Those

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] EMCC's Rules define an IDB as ''a broker-dealer that conducts securities trading which matches buyers and sellers who are banks or dealers, and who is designated as such by the Corporation.''

[4] *See, e.g.,* Government Securities Clearing Corporation Rule 4, Section 2(c).

[5] October, 1997 (Asia), August, 1998 (Russia), and January, 1999 (Brazilian).

IDBs with excess net capital or excess financial resources of more than $20,000,000 would be margined under the current event factor of 1.25. In either case, the event factor would be subject to EMCC's right to change the risk factor, as provided in EMCC Rule 4, Section 5(A)III.

EMCC believes that the two-tier membership standard will permit it to accept IDBs for membership while appropriately collateralizing the risk posed by those entities with lower levels of capital. EMCC recognizes that the clearing fund is a key mitigant to market risk in the event of member insolvency and feels that margining those IDBs with less than $20,000,000 excess regulatory capital at an event factor of 1.5 should mitigate any risk of their lower capital levels.

The effective date for these proposed changes will be thirty days following the date the Commission approves the filing for current members and will be immediately for any applicant who becomes a member after the rule change is approved.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [6] and the rules and regulations thereunder because it promotes the prompt and accurate settlement of emerging markets securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–00–05 and should be submitted by December 22, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30669 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43613; File No. SR–NASD–00–59]

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Permit the Inclusion of Certain Unit Investment Trusts in Nasdaq's Mutual Fund Quotation Service

November 22, 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 October 20, 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 (''SEC'' or ''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 is proposing to amend NASD Rule 6800 to permit the inclusion of certain Unit Investment Trusts (''UITs'') in Nasdaq's Mutual Fund Quotation Service (''MFQS''). Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6800. MUTUAL FUND QUOTATION SERVICE

(a) Description

The Mutual Fund Quotation Service collects and disseminates through The Nasdaq Stock Market prices for [both] mutual funds, [and] money market funds, *and unit investment trusts.*

(b) Eligibility Requirements

To be eligible for participation in the Mutual Fund Quotation Service, a fund shall:

(1) be registered with the Commission as an open-end (''open-end fund'') or a closed-end (''closed-end fund'') investment company *or a unit investment trust* pursuant to the Investment Company Act of 1940,

(2) execute the agreement specified by the Association relating to the fund's obligations under the Program,

(3) pay, and continue to pay, the fees as set forth in Rule 7090, an d

(4) submit quotations through an automatic quotation system operated by the Association.

(c) News Media Lists

(1) (A) An eligible open-end fund shall be authorized for inclusion in the News Media List released by the Association if it has at least 1,000 shareholders or $25 million in net assets.

(B) An eligible closed-end fund *or unit investment trust* shall be authorized for inclusion in the News Media List released by the Association if it has at least $60 million in net assets.

(C) Compliance with subparagraphs (1)(A) and (B) shall be certified by the fund to the Association at the time of initial application for inclusion in the List.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(2) (A) An authorized open-end fund shall remain included in the New Media List if it has either 750 shareholders or $15 million in net assets.

(B) An authorized closed-end fund *or unit investment trust* shall remain included in the News Media List if it has $30 million in net assets.

(C) Compliance with subparagraphs (2)(A) and (B) shall be certified to the Association upon written request by the Association.

(d) Supplemental List

An eligible open-end *fund*, [or] closed-end fund *or unit investment trust* shall be authorized for inclusion in the Supplemental List released to vendors of Nasdaq Level 1 Service if it meets one of the criteria set out in subparagraph (1), subparagraph (2), or subparagraph (3) below:

(1) the fund *or unit investment trust* has net assets of $10 million or more, or

(*2*) [3] the fund *or unit investment trust* has had two full years of operation, or

(*3*) [4] the fund's *or unit investment trust's* investment adviser:

(A) is the investment adviser of least one other fund *or unit investment trust* that is listed on the Mutual Fund Quotation Service and that has net assets of $10 million or more; and

(B) has at least $15 million in total assets of open-end, [and] closed-end, *or unit investment trust* funds under management.

(e) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 6800 to add listing standards for the inclusion of Unit Investment Trusts (''UITs'') to Nasdaq's Mutual Fund Quotation Service (''MFQS'' or the ''Service'').[5] The MFQS was created to collect and to disseminate data pertaining to the value of open-end and closed-end funds. Currently, the MFQS disseminates the valuation data for over 11,000 funds. The Service facilitates this process by permitting funds included in the Service (or pricing agents designated by such funds) to use browser-based technology to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[6] The MFQS has two ''lists'' in which a fund may be included—the News Media List and the Supplemental List—and each list has its own initial inclusion requirements.[7] In addition, there are maintenance/continued inclusion requirements for the News Media list only. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed by market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. Therefore, the Supplemental List provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.[8]

MFQS provides valuable pricing information for a large portion of funds for which there is significant investor interest, but it currently covers no UITs. According to data complied by the Investment Company Institute, as of the end of 1999 there were a total of 10,418 trusts with a market value of $94.60 billion, including 8,924 tax-free bond trusts, with a market value of $25.56 billion, 409 taxable bond trusts, with a market value of $4.28 billion; and 1,085 equity trusts, with a market value of $64.76 billion. Nasdaq estimates that nearly all of the equity-based UITs that exist today would be eligible for inclusion in the MFQS under the proposed new standards. Although many of the bond-based UITs will qualify under these standards, industry participants have indicated to Nasdaq that few of these funds will elect to participate in the MFQS.

Due to their similarly in pricing characteristics, Nasdaq proposes to apply to UITs the same MFQS listing standards that will apply to closed-end mutual funds. To qualify for initial inclusion in the News Media Lists, a closed-end fund must have at least $60 million in net assets, and to remain in the News Media List, an closed-end fund would have to maintain at least $30 million in net assets. These listing standards are designed to identify securities in which there is significant investor interest. Likewise, Nasdaq would apply to UITs the same criteria for inclusion in the Supplemental List as it currently applies to open and closed-end funds. Currently, an open-end or closed-end fund qualifies for inclusion in the Supplemental List if the fund has at least $10 million in net assets, or the fund has had two full years of operation or if the investment advisor to the fund has at least one other fund listed on MFQS that has $10 million in assets. In addition, the investment advisor must have under management at least $15 million from open-end, closed-end, or money-market funds. Managed assets from other sources—such as pension funds—would not be included for purposes of determining whether the investment firm meets the requirement that it manage at least $15 million in fund-related assets. Nasdaq proposes to apply the same three alternative criteria to UITs, requiring that they have $10 million in assets, be in operation for two full years, or have an investment advisor with sufficient fund- or UIT-related assets under management.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) [9] and section 11A [10] of the Act. Section 15A(b)(6) [11] of the Act requires the rules of a registered national securities association to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market

[3] Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between Jeffrey S. Davis, Assistant General Counsel, Nasdaq and Susie Cho, Attorney, Division of Market Regulation, Commission, November 16, 2000.

[4] *Id.*

[5] Section 4(2) of the Investment Company Act of 1940 defines a Unit Investment Trust as ''an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.'' 15 U.S.C. 80a–4(2).

[6] *See* NASD Rule 6800.

[7] *See id.*

[8] *See* NASD Rule 7090.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78k–1.

[11] 15 U.S.C. 78o–3(b)(6).

system, and, in general, to protect investors and the public interest. In section 11A(a)(1)(C),[12] the Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities.

Nasdaq believes that the proposed rule change will protect investors and the public interest by promoting better processing of price information in UITs. Accordingly, the new listing criteria will provide greater transparency to the markets by providing greater pricing information for a broader base of investments for which there is significant investor interest. Nasdaq believes the proposed listing standards serve as a means for the marketplace to screen issuers and to provide listed status only to *bona fide* investment companies with sufficient investor base and trading interest to maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office at the NASD. All submissions should refer to File No. SR–NASD–00–59 and should be submitted by December 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Security.

[FR Doc. 00–30664 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78k–1(a)(1)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43598; File No. SR–NSCC–00–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Submission of Extended Corrections and Time Frames for Confirmation

November 20, 2000.

On August 28, 2000, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–00–12) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to permit NSCC to allow Fund Members and Mutual Fund Processors to submit extended (post settlement) corrections in NSCC's Mutual Fund Service's Fund/Serv. Notice of the proposal was published in the **Federal Register** on October 24, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

Pursuant to NSCC's Rule 52A, section 12, only a Settling Member or TPA Member may currently submit extended (post settlement) correction instructions. These types of instructions are submitted when a Settling Member or TPA Member determines that data with respect to a settled order previously transmitted to a Fund Member or Mutual Fund Processor is in need of correction.[3]

Under the proposed rule change, section 12 will be amended to also permit Fund Members and Mutual Fund Processors to submit extended (post settlement) corrections to Settling Members or TPA Members. No action will be required by a Settling Member or TPA Member if it determines to accept the extended correction of a Fund Member or Mutual Fund Processor. A Settling Member or TPA Member will be able to reject the extended correction instruction within the time frame established by NSCC.[4] In addition, section 12 will be revised to permit extended corrections for exchange orders.

The rule change also proposes to make two additional changes to Rule 52A. Sections 4 and 8 of Rule 52A are being amended to allow NSCC to delete certain orders, corrections, and extended corrections that have not been confirmed or rejected, respectively, within the time frame established by NSCC. Section 21 is being amended to reduce the maximum time frame within which a Delivering Fund Member must confirm the value of Fund/Serv eligible mutual fund shares, investment funds, or UIT units being transferred to a Receiving Fund Member from sixty days to tens days.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43457 (October 17, 2000) 65 FR 63662 (October 24, 2000).

[3] Securities Exchange Act Release No. 31937 (March 1, 1993), 58 FR 12609 [SR–NSCC–92–14] (order approving post settlement correction initiated by Settling Members and TPA Members).

[4] Currently, a Settling Member or TPA Member must reject the extended correction instruction within three days. NSCC will issue an ''Important Notice'' at least 30 days prior to implementing changes in the time frames required for rejections of extended corrections. Telephone conservation between Richard J. Paley, Associate Counsel, NSCC, and Susan M. Petersen, Special Counsel, Division of Market Regulation, Commission (October 16, 2000).

[5] Pursuant to Section 21 of Rule 52A, a Fund Member or Mutual Fund Processor (''Receiving Fund Member'') may initiate a request for the transfer of a customer's mutual fund shares, investment fund, or UIT units from another Fund Member or Mutual Fund Processor (''Delivering Fund Member''). The Delivering Fund Member must acknowledge or reject the transfer request

NSCC intends to implement these changes, subject to SEC approval, on November 20, 2000.

II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. By permitting Fund Members and Mutual Fund Processors to submit post settlement corrections and by amending the time frames within which the value of the instruments being transferred must be confirmed, the rule change should allow NSCC to provide a mechanism to help facilitate the prompt and accurate clearance and settlement of transactions between users of Fund/Serv. Furthermore, by extending the ability to submit post settlement corrections to Fund Members and Mutual Fund Processors, an ability already granted to Settling Members and TPA Members, NSCC is ensuring that the primary users of Fund/Serv are afforded similar capabilities. These actions should foster cooperation and coordination among Fund/Serv users. Accordingly, the Commission finds that the rule change is consistent with NSCC's obligations under the Act.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register** because accelerated approval will permit NSCC to implement these Fund/Serv system enhancements, which are designed to accommodate new Internal Revenue Service regulations (which will be effective January 1, 2001),[7] in a manner consistent with industry practices with respect to system enhancements. Furthermore, the Commission has not received any comment letters and does not expect to receive any comment letters on the proposal.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–00–12) be and hereby is approved. For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30592 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

within two business days. Once the transfer is acknowledged, the Delivering Fund Member must also confirm the value of the shares to be transferred within the time frame specified under Section 21. Under the proposed rule change, a Delivering Fund Member must submit the confirmation no earlier than one business day and no later than ten business days after acknowledging the transfer.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] The new IRS regulation relates to the certification of foreign accounts, specifically the communication of W8-related registration information. Since fund companies typically do not implement December code or system changes, NSCC requested acceleration of the rule filing so as to implement and test the system changes prior to December.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43612; File No. SR–OCC–00–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Adjustments to Options Contracts

November 22, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 3, 2000, The Options Clearing Corporation (''OCC'') 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 primarily by OCC.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Article VI, Section 11(b) of OCC's By-Laws to explicitly provide that neither OCC nor OCC's securities committee will be liable for a failure to adjust outstanding options contracts when the securities committee does not learn or does not learn in a timely manner of an event for which it otherwise would have directed an adjustment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCFC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed new language to be added to paragraph (b) of Article VI, Section 11 of OCC's By-Laws is to clarify that neither OCC nor OCC's securities committee will be liable for any failure to adjust outstanding option contracts or any delay in adjusting such contracts when the securities committee does not learn in a timely manner of an event for which it would otherwise have directed an adjustment. While OCC believes that this should be the result under the By-Laws in its present form, OCC believes it is advisable to cover this situation specifically.

Normally, OCC is notified of the occurrence of a section 11(a) adjustment event[4] by its internal stock watch department or by the exchanges, which use their research departments to monitor the underlying securities and the issuers of the underlying securities. OCC's economic research department regularly scans Bloomberg, Reuters, and Dow Jones newswires for announcements of adjustment events. When it learns of such an event, OCC contacts the options exchanges, the primary market for the underlying, and the issuer of the underlying to obtain more information about the event and to monitor the event. Likewise, the research departments at the various

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of OCC's proposed rule change is available at the Commission's Public Reference Section or through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Section 11(a) of Article VI of OCC's By-Laws states that whenever there is a dividend, stock split, reorganization, recapitalization, or similar event with respect to an underlying security or whenever there is a merger, consolidation, dissolution, or liquidation of the issuer of an underlying security, the number of option contracts, unit of trading, exercise price, and the underlying security of all outstanding options contracts open for trading in that underlying security may be adjusted.

options exchanges scan a variety of newswires and employ different news alert services to monitor for adjustment events. When the exchanges learn of an adjustment event, they alert OCC and contact the primary market for the underlying security to obtain more information about the event and to monitor the event.

Through these procedures, the likelihood that a potential adjustment event will escape notice is minimized. However, the possibility of such an occurrence can never be completely eliminated. Accordingly, OCC wishes to make clear that neither it nor its securities committee will have liability for any failure to act or delay in acting on events not known to the securities committee. The proposed rule change would also clarify that adjustment determinations are made in light of circumstances known at the time the determination is made. For example, if the securities committee does not learn of an event for which an adjustment would normally be made until after the ex-date, the fact that options trading and/or exercise activity has taken place in circumstances suggesting that there would be no adjustment could tip the balance of fairness against making an adjustment.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to OCC because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would 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 not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–00–10 and should be submitted by December 22, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30665 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43614; File No. SR–Phlx–00–101]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program for Exchange Rule 98, Emergency Committee Until April 30, 2001

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 November 17, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the pilot program period for Rule 98, Emergency Committee until April 30, 2001. No changes to the existing rule language are being proposed.

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

On December 23, 1999, the Commission approved amendments to Rule 98, Emergency Committee (the ''Committee''), which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.[5] The

[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] Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) (SR–Phlx–99–42). In the approval order, the Commission requested that the Exchange examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (*e.g.,* On-Floor or Off-Floor interests). The

pilot has been extended twice, most recently to November 17, 2000.[6] The Commission has requested that the Exchange file the instant proposed rule change to extend the current pilot through April 30, 2001 as the Exchange considers other changes to the composition of the Committee.

The Exchange originally proposed to amend Rule 98, Emergency Committee, by updating the composition of the Committee to correspond with previous revisions to the Exchange's governance structure,[7] and by deleting a provision authorizing the Committee to take action regarding CENTRAMART, an equity order reporting system which is no longer used on the Exchange Equity Floor.

The Committee was formed in 1989[8] prior to the aforementioned changes to the Exchange's governance structure. The original proposed rule change, approved by the Commission, deleted the word ''President'' from the rule, as the Exchange no longer has a ''President,'' and included the Exchange's On-Floor Vice Chairman[9] as a member of the Committee.

Thus, Rule 98 specifies the composition of the Emergency Committee to include the following individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors; and the Chairmen of the Options Committee, the Floor Procedure Committee, and the Foreign Currency Options Committee.

The staff of the Commission has requested that the Exchange file the instant proposed rule change to extend the pilot program through April 30, 2001 so that the Committee will reflect the current governance structure of the Exchange and will be in place to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.[10] The extension of the pilot program will also allow the Exchange the necessary time to propose changes to the Committee's structure to meet the Commission's concerns about whether the Committee ensures that all interests of the Exchange (*e.g.,* On-Floor or Off-Floor) are adequately represented by the Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6[11] of the Act in general, and with section 6(b)(5)[12] of the Act in specific, 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, by updating the composition of the Emergency Committee to reflect the current governance structure of the Exchange, and by continuing to provide a regular procedure for the Exchange to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder because the 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 the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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 Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposal simply extends a previously approved pilot program until April 30, 2001. No changes to Rule 98 are being proposed at this time. In addition, the commission waives the 5-day prefiling notice as required by Rule 19b–4(f)(6).[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 the Phlx. All submissions should refer to the File No. SR–Phlx–00–101 and should be submitted by December 22, 2000.

Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee.

[6] Securities Exchange Act Release No. 42898 (June 5, 2000), 65 FR 36879 (June 12, 2000) (SR–Phlx–00–42), extending the pilot program until August 21, 2000; Securities Exchange Act Release No. 43169 (August 17, 2000), 65 FR 51888 (August 25, 2000) (SR–Phlx–00–76), extending the pilot program until November 17, 2000. On July 14, 2000, the Exchange filed a proposed rule change to effect the amendments on a permanent basis. SR–Phlx–00–63 (filed July 14, 2000). In SR–Phlx–00–63 the Exchange also enclosed the Exchange's views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. Because the Exchange is considering changes to the Committee, we would expect SR–Phlx–00–63 to be withdrawn.

[7] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997) (SR–Phlx–97–31).

[8] *See* Securities Exchange Act Release No. 26858 (May 22, 1989), 54 FR 23007 (May 30, 1989) (SR–Phlx–88–36).

[9] *See also* Exchange By-Law, Article IV, Section 4–2.

[10] Previously, the Exchange has described ''extraordinary market or emergency conditions'' as, among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. Letter dated March 15, 1989, from William W. Uchimoto, General Counsel, Exchange, to Sharon L. Itkin, Esquire, Commission, Division of Market Regulation.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 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).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30667 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Request for Public Comments on the Review and Renegotiation of the United States-Israel Agreement on Trade in Agricultural Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Trade Policy Staff Committee (TPSC) is soliciting written comments on U.S. objectives for upcoming negotiations on the renewal of the United States-Israel Agreement on Trade in Agricultural Products (ATAP). Specifically, the TPSC is seeking comments on general negotiating objectives and product-specific requests.

DATES: Public comments are due by noon December 29, 2000.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW., Washington, DC 20508 (202) 395–3475. All other questions regarding the negotiations should be addressed to Ned Saums, Director for Middle Eastern Affairs, Office of the USTR, (202) 395–3320.

SUPPLEMENTARY INFORMATION: The 1985 Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America (FTAA) was intended to apply, in full, to trade in all products between the two countries. However, the United States and Israel held differing interpretations as to the meaning of certain rights and obligations related to agricultural products under the FTAA. In the interest of achieving practical improvements in agricultural trade between the two countries, the United States and Israel in November 1996 signed the Agreement on Trade in Agricultural Products (ATAP). The ATAP, an adjunct to the FTAA, is a five-year agreement, expiring on December 31, 2001.

According to the ATAP, U.S. agricultural products exported to Israel are divided into three categories: (1) Products which are exempt from tariffs, (2) products which are exempt from tariffs within certain quantities, (3) products which are imported at a preferential tariff rate. Israeli agricultural products are treated differently under the ATAP. Following the implementation of the 1985 FTAA, most Israeli agricultural products exported to the U.S. had duty-free access to the U.S. market. Therefore, duty-free quota allocations, in excess of U.S. WTO commitments, are the principle concessions granted to Israeli products as a result of the ATAP. Not later than January 31, 2001, The United States and Israel have committed to initiate a review of the operation of the ATAP and to seek further improvements. In preparation, USTR is soliciting detailed written comments, including data and arguments, addressing:

(a) General and product-specific negotiating objectives for the ATAP;

(b) Economic costs and benefits to U.S. producers and exporters related to the reduction or removal of current restrictions to the Israeli agricultural market;

(c) Product-specific export interests or barriers (described by Harmonized Tariff System numbers);

(d) Detailed accounts of particular trade-restrictive measures that should be addressed in the negotiations; and,

(e) Other relevant issues, including potential environmental implications of the proposed agreement.

Written Comments

Persons submitting written comments should provide twenty (20) copies no later than noon, December 29, 2000, to Gloria Blue at the address listed above. Where possible, please supplement written comments with a computer disk of the submission containing as much of the technical details as possible either in spreadsheet or word processing table format, with each tariff line/services sector in a separate cell. The disk should have a label identifying the software used and the submitter.

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room (Room 101) at the address noted above. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Carmen Suro-Bredie,

Assistant U.S. Trade Representative for Policy Coordination.

[FR Doc. 00–30648 Filed 11–30–00; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–402 (Sub-No. 8X)]

Fox Valley & Western Ltd.—Abandonment Exemption—in Brown and Outagamie Counties, WI

On November 13, 2000, Fox Valley and Western Ltd. (FVW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Green Bay-New London line, extending between milepost 4.78 west of Green Bay and milepost 38.98 in New London, in Brown and Outagamie Counties, WI, a distance of 34.2 miles. The line traverses U.S. Postal Service Zip Codes 54311, 54155, 54165, 54106, 54170, and 54961, and includes stations at Oneida (milepost 10.5), Seymour (milepost 17.0), Black Creek (milepost 23.5), and Shiocton (milepost 30.6).

The line does contain federally granted rights-of-way. Any documentation in FVW's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.*—

Abandonment—Goshen, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 2, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 21, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–402 (Sub-No. 8X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., P.O. Box 5062, Rosemont, IL 60017–5062. Replies to the FVW petition are due on or before December 21, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for hearing impaired is available at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *http://WWW.STB.DOT.GOV.*

Decided: November 22, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30521 Filed 11–30–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 20, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 2, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1144.

Form Number: IRS Form 706–GS(D).

Type of Review: Extension.

Title: Generation-Skipping Transfer Tax Return for Distributions.

Description: Form 706–GS(D) is used by the distributees to compute and report the Federal GST tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	6 min.
Learning about the law or the form.	13 min.
Preparing the form	24 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,080 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–30590 Filed 11–30–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 24, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 2, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0135.

Form Number: IRS Form 1138.

Type of Review: Extension.

Title: Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback.

Description: Form 1138 is filed by corporations to request an extension of time to pay their income taxes, including estimated taxes. Corporations may only file for an extension when they expect a net operating loss carryback in the tax year and want to delay the payment of taxes from a prior tax year.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,033.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	3 hr., 21 min.
Learning about the law or the form.	42 min.
Preparing and sending the form to the IRS.	46 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 9,800 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–30591 Filed 11–30–00; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
December 1, 2000

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6905–1]

RIN 2060–AF91

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final standards and guidelines.

SUMMARY: We are promulgating standards and guidelines for new and existing commercial and industrial solid waste incineration (CISWI) units. These standards and guidelines fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA), which require us to promulgate standards and guidelines for CISWI units. The final standards and guidelines will protect public health by reducing exposure to air pollution, including several hazardous air pollutants (HAP) that can cause toxic effects such as eye, nose, throat, and skin irritation; reproductive effects; and cancer. These standards and guidelines apply only to CISWI units burning nonhazardous wastes.

EFFECTIVE DATE: January 30, 2001.

ADDRESSES: *Docket.* Docket No. A–94–63 contains the supporting information used in developing the final standards and guidelines and is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7548, fax (202) 260–4000. The docket is available at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5251, e-mail: *porter.fred@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background Information. A list of combustion related rules is available on the Combustion Group website on the EPA Technology Transfer Network website (TTN Web) at *http://www.epa.gov/ttn/uatw/combust/list.html*. You may obtain **Federal Register** notices, supporting information, and docket indices for these combustion related rules.

Regulated Entities. These standards and guidelines affect the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes:

Category	NAICS Code	SIC Code	Examples of potentially regulated entities
Any industry using a solid waste incinerator as defined in the regulations.	325	28	Manufacturers of chemicals and allied products.
	325	34	Manufacturers of electronic equipment.
	421	36	Manufacturers of wholesale trade, durable goods.
	321, 337	24, 25	Manufacturers of lumber and wood furniture.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities that could be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 60.2010 of subpart CCCC and 40 CFR 60.2505 of subpart DDDD.

Judicial Review. We proposed this rule for CISWI units in the **Federal Register** on November 30, 1999 (64 FR 67092). This action adopting a rule for CISWI units constitutes final administrative action on that proposal. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 30, 2001. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

Organization of this Document. The following outline is provided to aid in locating information in this preamble. With the exception of section V, which covers various administrative requirements, each section heading of the preamble is presented as a question, and the text in the section answers the question.

I. Background Information

A. What information is covered in this preamble?
B. Where in the Code of Federal Regulations will these standards and guidelines be codified?
C. What is the regulatory development background for these standards and guidelines?
D. What is the statutory authority for these standards and guidelines?
E. What are new source performance standards?
F. What are emission guidelines?
G. How are the emission guidelines implemented?

II. Summary of the NSPS and EG

A. Do the standards and guidelines apply to me?
B. What emission limitations must I meet?
C. What operating limits must I meet?
D. What are the other requirements?
E. What are the requirements for air curtain incinerators?

III. Significant Issues and Changes

A. Are very small municipal waste combustion units covered?
B. Are cyclonic barrel burners covered?
C. Has the definition of a CISWI unit or solid waste changed?
D. Which elements of the definition of solid waste have been retained and clarified?
E. Were significant issues raised regarding EPA's approach to setting the proposed standards and guidelines, and has EPA made any changes?

IV. Impacts of the Final NSPS and EG

A. What are the air impacts for new units?
B. What are the air impacts for existing units?

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 13132: Federalism
C. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory

Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act

Abbreviations and Acronyms Used in This Document

BDT Best demonstrated technology
Btu British thermal units
CAA Clean Air Act
CFR Code of Federal Regulations
CISWI Commercial and industrial solid waste incineration
EG Emission guidelines
EPA Environmental Protection Agency
FACA Federal Advisory Committee Act
FR **Federal Register**
HMIWI Hospital/medical/infectious waste incineration
HWI Hazardous waste incinerator
ICCR Industrial Combustion Coordinated Rulemaking
ICR Information Collection Request
kg/hr Kilograms per hour
lbs/hr Pounds per hour
MACT Maximum achievable control technology
mg/dscm Milligrams per dry standard cubic meter
Mg/yr Megagrams per year
MWC Municipal waste combustion
NAICS North American Industrial Classification System
ng/dscm Nanograms per dry standard cubic meter
NSPS New source performance standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
ppm Parts per million
RFA Regulatory Flexibility Act
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act
SIC Standard Industrial Classification
SWDA Solid Waste Disposal Act
TEQ Toxic equivalency
TTN Web Technology Transfer Network Website
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

I. Background Information

A. What Information is Covered in This Preamble?

We summarize the important features of the standards and guidelines that apply to CISWI units in this preamble. The preamble also outlines the significant issues and changes in response to public comments, the environmental impacts of these standards and guidelines, and the administrative requirements relative to this action.

B. Where in the Code of Federal Regulations Will These Standards and Guidelines be Codified?

The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. The code is divided into 50 titles that represent broad areas subject to Federal regulation. The final standards and guidelines for CISWI units will be published in Title 40, Protection of the Environment. Part 60 of title 40 includes standards of performance for new stationary sources and emission guidelines and compliance times for existing sources. The table below lists the subparts in which the standards and guidelines will be codified.

Title of the regulation	Subpart in title 40, part 60
Standards of Performance for New Stationary Sources: Commercial and Industrial Solid Waste Incineration Units	Subpart CCCC.
Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units	Subpart DDDD.

C. What is the Regulatory Development Background for These Standards and Guidelines?

Section 129 of the CAA requires us to develop new source performance standards (NSPS) and emission guidelines (EG) for ''solid waste incineration units combusting commercial or industrial waste.'' We refer to these units as ''commercial and industrial solid waste incineration'' (CISWI) units. On December 28, 1994 (59 FR 66850), the EPA published an advance notice of proposed rulemaking in the **Federal Register**. That notice requested information and data concerning the operation, location, emissions, and emission controls for CISWI units.

In September 1996, we chartered the Industrial Combustion Coordinated Rulemaking (ICCR) advisory committee under the Federal Advisory Committee Act (FACA). The committee's objective was to develop recommendations for regulations for several combustion source categories under sections 112 and 129 of the CAA. The ICCR advisory committee, known as the Coordinating Committee, formed Source Work Groups for the various combustor types covered under the ICCR. One work group, the Incinerator Work Group, was formed to research issues related to CISWI units. The Incinerator Work Group submitted recommendations, information, and data analysis results to the Coordinating Committee, which in turn considered them and submitted recommendations and information to us. We have reviewed and considered the Committee's recommendations in developing these regulations for CISWI units. The Committee's 2-year charter expired in September 1998.

Pursuant to a February 1995 consent decree (as modified in July 1997), the Administrator was required to sign a notice of proposed rulemaking for CISWI units by November 15, 1999 for publication in the **Federal Register**. The consent decree also requires the Administrator to sign a notice of final rulemaking for CISWI units by November 15, 2000 for publication in the **Federal Register**.

The proposed rule satisfies the first requirement in the consent decree, and this final rule satisfies the second requirement.

D. What is the Statutory Authority for These Standards and Guidelines?

Section 129 of the CAA requires us to develop and adopt NSPS and EG for CISWI units pursuant to section 111 of the CAA. Section 111(b) requires us to establish NSPS for new sources, and section 111(d) requires us to establish EG for existing sources. Under section 129, the NSPS and EG adopted for CISWI units must reflect maximum achievable control technology (MACT). This term ''MACT'' is defined in section 129 of the CAA as the maximum degree of reduction in emissions of air pollutants that the Administrator determines is achievable, taking into consideration the cost of achieving the reductions and any nonair quality health and environmental impacts and energy requirements.

E. What are New Source Performance Standards?

The NSPS apply to new stationary sources, that is, sources whose construction begins after the NSPS is proposed or sources that are reconstructed or modified on or after a specified date. The following are the key elements in an NSPS.

1. *Source category* means the industry or type of process that is regulated. The source category in today's final standards is CISWI units.

2. *Affected facility* means the equipment subject to the NSPS. The

affected facility in today's final standards is each individual CISWI unit.

3. *Pollutants* means the particular air pollutants emitted by the affected facility that the standards regulate. Section 129 requires us to regulate nine pollutants: cadmium, carbon monoxide, dioxins/furans, fine and total particulate matter, hydrogen chloride, lead, mercury, oxides of nitrogen, and sulfur dioxide. Under section 129, opacity standards may also be required as appropriate.

4. *Maximum achievable control technology* means the technology on which the emission standards will be based. Section 129(a)(2) specifies that standards be based on ''the maximum degree of reduction in emissions . . . that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable * * *.'' (Note that the basis of these solid waste incineration standards is different from that of the typical NSPS under section 111. The basis of the typical NSPS is ''best demonstrated technology.'' These solid waste incineration NSPS are based on MACT and, in this sense, therefore, are similar to national emission standards for hazardous air pollutants (NESHAP) for new sources under section 112.)

5. *Format* means the form in which the standards are expressed; for example, as pollutant concentration emission limitations, as a percent reduction in emissions, or as equipment or work practice requirements.

6. *Standards* generally means emission limitations based on the level of reduction that the MACT can achieve. Under certain circumstances, it may not be possible to develop emission limitations if the level of performance cannot be identified. Only in unusual cases do standards require that a specific technology be used. In general, the source owner or operator may select any method for complying with the emission limitations.

7. *Other considerations.* In addition to emission limitations, NSPS usually include monitoring requirements, performance test methods and compliance procedures, and reporting and recordkeeping requirements. Section 129 also directs EPA to establish siting requirements for new incineration units and operator certification and training requirements for all units.

F. What Are Emission Guidelines?

The EG are similar to the NSPS, except that they apply to existing sources, that is, sources whose construction begins on or before the date the NSPS is proposed, or sources that are reconstructed or modified before a specified date. Unlike NSPS, the EG are not enforceable until EPA approves a State plan or adopts a Federal plan for implementing and enforcing them, and the State or Federal plan becomes effective. (Note that the basis of these solid waste incineration guidelines is different from that of the typical EG under section 111. The basis of the typical EG is ''best demonstrated technology.'' These solid waste incineration EG are based on MACT and, in this sense, therefore, are similar to national emission standards for hazardous air pollutants (NESHAP) for existing sources under section 112.)

G. How Are the Emission Guidelines Implemented?

When EG are promulgated under sections 111(d) and 129(b), the CAA requires States to adopt and submit to EPA for approval a State plan implementing the EG within 1 year after the promulgation of the EG (section 129(b)(2)). Section 129 requires that the State plan must be at least as protective as the EG and must provide for compliance by affected facilities no later than 3 years after the Administrator approves the State plan, but no later than 5 years after EPA promulgates the EG. Sections 111(d) and 129(b) also require EPA to develop, implement, and enforce a Federal plan if a State fails to submit a satisfactory State plan.

II. Summary of the NSPS and EG

This preamble discusses the major requirements of the NSPS and EG as they apply to you, the owner or operator of a new or existing CISWI unit.

A. Do the Standards and Guidelines Apply to Me?

The standards and guidelines apply to you if you own or operate a combustion device that combusts commercial and industrial waste (as defined in § 60.2265 of the NSPS and § 60.2875 of the EG). Commercial and industrial waste is solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

Fifteen types of combustion units, which are listed in § 60.2020 of the NSPS and § 60.2555 of the EG, are exempt from these standards and guidelines.

If you began the construction of your CISWI unit on or before November 30, 1999, it is considered an existing CISWI unit and is subject to the EG. If you began the construction of your CISWI unit after November 30, 1999, it is considered a new CISWI unit and is subject to the NSPS.

If you began reconstruction or modification of your CISWI unit prior to June 1, 2001, it is considered an existing CISWI unit and is subject to the EG. Likewise, if you began reconstruction or modification of your CISWI unit on or after June 1, 2001, it is considered a new CISWI unit and is subject to the NSPS.

B. What Emission Limitations Must I Meet?

As the owner or operator of a new or existing CISWI unit, you are required to meet the emission limitations specified in Table 1 of this preamble. You must conduct a performance test to show compliance within 60 days after a new CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after the unit's initial startup.

As the owner or operator of an existing CISWI unit, you are required to meet the emission limitations specified in Table 1 within 3 years after the Administrator approves the State plan or promulgates a Federal plan. Each existing CISWI unit must be in compliance within 5 years of promulgation of the EG.

TABLE 1.—EMISSION LIMITATIONS FOR NEW AND EXISTING CISWI UNITS

For these pollutants	You must meet these emission limitations [a]	And determine compliance using these methods [b]
Cadmium	0.004 mg/dscm	EPA Method 29.
Carbon Monoxide	157 ppm by dry volume	EPA Methods 10, 10A, or 10B.
Dioxins/Furans (TEQ basis)	0.41 ng/dscm	EPA Method 23.
Hydrogen Chloride	62 ppm by dry volume	EPA Method 26A.

TABLE 1.—EMISSION LIMITATIONS FOR NEW AND EXISTING CISWI UNITS—Continued

For these pollutants	You must meet these emission limitations [a]	And determine compliance using these methods [b]
Lead	0.04 mg/dscm	EPA Method 29.
Mercury	0.47 mg/dscm	EPA Method 29.
Opacity	10 percent	EPA Method 9.
Oxides of Nitrogen	388 ppm by dry volume	EPA Methods 7, 7A, 7C, 7D, or 7E.
Particulate Matter	70 mg/dscm	EPA Method 5 or 29.
Sulfur Dioxide	20 ppm by dry volume	EPA Method 6 or 6c.

[a] All emission limitations (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] These methods are in 40 CFR part 60, appendix A.

C. What Operating Limits Must I Meet?

If you are using a wet scrubber to comply with the emission limitations, you must establish the maximum and minimum site-specific operating limits indicated in Table 2 of this preamble. You must then operate the CISWI unit and wet scrubber so that the operating parameters do not deviate from the established operating limits.

TABLE 2.—OPERATING LIMITS FOR NEW AND EXISTING CISWI UNITS USING WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor continuously using these recording times
Charge rate	Maximum charge rate	Every hour.
Pressure drop across the wet scrubber, or amperage to the wet scrubber.	Minimum pressure drop or amperage	Every 15 minutes.
Scrubber liquor flow rate	Minimum flow rate	Do.
Scrubber liquor pH	Minimum pH	Do.

Note: Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a daily basis.

If you are using an air pollution control device other than a wet scrubber to comply with the emission limitations, you must petition the Administrator for other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The required components of the petition are described in § 60.2115 of the NSPS and § 60.2680 of the EG.

If you are using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, you must operate the fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period.

D. What are the other requirements?

As the owner or operator of a new or existing CISWI unit, you are required to meet the following additional requirements.

Siting Analysis (new units only):

• Submit a report that evaluates site-specific air pollution control alternatives that minimize potential risks to public health or the environment, considering costs, energy impacts, nonair environmental impacts, or any other factors related to the practicability of the alternatives.

Waste Management Plan:

• Submit a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

Operator Training and Qualification Requirements:

• Qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course.

Testing Requirements:

• Conduct initial performance tests for cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, nitrogen oxides, opacity, particulate matter, and sulfur dioxide and establish operating limits (i.e., maximum or minimum values for operating parameters).

• Conduct annual performance tests for particulate matter and hydrogen chloride emissions and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limitations for 3 consecutive years.)

Monitoring Requirements:

• If using a wet scrubber to comply with the emission limitations, continuously monitor the following operating parameters: charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH.

• If something other than a wet scrubber is used to comply with the emission limitations, monitor other operating parameters, as approved by the Administrator.

• If using a fabric filter to comply with the emission limitations, in addition to monitoring other operating parameters as approved by the Administrator, you must install and operate a bag leak detection system with an alarm.

Recordkeeping and Reporting Requirements:

• Maintain for 5 years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, the siting analysis (for new units only), and operator training and qualification.

• Submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters.

E. What Are the Requirements for Air Curtain Incinerators?

The NSPS and EG establish opacity limitations for air curtain CISWI units burning:

- 100 percent wood wastes,
- 100 percent clean lumber, or
- 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

The opacity limitation is 10 percent, except 35 percent opacity is allowed during startup periods that are within the first 30 minutes of operation.

III. Significant Issues and Changes

A total of 95 comments letters were received during the public comment period for the proposed CISWI rule, which ended on January 31, 2000. Among the comments received, the most significant issues addressed applicability, the definition of solid waste, and the MACT floor approach and emission limitations. The issues are addressed below, and other issues raised in the comments are addressed in a comment and response document contained in the docket.

A. Are very small municipal waste combustion units covered?

Commenters questioned whether very small municipal waste combustion (MWC) units (*i.e.*, units that combust less than 35 tons (31.8 megragrams (Mg)) of municipal solid waste per day) are covered by the proposed NSPS and EG. We did not intend to cover very small MWC units, and the final NSPS and EG have been clarified to ensure they are not covered.

The intent of the NSPS and EG for CISWI units is to cover incinerators burning commercial and industrial solid waste, not combustors burning municipal solid waste.

B. Are cyclonic barrel burners covered?

Several commenters questioned whether cyclonic barrel burners are covered by the proposed NSPS and EG. We did not intend to cover cyclonic barrel burners, and the final NSPS and EG have been clarified to ensure they are not covered.

A cyclonic barrel burner is a portable device for burning materials that can be attached to a 55 gallon, open-head drum. The device consists of a lid that fits onto the drum and is connected to a blower that feeds combustion air to the drum in a cyclonic or swirling manner to enhance the combustion of the material. We were not aware of the small combustion devices when developing the proposed regulations, and, as a result, had no information on the devices. Information on cyclonic barrel burners is currently being gathered, and the devices will be evaluated separately from the CISWI category.

C. Has the Definition of a CISWI Unit or Solid Waste Changed?

Section 129(g)(1) and (6) create a specialized definition of ''solid waste incineration unit'' that depends in part on the definition of ''solid waste'' contained in section 1004(27) of the Resource Conservation and Recovery Act (RCRA). The overall intent of the CAA provisions is that section 129 rules are to apply to devices conventionally regarded as incinerators, that is, devices burning wastes in order to destroy the wastes. For purposes of promulgating regulations applicable to commercial and industrial solid waste incinerators, it is particularly important to distinguish between units that will be regulated as boilers as well as other devices whose primary purpose is energy recovery (such as process heaters), and devices that will be regulated as incinerators under section 129 of the CAA. The distinction is necessary to avoid dual regulation of the many combustion units in use at commercial and industrial facilities that function as energy recovery devices and may be subject to regulation under other sections of the CAA.

Our proposed definitions of solid waste and CISWI unit reflected this broad principle of distinguishing boilers and other energy recovery devices from incinerators. However, as explained below, our proposed definitions proved inadequate to distinguish boilers from incinerators within the category of sources. Therefore, in the final NSPS and EG, we have modified our definitions of solid waste and CISWI unit.

For purposes of this rule, we are adopting a revised definition of solid waste that reflects the definition in the Solid Waste Disposal Act (SWDA) and which is reiterated in the regulation promulgated by the Administrator pursuant to the SWDA. We emphasize that the definition is adopted solely for purposes of section 129 in order to implement the principles of that section. We note that the RCRA regulatory definition of solid waste, which effectively determines the scope of the regulatory program for hazardous wastes (since hazardous wastes are a subset of solid wastes (see RCRA section 1004(5)), defines secondary materials burned for energy recovery as solid wastes (40 CFR 261.2(c)(2)). The classification implements both an explicit directive in RCRA to regulate wastes burned for energy recovery (RCRA sections 3004(q), (r) and (s)), as well as the RCRA statutory definition of solid waste. See also *Horsehead Resource Development Corp.* v. *Browner,* 16 F. 3d 1246 (D.C. Cir. 1994) (upholding the rules implementing RCRA section 3004(q)). We reemphasize that the final CISWI NSPS and EG in no way affect those existing (and long-standing) RCRA provisions or reflect any type of Agency decision about the permissible scope of the RCRA statutory definition of solid waste. Our purpose here is only to adapt that definition to reflect the regulatory purpose of CAA section 129.

Many commenters stated that the definitions of solid waste and CISWI unit in the proposed NSPS and EG were too broad, and, therefore, would inappropriately cover some boilers, process heaters, and possibly other units that recover energy from the burning of fuels. The commenters stated their belief that commercial and industrial combustion units that recover energy were intended to be regulated under section 112 of the CAA, and that only incinerators that burn wastes for destruction alone were intended to be regulated as CISWI units.

The comments pointed to two primary reasons why the proposed NSPS and EG for CISWI units would inadvertently cover some units that recover energy, such as boilers and process heaters. First, many legitimate energy recovery units are physically separated from their associated energy recovery systems. The units would not meet the requirement that heat recovery must be part of a unit's ''integral'' design for it not to be considered a CISWI unit. Second, the universe of materials burned for energy recovery is much broader than those defined as ''fuels.'' For example, several of today's combustion technologies and some new emerging technologies can burn materials for energy recovery having heat values less than the proposed 5,000 British thermal units per pound (Btu/lb) threshold for considering a material a fuel.

As a result, the commenters suggested that the NSPS and EG for CISWI units be changed so that units that recover energy not be considered incinerators. Without such a change, units could be regulated both as CISWI units under section 129 and as boilers, for example, under section 112. Such a potential overlap in regulations could create confusion as well as inconsistent and conflicting regulatory requirements, according to some commenters.

We agree that units physically separated from their associated energy recovery systems may be legitimate energy recovery devices. Therefore, we

have deleted from the final NSPS and EG the requirement for energy recovery to be part of the unit's ''integral'' design for it not to be considered a CISWI unit. Additionally, we have added a definition of energy recovery. Furthermore, we agree that several of today's combustion technologies, including some emerging technologies, may be capable of burning materials with a heat value of less than 5,000 Btu/lb to recover energy. Therefore, we have deleted the requirement from the definition of solid waste in the final NSPS and EG.

As we indicated in the preamble to the November 1999 proposal, the main purpose of the proposed definition of nonhazardous solid waste was to identify which materials when burned by CISWI units would be subject to regulations developed under section 129, and which materials when burned would be subject to regulations to be developed under section 112. Consideration of the above comments led us to conclude that the proposed definitions of ''CISWI unit'' and ''solid waste'' created the potential for overlap with rules we are developing under section 112, such as the boiler MACT.

The primary difference between incinerators and boilers is that incinerators burn materials for the purpose of disposal, whereas boilers burn materials for the purpose of recovering energy. Thus, we believe the concept of energy recovery is the key to distinguishing between CISWI units (which will be regulated under section 129) and boilers (which will be regulated under section 112). Specifically, commercial and industrial units burning materials without energy recovery are disposing of the materials, that is, they are treating such materials as commercial or industrial waste, and they should be regulated as CISWI units under section 129. In contrast, commercial and industrial units burning materials with energy recovery, that is, treating such materials as fuel, should be regulated under section 112.

In order to address the concerns raised by commenters, and to provide a clear distinction between CISWI units and combustion devices that will be covered by regulations promulgated under section 112 of the CAA, we have included in the final NSPS and EG a definition of ''commercial and industrial waste.'' We define commercial and industrial waste as any solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

With the changes, we believe the final NSPS and EG will avoid the possibility of double coverage under section 129 and section 112.

D. Which Elements of the Definition of Solid Waste Have Been Retained and Clarified?

For additional clarity, the exemptions from the CISWI rules for units burning municipal solid waste, hospital/medical/infectious waste, and hazardous wastes under the RCRA have been retained and are now included in the applicability sections (§ 60.2020 of the NSPS; § 60.2555 of the EG). The solid waste definition refers to the exemptions from the CISWI NSPS and EG. In addition, the exemption for units that burn materials for the purpose of recovering their chemical constituents is now included in the applicability sections of the CISWI NSPS and EG. The exemption has also been expanded by increasing the list of units that burn materials for the purpose of recovering their chemical constituents. Owners or operators who believe their unit is not a CISWI unit may petition the Administrator to add their unit to the list.

Finally, one commenter stated that the definition of solid waste in 40 CFR part 261 applies to nonhazardous solid waste. Therefore, the commenter believes that EPA must use that definition and is not free to redefine solid waste for the purpose of section 129.

Section 129 does not define nonhazardous solid waste, but directs EPA to use the meaning of solid waste established by the Administrator pursuant to the SWDA. To develop and implement the hazardous waste regulatory program authorized by the SWDA, the Administrator adopted a definition of hazardous waste pursuant to the SWDA. It is true that 40 CFR part 261 defines solid waste; however, 40 CFR 261.1(b)(1) states explicitly that the definition is only for the purpose of materials that are hazardous wastes.

The Administrator has included in the final NSPS and EG the definition of solid waste from the SWDA and is establishing the definition jointly under the authority of the CAA and the SWDA. The purpose of the definition is solely to identify nonhazardous solid waste for the purpose of the CISWI regulations.

E. Were Significant Issues Raised Regarding EPA's Approach to Setting the Proposed Standards and Guidelines, and Has EPA Made Any Changes?

The significant comments received on EPA's approach to setting the standards and guidelines, and the changes that have been made in response to these comments, are discussed below.

1. What Is EPA's General Approach to Setting the MACT Floors?

One commenter stated that EPA's technology-based approach to determining the MACT floors is unlawful and that the resulting MACT floors do not reasonably reflect the actual performance of the best performing 12 percent of existing units or the expected performance of the best controlled similar unit. Moreover, the commenter stated that the ''worst emission test result for any unit using a particular technology does not reasonably reflect the actual performance of the best performing unit.'' As a result, the commenter concluded that the MACT emission limitations are not as stringent as the CAA requires. Generally, we disagree with the commenter for the following reasons.

Section 129(a)(2) of the CAA specifies that the emission limitations for existing units shall not be less stringent than the average emission limitation achieved by the best performing 12 percent of units in the category, and for new units shall not be less stringent than the emission control that is achieved in practice by the best controlled similar unit. The emission limitation associated with the above criteria for a pollutant is referred to as the ''MACT floor'' for that pollutant. With respect to new units, EPA interprets ''achieved in practice'' to mean achieved under the worst foreseeable circumstances, consistent with *National Lime Ass'n* v. *EPA,* 627 F. 2d 416, 431 n.46 (DC Cir. 1980). Moreover, EPA views the phrase ''best controlled similar source'' as encompassing all units using the same control technology as the unit with the best observed performance, rather than just that unit itself. Consequently, the MACT floor for new units is based on the highest data point from a unit using the ''best'' technology, since such a value is a reasonable estimate of the performance of the ''best controlled similar unit'' under the worst foreseeable circumstances. The approach is reasonable because the most informative way to predict the worst reasonably foreseeable performance of the best controlled unit, with the available data, is to examine the

performance of other units that use the same control technology. In other words, EPA considers all units with the same control technology to be equally well controlled, and each unit with the best control technology is a ''best controlled similar unit'' even if the emissions test results from such units vary considerably.

As discussed at proposal, to determine the MACT floors for the pollutants listed in section 129 of the CAA, we examined our CISWI unit database to identify the various emission control technologies (including the absence of emission control technology) that were in use on CISWI units. We then ranked the technologies on a pollutant-by-pollutant basis in terms of their emission control performance capabilities. For example, wet scrubbers (and fabric filters in the case of particulate emissions) were ranked higher than other technologies because they are capable of greater emissions reductions.

Using the ranking of emission control technologies, we were able to identify for each pollutant the best performing CISWI units. Because comprehensive emission test data are not available for each of the best performing CISWI units, we were unable to identify the specific emission control performance achieved by each unit. As a result, we considered the best performing CISWI units which used the same emission control technology as equally well controlled.

We then examined the best performing 12 percent of CISWI units, as well as the best performing CISWI unit, to identify the emission control technology which represents the MACT floor for each pollutant for existing and new CISWI units. For existing units, this was accomplished by identifying the emission control technology used by the median of the best performing 12 percent of units (*i.e.,* the CISWI unit representing the 94th percentile). (Because technologies cannot be ''averaged'' in the same way that numbers are averaged, the average performance of the emission control technology used by the best performing 12 percent of units is best represented by the technology in the middle of the range of the best performing 12 percent of units, *i.e.,* the median.) Similarly, for new units, this was accomplished by identifying the emission control technology used by the best performing CISWI unit for each pollutant.

Using this approach, the emission control technology identified as representing the MACT floor for each pollutant was determined to be the same for both new and existing CISWI units. As discussed at proposal, the use of a wet scrubbing system, or other equivalent emission control technology (such as use of a fabric filter system for particulate matter control), is the emission control technology which represents the MACT floor for both existing and new CISWI units. The MACT floor can be identified, therefore, by determining the emission limitations which are achieved by wet scrubbing systems on CISWI units.

As a result, having identified the emission control technology which represents the MACT floor, it was then necessary to determine the emission limitations ''achieved'' by this emission control technology for each pollutant. This determination is not, as this one commenter appears to suggest, simply a matter of looking at the test results from a single CISWI unit or generating a numerical average of the test data from all CISWI units employing the MACT technology. Such an approach fails to consider the inherent and unavoidable variability associated with the incinerators in the CISWI category. Consequently, such an approach does not accurately identify the actual emissions performance of existing units that use the MACT technology, or the level of performance which is achievable by a CISWI unit operating with this emission control technology under the worst reasonably foreseeable circumstances.

Examining emission data from a number of CISWI units using the same emission control technology gives us the best picture of the actual performance and the performance capability of this technology. It enables us to take into consideration the inherent variability associated with the incinerators in the CISWI category, and it allows us to identify the emission limitations achieved in practice under the worst reasonably foreseeable circumstances.

There are between 4 and 14 emission tests available for CISWI units controlled by wet scrubbing systems for each pollutant (with the exception of dioxins/furans, mercury, and hydrogen chloride, where fewer tests are available). As expected, there is considerable variation among the emission values from the emission tests for each pollutant as a result of the unavoidable process and operational variability within CISWI units (*e.g.,* variations in waste combusted, incinerator design and operation, etc.). Because this variability occurs among all CISWI units and because there is no clear explanation for this variability, it is reasonable to expect that there will always be a variation in emissions among CISWI units controlled by wet scrubbing systems.

Another way to view this emission variability among CISWI units is to consider each emission test as a ''snapshot'' of actual performance taken at one moment in time. Taken together, the snapshots provide a picture of the unavoidable variation in emissions expected to occur and recur over time at every similarly controlled CISWI unit. Absent additional information, there is no reason to believe that any observed emission value (*i.e.,* the emission level measured during a test) from a CISWI unit controlled with wet scrubbing could be prevented from occurring at any other CISWI unit also controlled by wet scrubbing.

As a result, the most reasonable methodology for determining the performance of wet scrubbing systems on CISWI units (*i.e.,* the MACT floor) is to examine the emission values for all similarly controlled CISWI units (excluding any emission values from tests that did not represent a proper functioning CISWI unit or wet scrubbing system). Thus, for a given pollutant, the most reasonable estimate of the MACT floor emission limitation ''achieved'' by the best performing 12 percent of CISWI units (or the best performing CISWI unit) is represented by the highest emission value observed from a CISWI unit using wet scrubbing.

We adopted this approach to ensure that the MACT floor emission limitations represent, as accurately as possible, what the best performing 12 percent of existing units is actually achieving, and what the best performing CISWI unit can be reasonably expected to achieve. Despite the commenters objections, we continue to believe that this is the most appropriate methodology for evaluating the performance of units in the CISWI category, given the inherent and unavoidable variability in emissions among these units and the limited emissions data available. Therefore, we continue using this approach to determine the MACT floors.

2. Will EPA Allow Compliance on a Percent Reduction Basis?

Several commenters recommended that we include percent reduction requirements for some pollutants, as alternatives to the emission limitations, to accommodate the variability in emissions among CISWI units.

As outlined above, we believe the emission limitations in the final standards and guidelines reasonably incorporate the variability associated with CISWI units using wet scrubbing systems (which is the basis for MACT as well as the MACT floor). Thus, we do not believe that alternative percentage

reduction requirements are necessary or would serve to provide emission limitation alternatives more representative of the actual performance of CISWI units. For these reasons, EPA is not including percent reduction requirements in the final rule.

3. How did EPA Establish Emission Limitations for Dioxins/Furans, Mercury, and Hydrogen Chloride?

Some commenters stated that the emission test data upon which several of the MACT emission limitations were based at proposal were extremely limited and, as a result, the limitations are not necessarily achievable in practice because they may not be representative of actual CISWI unit performance. Several of the commenters suggested that we consider the use of emission data from rulemakings which establish standards for sources that utilize similar emission control equipment under conditions comparable to units in the CISWI category.

As discussed above, a number of emission tests from CISWI units were available to determine the MACT emission limitations for most pollutants. However, for three pollutants, dioxins/furans, mercury, and hydrogen chloride, there were only one or two emission tests from CISWI units. As we noted at proposal, such limited data may not provide a sufficient basis to establish MACT emission limitations for the pollutants in this category (particularly given the degree of variability among CISWI units). Consequently, we decided not to rely only on the emission tests to determine the MACT emission limitations for the three pollutants.

While the provisions of section 129 identify a general minimum stringency for MACT emission limitations, there is nothing about how MACT emission limitations are to be calculated, that is, the provisions do not identify a specific procedure or type of information that EPA must use. Thus, we generally have wide latitude in determining the extent of data gathering necessary to establish emission limitations. We believe it is appropriate to use any data available (such as emission test results, operating permit limitations, engineering calculations, control equipment specifications, or other reliable information) that provide information useful for generating a reasonable estimate of the performance of units within a category.

Accordingly, where the emission data from units within a category are incomplete, we may augment our analysis with supplementary information to determine MACT emission limitations. Provided that the augmented emission data we use to generate the MACT emission limitations provide a good proxy for the best performing units in the category, it is irrelevant that the actual test data available from units in the category are incomplete. Similarly, if our analysis provides a reasonable representation of the actual performance of units in the category, we may consider relevant supplemental information from any available source. Courts have ruled that EPA need not invest resources to conduct the perfect study, provided that our approach bears a rational relationship to the reality it purports to represent (See *Sierra Club* v. *EPA,* 167 F. 3d 658, 663 (D.C. Cir. 1999)).

Thus, because emission data for dioxins/furans, mercury, and hydrogen chloride emissions from CISWI units controlled by wet scrubbing systems are extremely limited, we have augmented the data with emission data from similarly controlled units outside of the CISWI category. This approach allows us to better characterize the actual dioxins/furans, mercury, and hydrogen chloride emission limitations achieved by units in the CISWI category by providing additional information regarding the performance of wet scrubbers under conditions similar to those experienced by CISWI units.

Hazardous waste incinerator (HWI) units without waste heat recovery that are controlled with wet scrubbing systems serve as a valuable source of supplementary data for emissions of dioxins/furans. (Units in the CISWI category that were used to establish the emission limitations did not incorporate waste heat recovery, and it is not the intent of this rulemaking to cover such units.) These types of HWI units are generally similar to CISWI units that are controlled by wet scrubbing systems. Thus, it is reasonable to conclude that the emissions performance of HWI units without waste heat boilers and controlled with wet scrubbing systems is comparable to that of CISWI units controlled with wet scrubbing systems.

As a result, we combined dioxins/furans emission data from HWI units without waste heat recovery boilers and controlled with wet scrubbing systems with the dioxins/furans emission data for CISWI units controlled with wet scrubbing systems. We then determined the MACT emission limitation for dioxins/furans as discussed above. The resulting emission limitation included in the final NSPS and EG is 0.41 nanograms per dry standard cubic meter (ng/dscm) toxic eqivalency (TEQ) (Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Notice of Data Availability, August 28, 2000, 65 FR 52058).

Unfortunately, with respect to the other two pollutants for which CISWI test data are extremely limited (mercury and hydrogen chloride), it is inappropriate to use emission data from HWI units to supplement the CISWI unit data. The mercury and hydrogen chloride emission data available from HWI units are based on the use of a different emission control technology than wet scrubbing systems, and this prevents us from combining mercury and hydrogen chloride emission data from HWI units with that from CISWI units. Since appropriate HWI data were not available, we identified another source of data to augment mercury and hydrogen chloride emission data from CISWI units controlled by wet scrubbing systems.

Hospital, medical, and infectious waste incinerator (HMIWI) units controlled with wet scrubbing systems serve as a valuable source of supplementary data for mercury and hydrogen chloride. Those HMIWI units are also generally similar to CISWI units that are controlled by wet scrubbing systems. Thus, it is reasonable to conclude that the mercury and hydrogen chloride emission performance achieved by HMIWI units controlled with wet scrubbing systems is comparable to that of CISWI units controlled with wet scrubbing systems.

As a result, we combined mercury and hydrogen chloride emission data from HMIWI units controlled with wet scrubbing systems with the mercury and hydrogen chloride emission data from CISWI units controlled with wet scrubbing systems. We then determined the emission limitations for mercury and hydrogen chloride as discussed above. The resulting emission limitations included in the final NSPS and EG are 0.47 mg/dscm for mercury and 62 parts per million by volume, dry basis (ppmdv) for hydrogen chloride (Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Notice of Data Availability, August 28, 2000, 65 FR 52058).

This process for augmenting the CISWI data with appropriate HWI or HMIWI data results in dioxins/furans, mercury, and hydrogen chloride emission limitations which more accurately represent the levels of such emissions actually achieved by CISWI units employing the MACT technology

(wet scrubbing systems). This approach to developing the emission limitations provides a reasonable proxy for the actual performance of the best performing CISWI units and is the most appropriate method, under the circumstances, for EPA to identify the emission limitations that are achieved by such units.

(**Note:** While we believe that emission data for dioxins/furans, mercury, and hydrogen chloride from the HWI and HMIWI categories are useful for augmenting the CISWI data where insufficient CISWI emission data are available, we do not believe that HWI, HMIWI, and CISWI units should generally be characterized as similar units for the purpose of determining MACT emission limitations for all CISWI pollutants.)

4. How did EPA Establish Emission Limitations for Lead and Cadmium?

In reviewing the CISWI database to address comments following proposal, we found that, despite our earlier efforts to rigorously screen the database, the unit responsible for the highest recorded emissions of lead and cadmium (which drove the MACT emission limitations for the pollutants) was not a CISWI unit. As a result, this unit was removed from the CISWI database, resulting in a change in the lead and cadmium MACT emission limitations. Following the methodology outlined above, the final MACT emission limitations included in the final NSPS and EG are 0.04 mg/dscm for lead and 0.004 mg/dscm for cadmium.

IV. Impacts of the Final NSPS and EG

The air impacts of the NSPS and EG were reestimated as a result of revising the emission limitations for new and existing CISWI units. Because the estimates of water, solid waste, energy, cost, and economic impacts depend solely on the technology upon which the MACT limits are based, and because the technology remains the same as proposed, there were no changes in other impacts.

A. What Are the Air Impacts for New Units?

To illustrate the potential emissions reductions achieved by the NSPS with respect to new CISWI units, we modeled hypothetical CISWI units with capacities of 100 and 1,500 pounds per hour (lb/hr) (45 and 680 kilograms per hour (kg/hr)) and estimated the impacts associated with application of wet scrubbers. The resulting impact estimates (i.e., the difference in emissions between a CISWI unit with a wet scrubber and an uncontrolled CISWI unit) are presented in Table 3 of this preamble.

TABLE 3.—EMISSIONS REDUCTIONS ON A MODEL UNIT BASIS

Pollutant	Emissions Reduction, tons/yr (Mg/yr)			
	100 lb/hr		1500 lb/hr	
	(45 kg/hr)	Capacity	(680 kg/hr)	Capacity
Cadmium	1.5×10^{-5}	(1.4×10^{-5})	3.1×10^{-4}	(2.8×10^{-4})
Dioxins/furans (TEQ)	2.0×10^{-9}	(1.8×10^{-9})	4.2×10^{-8}	(3.9×10^{-8})
Hydrogen chloride	1.5	(1.4)	32.3	(29.3)
Lead	1.9×10^{-4}	(1.7×10^{-4})	4.0×10^{-3}	(3.6×10^{-3})
Mercury	6.5×10^{-4}	(5.9×10^{-4})	0.01	(0.01)
Particulate matter	0.50	(0.45)	10.8	(9.8)
Sulfur dioxide	0.38	(0.35)	7.9	(7.2)

B. What are the air impacts for existing units?

Table 4 of this preamble summarizes the national air emission impacts of the EG. The impacts are expressed in two ways. First, the impacts are expressed as annual nationwide mass emissions reductions; and second, as percent reductions compared to current estimated national emissions for existing CISWI units.

TABLE 4.—EMISSIONS REDUCTIONS FOR EXISTING CISWI UNITS

Pollutant	National Emissions Reduction		Percent [1]
	Tons/yr	(Mg/yr)	
Cadmium	0.01	(0.01)	56
Dioxins/furans (TEQ)	1.8×10^{-6}	(1.6×10^{-6})	65
Hydrogen chloride	1315	(1193)	89
Lead	0.15	(0.14)	62
Mercury	0.56	(0.51)	34
Particulate matter	409	(371)	71
Sulfur dioxide	324	(294)	72

[1] Percent reduction from current (baseline) emissions.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified us that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. As a result, we submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

Section 129 of the CAA requires EPA to adopt NSPS and EG for CISWI units. These NSPS and EG must be based on MACT, which is defined as the maximum degree of reduction in emissions of air pollutants, taking into consideration the cost of achieving the reductions and any nonair quality health and environmental impacts and energy requirements, that the Administrator determines is achievable. The MACT for the NSPS must be no less stringent than the emission reduction achieved by the best controlled source, and MACT for the EG must be no less stringent that the emission reduction achieved by the average of the best controlled 12 percent of sources. These minimum requirements are referred to as the floor, and more stringent requirements are referred to as beyond-the-floor.

To determine MACT, we examined two alternatives. The first reflected the floor (i.e., wet scrubbing); the second reflected a beyond-the-floor option (i.e., wet scrubbing followed by carbon injection and a fabric filter). Taking into consideration the cost of achieving the emission reductions and any nonair quality health and environmental impacts and energy requirements, the Administrator determined that the first alternative is MACT.

The total national annualized cost impact of this regulatory action is estimated as $11.6 million per year, assuming those CISWI units currently operating without wet scrubbers would install wet scrubbers in order to comply with the emission limits in the NSPS and EG. As a result, emissions (consisting primarily of hydrogen chloride, particulate matter, and sulfur dioxide) would be reduced by 2048 tons per year.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us 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'' are 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.''

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the regulation. We also may not issue a regulation that has federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

If we comply by consulting, Executive Order 13132 requires us to provide to the OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement. The federalism summary impact statement must include a description of the extent of our prior consultation with State and local officials, a summary of the nature of their concerns and our position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when we transmit a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, we must include a certification from the agency's federalism official stating that we have met the requirements of Executive Order 13132 in a meaningful and timely manner.

This rule 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, as specified in Executive Order 13132. This rule establishes national performance standards and other requirements for certain solid waste incineration units. We are required by section 129 of the CAA, 42 U.S.C. 7429, to establish the standards and guidelines embodied in this rule. This regulation primarily affects private industry and does not impose significant economic costs on State or local governments. The standards established by this rule apply to new facilities that operate commercial or industrial incineration units (and the owners or operators of such facilities) and require States to submit State plans that include standards applicable to existing incineration units that are at least as protective as the standards specified in the rule. If a State does not submit an approvable plan, any covered incineration units in that State will become subject to a Federal plan to implement this rule. The regulation does not include an express provision preempting State or local regulations. However, once a State or Federal plan is in effect, covered facilities would be subject to the standards established by this rule, regardless of any less protective State or local regulations that contain emission limitations for the pollutants addressed by this rule. To the extent that this might preempt State or local regulations, it does not significantly affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule; and we have complied with the requirements of section 4(e), to the extent that they may be applicable to the regulations, by providing notice to potentially affected State and local officials through publication of this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, we consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of this rule. This consultation took place during the ICCR FACA committee meetings, where members representing State and local governments participated in developing recommendations for our combustion-related rulemakings, including this rule. Additionally, we sponsored the Small Communities Outreach Project, which involved meetings with elected officials and other government representative to provide them with information about this rule and to solicit their comments. The concerns raised by representatives of State and local governments were considered during the development of this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance

costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. We know of no CISWI units owned by Indian tribal governments. However, if there are any, the effect of these rules on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that we determine: (1) Is ''economically significant'' as defined under Executive Order 12866, (2) is based on health or safety risks, and (3) for which we have reason to believe may disproportionately affect children. If the regulatory action meets these criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, this final rule is not economically significant as defined by Executive Order 12866.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we 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 1 year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, thereby enabling officials of affected small governments to have meaningful and timely input in the development of the regulatory proposal with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. Additionally, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires Federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) a small business who has less than 500 employees, (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The SBA guidelines define a small business based on number of employees or annual revenues, and the size standards vary from industry to industry. Generally, businesses covered by the Standard Industry Codes (SIC) affected by this final rule are considered small if they have less than 500 employees or less than $5 million in annual sales.

The regulation will affect 112 existing facilities owned by 90 parent companies. Based on Small Business Administration guidelines, 26 of the companies are small businesses. The lumber and wood products industry includes the largest number (seven) of the small businesses, followed by fabricated metals, veterinary hospitals (burning less than 90 percent pathological waste), and wholesale trade sectors with three companies each. The remaining small businesses are distributed across six different industries. If add-on controls are employed to meet the standards, a total of 15 small businesses have cost-to-sales ratios greater than 1 percent; and of the 15 small businesses, 9 have cost-to-sales ratios that exceed 3 percent (ranging from 3.4 to 27.7 percent with a median of 4 percent). The nine entities with cost-to-sales ratios greater than three percent incinerate relatively small amounts of material. Therefore, it is reasonable to assume the businesses will seek an alternative method of disposal rather than bearing the cost of installing add-on equipment. Since the median amount of material incinerated by the nine companies is only about 50 tons per year, the alternative net cost for sending waste to a landfill for many of the facilities is expected to be less than the control costs, based on an estimated total alternative disposal cost (*i.e.,* transportation and storage costs plus tipping fee) of about $58 per ton. The cost of using an off-site landfill for the median amount of material is estimated to be about $2,900 per year. Thus, it

may be economically feasible for some of these small entities to switch to an alternative disposal method, such as off-site landfills, and lower their net compliance costs.

Based on the low number of affected small entities in each individual market, the alternative method of waste disposal available, and the relatively low control cost, this analysis suggests that the regulation should not generate a significant small business impact on a substantial number of small entities in the commercial and industrial sectors. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule wil not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) documents have been prepared (ICR No. 1926.02 for subpart CCCC and 1927.02 for subpart DDDD), and copies may be obtained from Sandy Farmer by mail at U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. Copies may also be downloaded from the internet at *http://www.epa.gov/icr*.

The NSPS and EG contain monitoring, reporting, and recordkeeping requirements. The information will be used to identify new, modified, or reconstructed incineration units subject to the NSPS and to ensure that new incineration units undergo a siting analysis and that the analysis is reviewed by the public. Records and reports are necessary to enable us to identify waste incineration units that may not be in compliance with the requirements. Based on reported information, we would decide which units and what records or processes should be inspected.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the NSPS for industry and the implementing agency is outlined below.

Affected entity	Total hours	Labor costs	Capital costs	O&M costs	Total costs
Industry	11,209	$685,269	$13,440	$1,266	$699,975
Implementing agency	794	$32,608	0	0	$32,608

We expect the NSPS to affect 18 CISWI units over the first 3 years, based on the assumption that six existing units will be replaced by six new units each year. We estimate the total annualized capital and startup costs for these new units to be $13,440. Continuous parameter monitoring equipment would be required for new units. When a wet scrubber is used to meet the emission limitation, monitoring equipment must be installed to monitor maximum charge rate, minimum pressure drop across the wet scrubber (or minimum amperage), minimum scrubber liquor flow rate, and minimum scrubber liquor pH. The estimated total operation, maintenance, and purchase costs for the monitoring equipment averaged over the first 3 years are expected to be $1,266. The implementing agency would not incur any capital or startup costs.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Total hours	Labor costs	Capital costs	O&M costs	Total costs
Industry	9,145	$407,067	$0	$0	$407,067
Implementing agency	1,817	$48,386	0	0	$48,386

We expect the EG to affect a maximum of 116 units over the first 3 years. We assume that six existing units will be replaced by six new units each year. There are no capital, startup, or operation and maintenance costs for existing units during the first 3 years. The implementing agency would not incur any capital or startup costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards for use in process and emissions monitoring.

The search for emissions monitoring procedures identified six voluntary consensus standards that appeared to have possible use in lieu of our standard reference methods. However, after reviewing available standards, we determined that these candidate consensus standards would not be practical due to the potential lack of equivalency, documentation, validation data and other important technical and policy considerations. These six candidate consensus standards are under development and we plan to follow, review and consider adopting them at a later date.

I. Congressional Review Act

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. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 30, 2001.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal.

Dated: November 15, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

2. Part 60 is amended by adding subpart CCCC to read as follows:

Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.

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Introduction

§ 60.2000 What does this subpart do?

This subpart establishes new source performance standards for commercial and industrial solid waste incineration (CISWI) units.

§ 60.2005 When does this subpart become effective?

This subpart takes effect on June 1, 2001. Some of the requirements in this subpart apply to planning the CISWI unit and must be completed even before construction is initiated on the CISWI unit (i.e., the preconstruction requirements in §§ 60.2045 and 60.2050). Other requirements such as the emission limitations and operating limits apply after the CISWI unit begins operation.

Applicability

§ 60.2010 Does this subpart apply to my incineration unit?

Yes, if your incineration unit meets all the requirements specified in paragraphs (a) through (c) of this section.

(a) Your incineration unit is a new incineration unit as defined in § 60.2015.

(b) Your incineration unit is a CISWI unit as defined in § 60.2265.

(c) Your incineration unit is not exempt under § 60.2020.

§ 60.2015 What is a new incineration unit?

(a) A new incineration unit is an incineration unit that meets either of the two criteria specified in paragraph (a)(1) or (2) of this section.

(1) Commenced construction after November 30, 1999.

(2) Commenced reconstruction or modification on or after June 1, 2001.

(b) This subpart does not affect your incineration unit if you make physical or operational changes to your incineration unit primarily to comply with the emission guidelines in subpart DDDD of this part (Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units). Such changes do not qualify as reconstruction or modification under this subpart.

§ 60.2020 What combustion units are exempt from this subpart?

This subpart exempts fifteen types of units described in paragraphs (a) through (o) of this section.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 60.2265 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in § 60.2265 are not subject to this subpart if you meet the two requirements specified in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(c) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in paragraph (c)(1) or (2) of this section.

(1) Are regulated under subpart Ea of this part (Standards of Performance for Municipal Waste Combustors); subpart Eb of this part (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994); subpart Cb of this part (Emission Guidelines and Compliance Time for Large Municipal Combustors that are Constructed on or Before September 20, 1994); AAAA of this part (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units); or subpart BBBB of this part (Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units).

(2) Burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in subpart Ea, subpart Eb, subpart AAAA, and subpart BBBB of this part, and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) Notify the Administrator that the unit meets these criteria.

(ii) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(d) *Medical waste incineration units.* Incineration units regulated under subpart Ec of this part (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) or subpart Ce of this part (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).

(e) *Small power production facilities.* Units that meet the three requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit meets all of these criteria.

(f) *Cogeneration facilities.* Units that meet the three requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit meets all of these criteria.

(g) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in paragraph (g)(1) or (2) of this section.

(1) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(2) Units regulated under subpart EEE of 40 CFR part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(h) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(i) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in paragraphs (i)(1) through (3) of this section are only required to meet the requirements under ''Air Curtain Incinerators'' (§§ 60.2245 through 60.2260).

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(j) *Cyclonic barrel burners.* (See § 60.2265)

(k) *Rack, part, and drum reclamation units.* (See § 60.2265)

(l) *Cement kilns.* Kilns regulated under subpart LLL of part 63 of this chapter (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry).

(m) *Sewage sludge incinerators.* Incineration units regulated under subpart O of this part (Standards of Performance for Sewage Treatment Plants).

(n) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in paragraphs (n)(1) through (7) of this section are considered chemical recovery units.

(1) Units burning only pulping liquors (*i.e.,* black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

(o) *Laboratory Analysis Units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

§ 60.2025 What if my chemical recovery unit is not listed in § 60.2020(n)?

(a) If your chemical recovery unit is not listed in § 60.2020(n), you can petition the Administrator to add your unit to the list. The petition must contain the six items in paragraphs (a)(1) through (6) of this section.

(1) A description of the source of the materials being burned.

(2) A description of the composition of the materials being burned, highlighting the chemical constituents in these materials that are recovered.

(3) A description (including a process flow diagram) of the process in which the materials are burned, highlighting the type, design, and operation of the equipment used in this process.

(4) A description (including a process flow diagram) of the chemical constituent recovery process, highlighting the type, design, and operation of the equipment used in this process.

(5) A description of the commercial markets for the recovered chemical constituents and their use.

(6) The composition of the recovered chemical constituents and the composition of these chemical constituents as they are bought and sold in commercial markets.

(b) Until the Administrator approves your petition, the incineration unit is covered by this subpart.

(c) If a petition is approved, the Administrator will amend § 60.2020(n) to add the unit to the list of chemical recovery units.

§ 60.2030 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (7) of this section.

(1) Approval of alternatives to the emission limitations in Table 1 of this subpart and operating limits established under § 60.2110.

(2) Approval of major alternatives to test methods.

(3) Approval of major alternatives to monitoring.

(4) Approval of major alternatives to recordkeeping and reporting.

(5) The requirements in § 60.2025.

(6) The requirements in § 60.2115.

(7) The requirements in § 60.2100(b)(2).

§ 60.2035 How are these new source performance standards structured?

These new source performance standards contain the eleven major components listed in paragraphs (a) through (k) of this section.

(a) Preconstruction siting analysis.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limitations and operating limits.

(e) Performance testing.

(f) Initial compliance requirements.

(g) Continuous compliance requirements.

(h) Monitoring.

(i) Recordkeeping and reporting.

(j) Definitions.

(k) Tables.

§ 60.2040 Do all eleven components of these new source performance standards apply at the same time?

No. You must meet the preconstruction siting analysis and waste management plan requirements before you commence construction of the CISWI unit. The operator training and qualification, emission limitations, operating limits, performance testing and compliance, monitoring, and most recordkeeping and reporting requirements are met after the CISWI unit begins operation.

Preconstruction Siting Analysis

§ 60.2045 Who must prepare a siting analysis?

(a) You must prepare a siting analysis if you plan to commence construction of a CISWI unit after December 1, 2000.

(b) You must prepare a siting analysis if you are required to submit an initial application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, as applicable, for the reconstruction or modification of your CISWI unit.

§ 60.2050 What is a siting analysis?

(a) The siting analysis must consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment. In considering such alternatives, the analysis may consider costs, energy impacts, nonair environmental impacts, or any other factors related to the practicability of the alternatives.

(b) Analyses of your CISWI unit's impacts that are prepared to comply with State, local, or other Federal regulatory requirements may be used to

satisfy the requirements of this section, provided they include the consideration of air pollution control alternatives specified in paragraph (a) of this section.

(c) You must complete and submit the siting requirements of this section as required under § 60.2190(c) prior to commencing construction.

Waste Management Plan

§ 60.2055 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 60.2060 When must I submit my waste management plan?

You must submit a waste management plan prior to commencing construction.

§ 60.2065 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures and implement those measures the source considers practical and feasible, considering the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 60.2070 What are the operator training and qualification requirements?

(a) No CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, you must follow the procedures in § 60.2100.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the eleven subjects listed in paragraphs (c)(1)(i) through (xi) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to correct malfunctions or conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

§ 60.2075 When must the operator training course be completed?

The operator training course must be completed by the later of the three dates specified in paragraphs (a) through (c) of this section.

(a) Six months after your CISWI unit startup.

(b) December 3, 2001.

(c) The date before an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

§ 60.2080 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.2070(b).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.2070(c)(2).

§ 60.2085 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 60.2090 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.2085.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.2080(a).

§ 60.2095 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI unit operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 60.2055 through 60.2065.

(9) Procedures for handling ash.

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted within

6 months after the effective date of this subpart or prior to an employee's assumption of responsibilities for operation of the CISWI unit, whichever date is later.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted not later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of CISWI unit operators who have completed review of the information in § 60.2095(a) as required by § 60.2095(b), including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2070, met the criteria for qualification under § 60.2080, and maintained or renewed their qualification under § 60.2085 or § 60.2090. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 60.2100 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in § 60.2095(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 60.2210.

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 60.2070(a).

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

Emission Limitations and Operating Limits

§ 60.2105 What emission limitations must I meet and by when?

You must meet the emission limitations specified in Table 1 of this subpart 60 days after your CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

§ 60.2110 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in Table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii), as appropriate.

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as 90 percent of the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90 percent of the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the HCl emission limitation.

(b) You must meet the operating limits established during the initial performance test 60 days after your CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(c) If you use a fabric filter to comply with the emission limitations, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

§ 60.2115 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, or limit emissions in some other manner, to comply with the emission limitations under § 60.2105, you must petition the Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as additional operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 60.2120 What happens during periods of startup, shutdown, and malfunction?

(a) The emission limitations and operating limits apply at all times except during CISWI unit startups, shutdowns, or malfunctions.

(b) Each malfunction must last no longer than 3 hours.

Performance Testing

§ 60.2125 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 60.2175(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of appendix A of this part must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of appendix A of this part must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of appendix A of this part must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{adj} = C_{meas} (20.9–7)/(20.9-\%O_2) \quad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

(20.9–7) = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (3) of this section.

(1) Measure the concentration of each dioxin/furan tetra-through octachlorinated-congener emitted using EPA Method 23.

(2) For each dioxin/furan (tetra-through octachlorinated) congener measured in accordance with paragraph (g)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 of this subpart.

(3) Sum the products calculated in accordance with paragraph (g)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

§ 60.2130 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

Initial Compliance Requirements

§ 60.2135 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under § 60.8, to determine compliance with the emission limitations in Table 1 of this subpart and to establish operating limits using the procedure in § 60.2110 or § 60.2115. The initial performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 60.2125.

§ 60.2140 By what date must I conduct the initial performance test?

The initial performance test must be conducted within 60 days after your CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

Continuous Compliance Requirements

§ 60.2145 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each CISWI unit as required under § 60.8 to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 60.2125.

(b) You must continuously monitor the operating parameters specified in § 60.2110 or established under § 60.2115. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour rolling average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 60.2115. Operating limits do not apply during performance tests.

(c) You must only burn the same types of waste used to establish operating limits during the performance test.

§ 60.2150 By what date must I conduct the annual performance test?

You must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 60.2155 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all performance tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the 3rd year and no more than 36 months following the previous performance test.

(b) If your CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, you may choose to conduct performance tests for these pollutants every 3rd year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, you must conduct annual performance tests for that pollutant until all performance tests over a 3-year period show compliance.

§ 60.2160 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

Monitoring

§ 60.2165 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 60.2105, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 2 of this subpart at all times except as specified in § 60.2170(a).

(b) If you use a fabric filter to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using something other than a wet scrubber to comply with the emission limitations under § 60.2105, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 60.2115.

§ 60.2170 Is there a minimum amount of monitoring data I must obtain?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the CISWI unit is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Recordkeeping and Reporting

§ 60.2175 What records must I keep?

You must maintain the fourteen items (as applicable) as specified in paragraphs (a) through (n) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (6) of this section:

(1) The CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 60.2115, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 60.2110(c).

(c) Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in Table 2 of this subpart or a deviation from other operating limits established under § 60.2115 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) All documentation produced as a result of the siting requirements of §§ 60.2045 and 60.2050.

(h) Records showing the names of CISWI unit operators who have completed review of the information in § 60.2095(a) as required by § 60.2095(b), including the date of the initial review and all subsequent annual reviews.

(i) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2070, met the criteria for qualification under § 60.2080, and maintained or renewed their qualification under § 60.2085 or § 60.2090. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(j) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(k) Records of calibration of any monitoring devices as required under § 60.2165.

(l) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(m) The information listed in § 60.2095(a).

(n) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

§ 60.2180 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 60.2185 What reports must I submit?

See Table 4 of this subpart for a summary of the reporting requirements.

§ 60.2190 What must I submit prior to commencing construction?

You must submit a notification prior to commencing construction that includes the five items listed in paragraphs (a) through (e) of this section.

(a) A statement of intent to construct.

(b) The anticipated date of commencement of construction.

(c) All documentation produced as a result of the siting requirements of § 60.2050.

(d) The waste management plan as specified in §§ 60.2055 through 60.2065.

(e) Anticipated date of initial startup.

§ 60.2195 What information must I submit prior to initial startup?

You must submit the information specified in paragraphs (a) through (e) of this section prior to initial startup.

(a) The type(s) of waste to be burned.

(b) The maximum design waste burning capacity.

(c) The anticipated maximum charge rate.

(d) If applicable, the petition for site-specific operating limits under § 60.2115.

(e) The anticipated date of initial startup.

§ 60.2200 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 60.2135, as applicable.

(b) The values for the site-specific operating limits established in § 60.2110 or § 60.2115.

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 60.2165(b).

§ 60.2205 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 60.2200. You must submit subsequent reports no more than 12 months following the previous report. (If the unit is subject to permitting requirements under title V of the Clean Air Act, you may be required by the permit to submit these reports more frequently.)

§ 60.2210 What information must I include in my annual report?

The annual report required under § 60.2205 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 60.2215, 60.2220, and 60.2225.

(a) Company name and address.

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 60.2110 or § 60.2115.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 60.2175(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 60.2155(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 60.2155(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

§ 60.2215 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month reporting period, or if a performance test was conducted that deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 60.2220 What must I include in the deviation report?

In each report required under § 60.2215, for any pollutant or parameter that deviated from the emission limitations or operating limits specified in this subpart, include the six items described in paragraphs (a) through (f) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Durations and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitor downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

§ 60.2225 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the Administrator to continue operation of the CISWI unit.

(b) If your unit was shut down by the Administrator, under the provisions of § 60.2100(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

§ 60.2230 Are there any other notifications or reports that I must submit?

Yes. You must submit notifications as provided by § 60.7.

§ 60.2235 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 60.2240 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

Title V Operating Permits

§ 60.2242 Am I required to apply for and obtain a title V operating permit for my unit?

Yes. Each CISWI unit must operate pursuant to a permit issued under section 129(e) and title V of the Clean Air Act by the later of the two dates in paragraphs (a) and (b) of this section.

(a) Thirty-six months after December 1, 2000.

(b) The effective date of the title V permit program to which your unit is subject. If your unit is subject to title V as a result of some triggering requirement(s) other than this subpart (for example, being a major source), then your unit may be required to apply for and obtain a title V permit prior to the deadlines noted above. If more than one requirement triggers the requirement to apply for a title V permit, the 12-month timeframe for filing a title V application is triggered by the requirement which first causes the source to be subject to title V.

Air Curtain Incinerators

§ 60.2245 What is an air curtain incinerator?

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (3) of this section are only required to meet the requirements under ''Air Curtain Incinerators'' (§§ 60.2245 through 60.2260).

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 60.2250 What are the emission limitations for air curtain incinerators?

(a) Within 60 days after your air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup, you must meet the two limitations specified in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 60.2255 How must I monitor opacity for air curtain incinerators?

(a) Use Method 9 of appendix A of this part to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.2260 What are the recordkeeping and reporting requirements for air curtain incinerators?

(a) Prior to commencing construction on your air curtain incinerator, submit the three items described in paragraphs (a)(1) through (3) of this section.

(1) Notification of your intent to construct the air curtain incinerators.

(2) Your planned initial startup date.

(3) Types of materials you plan to burn in your air curtain incinerator.

(b) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(c) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(d) You must submit the results (each 6-minute average) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date.

(f) Keep a copy of the initial and annual reports onsite for a period of 5 years.

Definitions

§ 60.2265 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and subpart A (General Provisions) of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (e.g., almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and

floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Commercial and industrial waste means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

Contained gaseous material means gases that are in a container when that container is combusted.

Cyclonic barrel burner means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Discard means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

Drum reclamation unit means a unit that burns residues out of drums (e.g., 55 gallon drums) so that the drums can be reused.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Modification or *modified CISWI unit* means a CISWI unit you have changed later than June 1, 2001 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Part reclamation unit means a unit that burns coatings off parts (e.g., tools, equipment) so that the parts can be reconditioned and reused.

Particulate matter means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of appendix A of this part.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Rack reclamation unit means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

Reconstruction means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins on or after June 1, 2001.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit

used to calculate these costs, see the definition of CISWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014). For purposes of this subpart and 40 CFR part 60, subpart DDDD, only, solid waste does not include the waste burned in the fifteen types of units described in § 60.2020.

Standard conditions, when referring to units of measure, means a temperature of 68°F (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the unit.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

TABLE 1 TO SUBPART CCCC—EMISSION LIMITATIONS

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Dioxins/furans (toxic equivalency basis).	0.41 nanograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 23 of Appendix A of this part).
Hydrogen chloride	62 parts per million by dry volume	3-run average (1 hour volume minimum sample time per run).	Performance test (Method 26A of appendix A of this part).
Lead	0.04 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part).
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part).
Opacity	10 percent	6-minute averages	Performance test (Method 9 of appendix A of this part).
Oxides of nitrogen	388 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 7, 7A, 7C, 7D, or 7E of appendix A of this part)
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 5 or 29 of appendix A of this part).
Sulfur dioxide	20 parts per million by dry volume	3-run average (1 hour volume minimum sample time per run).	Performance test (Method 6 or 6c of appendix A of this part).

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 2 TO SUBPART CCCC—OPERATING LIMITS FOR WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitoring using these minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate	Continuous	Every hour	Daily (batch units) 3-hour rolling (continuous and intermittent units) [a]
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes	3-hour rolling [a]
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling [a]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling [a]

[a] Calculated each hour as the average of the previous 3 operating hours.

TABLE 3 TO SUBPART CCCC—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

TABLE 4 TO SUBPART CCCC—SUMMARY OF REPORTING REQUIREMENTS [a]

Report	Due date	Contents	Reference
Preconstruction report	Prior to commencing construction	• Statement of intent to construct • Anticipated date of commencement of construction • Documentation for siting requirements • Waste management plan • Anticipated date of initial startup	§ 60.2190
Startup notification	Prior to initial startup	• Type of waste to be burned • Maximum design waste burning capacity • Anticipated maximum charge rate • If applicable, the petition for site-specific operating limits	§ 60.2195
Initial test report	No later than 60 days following the initial performance test	• Complete test report for the initial performance test • The values for the site-specific operating limits • Installation of bag leak detection system for fabric filter	§ 60.2200
Annual report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	• Name and address • Statement and signature by responsible official • Date of report • Values for the operating limits • If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period • Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported • Information for deviations or malfunctions recorded under § 60.2175(b)(6) and (c) through (e) • If a performance test was conducted during the reporting period, the results of the test • If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2155(a) or (b) were met • Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks	§§ 60.2205 and 60.2210

TABLE 4 TO SUBPART CCCC—SUMMARY OF REPORTING REQUIREMENTS [a]—Continued

Report	Due date	Contents	Reference
Emission limitation or operating limit deviation report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	• Dates and times of deviation • Averaged and recorded data for those dates • Duration and causes of each deviation and the corrective actions taken • Copy of operating limit monitoring data and any test reports • Dates, times, and causes for monitor downtime incidents • Whether each deviation occurred during a period of startup, shutdown, or malfunction	§ 60.2215 and 60.2220
Qualified operator deviation notification.	Within 10 days of deviation	• Statement of cause of deviation • Description of efforts to have an accessible qualified operator • The date a qualified operator will be accessible	§ 60.2225(a)(1)
Qualified operator deviation status report.	Every 4 weeks following deviation	• Description of efforts to have an accessible qualified operator • The date a qualified operator will be accessible • Request for approval to continue operation	§ 60.2225(a)(2)
Qualified operator deviation notification of resumed operation.	Prior to resuming operation	• Notification that you are resuming operation	§ 60.2225(b)

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.

3. Part 60 is amended by adding subpart DDDD to read as follows:

Subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999

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Introduction

§ 60.2500 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units. The pollutants addressed by these emission guidelines are listed in Table 2 of this subpart. These emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of this part.

§ 60.2505 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a State or United States protectorate with one or more existing CISWI units that commenced construction on or before November 30, 1999, you must submit a State plan to U.S. Environmental Protection Agency (EPA) that implements the emission guidelines contained in this subpart.

(b) You must submit the State plan to EPA by December 3, 2001.

§ 60.2510 Is a State plan required for all States?

No. You are not required to submit a State plan if there are no existing CISWI units in your State, and you submit a negative declaration letter in place of the State plan.

§ 60.2515 What must I include in my State plan?

(a) You must include the nine items described in paragraphs (a)(1) through (9) of this section in your State plan.

(1) Inventory of affected CISWI units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected CISWI units in your State.

(3) Compliance schedules for each affected CISWI unit.

(4) Emission limitations, operator training and qualification requirements, a waste management plan, and operating limits for affected CISWI units that are at least as protective as the emission guidelines contained in this subpart.

(5) Performance testing, recordkeeping, and reporting requirements.

(6) Certification that the hearing on the State plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of this subpart.

(9) Demonstration of your State's legal authority to carry out the sections 111(d) and 129 State plan.

(b) Your State plan may deviate from the format and content of the emission guidelines contained in this subpart. However, if your State plan does deviate in content, you must demonstrate that your State plan is at least as protective as the emission guidelines contained in this subpart. Your State plan must address regulatory applicability, increments of progress for retrofit, operator training and qualification, a waste management plan, emission limitations, performance testing, operating limits, monitoring, recordkeeping and reporting, and air curtain incinerator requirements.

(c) You must follow the requirements of subpart B of this part (Adoption and Submittal of State Plans for Designated Facilities) in your State plan.

§ 60.2520 Is there an approval process for my State plan?

Yes. The EPA will review your State plan according to § 60.27.

§ 60.2525 What if my State plan is not approvable?

If you do not submit an approvable State plan (or a negative declaration letter) by December 2, 2002, EPA will develop a Federal plan according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of CISWI units not covered by an approved State plan must comply with the Federal plan. The Federal plan is an interim action and will be automatically withdrawn when your State plan is approved.

§ 60.2530 Is there an approval process for a negative declaration letter?

No. The EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, EPA will place a

copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an existing CISWI unit is found in your State, the Federal plan implementing the emission guidelines contained in this subpart would automatically apply to that CISWI unit until your State plan is approved.

§ 60.2535 What compliance schedule must I include in my State plan?

(a) Your State plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the State plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section.

(1) December 1, 2005.

(2) Three years after the effective date of State plan approval.

(b) For compliance schedules more than 1 year following the effective date of State plan approval, State plans must include dates for enforceable increments of progress as specified in § 60.2580.

§ 60.2540 Are there any State plan requirements for this subpart that apply instead of the requirements specified in subpart B?

Yes. Subpart B establishes general requirements for developing and processing section 111(d) plans. This subpart applies instead of the requirements in subpart B of this part for paragraphs (a) and (b) of this section:

(a) State plans developed to implement this subpart must be as protective as the emission guidelines contained in this subpart. State plans must require all CISWI units to comply by December 1, 2005 or 3 years after the effective date of State plan approval, whichever is sooner. This applies instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f).

(b) State plans developed to implement this subpart are required to include two increments of progress for the affected CISWI units. These two minimum increments are the final control plan submittal date and final compliance date in § 60.21(h)(1) and (5). This applies instead of the requirement of § 60.24(e)(1) that would require a State plan to include all five increments of progress for all CISWI units.

§ 60.2545 Does this subpart directly affect CISWI unit owners and operators in my State?

(a) No. This subpart does not directly affect CISWI unit owners and operators in your State. However, CISWI unit owners and operators must comply with the State plan you develop to implement the emission guidelines contained in this subpart. States may choose to incorporate the model rule text directly in their State plan.

(b) If you do not submit an approvable plan to implement and enforce the guidelines contained in this subpart by December 2, 2002, the EPA will implement and enforce a Federal plan, as provided in § 60.2525, to ensure that each unit within your State reaches compliance with all the provisions of this subpart by December 1, 2005.

Applicability of State Plans

§ 60.2550 What CISWI units must I address in my State plan?

(a) Your State plan must address incineration units that meet all three criteria described in paragraphs (a)(1) through (3) of this section.

(1) Incineration units in your State that commenced construction on or before November 30, 1999.

(2) Incineration units that meet the definition of a CISWI unit as defined in § 60.2875.

(3) Incineration units not exempt under § 60.2555.

(b) If the owner or operator of a CISWI unit makes changes that meet the definition of modification or reconstruction on or after June 1, 2001, the CISWI unit becomes subject to subpart CCCC of this part and the State plan no longer applies to that unit.

(c) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with your State plan, subpart CCCC of this part does not apply to that unit. Such changes do not qualify as modifications or reconstructions under subpart CCCC of this part.

§ 60.2555 What combustion units are exempt from my State plan?

This subpart exempts fifteen types of units described in paragraphs (a) through (o) of this section.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 60.2875 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in § 60.2875 are not subject to this subpart if you meet the two requirements specified in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(c) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in paragraphs (c)(1) or (2) of this section.

(1) Are regulated under subpart Ea of this part (Standards of Performance for Municipal Waste Combustors); subpart Eb of this part (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994); subpart Cb of this part (Emission Guidelines and Compliance Time for Large Municipal Combustors that are Constructed on or Before September 20, 1994); subpart AAAA of this part (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units); or subpart BBBB of this part (Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units).

(2) Burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in subpart Ea, subpart Eb, subpart AAAA, and subpart BBBB, and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) Notify the Administrator that the unit meets these criteria.

(ii) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(d) *Medical waste incineration units.* Incineration units regulated under subpart Ec of this part (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) or subpart Ca of this part (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).

(e) *Small power production facilities.* Units that meet the three requirements

specified in paragraphs (e)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit meets all of these criteria.

(f) *Cogeneration facilities.* Units that meet the three requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit meets all of these criteria.

(g) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in paragraph (g)(1) or (2) of this section.

(1) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(2) Units regulated under subpart EEE of 40 CFR part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(h) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(i) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in paragraphs (i)(1) through (3) of this section are only required to meet the requirements under ''Air Curtain Incinerators'' (§§ 60.2810 through 60.2870).

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(j) *Cyclonic barrel burners.* (See § 60.2875)

(k) *Rack, part, and drum reclamation units.* (See § 60.2875)

(l) *Cement kilns.* Kilns regulated under subpart LLL of part 63 of this chapter (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry).

(m) *Sewage sludge incinerators.* Incineration units regulated under subpart O of this part (Standards of Performance for Sewage Treatment Plants).

(n) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in paragraphs (n)(1) through (7) of this section are considered chemical recovery units.

(1) Units burning only pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

(o) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

§ 60.2558 What if a chemical recovery unit is not listed in § 60.2555(n)?

(a) If a chemical recovery unit is not listed in § 60.2555(n), the owner or operator of the unit can petition the Administrator to add the unit to the list. The petition must contain the six items in paragraphs (a)(1) through (6) of this section.

(1) A description of the source of the materials being burned.

(2) A description of the composition of the materials being burned, highlighting the chemical constituents in these materials that are recovered.

(3) A description (including a process flow diagram) of the process in which the materials are burned, highlighting the type, design, and operation of the equipment used in this process.

(4) A description (including a process flow diagram) of the chemical constituent recovery process, highlighting the type, design, and operation of the equipment used in this process.

(5) A description of the commercial markets for the recovered chemical constituents and their use.

(6) The composition of the recovered chemical constituents and the composition of these chemical constituents as they are bought and sold in commercial markets.

(b) Until the Administrator approves the petition, the incineration unit is covered by this subpart.

(c) If a petition is approved, the Administrator will amend § 60.2555(n) to add the unit to the list of chemical recovery units.

Use of Model Rule

§ 60.2560 What is the ''model rule'' in this subpart?

(a) The model rule is the portion of these emission guidelines (§§ 60.2575 through 60.2875) that addresses the regulatory requirements applicable to CISWI units. The model rule provides these requirements in regulation format. You must develop a State plan that is at least as protective as the model rule. You may use the model rule language as part of your State plan. Alternative language may be used in your State plan if you demonstrate that the alternative language is at least as protective as the model rule contained in this subpart.

(b) In the model rule of §§ 60.2575 to 60.2875, ''you'' means the owner or operator of a CISWI unit.

§ 60.2565 How does the model rule relate to the required elements of my State plan?

Use the model rule to satisfy the State plan requirements specified in § 60.2515(a)(4) and (5).

§ 60.2570 What are the principal components of the model rule?

The model rule contains the eleven major components listed in paragraphs (a) through (k) of this section.

(a) Increments of progress toward compliance.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limitations and operating limits.

(e) Performance testing.

(f) Initial compliance requirements.

(g) Continuous compliance requirements.

(h) Monitoring.

(i) Recordkeeping and reporting.

(j) Definitions.

(k) Tables.

Model Rule—Increments of Progress

§ 60.2575 What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of State plan approval, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section.

(a) Submit a final control plan.
(b) Achieve final compliance.

§ 60.2580 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress.

§ 60.2585 What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include the three items specified in paragraphs (a) through (c) of this section.

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress.

(c) Signature of the owner or operator of the CISWI unit.

§ 60.2590 When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§ 60.2595 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the date for that increment of progress in Table 1 of this subpart. You must inform the Administrator that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§ 60.2600 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section.

(a) Submit the final control plan that includes the five items described in paragraphs (a)(1) through (5) of this section.

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limitations and other requirements of this subpart.

(2) The type(s) of waste to be burned.

(3) The maximum design waste burning capacity.

(4) The anticipated maximum charge rate.

(5) If applicable, the petition for site-specific operating limits under § 60.2680.

(b) Maintain an onsite copy of the final control plan.

§ 60.2605 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

§ 60.2610 What must I do if I close my CISWI unit and then restart it?

(a) If you close your CISWI unit but will restart it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.2575.

(b) If you close your CISWI unit but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limitations and operating limits on the date your unit restarts operation.

§ 60.2615 What must I do if I plan to permanently close my CISWI unit and not restart it?

If you plan to close your CISWI unit rather than comply with the State plan, submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

Model Rule—Waste Management Plan

§ 60.2620 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 60.2625 When must I submit my waste management plan?

You must submit a waste management plan no later than the date specified in Table 1 of this subpart for submittal of the final control plan.

§ 60.2630 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Model Rule—Operator Training and Qualification

§ 60.2635 What are the operator training and qualification requirements?

(a) No CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, you must follow the procedures in § 60.2665.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the eleven subjects listed in paragraphs (c)(1)(i) through (xi) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to correct malfunctions or conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as

reference material following completion of the course.

§ 60.2640 When must the operator training course be completed?

The operator training course must be completed by the later of the three dates specified in paragraphs (a) through (c) of this section.

(a) The final compliance date (Increment 2).

(b) Six months after CISWI unit startup.

(c) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

§ 60.2645 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.2635(b).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.2635(c)(2).

§ 60.2650 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 60.2655 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.2650.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.2645(a).

§ 60.2660 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI unit operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 60.2620 through 60.2630.

(9) Procedures for handling ash.

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the later of the three dates specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) The final compliance date (Increment 2).

(ii) Six months after CISWI unit startup.

(iii) Six months after being assigned to operate the CISWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted no later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of CISWI unit operators who have completed review of the information in § 60.2660(a) as required by § 60.2660(b), including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2635, met the criteria for qualification under § 60.2645, and maintained or renewed their qualification under § 60.2650 or § 60.2655. Records must include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 60.2665 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in § 60.2660(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 60.2770.

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 60.2635(a).

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

Model Rule—Emission Limitations and Operating Limits

§ 60.2670 What emission limitations must I meet and by when?

You must meet the emission limitations specified in Table 2 of this subpart on the date the initial performance test is required or completed (whichever is earlier).

§ 60.2675 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in Table 3 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii), as appropriate.

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as 90 percent of the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90 percent of the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the HCl emission limitation.

(b) You must meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier).

(c) If you use a fabric filter to comply with the emission limitations, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

§ 60.2680 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, or limit emissions in some other manner, to comply with the emission limitations under § 60.2670, you must petition the Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as additional operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 60.2685 What happens during periods of startup, shutdown, and malfunction?

(a) The emission limitations and operating limits apply at all times except during CISWI unit startups, shutdowns, or malfunctions.

(b) Each malfunction must last no longer than 3 hours.

Model Rule—Performance Testing

§ 60.2690 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 60.2740(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in Table 2 of this subpart.

(d) Method 1 of appendix A of this part must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of appendix A of this part must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of appendix A of this part must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{adj} = C_{meas}\,(20.9 - 7)/(20.9 - \%O_2) \quad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

$(20.9 - 7)$ = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (3) of this section.

(1) Measure the concentration of each dioxin/furan tetra- through octa-congener emitted using EPA Method 23.

(2) For each dioxin/furan congener measured in accordance with paragraph (g)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 4 of this subpart.

(3) Sum the products calculated in accordance with paragraph (g)(2) of this section to obtain the total concentration

of dioxins/furans emitted in terms of toxic equivalency.

§ 60.2695 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 2 of this subpart.

Model Rule—Initial Compliance Requirements

§ 60.2700 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under § 60.8, to determine compliance with the emission limitations in Table 2 of this subpart and to establish operating limits using the procedure in § 60.2675 or § 60.2680. The initial performance test must be conducted using the test methods listed in Table 2 of this subpart and the procedures in § 60.2690.

§ 60.2705 By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 180 days after your final compliance date. Your final compliance date is specified in Table 1 of this subpart.

Model Rule—Continuous Compliance Requirements

§ 60.2710 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each CISWI unit as required under § 60.8 to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 2 of this subpart and the procedures in § 60.2690.

(b) You must continuously monitor the operating parameters specified in § 60.2675 or established under § 60.2680. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour rolling average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 60.2680. Operating limits do not apply during performance tests.

(c) You must only burn the same types of waste used to establish operating limits during the performance test.

§ 60.2715 By what date must I conduct the annual performance test?

You must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 60.2720 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all performance tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no more than 36 months following the previous performance test.

(b) If your CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, you must conduct annual performance tests for that pollutant until all performance tests over a 3-year period show compliance.

§ 60.2725 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

Model Rule—Monitoring

§ 60.2730 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 60.2670, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 3 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 3 of this subpart at all times except as specified in § 60.2735(a).

(b) If you use a fabric filter to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using something other than a wet scrubber to comply with the emission limitations under § 60.2670, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 60.2680.

§ 60.2735 Is there a minimum amount of monitoring data I must obtain?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as

applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the CISWI unit is operating.

(b) Do not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Model Rule—Recordkeeping and Reporting

§ 60.2740 What records must I keep?

You must maintain the 13 items (as applicable) as specified in paragraphs (a) through (m) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (6) of this section:

(1) The CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 60.2680, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 60.2675(c).

(c) Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in Table 3 of this subpart or a deviation from other operating limits established under § 60.2680 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI unit operators who have completed review of the information in § 60.2660(a) as required by § 60.2660(b), including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2635, met the criteria for qualification under § 60.2645, and maintained or renewed their qualification under § 60.2650 or § 60.2655. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(i) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(j) Records of calibration of any monitoring devices as required under § 60.2730.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(l) The information listed in § 60.2660(a).

(m) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

§ 60.2745 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 60.2750 What reports must I submit?

See Table 5 of this subpart for a summary of the reporting requirements.

§ 60.2755 When must I submit my waste management plan?

You must submit the waste management plan no later than the date specified in Table 1 of this subpart for submittal of the final control plan.

§ 60.2760 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 60.2700, as applicable.

(b) The values for the site-specific operating limits established in § 60.2675 or § 60.2680.

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 60.2730(b).

§ 60.2765 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 60.2760. You must submit subsequent reports no more than 12 months following the previous report. (If the unit is subject to permitting requirements under title V of the Clean Air Act, you may be required by the permit to submit these reports more frequently.)

§ 60.2770 What information must I include in my annual report?

The annual report required under § 60.2765 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 60.2775, 60.2780, and 60.2785.

(a) Company name and address.

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 60.2675 or § 60.2680.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits

was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 60.2740(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 60.2720(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 60.2720(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

§ 60.2775 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month reporting period, or if a performance test was conducted that deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 60.2780 What must I include in the deviation report?

In each report required under § 60.2775, for any pollutant or parameter that deviated from the emission limitations or operating limits specified in this subpart, include the six items described in paragraphs (a) through (f) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Duration and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitoring downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

§ 60.2785 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the Administrator to continue operation of the CISWI unit.

(b) If your unit was shut down by the Administrator, under the provisions of § 60.2665(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

§ 60.2790 Are there any other notifications or reports that I must submit?

Yes. You must submit notifications as provided by § 60.7.

§ 60.2795 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 60.2800 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

Model Rule—Title V Operating Permits

§ 60.2805 Am I required to apply for and obtain a title V operating permit for my unit?

Yes. Each CISWI unit must operate pursuant to a permit issued under section 129(e) and title V of the Clean Air Act by the later of the two dates in paragraphs (a) and (b) of this section.

(a) Thirty-six months after December 1, 2000.

(b) The effective date of the title V permit program to which your unit is subject. If your unit is subject to title V as a result of some triggering requirement(s) other than this subpart (for example, being a major source), then your unit may be required to apply for and obtain a title V permit prior to the deadlines noted above. If more than one requirement triggers the requirement to apply for a title V permit, the 12-month timeframe for filing a title V application is triggered by the requirement which first causes the source to be subject to title V.

Model Rule—Air Curtain Incinerators

§ 60.2810 What is an air curtain incinerator?

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (3) of this section are only required to meet the requirements under ''Air Curtain Incinerators'' (§§ 60.2810 through 60.2870).

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 60.2815 What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of State plan approval, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section.

(a) Submit a final control plan.

(b) Achieve final compliance.

§ 60.2820 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress.

§ 60.2825 What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include the three items described in paragraphs (a) through (c) of this section.

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress (see § 60.2840).

(c) Signature of the owner or operator of the incinerator.

§ 60.2830 When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§ 60.2835 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the date for that increment of progress in Table 1 of this subpart. You must inform the Administrator that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§ 60.2840 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section.

(a) Submit the final control plan, including a description of any devices for air pollution control and any process changes that you will use to comply with the emission limitations and other requirements of this subpart.

(b) Maintain an onsite copy of the final control plan.

§ 60.2845 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

§ 60.2850 What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.2815.

(b) If you close your incinerator but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limitations on the date your incinerator restarts operation.

§ 60.2855 What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to close your incinerator rather than comply with the State plan, submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

§ 60.2860 What are the emission limitations for air curtain incinerators?

(a) After the date the initial stack test is required or completed (whichever is earlier), you must meet the limitations in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 60.2865 How must I monitor opacity for air curtain incinerators?

(a) Use Method 9 of appendix A of this part to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 no later than 180 days after your final compliance date.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.2870 What are the recordkeeping and reporting requirements for air curtain incinerators?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(b) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in paragraphs (c)(1) and (2) of this section.

(1) The types of materials you plan to combust in your air curtain incinerator.

(2) The results (each 6-minute average) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of 5 years.

Model Rule—Definitions

§ 60.2875 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and subparts A and B of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (e.g., almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Commercial and industrial waste means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

Contained gaseous material means gases that are in a container when that container is combusted.

Cyclonic barrel burner means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Dioxins/furans means tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Discard means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

Drum reclamation unit means a unit that burns residues out of drums (e.g., 55 gallon drums) so that the drums can be reused.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Modification or *modified CISWI unit* means a CISWI unit you have changed later than June 1, 2001 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Part reclamation unit means a unit that burns coatings off parts (e.g., tools, equipment) so that the parts can be reconditioned and reused.

Particulate matter means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of appendix A of this part.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Rack reclamation unit means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

Reconstruction means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins on or after June 1, 2001.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community

activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014). For purposes of this subpart and subpart CCCC, only, solid waste does not include the waste burned in the fifteen types of units described in § 60.2555.

Standard conditions, when referring to units of measure, means a temperature of 68°F (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the unit.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

TABLE 1 TO SUBPART DDDD—MODEL RULE—INCREMENTS OF PROGRESS AND COMPLIANCE SCHEDULES

Comply with these increments of progress	By these dates [a]
Increment 1—Submit final control plan	(Dates to be specified in State plan)
Increment 2—Final compliance	(Dates to be specified in State plan) [b]

[a] Site-specific schedules can be used at the discretion of the State.
[b] The date can be no later than 3 years after the effective date of State plan approval or December 1, 2005.

TABLE 2 TO SUBPART DDDD—MODEL RULE—EMISSION LIMITATIONS

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Cadmium	0.004 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part)
Carbon monoxide	157 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10, 10A, or 10B, of appendix A of this part)
Dioxins/furans (toxic equivalency basis).	0.41 nanograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 23 of appendix A of this part)
Hydrogen chloride	62 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 26A of appendix A of this part)
Lead	0.04 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part)
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of this part)
Opacity	10 percent	6-minute averages	Performance test (Method 9 of appendix A of this part)
Oxides of nitrogen	388 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Methods 7, 7A, 7C, 7D, or 7E of appendix A of this part)
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 5 or 29 of appendix A of ths part)
Sulfur dioxide	20 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c of appendix A of this part)

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 3 TO SUBPART DDDD—MODEL RULE—OPERATING LIMITS FOR WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate.	Continuous	Every hour	Daily (batch units). 3-hour rolling (continuous and intermittent units) [a]
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes	3-hour rolling [a]
Scrubber liquor flow rate.	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling [a]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling [a]

[a] Calculated each hour as the average of the previous 3 operating hours.

TABLE 4 TO SUBPART DDDD—MODEL RULE—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

TABLE 5 TO SUBPART DDDD—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS [a]

Report	Due date	Contents	Reference
Waste Management Plan.	No later than the date specified in table 1 for submittal of the final control plan.	• Waste management plan	§ 60.2755.
Initial Test Report	No later than 60 days following the initial performance test.	• Complete test report for the initial performance test • The values for the site-specific operating limits • Installation of bag leak detection systems for fabric filters	§ 60.2760.
Annual Report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	• Name and address • Statement and signature by responsible official • Date of report • Values for the operating limits • If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period • Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported • Information for deviations or malfunctions recorded under § 60.2740(b)(6) and (c) through (e) • If a performance test was conducted during the reporting period, the results of the test • If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2155(a) or (b) were met • Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks	§§ 60.2765 and 60.2770.
Emission Limitation or Operating Limit Deviation Report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	• Dates and times of deviations • Averaged and recorded data for these dates • Duration and causes for each deviation and the corrective actions taken • Copy of operating limit monitoring data and any test reports • Dates, times, and causes for monitor downtime incidents • Whether each deviation occurred during a period of startup, shutdown, or malfunction	§§ 60.2775 and 60.2780.

TABLE 5 TO SUBPART DDDD—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS [a]—Continued

Report	Due date	Contents	Reference
Qualified Operator Deviation Notification.	Within 10 days of deviation	• Statement of cause of deviation • Description of efforts to have an accessible qualified operator • The date a qualified operator will be accessible	§ 60.2785(a)(1).
Qualified Operator Deviation Status Report.	Every 4 weeks following deviation	• Description of efforts to have an accessible qualified operator • The date a qualified operator will be accessible • Request for approval to continue operation	§ 60.2785(a)(2).
Qualified Operator Deviation Notification of Resumed Operation.	Prior to resuming operation	• Notification that you are resuming operation	§ 60.2785(b)

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.

[FR Doc. 00–29875 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–01–U

Federal Register

Friday,
December 1, 2000

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 195

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With 500 or More Miles of Pipeline); Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–99–6355; Amendment 195–70]

RIN 2137–AD45

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With 500 or More Miles of Pipeline)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule specifies regulations to assess, evaluate, repair and validate through comprehensive analysis the integrity of hazardous liquid pipeline segments that, in the event of a leak or failure, could affect populated areas, areas unusually sensitive to environmental damage and commercially navigable waterways. OPS is requiring that an operator develop and follow an integrity management program that provides for continually assessing the integrity of all pipeline segments that could affect these high consequence areas, through internal inspection, pressure testing, or other equally effective assessment means. The program must also provide for periodically evaluating the pipeline segments through comprehensive information analysis, remediating potential problems found through the assessment and evaluation, and ensuring additional protection to the segments and the high consequence areas through preventive and mitigative measures.

Through this required program, hazardous liquid operators will comprehensively evaluate the entire range of threats to each pipeline segment's integrity by analyzing all available information about the pipeline segment and consequences of a failure on a high consequence area. This includes analyzing information on the potential for damage due to excavation; data gathered through the required integrity assessment; results of other inspections, tests, surveillance and patrols required by the pipeline safety regulations, including corrosion control monitoring and cathodic protection surveys; and information about how a failure could affect the high consequence area.

The final rule requires an operator to take prompt action to address the integrity issues raised by the assessment and analysis. This means an operator must evaluate all defects and repair those could reduce a pipeline's integrity. An operator must develop a schedule that prioritizes the defects for evaluation and repair, including time frames for promptly reviewing and analyzing the integrity assessment results and completing the repairs. An operator must also provide additional protection for these pipeline segments through other remedial actions, and preventive and mitigative measures.

DATES: Effective Date: This final rule takes effect March 31, 2001.

Compliance Dates: An operator must complete an identification of all pipeline segments that could affect a high consequence area no later than December 31, 2001. An operator must develop a written integrity management program no later than March 31, 2002.

Comment Date: Interested persons are invited to submit comment on the provisions of the rule concerning actions an operator must take to address integrity issues on the pipeline (§ 195.452(h)) by March 31, 2001. At the end of the comment period, we will publish a document modifying these remedial action provisions or a document stating that the provisions will remain unchanged.

ADDRESSES: Comments limited to the provisions on actions an operator must take to address pipeline integrity issues (§ 195.452(h)) must be sent to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. It is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except federal holidays. You also may submit written comments to the docket electronically. To do so, log on to the following Internet Web address: http://dms.dot.gov. Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should identify the docket number stated in the heading of this rule.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or by e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this final rule, or the Dockets Facility (202) 366–9329, for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at http://dms.dot.gov. General information about the RSPA/Office of Pipeline Safety programs may be obtained by accessing OPS's Internet home page at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking

On April 24, 2000, OPS published a notice of proposed rulemaking (65 FR 21695) that proposed pipeline integrity management program requirements for hazardous liquid operators that operated 500 or more miles of pipeline. The proposed requirements were to apply to hazardous liquid pipelines that could affect areas we proposed as high consequence areas—populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways.

OPS issued the proposal after a public meeting that OPS hosted on November 18 & 19, 1999, to gather information on current pipeline assessment methods and integrity management programs. OPS had also established an electronic public discussion forum to gather further information. Comments and information gathered from these forums were used in developing the proposed rule for larger hazardous liquid operations. The proposed rule was the first in a series of rulemakings that will require all regulated pipeline operators to have integrity management programs.

The notice proposed that a hazardous liquid operator develop and follow an integrity management program. Among the proposed required elements of a program were—

- Baseline assessment of all pipelines that could affect a high consequence area. The integrity of these pipelines was to be assessed by internal inspection, pressure test, or equivalent alternative new technology. The assessment had to be completed in seven years, with 50% of the pipeline mileage done in three and one-half years.
- Continual assessment of all pipelines that could affect a high consequence area. An operator would have to continue to assess, at intervals not to exceed ten-years, and periodically evaluate the integrity of the pipelines.
- Data integration. An operator would have to integrate all information about the pipeline from diverse sources to analyze the entire range of threats to a pipeline's integrity.
- Prompt remedial action. An operator would have to take prompt action to address all integrity issues raised by the integrity assessment and data integration analysis.
- Preventive and mitigative measures. An operator would have to evaluate the need for additional measures to prevent and mitigate pipeline failures, such as installing emergency flow restricting devices (EFRDs) and establishing or

modifying systems that monitor pressure and detect leaks.

• Performance measures to measure the effectiveness of the program.

The proposed rule permitted two options in establishing baseline and continual assessment schedules. An operator choosing the first option would have to base the schedule on specified risk factors. With the second option, an operator would base the schedule on risk factors the operator considered essential in risk or consequence evaluation.

The NPRM explained in great detail the background of the proposed rule for the integrity management program (65 FR 21695; April 24, 2000).

In the NPRM, we said that we intended to apply integrity management program requirements to all regulated pipeline operators but that we would implement the requirements in several steps; when we were done, all regulated operators would be required to have an integrity management program. We explained that because natural gas and hazardous liquid have different physical properties, pose different risks, and the configuration of the systems differ, and because we needed to gather more information about smaller liquid operations, we were beginning the series of integrity management program proposals with hazardous liquid operators operating 500 or more miles of pipeline. We further stated that proposed regulatory requirements for the other operators would soon follow.

The proposed rulemaking was the culmination of experience gained from inspections, accident investigations and risk management and system integrity initiatives. This experience was the foundation for proposing a rulemaking that addressed in a comprehensive manner NTSB recommendations, Congressional mandates and pipeline safety and environmental issues raised over the years. To recap the history of the rulemaking—

• The rulemaking addressed several recommendations NTSB made to OPS concerning pipeline safety.

(1) Require periodic testing and inspection to identify corrosion and other time-dependent damages.

(2) Establish criteria to determine appropriate intervals for inspections and tests, including safe service intervals between pressure testing.

(3) Determine hazards to public safety from electric resistance welded (ERW) pipe and establish standards for leak detection, and expedite requirements for installing automatic or remote-operated mainline valves on high-pressure lines in urban and environmentally sensitive areas to provide for rapid shutdown of failed pipeline segments.

• Our analyses of several pipeline ruptures in Bellingham, Washington; Simpsonville, South Carolina; Reston, Virginia; and Edison, New Jersey, brought to light the need for operators to address the potential interrelationship among failure causes and to implement coordinated risk control actions to supplement the protection of the regulations.

• The rulemaking also addressed several Congressional mandates to OPS concerning areas where the risk of a pipeline spill could have significant impact.

(1) 49 U.S.C. 60109(a)—prescribe standards establishing criteria for identifying gas pipeline facilities located in high-density population areas and for hazardous liquid pipelines that cross waters where a substantial likelihood of commercial navigation exists, or are located in a high-density population area, or are located in an area unusually sensitive to environmental damage (USAs).

(2) 49 U.S.C. 60102(f)(2)—prescribe, if necessary, additional standards requiring the periodic inspection of pipelines in USAs and high-density population areas, and those crossing commercially navigable waterways, to include any circumstances when an instrumented internal inspection device, or similarly effective inspection method, should be used to inspect the pipeline.

(3) 49 U.S.C. 60102(j)—survey and assess the effectiveness of emergency flow restricting devices (EFRDs) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures, and to prescribe standards on the circumstances where an operator of a hazardous liquid pipeline facility must use an EFRD or such other procedure, system, or equipment.

Risk Management and Inspection Initiatives

The proposed rulemaking was also based on what we had learned about integrity management programs from our risk management and pipeline inspection activities, particularly the Risk Management Demonstration Program, the Systems Integrity Inspection (SII) Pilot Program and the new high impact format for inspections. (These programs and activities are discussed in greater detail in the NPRM (65 FR 21695).)

In the Risk Management Demonstration and Systems Integrity Inspection Pilot Programs, we studied and evaluated comprehensive and integrated approaches to safety and environmental protection. These approaches incorporated operator- and pipeline-specific information and data to identify, assess, and address pipeline risks, in conjunction with compliance with existing pipeline safety regulations. From these programs, we also learned about the extent and variety of internal inspection and other diagnostic tools that hazardous liquid pipeline operators use in their integrity management programs.

OPS implemented a systems approach through a new high impact inspection format that evaluates pipeline systems as a whole rather than in small segments. We found that a system-wide approach is a more effective and, in most cases, more efficient means of evaluating pipeline integrity. As part of this approach, we have been evaluating how pipeline operators integrate information about their pipelines to determine the best means of addressing risk. This experience is helping us to develop detailed inspection guidelines to evaluate compliance with the requirements of this rule.

Advisory Committee Consideration

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) is the Federal advisory committee charged with responsibility for advising on the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed hazardous liquid pipeline safety standards. The 15 member committee has balanced membership with individuals having the requisite expertise who represent industry, government, and the general public.

We presented the proposed rule to the Technical Hazardous Liquid Pipeline Safety Standards Committee at its meeting on May 4, 2000. At the request of various committee members, who believed that they had not had sufficient time to review the proposed rule, which was published in April, 2000, formal consideration of the proposal was postponed to September. In preparation for this consideration, the draft cost-benefit analysis was mailed to the members on June 16, 2000 and the members were briefed on the proposed rule in a teleconference on August 24, 2000.

The committee began consideration of the proposed rule at a September 11, 2000 meeting (by teleconference) and completed consideration at a September 22, 2000 meeting (by teleconference). At the September 22 meeting, ten of the eleven participating THLPSSC members voted to accept the proposed rule provided several changes were made.

One member abstained from the general vote, but voted on the individual changes. These changes as well as other comments including minority views are described below. A more complete description can be found in the transcript of the committee's consideration of the proposed rule which is available in the docket.

Various committee members had earlier expressed concern about the quality of the cost-benefit analysis. Concerns expressed included the lack of clear articulation of the benefits and the failure to follow the framework for cost-benefit analysis developed for use in pipeline safety rulemaking. In response to these concerns, OPS committed to revise the cost-benefit analysis to be more consistent with the framework prior to publication of a final rule. Discussion of the issue at the September 22nd meeting indicated that members did not want to delay the issuance of a final rule, but that they believed that the quality of the cost-benefit analysis to be important. The committee voted unanimously that it could not conclude that the proposed rule is reasonable at this time until OPS completed a more meaningful cost-benefit analysis based on the framework. The committee recommended that this be done prior to issuance of the final rule.

In addition, the committee unanimously made the following recommendations for changes to the proposed rule:

- Add pipeline stress to the list of risk factors to be considered in determining the frequency of integrity assessment.
- Clarify OPS's responsibility to identify, generate, publish, and update maps of high consequence areas.
- Establish time requirements for completion of repairs following detection of the defects. The timing may be tiered.
- Require leak detection capability.
- Specify the date (for example, January 1995) for acceptability of data from previously conducted internal inspections. This date should be consistent with the proposed 5 year look-back.

With the exception of item 2 (responsibility for maps), RSPA has made changes to the final rule that address each of these recommendations. RSPA is addressing item 2 in this preamble, under the topic heading ''Definition of High Consequence Areas—Identification'', rather than in language of the rule. That section describes the process through which RSPA intends to make maps identifying high consequence areas available to the operators and the public.

In addition to the formal recommendations of the committee, individual committee members raised two issues about which there was general agreement. The first of these concerned the need to clarify the applicability of the rule to offshore areas. This issue is addressed under the topic heading ''Applicability (Coverage) of the Rule.'' The second of these was the need to clarify the use of internal inspection to assess the integrity of pre-1970 electric resistance welded (ERW) pipe. The committee member was concerned that a footnote in the proposed rule would preclude internal inspection of this type of pipe. Accordingly, RSPA has modified the rule to address the issue. We discuss the rule modification later under the topic heading ''Program Implementation and Integrity Assessment Time Frames, Assessment Methods and Criteria.''

Prior to the meeting, one committee member had raised the issue of requirements for emergency flow restricting devices. RSPA had indicated that it was considering including criteria for requiring the use of such devices. After a brief discussion in the meeting, the member decided not to pursue a formal recommendation by the committee. As discussed later in the Preamble under the topic heading ''Requirements for Preventive and Mitigative Measures, including, Emergency Flow Restricting Devices (EFRDs) and Leak Detection Devices'', RSPA has modified the rule's provisions concerning emergency flow restricting devices.

There was some discussion in the various meetings that indicated some concern about how RSPA would be able to enforce broad requirements for programs. Some committee members suggested the need for specific criteria that inspectors could apply in reviewing an operator's program. Although these discussions did not result in formal recommendations by the committee, RSPA has included additional specificity in the final rule that will aid in reviewing integrity management programs. In addition, enforceability is discussed elsewhere in this preamble.

The committee also discussed three other issues about which there was not general agreement. Four members of the committee believed that the final rule or a future modification should require leak detection systems and specify performance standards for those systems. The proposed rule did not propose to require or set standards for leak detection systems. (Current regulations require computational pipeline monitoring leak detection systems to comply with API 1130, the industry consensus standard.) Industry members raised concerns about the scope of the current proposed rule and offered to brief the committee at a future meeting on the range of leak detection systems currently available. As noted above, the committee finally recommended by unanimous consent that the final rule require that pipelines affecting high consequence areas have the capability of detecting leaks. As explained later in the Preamble under the topic heading ''Requirements for Preventive and Mitigative Measures, including, Emergency Flow Restricting Devices (EFRDs) and Leak Detection Devices'', we have revised the rule to address this recommendation.

A second area of discussion about which there was not agreement was a motion to reduce the time for completion of the initial baseline assessment from seven years to three years. RSPA's rationale for not reducing this time frame is discussed elsewhere in this preamble.

The third area was a motion to reduce the time interval for subsequent assessments from ten years to five years. The committee was evenly divided on this issue. As discussed elsewhere in this document under the heading ''Program Implementation and Integrity Assessment Time Frames, Assessment Methods and Criteria'', RSPA has decided to modify the time interval for integrity re-assessments subsequent to the baseline assessment.

Comments to NPRM

We received comments from 36 sources in response to the NPRM:

2 Trade associations with members affected by this rulemaking
- American Petroleum Institute (API)
- American Water Works Association (AWWA)

3 Trade associations with members not directly affected by this rulemaking
- American Gas Association (AGA)
- New York Gas Group
- Interstate National Gas Association of America (INGAA)

8 Individual liquid operators
- Tosco Corporation
- Chevron Pipe Line Company
- BP Amoco
- Colonial Pipeline Company
- Koch Pipeline Company
- Equilon Pipeline Company
- Enbridge (U.S.) Inc. and Lakehead Pipe Line Partners
- Dynegy Midstream Services

4 Operators not directly affected by this rulemaking
- The Peoples Gas Light and Coke Company (LDC and intrastate)

Tennessee Gas Company (natural gas transmission)
Enron Pipeline Group(natural gas transmission)
Consumers Energy (natural gas transmission and distribution)
2 State agencies
Lower Colorado River Authority (LCRA)
State of Missouri—Department of Natural Resources
6 Advocacy groups
Robert B. Rackleff, Friends of the Aquifer
Pipeline Survivor's(sic) Association
Environmental Defense
National Pipeline Reform Coalition
Fuel Safe Washington
Harry S. Kottke and Delbert L. Moine, representing Ohio Pennsylvania Landowners Association (OPLA)
4 Federal agencies
Environmental Protection Agency, Region III
Environmental Protection Agency, Oil Program Center
Department of Energy
National Transportation Safety Board
2 Cities
Austin, Texas
Bellingham, Washington
3 Consultants/Contractors
Batten and Associates
Dr. Neb I. Uzelac
SEFBO
2 Individuals
U.S. Senator John Breaux
Dene Miller Alden

General Comments

Virtually all commenters were supportive of the need for additional and stronger regulations in this area, and provided comments and suggestions focusing on specific details and language of the proposed rule. Commenters generally fell into one of two groups: those that thought the general structure of the proposed rule was adequate and provided the appropriate balance between prescriptive requirements and pipeline-specific analysis, and those that believed the proposed rule was not sufficiently strong, broad enough in scope, or specific.

All commenters were positive about the need for additional communication among industry, public safety officials, regulators, and the public concerning pipeline risks. We have decided to address the topic of public communication and interaction in a subsequent related rulemaking. We will address these comments in more detail in that rulemaking.

The trade associations and operators that are not directly affected by this rulemaking provided comments in anticipation of future integrity management program regulations that would affect them. We will use these comments when preparing the proposed rulemakings for the other operators.

We have summarized the comments we received under the following topic areas:

1. Clarity and Specificity in the Proposed Rule
2. Remedial Actions
3. Review, Approval, and Enforcement Processes
4. Program Implementation and Integrity Assessment Time Frames, Assessment Methods and Criteria
5. Applicability (Coverage) of the Rule
6. Consensus Standard on Pipeline Integrity
7. Definition of High Consequence Areas
8. Requirements for Preventive and Mitigative Measures, including, Emergency Flow Restricting Devices (EFRDs) and Leak Detection Devices
9. Methods to Measure Program Effectiveness
10. Cost Benefit Analysis
11. Information for Local Officials and the Public
12. Appendix C Guidance

In addition, there were a variety of technical comments and suggestions concerning specific details of proposed Appendix C, and other technical language in the proposed rule. We did not include discussion of these detailed technical comments here but we did consider them in preparing the final rule and revising the Appendix.

RSPA personnel also had numerous discussions with representatives from several federal government agencies during this rulemaking to resolve issues the agencies had raised about the proposed rule. These agencies included the Environment and Natural Resources Division of the Department of Justice, (DOJ/ENRD); Fish and Wildlife Service (FWS), Bureau of Land Management, Office of Environmental Policy and Compliance and National Park Service from the Department of the Interior (DOI),[1] the Office of Ground Water and Drinking Water, Oil Program Center, and Region 3 from the Environmental Protection Agency (EPA); the National Transportation Safety Board (NTSB), the Council on Environmental Quality (CEQ); and the Office of Management and Budget. Where we have made changes to the rule to address comments these agencies raised during the discussions, we have so indicated.

1. Clarity and Specificity in the Proposed Rule

The proposed rule used primarily performance-based language to allow operators to use pipeline- and location-specific information to determine the necessary integrity management practices. The proposed rule used specification language to prescribe the required elements of an integrity management program and baseline assessment plan, the allowable methods of integrity assessment and the required intervals for conducting baseline and continual assessments. The proposed rule also specified that an operator was to follow best industry practices unless a rule section specified otherwise or the operator could justify reasons for deviating from such practices and that the deviation was supported by a reliable engineering evaluation.

The proposed rule recognized that an integrity management program was an evolving program that an operator needed to continually improve.

API and the liquid operators supported the proposed rule's holistic approach to pipeline integrity management that incorporated risk assessment and risk-based decision making. API further praised the use of performance-based language in OPS's regulations. Koch commented that ''a pipeline integrity management program allows an operator to consider the unique factors that impact a specific pipeline or pipeline segment and is more effective in improving pipeline safety than prescriptive regulations that treat all pipelines, no matter what their characteristics or where they are located, the same.''

Environmental Defense, other advocacy groups, and other commenters maintained that the rule should have more specific requirements. These commenters stated that without such specificity, OPS would not be able to evaluate the adequacy of operator programs and enforce the rule. The City of Austin cautioned against a performance-based approach and urged us to clearly define the performance requirements and standards for monitoring, inspection and response.

NTSB reiterated its ongoing concern that OPS have regulations that contain measurable standards for performance.

EPA Oil Program Center commented that the proposed rule failed to include the specific requirements for an integrity management program or the process for determining if a pipeline will affect a high consequence area. The City of Austin said the rule should

[1] The Department of the Interior submitted comments to the docket in the USA rulemaking (RSPA–99–5455). We will consider and address those comments in that rulemaking. The DOI comments we discuss in this rulemaking were made during the inter-agency meetings.

require an operator to determine the potential impact for a worst case spill. Colonial Pipeline recommended that the rule clarify, either in the regulatory language or through guidance, how pipelines outside the high consequence area could affect the area.

API recommended that the rule recognize the value of planning changes and allow an operator to make changes to the baseline assessment plan.

DOJ/ENRD expressed concern that the proposed rule's language about an integrity program being an evolving program that an operator had to continually improve left too much to the operator's discretion. DOJ/ENRD had similar concerns with the language about an operator using and documenting a practice other than a standard industry practice. DOJ/ENRD further thought a deviation from a standard practice should only be allowed when new technology is being used. DOJ/ENRD also strongly urged substantial revisions of the proposed rule to improve its enforceability. DOJ/ENRD wanted clearly stated and unambiguous requirements for specific actions that achieve measurable results, the violation of which subject the operator to meaningful penalties.

NTSB expressed concern about the proposed rule's use of the term best industry practices without explaining where these practices could be found. EPA Region III also questioned who would be responsible for establishing, compiling, and disseminating the best industry practices.

API commented that the term best industry practices may cause controversy over its meaning and suggested that the term proven industry practices would be more appropriate.

Response:

To achieve effective integrity management programs that evolve and take advantage of changing technologies, the final rule uses both performance and specification-based language.

Based on our considerable experience with performance-based regulations, OPS believes that performance-based language will best achieve effective integrity management programs that are sufficiently flexible to reflect pipeline-specific conditions and risks.[2] However, we recognize that certain elements of the rule need to be written in specification language.

Performance-based standards allow an operator to select the most effective processes and technologies as they become available. OPS wants to create incentives for operators to invest in the development of new technology. Because internal inspection technology and other integrity monitoring equipment have changed considerably in recent years and are expected to continue to improve, we want to encourage operators to use and strive to improve the best available technologies and processes. Thus, rather than only specify the use of currently available technologies, parts of the rule are performance-based to allow operators to develop customized programs that address pipeline-specific characteristics, are fully integrated into company safety and environmental protection programs, and use the best available technologies to assess and repair pipelines.

The specification parts of the rule ensure uniformity among integrity management programs so that they all address key issues, such as baseline and continual integrity assessment intervals, information integration and analysis requirements, and time frames to review and analyze integrity assessment results and to complete remedial actions.

As suggested by commenters, we have revised the rule to allow an operator to modify its baseline assessment plan and to clarify the basis for an operator changing and improving its integrity management program. We have added a provision allowing an operator to modify its baseline assessment plan so long as the operator documents the modification and reasons for the modification. An operator would have to document any modification at the time the decision is made to modify the plan, not at the time the modification is implemented. OPS enforcement personnel would review these supporting documents during a field inspection.

Although reworded, the rule still provides that an integrity management program is a continually changing program. However, the rule now specifies that an operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. The rule also clarifies that an operator's integrity management program will evolve from the initial program framework the operator develops.

We have revised the rule to clarify that the integrity management program requirements apply to each pipeline segment that could affect a high consequence areas. An operator's program must address the risk factors each pipeline segment poses to a high consequence area.

The proposed rule specified required elements of an operator's integrity management program. Other than some minor word changes and edits, we have not changed those elements in the final rule. We believe these elements will ensure sound integrity management programs.

However, to address commenters' concerns that the proposed rule failed to specify a process for determining if a release could affect a high consequence area, we have added two related requirements: that, as a first step, an operator identify all pipeline segments that could affect a high consequence area and also include a process in its program for identifying which pipeline segments could affect a high consequence area. (Identifying those segments that could affect an area involves determining if a release from a segment in or near a high consequence area could affect the area.) Although we did not propose these requirements in the notice, we believe they were implicit. Whether explicitly stated or not, an operator would have to identify which pipeline segments could affect a high consequence area before determining how the line pipe in those segments would be assessed. Moreover, since the trigger for the integrity management program requirements is whether a pipeline segment could affect a high consequence area, an essential element must be a process for identifying those pipeline segments that could affect the defined high consequence areas. In the Appendix to the rule, we have also provided guidance to help an operator in identifying high consequence areas and in evaluating how a pipeline release could affect a high consequence area. This guidance will help an operator in developing the required process.

The final rule requires that an operator follow recognized industry practices unless the rule otherwise requires a different practice or the operator can demonstrate that an alternative practice is supported by a reliable engineering evaluation. Paragraph (b)(3) does not affect an operator's obligation to comply with all other requirements in this rule. In the final rule, we have changed the term best industry practices to recognized industry practices. We believe this is an easily understood term by operators and enforcement personnel. Recognized industry practices include those found in national consensus standards or reference guides, and generally conform to the practices of the American

[2] Our using performance-based language in the rule is consistent with the Administration's policy of using performance-based standards. (See Executive Order 12866, Section 1(b) The Principles of Regulation (September 30, 1993).)

National Standards Institute. Companies' successful use of these practices helps determine their validity and acceptance. We have further revised the provision to clarify the basis for an operator using an alternative practice. The rule now provides that an operator's selection of an alternative must be based on a reliable engineering evaluation. Use of an alternative must provide an equivalent level of public safety and environmental protection. An operator must document its use of an alternative practice from when the operator makes the decision to use the alternative. An operator must be able to provide the documentation to OPS enforcement personnel for review during a field inspection.

We have not limited an operator's use of alternative practices to only when new technology is being used. For example, an alternative practice could be one that has been successfully used in other countries or by other pipeline companies but has not yet been codified into a national consensus standard. OPS wants to encourage operators to use innovative practices that are based on sound engineering judgment. OPS also wants to encourage innovation in technology and recognizes that an existing technology may be improved and given a new application.

We have also revised language throughout the rule to make the rule clearer and more understandable. These changes have not affected the requirements of the rule, most have simply been made to improve the rule's overall clarity and to ensure the consistency in use of terms. Others have been made to address DOJ's concerns about making the rule more specific and enforceable and clarifying the operator's required responsibilities under the rule. Any substantive changes are discussed in this document.

2. Remedial Actions—Proposed Section 195.452(g)

The proposed rule required an operator to take prompt action to address all pipeline integrity issues raised by the integrity assessment and data integration analysis. The rule proposed that an operator evaluate and repair all defects that could reduce a pipeline's integrity, and establish an evaluation and repair schedule. The rule did not propose time frames for making the repairs, other than an operator could not operate the affected part of its pipeline system until it had corrected a condition presenting an immediate hazard. The NPRM also asked for comment on whether the rule should contain specific time lines for conducting repairs.

API was against specific time lines and said that criteria for when repairs should be implemented could not be reduced to simple statements suitable for inclusion in the rule. API added that the consensus standard will offer guidance to operators. Enbridge stated that a one-size-fits-all time frame for conducting repairs is not practical or technically justified; however, Enbridge said that it supported the goal of ensuring that no imminent hazard is left unaddressed.

Environmental Defense recommended a relatively short time to conduct repairs after serious defects are identified, e.g., one month to complete repairs unless pipeline pressure is significantly reduced. The City of Austin said that the rule should include repair time lines, acceptable methods of remediation and a better definition of what pipeline flaws constitute an immediate hazard. The City of Bellingham also recommended that the rule establish a specific and expeditious deadline for conducting repairs. EPA Region III commented that the proposed rule did not define what conditions constituted immediate hazard conditions.

Peoples Energy commented that the proposed language about which anomalies an operator had to evaluate and repair only applied to defects that could reduce integrity. Peoples Energy pointed out that this determination could not be made until an operator reviewed all data.

DOJ/ENRD questioned the ability to enforce performance-based standards, particularly with respect to the proposed repair provisions. DOJ/ENRD requested that the regulation be written in language that requires an operator to take specific action. DOJ/ENRD based its concerns on its experience with enforcing the Clean Water Act. DOJ/ENRD was particularly concerned that the proposed rule would not ensure that repairs were made before failures occurred and strongly recommended that language be added specifying when an operator would have to make repairs on the pipeline. DOJ/ENRD also strongly urged that the rule include a provision establishing a cut-off time for when an operator had to review and analyze the results from an internal inspection, and recommended a phased-in approach.

Response: We have rewritten the remedial action section of the final rule to accommodate DOJ/ENRD's and other commenters' concerns. To be consistent with the wording used to describe required program elements, we have renamed the section to reflect the broader actions an operator must take to address integrity issues raised by the assessments. The rule has been revised to specify time frames for reviewing and analyzing the results of an integrity assessment and for completing repairs of certain conditions (see § 195.452(h)).

The rule still requires an operator to take prompt action to address all pipeline integrity issues raised by the integrity assessment and information integration. The rule now clarifies that an operator is required to evaluate all anomalies and repair those that could affect the pipeline's integrity. Prompt action means that an operator must make the repair as soon as practical. However, an operator must prioritize the repairs according to the severity of each anomaly and address first those anomalies that pose the greatest risk to the pipeline's integrity.

The rule now requires that an operator complete repairs according to a schedule that prioritizes anomalies found during the integrity assessment for evaluation and repair. In this schedule, an operator would have to provide for review and analysis of the integrity assessment results by a date certain. The review and analysis must be done by a qualified person (*i.e.*, a person who has the requisite knowledge and technical expertise to review the results and analyze the data.) For the first three years after the rule's effective date, an operator would determine the period by which the results would have to be reviewed and analyzed and commit that date in writing in its schedule. After the third year, an operator's schedule must provide for review and analysis of the integrity assessment results within 120 days of conducting each assessment. The rule allows more flexibility in the first three years so that OPS can review the adequacy of time frames operators establish, and gather sufficient information to determine what the required standard for review and analysis of assessment results should be. OPS recognizes that a time frame depends, in part, on the availability of persons with expertise to evaluate the data. OPS further recognizes that a quality review and analysis takes time. By the end of the third year OPS will have sufficient information to be able to determine if it should revise the 120-day required period.

An operator's schedule also has to provide time frames for evaluating and completing repairs. A qualified person must conduct the evaluation (*i.e.*, a person with the requisite knowledge and technical expertise.) Because an operator must prioritize the repairs, the rule provides that the operator is to base the repair schedule on specified risk factors and pipeline-specific risk factors

the operator develops. For conditions not specified in the rule, the operator determines the schedule for evaluation and repair. However, the rule provides the time frames in which an operator must complete repair of certain conditions on the pipeline. These conditions are listed as immediate repair conditions, 60-day conditions and 6-month conditions. The time frame required for repair starts at the time the operator discovers the condition on the pipeline, which occurs when an operator has adequate information about the condition to determine the need for repair. Depending on circumstances, an operator could have adequate information when the operator receives the preliminary internal inspection report, gathers and integrates information from other inspections or the periodic evaluation, excavates the anomaly, or receives the final internal inspection report.

In the proposed rule we used the term immediate hazard for certain conditions, and referenced § 195.401(b). In the final rule we refer to these as immediate repair conditions and identify several. Under § 195.401(b), an immediate hazard condition requires that an operator shut down the pipeline until the operator has corrected the condition. With an immediate repair condition, as long as safety is maintained, an operator will either be able to temporarily reduce operating pressure or shut down the pipeline until the operator can complete the repair of the condition.

An operator may deviate from the rule's specified repair times if the operator justifies the reasons why the schedule cannot be met and that the changed schedule will not jeopardize public safety or environmental protection. OPS enforcement personnel will review any justifications and supporting documents during site inspections. In certain cases when an operator cannot meet the required schedule and cannot provide safety through a temporary reduction in operating pressure, the operator must notify OPS. This will allow OPS to determine the extent of review needed and if an inspection is needed. The rule specifies how an operator must notify OPS.

In the NPRM we discussed the consensus standard that an ANSI workgroup was developing on integrity management. OPS has been participating in the work group. In the notice, we said that we would consider adopting all, or part of, the standard once it was final, but only after public notice and comment. (More discussion about the consensus standard appears later in this document under the topic heading ''Consensus standard on pipeline integrity.'') The standard is not yet final. However, OPS is basing the provisions in section 195.452(h) on initial indications of what will be in the final consensus standard. We believe that the criteria being considered by the standard's workgroup adequately address pipeline integrity concerns because the criteria are based on a structured methodology for evaluation of internal inspection devices data. The methodology is a recognized industry practice. The criteria are also based on well-established consensus standards, such as the American Society of Mechanical Engineers (ASME) B31.4 standard. ASME B31.4 is a widely-recognized and long accepted standard on liquid transportation systems for hydrocarbons, liquid petroleum gas, anhydrous ammonia, and alcohols. (The regulations in 49 CFR Part 195 were developed from ASME B31.4.)

Although a consensus integrity standard is not yet final, we have made available at OPS's website, notes of the meetings, and a peer review draft of the standard on Managing Pipeline System Integrity. The standard is expected to be completed and published in December, 2000.

We recognize that we have completely restructured the section of the rule pertaining to actions an operator must take to address pipeline integrity issues. Because of the extensive changes to this section of the rule, we are allowing 60 days comment on the provisions in section 195.452(h). Based on the comments we receive, we will consider modifying the provisions. At the end of the comment period, we will either issue a modification or a notice stating that the section stands as written.

An operator has one year from the effective date of the rule to develop the framework for an integrity management program. An operator has 3½ years from the rule's effective date to conduct a baseline integrity assessment of the highest risk line pipe segments. An operator is not likely to take remedial actions required by this rule until after the integrity assessment. Thus, remedial action criteria are not needed until some time after the rule's effective date. We expect to issue any modifications so that operators have ample time to incorporate the modifications into their program framework. If we are delayed in issuing the modification so that operators do not have adequate lead time, we will then consider further delaying the compliance date for section 195.452(h). Until OPS announces a modification, operators can base their program remedial action criteria on those set forth in this rule.

3. Review, Approval and Enforcement Processes

Some commenters questioned why the proposed rule did not provide for adequate and timely OPS review and approval of an operator's baseline plan, integrity assessments, and integrity program. The proposed rule requires an operator to maintain for inspection written documentation of its program and assessment plan, and of any evaluation or analysis made to support a decision or action. The rule did not propose requirements for formal transmittal of baseline assessment plans, assessment results, or integrity management programs to OPS for approval.

Lower Colorado River Authority (LCRA) supported the flexibility of a performance-based approach but cautioned that the commensurate accountability component seemed to be missing. LCRA explained that the proposed rule did not provide a mechanism for OPS review, or approval of critical decisions made by an operator or indicate that OPS would have any involvement in program implementation. The City of Austin maintained that the proposed rule seemed to continue reliance on the regulated community to implement pipeline safety regulations at their own discretion, with only minimal regulatory oversight. The City of Austin cautioned that close regulatory review and oversight are needed and strongly urged OPS to require all integrity management programs to be submitted for OPS approval, as well as assessment reports.

EPA Oil Program Center expressed concern that the proposed rule relied ''heavily on a pipeline operator's assessments, assumptions, and evaluations, yet requires no formal approval process by the Office of Pipeline Safety or certification by a third party, such as a Professional Engineer.''

Several commenters questioned OPS's ability to adequately enforce the proposed rule because of inadequate data, knowledge, or expertise. EPA Region III stated that the bulk of expertise in this subject area seemed to reside with the pipeline industry because of the proposed rule's reliance on industry's efforts to evaluate and resolve risk issues concerning pipelines. Region III further stated that OPS must obtain and/or develop independent expertise and knowledge for effective oversight. Friends of the Aquifer commented that because of the lack of

accurate data about pipeline spills, OPS would not be able to judge the adequacy of the risk factors included in an operator's plan.

Response: OPS agrees that an effective and credible inspection process is critical to achieving the objectives of the rule. OPS is developing protocols and criteria for detailed inspection of operator baseline assessment plans and integrity management programs to ensure that operators comply with the requirements of the rule, and that operators use structured, documented, and technically defensible processes and models to support assessment priorities and time frames, decisions on remediation, prevention and mitigation, and measures of program effectiveness.

OPS has already developed expertise in enforcing performance-based regulations and in evaluating risk-based decision processes. OPS has contracted for additional training in specific technical areas to improve the qualifications of its enforcement personnel. OPS plans to have a sufficient base of trained enforcement personnel who will review the integrity management programs during on-site inspections of pipeline operators. OPS will contract for any needed technical expertise to supplement the knowledge of its enforcement personnel.

We are not requiring formal approval of an operator's integrity management program or of decisions and analyses made to develop and implement the program. Rather, a multi-disciplined team composed of OPS regional inspectors, and technical specialists from headquarters will conduct integrity management program inspections. In addition, OPS will contract for other technical expertise, as needed. We are also planning how best to involve state pipeline safety inspectors in the review.

We have also added requirements that an operator provide advance notice to OPS when the operator plans to use other technology (other than internal inspection or pressure test) for a baseline or continual integrity assessment or intends to justify a longer continual assessment period. (We discuss these advance notice requirements later in the document.) We determined that an advance notice requirement was necessary in certain instances to give OPS enforcement personnel additional time to review and evaluate an operator's rationale and supporting documentation.

The rule continues to require an operator to document all aspects of its integrity management program so that OPS enforcement personnel can review these documents during an inspection to determine an operator's compliance with the rule. We have clarified the language in the final rule concerning the types of documents an operator is required to maintain. Required documents include those to support decisions and analyses made, as well as modifications, justifications, deviations, variances and determinations made, and actions taken to implement and evaluate each of the required program elements. This requirement is no different from other requirements in the pipeline safety regulations that an operator maintain current maps and records of its pipeline system, maintain a procedural manual for operations, maintenance and emergencies and maintain other records of tests and inspections. In Appendix C we have provided some examples of records an operator would have to maintain for inspection. We also discuss recordkeeping requirements in greater detail later in this document in the section by section analysis (section 195.452(1)).

4. Program Implementation and Integrity Assessment Time Frames, Assessment Methods and Criteria—Proposed Sections 195.452(b)–(e) and (j)

The notice proposed that an operator develop and follow a written integrity management program within one year after the final rule's effective date. The proposed rule included a seven-year time frame for the baseline assessment, with an operator having to assess 50% of the mileage within 3.5 years, and a ten-year maximum interval for continual integrity re-assessments. The notice proposed that an operator conduct the integrity assessment by internal inspection, pressure test, or new technology that could provide equivalent protection to the other two methods.

The proposed rule disallowed use of a magnetic flux leakage or ultrasonic internal inspection device for a pipeline segment constructed of low frequency ERW pipe or lapwelded pipe susceptible to longitudinal seam failures. This was done to be consistent with current requirements in section 195.303 providing that an operator's program for testing a pipeline on risk-based criteria provide for pressure testing of a segment constructed of either of those types of pipe.

The notice also proposed allowing as a baseline assessment an integrity assessment that an operator had conducted within five years prior to the effective date of a final rule.

The proposed rule permitted an operator to choose between two options in establishing baseline and continual assessment schedules. The first option specified risk factors to use in establishing the schedule. The second option permitted an operator to base the schedule on risk factors the operator considered essential in risk or consequence evaluation. This option would have given an operator some flexibility to establish re-assessment intervals exceeding ten years.

Implementation

API recommended that program implementation be keyed to OPS making available to operators a complete set of maps designating the high consequence areas rather than to the final rule's effective date.

The National Pipeline Reform Coalition objected to the one-year program development period based on OPS's estimate in its cost/benefit analysis of how long it would take an operator to develop an integrity management program. OPS had estimated 430 hours.

Assessment Time Frames

API and the industry commenters suggested that OPS establish January 1, 1995 as the cut off date for acceptability of prior integrity assessments, rather than tying the cutoff date to a final rule date. Enbridge and Lakehead asked that operators be allowed to justify older assessments, rather than OPS arbitrarily excluding those older than five years.

API also said that the proposed seven-year baseline and ten-year re-assessment periods were reasonable, and would allow operators to make decisions based on the characteristics of their pipeline system.The hazardous liquid operators re-iterated and concurred with API's comments.

Advocacy and environmental groups, and other commenters objected to the proposed seven-year baseline assessment and ten-year re-assessment periods. Some also objected to allowing a five-year old prior assessment to satisfy the baseline assessment. Environmental Defense suggested a three-year maximum, only allowing baseline assessments that have occurred within two years of the rule. For the continual re-assessment interval, Environmental Defense recommended that OPS follow the California model, and require re-assessment every five years. The City of Bellingham suggested that baseline assessments should be completed in one to three years, and periodic updates within five years. Fuel Safe Washington objected to allowing any prior baseline assessments, and suggested that baseline assessment be completed within 18 months, and that re-assessment be required at a maximum of five years, three years for pipelines constructed prior to 1970, and one year

for pipelines located in unusually sensitive environmental areas. Pipeline Survivor's Association argued that baseline assessments should be completed in three years, with 50% of that mileage being assessed in 18 months, prior assessments be limited to one year before the rule, and re-assessments intervals be shortened to five years. The City of Austin recommended five years for establishing the baseline, 2.5 years to complete 50% of the baseline, and five years for reassessment. Batten & Associates recommended a baseline assessment period of three years, limiting prior allowable integrity assessments to one year before the rule's effective date, and re-assessment intervals of three years. LCRA recommended a seven-year time frame for completing the baseline integrity assessment and shortening the ten-year time frame for re-assessment in some instances based on pipeline-specific risk factors (*e.g.,* age of pipe, leak history, etc.).

Several federal agencies also objected to the proposed integrity assessment time frames. NTSB urged us to reduce the period for the baseline assessment because it could not find sufficient data in the proposed rule to justify the seven-year period. EPA Oil Program Center suggested a five-year time frame for completing the baseline, with 50% of the mileage completed within 30 months. EPA Region III also recommended a five-year continual assessment period because it would provide useful integrity/deterioration information, without imposing too great a burden. DOJ/ENRD raised concern with the proposed seven-year baseline and ten-year continual assessment intervals and strongly recommended shorter baseline and continual integrity assessment intervals. DOJ/ENRD said OPS could not demonstrate that defects would not propagate to failure within the proposed seven-year period. DOJ/ENRD also questioned the basis for OPS's assumption that a ten-year interval was reasonable if a pipeline was adequately cathodically protected.

Assessment Schedule Criteria

The City of Austin recommended eliminating Option 2—allowing an operator to establish an assessment schedule based on factors it determines essential—because it would not be feasible for an operator to demonstrate ''an equivalent level of safety and environmental protection as Option 1 given the extremely complex inter-workings of the many potential risk factors.'' The advocacy groups argued for dropping Option 2 from the rule because it provided the operator too much discretion. EPA Region III also stated that Option 2 may provide ''too loose a regimen'' and supported the approach described in Option 1. Environmental Defense preferred ''a modified Option 1 in which operators could identify and report any additional risk factors to those specified in the rule.'' The National Pipeline Reform Coalition also recommended eliminating Option 2 because Option 1 allowed enough flexibility for an operator to determine that a specified risk factor had little or no applicability to its operations and discount the factor.

Several commenters suggested risk factors that the rule require for establishing assessment frequency. NTSB recommended that OPS not let an operator determine what factors are essential for ensuring a pipeline system's safety and environmental protection; rather the rule should specify minimum factors that an operator must consider in establishing an assessment schedule. NTSB suggested these factors include the results from previous inspections, the pipeline's leak history, material and coating conditions, cathodic protection history, type of pipe seams, product transported, operating pipe stress levels, defect types and sizes detectable by the inspection method used, defect growth rates, and effectiveness of actions taken to correct chronic problems, such as corrosion. EPA Region III suggested that risk factors for establishing frequency of assessment should also include, product specific differences, location related to the ability of the operator to detect and respond to a leak (*e.g.,* pipelines deep underground) and non-standard or other than recognized pipeline installations (*e.g.,* horizontal directional drilling).

National Pipeline Reform Coalition suggested risk factors such as pipe material and manufacturing processes, highly corrosive soils, and highly volatile products being transported. Dynegy suggested that highly volatile liquids not be treated as other hazardous liquids because they do not pose the same potential for damage to sensitive environmental areas. SEFBO recommended that the rule distinguish overhead suspension pipeline bridges from other above ground pipeline support structures because more sophisticated skills and experience are required to inspect and maintain cable structures. Sen. Breaux also urged that we address the role of these bridges in high consequence areas.

Assessment Methods

API expressed satisfaction that the proposed rule not only recognized that internal inspection tools provide valuable information but also recognized that a single tool or integrity assessment methodology is not always the answer, and that integrity can be assessed by various inspection methods. API and Equilon, however, suggested that we delete the footnote in the proposed rule preventing operators from using magnetic flux or ultrasonic internal inspection tools on low frequency electric resistance (ERW) welded pipe. API suggested language to ensure that the integrity of ERW seams is adequately assessed. Colonial Pipeline was pleased that the rule recognized the value of internal inspection technology and recognized that technology is constantly evolving.

Koch suggested that the rule allow an alternative assessment methodology in situations where it would be appropriate to conduct an assessment by means other than internal inspection, pressure test, or equivalent new technology. Peoples Energy questioned why the proposed rule did not allow for use of current technology, such as sonic or optical methods, that could be made feasible for pipelines.

Dynegy pointed out that a leak during a hydrostatic test could damage the environment and that installing magnets needed for instrumented internal inspection could also damage an area.

Response:

Implementation

The final rule keeps the one-year period from the rule's effective date for an operator to develop an integrity management program. However, the rule now requires that an operator identify all pipeline segments that could affect high consequence areas within nine months from the rule's effective date. Although implicit that an operator would have to identify the pipeline segments that were covered by the rule, the proposed rule did not propose that an operator do this. Because identification is a necessary first step in the integrity management process, we did not think it unreasonable to make it an explicit requirement.

We have also clarified that during the first year an operator must develop a program framework that addresses each element of the integrity management program. The rule further clarifies that a program begins with the initial framework. Once the program framework is developed, an operator will then have to implement and follow the program. Because an integrity management program is dynamic, the rule provides that an operator must also continually change the program as the operator gains experience.

Assessment Intervals

We have not revised the time period for an operator to conduct a baseline assessment. OPS believes that a seven-year baseline integrity assessment cycle will result in a higher quality integrity assessment and analysis of the assessment results to better ensure the integrity of each pipeline segment. Further, OPS believes that this schedule will effectively double the rate of assessment currently being conducted. Finally, we decided not to establish a shorter baseline interval because an analysis OPS conducted found that internal inspection resources needed to meet demand for baseline assessment are marginally adequate until the year 2007. This finding took into account resources that will be needed concurrently for other assessments (apart from those this rule requires). (See memorandum from Noel Duckworth, dated October 1, 2000. This memorandum is in the docket.) We expect that internal inspection will be the primary choice of operators. Moreover, once we establish similar integrity management program requirements for liquid operators with smaller operations and for natural gas operators, these operators will all be drawing on the same market of vendors. Thus, to ensure that operators have adequate time to conduct high quality integrity assessments and to analyze the results from the assessments, we have kept the seven-year baseline interval.

Moreover, to ensure that the highest risk pipe is assessed early in the cycle, we have clarified that an operator must assess at least 50% of the pipe, beginning with the highest risk pipe, in the first 3.5 years of the seven-year baseline period. This requirement, coupled with the requirement to base the assessment intervals on risk-based factors and analyses, should ensure that an operator assesses the highest risk segments in a shorter time frame. An operator's schedule and rationale for establishing the assessment intervals are subject to review during an inspection.

The rule continues to allow as a baseline assessment an integrity assessment that an operator has conducted five years before the rule's effective date. However, we have revised the rule so that if an operator chooses to use a prior integrity assessment, the operator must then re-assess the pipe segment according to the continual integrity re-assessment requirements (discussed below). We believe that some operators will opt for using a prior integrity assessment to address integrity issues on a pipeline segment that need prioritized remedial action.

One of the greatest concerns expressed by Federal government agencies, environmental groups and other advocacy groups (as discussed above) was that the proposed ten-year continual re-assessment interval was too long to ensure public safety and environmental protection. Because of the concern expressed, we did additional research and reconsidered the issue. Based on what we found, we have revised the final rule to shorten the continual re-assessment interval. The rule now requires an operator to establish intervals not to exceed five (5) years for continually assessing the line pipe's integrity, unless the operator can demonstrate that one of the limited exceptions applies.

In deciding on the five-year interval, we relied extensively on an analysis OPS conducted on internal inspection devices (Noel Duckworth memorandum dated October 1, 2000). The analysis is available in the docket. The analysis found that, in 1999, the three major internal inspection devices vendors in the U.S. logged 30,000 miles, at 68% utilization capacity, and in 2000, the vendors expect to log 45,000 miles at 90% utilization (maximum attainable). According to the memorandum, the analyst estimated that the total capacity of these three internal inspection device vendors would likely increase to about 87,000 miles by 2007. Our current estimates indicate that this rule is likely to apply to 35,500 miles of hazardous liquid pipeline. (Because of the location of pig launchers and receptors, which are typically located near pump stations 50 miles apart, operators will be internally inspecting more than the 35,500 miles of hazardous liquid pipeline required under the rule. We expect that at least 25–30% additional mileage or 44,375 miles will be internally inspected.) Additional internal inspection requirements will also be generated by future rules that will apply to smaller hazardous liquid operators and to natural gas operators. Therefore, according to the Duckworth memorandum, the three big vendors should be able to meet the demand for internal inspection devices, although demand will stress the capacity of the market. The memorandum noted that more is involved in integrity assessment than just running the internal inspection devices, and analyzing the data, but also about the planning/scheduling process between internal inspection tool companies and pipeline operators. Based on these findings, coupled with the insistent urging of several federal agencies (DOJ, NTSB, and EPA), and many other commenters, who argued that a shorter continual integrity re-assessment interval was essential to protect public safety and the environment, we have reduced the re-assessment interval to a general requirement of five years, providing for exceptions.

The five-year integrity re-assessment period is not absolute. The rule allows variance in limited instances from the five-year period: when there is an engineering basis for a longer period or when the best technology needed to assess the segment is temporarily unavailable. For example, an operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe, if the operator can support the justification by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technologies, that provides an equivalent understanding of the condition of the line pipe. Or an operator may require a longer assessment period for a segment of line pipe because the best assessment technology, given the risk factors of the segment, is not available. An operator would then have to justify the reasons why it could not comply with the required assessment period and also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. In either instance, an operator would have to notify OPS before the end of the five-year period that the operator will be justifying a longer period. If the justification is based on engineering reasons, the operator must provide nine months notice before the end of the five-years. For unavailable technology, the operator must provide 90-days notice. Advance notice will give OPS sufficient lead time to review an operator's justification and supporting documents.

The rule continues to require that an operator base both the baseline and continual assessment intervals on the risk the pipeline segment poses to the high consequence area. To establish the assessment intervals, the rule requires that an operator use specified risk factors, the analysis of the results from the last integrity assessment, and information from the integration analyses. These factors and information will help the operator to prioritize the pipeline segments for assessment.

OPS inspectors will carefully evaluate each operator's methodology for determining the baseline and continual integrity assessment schedules to ensure that the highest risk segments are being addressed in the earliest time frames. OPS inspectors will also review an

operator's justification for deviating from the required five-year re-assessment interval. We have added the requirement for advance notice to OPS when an operator may vary from the five-year interval so that OPS inspectors have adequate time to review and evaluate the justification supporting the variance.

Assessment Criteria

We agree that appropriate flexibility for establishing an assessment schedule based on risk factors can be achieved by modifying Option 1 and deleting Option 2. The final rule requires that an operator base its integrity assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The rule also specifies certain factors that an operator must consider. These factors include those we proposed in the NPRM plus others suggested by NTSB, EPA, the THLPSSC and other commenters. However, the rule does not preclude an operator from including other risk factors specific to the pipeline being assessed. OPS wants to encourage operators to supplement the specified risk factors with factors relevant to the pipeline segment being assessed.

We have not changed the final rule to establish separate requirements for highly volatile liquids and other hazardous liquids, or for overhead suspension pipeline bridges. However, because highly volatile liquids and overhead suspension bridge pipelines may pose unique risks to a high consequence area, an operator's integrity management program must consider and address these risks. In the rule, we have added pipeline suspension bridges and product transported to the list of factors an operator must consider when establishing an assessment schedule. The Appendix provides an operator further guidance on establishing integrity assessment intervals.

Assessment Methods

The rule continues to allow a choice in the integrity assessment method—internal inspection tool, pressure test, or other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. We did not provide for another assessment method in lieu of the three permitted methods. We believe that the three permitted methods give an operator sufficient flexibility to conduct integrity assessments appropriate to each pipeline segment that must be assessed.

The rule provides that an operator choosing assessment by internal inspection must use a tool or tools capable of detecting corrosion and deformation anomalies, including dents, gouges and grooves.

We have revised the rule to delete the footnote about not using a magnetic flux leakage or ultrasonic internal inspection tool on ERW pipe. We recognize that technology in the internal inspection industry has been changing rapidly. Now, there are readily available tools, for example, ultrasonic (shear wave) and circumferential magnetic flux leakage tools, that can detect longitudinal seam failures. Therefore, the rule now allows an operator to use integrity assessment methods on ERW pipe and on lapwelded pipe susceptible to longitudinal seam failures that can assess seam integrity and can detect corrosion and deformation anomalies. An operator's integrity management program would also have to address the special risks of these types of pipe.

In the final rule we clarified that a pressure test must be conducted according to the requirements for pressure testing found in Part 195, subpart E. An operator choosing to assess by pressure test should also evaluate its corrosion control program before deciding on this option.

OPS inspectors will review the operator's selection of assessment methods for the relevant pipeline segments. OPS personnel will particularly look at the adequacy of the operator's corrosion control program when evaluating an operator's choice to pressure test.

We used the term *new technology* in the proposed rule as an operator's third option. In the final rule, we changed that term to *other technology.* Other technology would include new or existing technology that is adapted for pipeline use and provides an equivalent understanding of the condition of the line pipe as the other two methods. We have also changed the language that the other technology must provide *an equivalent level of protection in assessing the integrity of the line pipe* to that it must *provide an equivalent understanding of the line pipe.* We believe this language better reflects what an assessment tool does i.e., it does not protect the pipe but gives the operator an understanding of the condition of the line pipe.

If an operator chooses other technology as its assessment method, the operator must notify OPS 90 days before using the technology so that OPS has adequate time to review the technology.

5. Applicability (Coverage) of the Rule—Proposed Section 195.452(a)

The proposed rule applied to operators that operate 500 or more miles of hazardous liquid pipeline used in transportation. If an operator fell into that category it would then have to develop an integrity management program for all segments of pipeline that could affect a high consequence area.

EPA Oil Program Center, the National Pipeline Reform Coalition, and other advocates suggested that this rule should apply to all hazardous liquid pipelines. EPA Oil Program Center expressed confusion about whether the rule applied only to pipelines that were 500 miles long or longer. The City of Austin pointed out that smaller operators might be more likely to have poorer maintenance and operating practices. BP Amoco also urged OPS to require all hazardous liquid operators to comply with the proposed rule, expressing concerns that pipeline companies might structure their operations in a manner to avoid applicability of the rule.

NTSB suggested that integrity management requirements should apply to hazardous liquid pipelines no matter where they are located, not just those pipeline segments that could affect high consequence areas.

API and the individual operators commented on the need for greater clarity in the portions of a pipeline facility to which the rule would apply. These commenters said that OPS needed to clarify whether the integrity management program requirements were limited to the line pipe or were intended to cover other facilities included in the definition of pipeline (*e.g.,* pump stations, valves, breakout tanks). The pipeline industry commenters suggested that the rule be limited to the line pipe and that we address integrity issues for the other pipeline facilities in a separate rulemaking.

API also suggested that the final rule clarify that it is limited to onshore pipeline systems, and that OPS conduct a separate rulemaking on integrity management for offshore pipeline systems. API, and other industry commenters, explained that offshore lines may not be capable of accommodating internal inspection devices. API also noted that offshore pipelines pose different risks from onshore pipelines. BP Amoco thought it appropriate to include only offshore pipelines that could affect USAs in an integrity management program because offshore operations pose a limited, if any, risk to public safety. The company

listed technical factors that should be considered in establishing integrity requirements for these lines. Chevron also noted that offshore lines present technical and configurational differences from onshore lines.

SEFBO and Sen. Breaux commented that the rule should clearly distinguish overhead suspension pipeline bridges because of the different skills and experience required for inspection and maintenance of such structures. Dynegy recommended that the rule exempt highly volatile liquid product pipelines that traverse wet or flooded areas, instead, that we cover those lines under the gas integrity management program rule.

Response: The final rule clarifies that it applies to each operator who owns or operates a total of 500 or more miles of pipeline used in hazardous liquid transportation. If an operator has 500 or more miles of pipeline in its system, then the operator's integrity management program must address the risks on each pipeline segment in its system that could affect a high consequence area. The length of an individual pipeline segment that could affect the high consequence area is irrelevant to whether it is covered.

Moreover, as we explained in the NPRM, we have no intention of excluding hazardous liquid operators with smaller operations. Our public discussions had given us ample information to proceed with a proposed rulemaking aimed at larger liquid operators. While we proceeded with the first part of the rulemaking (liquid operators owning or operating 500 or more miles of pipeline), we continued to obtain further information about smaller liquid operations so that we could propose integrity management program requirements applicable to those systems. The next step in our series of rulemakings that will ultimately require all regulated pipeline operators to have integrity management programs is to propose integrity management program requirements for hazardous liquid operators who own or operate less than 500 miles of pipeline.

In this rulemaking we have not extended the pipeline integrity requirements to pipelines beyond those that could affect a high consequence area. We continue to focus on pipeline segments that could affect the areas we define as high consequence areas: populated areas, unusually sensitive environmental areas and commercially navigable waterways. However, we expect that many of the measures the rule requires for pipeline segments that could affect high consequence areas will benefit other parts of the pipeline system not covered by the rule. For example, the final rule requires an operator to analyze and integrate various information about the integrity of the entire pipeline. This analysis is likely to benefit other segments of the pipeline system. The additional preventive and mitigative measures that an operator must take to protect the high consequence area should also yield benefits beyond the segment in the critical area.

Because of the location of launchers and receivers on a pipeline, an assessment by internal inspection is likely to benefit an additional 25–30% of pipeline beyond that covered by this rule. An operator may also choose to extend the integrity assessment beyond the pipeline segment that could affect the high consequence area.

The final rule clarifies the pipeline facilities covered by the integrity management program requirements. The integrity management program requirements apply to each pipeline segment that could affect the high consequence area. We are using the term pipeline as it is defined in § 195.2; the term includes, but is not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, metering and delivery stations, and breakout tanks. Integrity management addresses more than material issues in line pipe, but other issues such as adequacy of procedures, operator training, and other issues related to the pipeline facilities.

The rule clarifies that the baseline integrity assessment, which involves internal inspection, pressure test, or other equivalent technology applies only to the line pipe. (Line pipe is defined in § 195.2.) The continual integrity assessments, done at intervals not to exceed five years, also are limited to the line pipe.

The continual evaluation and information analysis requirements, however, apply to the entire pipeline. To ensure that a high consequence area receives broad protection, an operator must evaluate all threats to and from the pipeline, and consider how operating experience in other locations on the pipeline could be relevant to a segment that could affect a high consequence area. Thus, the rule requires an operator to periodically evaluate the integrity of each pipeline segment that could affect a high consequence area by analyzing all available information about the entire pipeline. This information would include information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment; information about how a failure would affect location of water intake; and information gathered in conjunction with other inspections, tests, surveillance and patrols required in Part 195, including, corrosion control monitoring and cathodic protection surveys. This information analysis will be done in conjunction with the periodic evaluation and continual integrity assessment of each pipeline segment.

The rule does not apply to all offshore pipelines, only to those offshore pipeline segments (and onshore pipeline segments) that could affect a high consequence area. Offshore pipelines could, particularly, affect unusually sensitive environmental areas (USAs) and commercially navigable waterways. We are including these offshore pipeline segments because of their potential to impair unusually sensitive ecological resources, to disrupt the flow of goods to communities, or to impair unusually sensitive drinking water resources. We discuss later in this document all areas that are included as high consequence areas. (See discussion under topic heading ''Definition of High Consequence Areas.'') We also explain how these areas will be shown on the National Pipeline Mapping System (NPMS).

We have also added offshore pipelines to the list in Appendix C of risk factors that an operator should consider in establishing an integrity assessment schedule. Generally, risks associated with offshore lines are because of climatic or geological factors.

We did not accept the recommendation to exempt highly volatile liquid (HVL) product pipelines from this rule. (HVLs are covered under Part 195 because they are and behave like hazardous liquids when transported by pipeline under pressure.) Rather, as discussed previously in this document, we have added highly volatile liquids (or product transported) and pipeline suspension bridges to the list of risk factors an operator must consider in establishing an integrity assessment interval. And as we discuss later in the document, these factors have also been added to the specified factors an operator must consider when analyzing the need for additional protective measures for the pipeline segment.

6. Consensus Standard on Pipeline Integrity

In the NPRM, OPS mentioned that API was sponsoring an American National Standards Institute (ANSI) work group to develop a consensus

standard on integrity management. We said that we expected the consensus standard would provide detailed guidance to operators developing and implementing an integrity management program. We further said that once the standard was final, we would consider adopting it into the integrity management rule, but only after we had provided a public notice and comment period prior to incorporating it into the rule. The work group is continuing its work on the standard and is seeking comment on the draft of the standard.

There was a difference of opinion among commenters concerning an industry group's role in coordinating the development of a standard. Environmental Defense and other public advocates, expressed concern over API's role, and suggested use of a neutral engineering society. The City of Austin urged RSPA to develop standards using a team of stakeholders that includes the regulated community, local officials, experienced safety engineers, and other appropriate experts.

API responded that the standard is being developed using the procedures of the American National Standards Institute and includes broad participation from operators, vendors, representatives from the American Society of Mechanical Engineers (ASME), the National Association of Corrosion Engineers, OPS, and pipeline safety advocates.

EPA Region III said that the pursuit of an industry consensus standard by both the API and OPS is encouraging, but asked about the direct involvement in that process by OPS and other federal agencies, and the current review procedures for such standards.

Response: The standard being developed will be a consensus standard of the American National Standards Institute (ANSI), developed using the standard development procedures of this independent organization. The work group of technical experts includes representatives from government, industry, and members of the American Society of Mechanical Engineers (ASME). When the work group was created in February 2000, environmental and other advocacy groups were invited to join the work group.

The work group's meetings are open to the public. Public participation has been encouraged. Minutes of the meetings have been posted on OPS's website. The resulting draft standard is being distributed for public comment before publishing, allowing input and review from all stakeholders.

The Executive Committee of ASME B31.4 has also agreed, at OPS's request, to undertake a peer review of this ANSI standard to ensure that the standard adequately addresses the regulatory requirements. The ASME Executive Committee is expected to complete this peer review during fall 2000.

Accordingly, we believe that the on-going standard development process has the appropriate and adequate checks and balances built in to produce a technically sound product that can support the development and implementation of high quality integrity management programs. We expect this standard will provide more detailed guidance to operators on the specific elements and acceptable processes of an integrity management program, and can supplement the performance-based portions of the rule. Once the consensus standard is final, we will consider adopting, all or part of it into this final rule. However, we will only do so after we have provided for public notice and comment.

7. Definition of High Consequence Areas—Proposed Section 195.450

The proposed rule's definition of high consequence areas had three components: populated areas, areas unusually sensitive to environmental damage and commercially navigable waterways.

Populated Areas

The notice proposed that populated areas consist of high population areas and other populated areas. The proposed rule based these areas on Census Bureau definitions.

The City of Austin thought that the population component of the definition was too vague. They commented that because Census figures were only updated every ten years, that high growth areas could be penalized, and that smaller clusters of dense population would not be included. The City wanted OPS to supplement the Census data with local data on utility connections. The City of Austin also stated that OPS incorrectly stated the Census Bureau's definition of an urbanized area.

USAs

The environmental component of the proposed high consequence area definition used OPS's recently proposed definition of Unusually Sensitive Areas (USAs) (64 FR 73464; Dec. 30, 1999).

Many commented that this proposed definition is too restrictive, and should be expanded to include all environmentally sensitive areas. EPA Oil Program Center expressed concern that OPS's methodology would fail ''to protect even the most vulnerable of sensitive environmental populations and their habitat.'' EPA Region III said that the definition should include product-specific differences. Friends of the Aquifer stated that ''the rule proposes an eccentric and far too narrow definition of natural areas .'' AWWA also commented that the USA definition was inadequate because it excludes many sources of drinking water. Environmental Defense suggested we include all environmentally sensitive areas without the filtering system the proposed USA definition used. Friends of the Aquifer also wanted all environmentally sensitive areas included. Batten & Associates thought the proposed USA definition was too restrictive and would fail to protect many drinking water resources and habitats for threatened and endangered species.

Commercially Navigable Waterways

API and liquid operators questioned the inclusion of commercially navigable waterways into the high consequence area definition. API pointed out that Congress required OPs to identify hazardous liquid pipelines that cross waters where a substantial likelihood of commercial navigation exists and once identified, issue standards, if necessary, requiring periodic inspection of the pipelines in these areas. API said that OPS had not determined the necessity for including these waterways in areas that trigger additional integrity protections. BP Amoco said the rule should be limited to protection of public safety, rather than commercial interests. Enbridge and Lakehead also questioned why waterways that are not otherwise environmentally sensitive should be included for protection.

EPA Region III said that we should also consider recreational and waterways other than those for commercial use. Environmental Defense, Batten, City of Austin and other commented that we should consider all navigable waterways as high consequence areas, because of the environmental consequences a hazardous liquid release could have on such waters.

Other Areas

EPA Region III maintained that product specific differences should be incorporated into the definition. Environmental Defense, Batten and other commenters wanted OPS to expand the definition of high consequences areas to include cultural, recreational, tribal and economic resources. Environmental Defense suggested we include national parks, wilderness areas, and wildlife refuges.

The City of Bellingham asked that we consider addressing integrity management programs for pipeline located outside the high consequence areas.

The City of Austin commented that the definition failed to include areas that are of high consequence due to preservation or recreational value alone. The City suggested including all state, national, and local parkland, refuges and wilderness areas, and preserves designated for water quality protection and wildlife.

API argued against expanding the definition to include cultural resources, environmental resources other than those identified as USAs, and other areas of national importance. They argued that including these areas would dilute available resources and focus from the populated and environmental areas that need greater protection, and that many other Federal, state, and local regulations are in place to minimize the effects of hazardous liquid pipelines on these other areas.

During discussions with representatives from DOJ/ENRD, DOI, and EPA, we were strongly urged to include other areas as high consequence areas: all waters of the United States, wetlands and wildlife refuges, wilderness areas, fish hatcheries, units of the National Park System, and wild and scenic rivers. DOI, DOJ and EPA strongly recommended that the National Parks and National Fish Hatcheries be included in the definition.

Identification of High Consequence Areas

API and liquid operators wanted OPS to clarify its commitment to identify high consequence areas, to generate and publish maps of the areas, and to periodically update the maps. These commenters said that such information was necessary before operators could assess pipelines and take appropriate preventive and mitigative measures.

Response: The final rule continues to focus on areas where we have determined a hazardous liquid pipeline failure could pose the greatest threat to public safety, unusually sensitive environmental areas (including drinking water and ecological resources), and water commerce that is essential for communities' safety and public health or for national security. We have not revised the definition to incorporate product-specific differences; rather, other parts of the rule address the risks associated with different products the pipeline is transporting (e.g., when considering risk factors for establishing assessment intervals).

Populated Areas

In the final rule, we have not changed the definition of populated ares that is based on the Census Bureau's definitions and delineations. We disagree that we misstated the Census Bureau's definition of urbanized areas. The only change we have made is in the terms we are using. What Census Bureau calls an *urbanized area,* we are calling a *high population area.* The additional populated areas that the Census Bureau calls a *census designated place,* we are calling an *other populated area.* We have chosen these definitions to avoid confusion over the term places, which the Census Bureau used to include both urbanized and census designated places. Our National Pipeline Mapping Systems (NPMS) will use the same titles and definitions used in this final rule.

We are using Census Bureau data for the population component because it is the recognized expert and source for general population data in the communities of the United States. The data are standardized, publicly available and in a format that allows OPS and others to create maps of the populated areas. OPS currently does not have the resources to gather local data on utility connections. However, nothing precludes an operator from supplementing the maps we will provide with other data pertinent to its pipeline. (As discussed later in this Preamble under the sub-topic heading ''Identification of high consequence areas'', an operator will have the ongoing responsibility to incorporate newly-identified populated areas and unusually sensitive environmental areas into its assessment plan.)

Populated areas consist of high population and other populated areas. High population areas are the Census Bureau's urbanized areas. These areas contain 50,000 or more people and have a population density of at least 1,000 people per square mile. Other populated areas are the Census Bureau's places minus the urbanized areas. These areas contain concentrations of people and include incorporated or unincorporated cities, towns, villages, or other designated residential or commercial areas.

We believe the population component of the high consequences area definition picks up most areas where pipelines can pose a threat to public safety. However, we are aware that there may be other areas where people congregate near pipelines, but do not fall within either sub-component of the population definition. Two recent and tragic accidents illustrate the dangers that pipelines pose to public safety in these areas. In Bellingham, Washington, a pipeline release into a creek ignited and resulted in the deaths of three young people who were in the recreational park through which the creek flowed. An explosion that occurred on one of the three adjacent large natural gas pipelines near Carlsbad, New Mexico, killed 12 people, including five children, who had been camping near the pipeline.

Although this rule is not including areas where people congregate in the high consequence area definition, OPS is considering addressing these areas in a future rulemaking. In the meantime we encourage operators to consider addressing in their integrity management programs areas where people congregate and to determine if there are pipeline segments in or near these areas that could affect the area. Operators should be able to recognize these areas, through fly overs or other surveillance made of their pipelines, or through consultation with local officials in the community.

USAs

The rule's definition of high consequence areas will incorporate the final definition of Unusually Sensitive Areas, which OPS expects to issue in November 2000 (Docket No. RSPA–99–5455). The USA rulemaking will address the resolution of the above comments and other submitted to the docket for that rulemaking. Because of the dependence of this rulemaking on the final definition of USAs, this rule will not be effective until March 31, 2001.

Commercially Navigable Waterways

Our inclusion of commercially navigable waterways for public safety and secondary reasons is not based on the ecological sensitivity of these waterways. Parts of waterways sensitive for ecological purposes are covered in the proposed USA definition, to the extent that they contain occurrences of a threatened and endangered species, critically imperiled or imperiled species, depleted marine mammal, depleted multi-species area, Western Hemispheric Shorebird Reserve Network or Ramsar site. In this rule, only those pipeline segments that could affect a commercially navigable waterway are covered. We are including commercially navigable waterways as high consequence areas because these waterways are a major means of commercial transportation, are critical to interstate and foreign commerce, supply vital resources to many American communities, and are part of

a national defense system. A pipeline release could have significant consequences on such vital areas by interrupting supply operations due to potentially long response and recovery operations that occur with hazardous liquid spills. As explained later, OPS will map these waterways on its National Pipeline Mapping System.

Other Areas

As discussed above, representatives of several Federal government agencies urged us to include other areas in the definition of high consequence areas. We have decided not to include these suggested areas in this rulemaking.

Although we have not included the other suggested areas in this rulemaking, we are considering extending protection to other environmentally sensitive and vital resources through future rulemaking. Other areas that will be considered include National Parks, National Wildlife Refuges, National Wilderness Areas, National Forests, and other cultural resources and sensitive environmental resources that do not meet the USA filtering criteria.

Identification of High Consequence Areas

OPS will identify high consequence areas on its National Pipeline Mapping System (NPMS). Operators, other government agencies and the public will have access to these maps through the Internet. Individuals will be able to view high consequence areas nationally or by state, county, zip code, or zooming in or out of a particular area. An operator will then be able to determine which of its pipeline segments intersect or have the ability to affect a high consequence area.

OPS will identify the locations of USAs through a comprehensive collection and analysis of drinking water and ecological resource data, contingent on the availability of funding and resources.[3] OPS will make its USA maps, including the drinking water data, available through the National Pipeline Mapping System. Barring unforeseen resource demands, OPS's current plan is to have the USAs in the top ten states (covering 75% of total pipeline mileage) available by the end of December 2000. Maps of the USAs in the next ten states (90% of total pipeline mileage) should be available by April 2001. And we plan to have the maps of the remaining states (100% of total pipeline mileage) available by December 2001.

Some of the information that OPS is purchasing, such as discrete sets of ecological data from the Nature Conservancy and other sources, will not be publicly available. Operators may need to contact resource agencies to obtain additional information on a particular species or drinking water intake in an USA.

OPS will use the National Waterways Network database to identify commercially navigable waterways. The commercially navigable waterways map and database will be available through the National Pipeline Mapping System. The Bureau of Transportation Statistics also has a database that includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from the BTS website: http://www.bts.gov/gis/ntatlas/networks.html.

OPS will use the Census Bureau's data to identify high population and other populated areas. We will use the Census Bureau's urbanized area data to identify high population areas and their places data to identify other populated areas. Their data on places includes both urbanized areas and other populated areas. OPS will filter out the urbanized areas data from the places data so that the resulting map and database will clearly distinguish other populated areas from the urbanized or high population area data. Operators and the public will be able to view the high population and other populated areas maps together or separately on the National Pipeline Mapping System.

OPS recognizes that inventories and maps of high consequence areas have to be updated on a periodic basis to incorporate new information and databases. OPS intends to update the high consequence area maps every five years, contingent on the availability of funding and resources. OPS will review new or revised programs and databases at that time to incorporate appropriate programs and databases into the high consequence area definition and model. OPS will announce in the **Federal Register** and through other communication networks when revised high consequence area maps are available for given areas.

Changes, particularly population changes, will occur around an operator's pipeline. Although OPS intends to periodically update the maps, it remains an operator's responsibility to keep information about its pipelines up to date. By continually evaluating its entire pipeline and analyzing all available information about the integrity of the pipeline, an operator should be aware of population and ecological changes that are occurring around the pipeline and continue to update its maps and integrity management program to accommodate these changes.

In the rule we have added requirements about how an operator is to incorporate any newly-identified high consequence areas into its baseline assessment plan and integrity program. The rule provides that when an operator has information (from the information analysis or from Census Bureau maps) that the population density around a pipeline segment has changed so as to fall within the definition of a high population area or other populated area, the operator must incorporate the area into its baseline assessment plan as a high consequence area within one year from the date the area is identified. Similarly, an operator must incorporate a new unusually sensitive environmental area into its plan within one year from the date the area is identified. The rule further requires an operator to complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

We thought it necessary to add these requirements because of the concerns many commenters expressed about who would be responsible identifying high consequence areas and how updates would be handled. Although OPS is taking primary responsibility for mapping these areas, an operator has a corresponding responsibility to continually evaluate its pipeline and update information about the pipeline.

8. Requirements for Preventive and Mitigative Measures, Including, Emergency Flow Restricting Devices (EFRDs) and Leak Detection Systems—Proposed Section 195.452(i)

The proposed rule required an operator to conduct a risk analysis to assess the risks to its pipeline system and determine what additional preventive and mitigative measures are needed to protect a high consequence area. The proposal identified possible preventive or mitigative measures an operator could take to protect a high consequence area, such as implementing damage prevention best practices, establishing or modifying leak detection systems, and providing additional training on response procedures.

[3] OPS uses state data bases as the primary data source for the USA model. The drinking water USA model relies on data solely provided by the States. State aquifer maps are used to determine aquifer classifications. State data on well location depth, and source are used to identify the aquifers used by the wells. The ecological USA model uses data from the state Natural Heritage Programs (NHP) on rare and endangered species locations. OPS is also using the Environmental Sensitivity Index and related ecological data sets to augment the NHP data.

Installing EFRDs was one of several mitigative measures the rule proposed. However, the proposal did not require an operator to install EFRDs or define the conditions under which an operator should install EFRDs. In the NPRM we specifically invited comment on any needed further guidance to operators on when EFRDs should be installed. We also invited comment on the criteria for evaluating the decision on whether to install an EFRD or to take other measures, and if in certain limited circumstances, we should mandate the use of EFRDs.

EPA Region III supported the preventive and mitigative measures the rule proposed but argued against leaving the need for particular actions to the operator. Region III was concerned that without active and knowledgeable regulatory oversight, strict methodology, or the required participation of a risk assessment professional, an operator would be unlikely to find any of the measures necessary. Environmental Defense said that the rule should include specific requirements for operators to use preventive strategies. NTSB expressed concern with operators using risk management principles to determine the need for additional protective measures and recommended that the rule include minimum criteria.

EPA Oil Program Center said that the rule should prescribe circumstances in which EFRDs or other protective and mitigative measures must be used. EPA Oil Programs further commented that if the rule allows an operator to conduct a risk assessment to determine if EFRDs or other protective measures are needed, then the rule should prescribe a specific risk assessment protocol.

Environmental Defense, Batten and other advocates recommended that the rule include performance standards for leak detection, EFRD spacing and damage prevention best practices. Environmental Defense and Pipeline Survivor's Association recommended that leak detection systems be capable of detecting a leak of one gallon/minute or more and that EFRD spacing prevent releases of more than 10,000 gallons of hazardous liquid into a high consequence area. The City of Austin supported requiring EFRDs in all high consequence areas and that they be spaced to restrict the worst case spill to 10,000 gallons. Batten suggested that leak detection devices be capable of detecting within 15 minutes a leak of ten gallons or more and that pipe segments between EFRDs be able to contain no more than 50,000 gallons when located in a high consequence area.

AWWA encouraged the placement of EFRDs to the greatest extent possible to protect public water supplies, suggesting that EFRDs be used as the standard against which other mitigation strategies are measured. LCRA commented that EFRDs should be required on either side of a river crossing. EPA Region III also encouraged using EFRDs whenever necessary to protect a high consequence area.

API and operators commented that the proposed rule is reasonable and that OPS should ensure risk mitigation decisions made within an integrity management program include considering the use of EFRDs rather than requiring such placement or prescribing minimum spacing. Enbridge and Lakehead supported EFRDs as one of various preventive or mitigative actions an operator should consider but said there was no one distance or placement specification appropriate for all pipeline systems. Many cited research by the California State Fire Marshall, and Southwest Research to support their argument that there are many site and flow-specific factors that operators must consider in making risk mitigation decisions. Several industry commenters also noted the possible environmental disadvantage to EFRDs, including the possibility of valve leakage or inadvertent closure resulting in over pressurization, as well as the environmental impacts of installing and maintaining valves in or near environmentally sensitive areas.

Response: The final rule continues to require an operator to take additional measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. It is up to each operator to conduct a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. For this risk analysis, the rule clarifies that an operator must evaluate the likelihood of a pipeline release occurring, how a release could affect the high consequence area, and what risk factors the operator should consider. The rule continues to list some additional preventive and mitigative measures an operator should consider. The list is not an exhaustive recitation of every preventive or mitigative measure that could enhance public safety or environmental protection.

One of the listed measures is for an operator to modify the systems that monitor pressure and detect leaks. Operators use various procedures and methods to detect the movement of product through the pipeline. For example, computational pipeline monitoring, SCADA systems, and station sensors, measure deviations from measured values (pressures, flows) beyond established norms. The pipeline safety regulations do not require an operator to have a leak detection system. However, if an operator has a software-based leak detection system, the regulations require the operator to use an industry document (API 1130) in designing, evaluating, operating, maintaining and testing its software-based system. (See § 195.444.) Moreover, whenever a leak detection system is installed or a component replaced, API 1130 must be followed.

The final rule requires an operator to have a means to detect leaks on its pipeline system. (We provide several examples of types of leak detection systems later in this document when we discuss Section 195.452(i).) We have re-written the rule to require an operator to evaluate the leak detection's capability to protect the high consequence area and to modify, as needed, to protect the high consequence area. The rule includes factors that an operator must consider in making its evaluation. OPS enforcement personnel will review the adequacy of this evaluation process during site inspections.

Another protective measure the rule identifies is for an operator to install an EFRD on the pipeline segment. The final rule does not prescribe the specific conditions under which EFRDs or other preventive or mitigative measures are required. Rather, the final rule requires an operator to develop and apply risk assessment and decision-making processes that reflect pipeline-specific conditions and operating environments. The rule now specifies criteria that an operator must consider when conducting the analysis to identify additional protective measures. An operator is not limited to these criteria; rather, an operator must consider these criteria in addition to all other criteria specific to the pipeline segment.

In the final rule, OPS has not specified the circumstances when an operator must use a particular protective measure or install an EFRD. However, we have revised the rule to require that an operator install an EFRD if the operator determines that one is needed to protect the high consequence area. The rule also specifies factors that an operator must consider in making this determination. OPS will review during inspection the adequacy of the analysis and the appropriateness of the operator's decision on the need to install an EFRD.

OPS has been studying for some time the issue of the optimum placement of emergency flow restricting devices to limit commodity release after the location of the release has been identified. In the NPRM, we explained in detail the research OPS has conducted in this area. (See 65 FR 21695; April 24, 2000.) In addition to comment the NPRM solicited, OPS had previously issued an advance notice of proposed rulemaking asking questions concerning the performance of leak detection equipment and location of EFRDs, and held a public workshop to discuss the issues involved in developing regulations on EFRDs.

Our study of the issue led us to conclude that the decision to install an EFRD should not be mandatory but should be left to the operator. Nonetheless, the rule requires an operator to consider certain specified criteria in deciding whether an EFRD will protect the high consequence area.

OPS is requiring an operator to determine whether to install an EFRD based on the operator's risk analysis, because, we believe, prescriptive valve installation and spacing requirements would ignore the site-specific variables and unique flow characteristics of a pipeline segment. Prescriptive requirements could also overlook the potential sensitivity of a specific high consequence area. For example, locating an EFRD near a body of water to reduce the potential volume released might necessitate locating the valve in sensitive wetlands or a flood plain of a river, which creates myriad other problems. Also, a prescriptive approach detracts from the process of evaluating a host of alternative measures to enhance protection to high consequence areas.

9. Methods To Measure Program's Effectiveness—Proposed Section 195.452(k)

In the NPRM we proposed that an operator's integrity management program include methods to measure whether the program is effective in assessing and evaluating the integrity of the pipelines and in protecting the high consequences areas. NTSB commented that this requirement has to contain unequivocal guidance if operators are to use it to improve their programs, and suggested that we develop measures. EPA Region III commented that a measurement based on some industry-wide average should not be used because it could lower the bar for management, technology, and innovation.

Response: We have not revised the provision on program performance measures other than to clarify that an operator is to measure the effectiveness of the program on each pipeline segment. In Appendix C we have described types of program measures and included examples of methods that an operator can use to evaluate the effectiveness of its integrity management program.

10. Cost Benefit Analysis

The comments we received on the proposed rule's cost benefit analysis are addressed below under the Regulatory Analyses and Notices section.

11. Information for Local Officials and the Public

In the NPRM, OPS invited comments on how local officials could use and benefit from risk assessment information, how the consequences of potential pipeline failures should be characterized, how risk control actions should be described and what performance indicators would be meaningful. We further said that because of the significance of this issue we planned on extensive discussions with all the stakeholders before proposing communications requirements as part of an integrity management program.

Many provided comments relevant to the issue of communications with local officials. Tosco agreed that research is needed on the types and amount of information to distribute to local officials and made available to the general public to determine the most effective means to keep those entities informed. Environmental Defense, the Pipeline Survivor's Association, and Batten listed information they thought operators should make available to public officials and the public. American Water Works Association strongly supported the need for communication, but provided no specific guidance on content.

Lower Colorado River Authority (LCRA) promoted public involvement in the preparation and implementation of integrity management programs, maintaining that with public involvement, pipeline operators would have a better understanding of the vulnerability of the resources. LCRA further commented that public confidence in the pipeline industry would be enhanced if the results of the integrity assessments were made available. The City of Bellingham also recommended that integrity management programs be developed in consultation with appropriate state and local officials before the operator finalizes the program. The National Pipeline Reform Coalition also recommended that local communities have a role in developing the programs, citing the evidence of the role of the City of Bellingham in developing a safety plan for Olympic Pipe Line Company.

Response: Requirements for communication of integrity management information to local public officials and to the public will be the subject of a future rulemaking. We will use the comments received in this rulemaking in developing the communications rulemaking. A communications work team, consisting of representatives from environmental and public safety organizations, pipeline companies, and government has formed to aid the Hazardous Liquid Advisory Committee (THLPSSC) in developing communications issues. Notices of meetings of the work group will be published in the **Federal Register**. Notes from the meetings will be posted on OPS's web site.

12. Appendix C Guidance

Proposed Appendix C provided operators guidance on how to prioritize risk factors in determining assessment frequency, how to analyze smart pig inspection results, how to prioritize metal loss features, and what types of smart pigs to use for finding pipeline anomalies. The proposed Appendix also included risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, to help determine if the pipeline segment falls into a high, medium or low risk category.

There were a variety of comments concerning Appendix C. Some addressed the role of Appendix C in the overall rule, and others provided specific technical comments on detailed aspects of the Appendix (which are not summarized here).

API and other liquid operators commented that Appendix C ''is not sufficiently rigorous or technically accurate to be used as guidance for prioritizing risk'' and provided a list of problems they have identified. API recommended that OPS not include the Appendix in the final rulemaking, but that OPS and the integrity standard work group develop technically accurate, rigorous guidance for prioritizing risk factors.

The City of Austin recommended that Appendix C be included as part of the rule because it specifies how an operator should implement the proposed regulation. Fuel Safe Washington stated that ''Appendix C is completely undermined by allowing operators to apply their own weights or values to the risk factors.''

Response: An Appendix is guidance that is intended to give advice to operators on how to implement the requirements of the integrity management rule. An Appendix does not have the same force as the regulation itself. An operator does not have to follow the guidance. However, if an operator incorporates parts of the Appendix into its integrity management program, an operator must then comply with those provisions.

OPS continues to believe that the guidance provided in Appendix C will be helpful to operators in developing and implementing their integrity management programs. (Operators may supplement this guidance with the industry consensus standard or choose not to use the guidance.) We also continue to believe that the guidance should not be included in the body of the rule because it would unnecessarily inhibit operators from identifying the best pipeline- and segment-specific tools, risk factors, and repair techniques, and would require changes in the rule as new technologies or information is developed.

The Final Rule

The new section 195.450 titled ''Definitions'' defines high consequence areas. High consequence areas include—

- Unusually sensitive areas—these areas will be defined in the USA rulemaking (Docket No. RSPA–99–5455) and will include drinking water and ecological resources;
- High population areas—these are areas defined and delineated by the Census Bureau as urbanized areas.
- Other populated areas—these are areas defined and delineated by the Census Bureau as places that contain a concentrated population.
- Commercially navigable waterways—these are waterways where a substantial likelihood of commercial navigation exists.

The integrity management program requirements will apply to pipeline segments that could affect these high consequence areas. OPS will map these areas on its National Pipeline Mapping System, and make the maps publicly available.

This section also defines emergency flow restricting devices to include check valves and remote control valves. This definition is used in § 195.452(i) of the rule that addresses additional preventive and mitigative measures an operator must consider for pipeline segments that could affect a high consequence area.

The new section 195.452 titled ''Pipeline Integrity Management in High Consequence Areas'' imposes integrity management program requirements on each operator who owns or operates a total of 500 or more pipeline miles used in hazardous liquid transportation.

For an operator covered by the rule, the rule requires the operator to develop, implement and follow an integrity management program that provides for continually assessing the integrity of those pipeline segments that could affect a high consequence area, through internal inspection, pressure testing, or other equally effective assessment means. An operator's program must also provide for evaluating the segments through comprehensive information analysis, remediating potential integrity problems found through the assessment and evaluation, and ensuring additional protection though preventive and mitigative measures.

Through this required program, a hazardous liquid operator must comprehensively evaluate the entire range of threats to each pipeline segment's integrity by analyzing all available information about the entire pipeline and its relevance to the segment that could affect a high consequence area. Information an operator must evaluate includes information on the potential for damage due to excavation; data gathered through the required integrity assessment; results of other inspections, tests, surveillance and patrols required by the pipeline safety regulations, including corrosion control monitoring and cathodic protection surveys; and information about how a failure could affect the high consequence area.

The final rule requires an operator to take prompt action to address all integrity issues raised by the integrity assessment and information analysis. This means an operator must evaluate all anomalies and repair those could reduce a pipeline's integrity. An operator must develop a schedule that prioritizes the anomalies for evaluation and repair. The schedule must include time frames for promptly reviewing and analyzing the integrity assessment results and completing the repairs. An operator must also maintain, and further protect the integrity of these pipeline segments, through other remedial actions, and preventive and mitigative measures.

Which Operators Must Comply? Section 195.452(a)

This rule specifies pipeline system integrity management program requirements for each operator who owns or operates a total of 500 or more miles of hazardous liquid pipeline. This action covers approximately 87 percent of all the hazardous liquid pipelines in the United States. Based on the volume of hazardous liquid these pipelines transport, they have the greatest potential to adversely affect the environment.

For an operator covered by this rule, the requirements apply to all the operator's pipeline segments (offshore or onshore), regardless of date of construction, that could affect a high consequence area. The rule specifies how operators must provide additional protection to critical areas (*i.e.,* high consequence areas) through integrity management programs. Further, it assures that these protections will be put in place, with an operator being required to initially assess 50 percent of the line pipe that could affect critical areas, beginning with the highest risk pipe, within 3.5 years and the balance within seven years. An operator will then have to evaluate and repair defects within specified time frames and implement additional preventive and mitigative measures. An operator is also required to continually re-assess its pipeline segments at intervals not longer than five-years, as well as periodically evaluate each pipeline segment by analyzing all available information about the integrity of the entire pipeline, and its relevance to segments that could affect the high consequence areas.

What Must an Operator Do? Section 195.454(b)

The rule requires that, no later than one year after the rule's effective date, an operator must develop a written integrity management program that addresses the risks on each pipeline segment that could affect a high consequence area. An operator must then implement and follow the program it has developed. Initially, the program will consist of a framework. An operator must include in its integrity management program—

- An identification of all pipeline segments that could affect a high consequence area. Because identification of the pipeline segments is the trigger for all other integrity management requirements, the identification must be done within nine months from the rule's effective date.
- A plan for baseline assessment. The assessment of the line pipe must be done by internal inspection, pressure test, or other technology that provides an equivalent understanding of the condition of the line pipe.
- A program framework that addresses each of the required program elements, including continual integrity assessment and evaluation. In the first year after the rule's effective date, the

framework must indicate how decisions will be made to implement each required program element. The framework will evolve into an integrity management program as the operator makes decisions and gains experience. An integrity management program is a dynamic program that an operator must continually change as the operator gains more information about the pipeline and the results of the assessments.

To carry out the rule's requirements, an operator must follow recognized industry practices unless the rule specifies otherwise or the operator chooses an alternative practice that is supported by a reliable engineering evaluation and provides an equivalent level of public safety and environmental protection. Recognized industry practices include national consensus standards and practices found in reference guides. Allowing the use of alternative practices in the rule should encourage operators to use innovative technology in implementing the integrity management program's requirements.

What Must Be in the Baseline Assessment Plan? Section 195.452(c)

The rule requires an operator to include in its written baseline assessment plan each of the following elements.

- The methods selected to assess the integrity of the line pipe of each segment that could affect a high consequence area;
- A schedule for completing the integrity assessment;
- An explanation of the assessment methods the operator selected and an evaluation of risk factors the operator considered in establishing the assessment schedule for the pipeline segments.

The rule allows an operator to modify the baseline assessment plan provided the operator documents the modifications and reasons for the modifications. As discussed later under the section on recordkeeping requirements (§ 195.452(l)), these are documents an operator is required to maintain for inspection. Enforcement personnel will look to see that an operator has documented the modification well before the operator has implemented the modification.

OPS expects an operator to make the best use of current and innovative technology in assessing the integrity of the line pipe. Therefore, the rule allows an operator to conduct an integrity assessment by—

- Internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves. For electric resistance welded (ERW) pipe or lap welded pipe susceptible to longitudinal seam failures, the rule provides that the integrity assessment methods must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies. An operator's program would also have to address any risk factors associated with these types of pipe;
- Pressure test conducted in accordance with Part 195, subpart E; or
- Other technology that provides an equivalent understanding of the condition of the line pipe.

Internal inspection is one of the most useful tools in an integrity management program. We expect an operator to consider at least two types of internal inspection tools for the integrity assessment of the line pipe: *geometry pigs* for detecting changes in circumference and *metal loss tools* (magnetic flux leakage (MFL) pigs or ultra sonic pigs) for determining wall anomalies, or wall loss due to corrosion. Both high resolution and low resolution tools can be beneficial in integrity assessment. For example—

Corrosion/metal loss: With respect to corrosion, high-resolution tools can identify anomalies and, with the use of engineering critical assessments, use a conservative evaluation of the potential for the anomaly to have affected remaining pipe strength (or affected the pressure capacity of the pipeline segment). This assessment uses analytical techniques that estimate average depth of metal loss. Based on the evaluation of internal inspection results, a prioritized listing of potential defects is developed to guide the initiation of the field digging, inspection, confirmation and the necessary repair program. Once in the field, additional calculations based on actual profile of metal loss are used to confirm the need and type of appropriate repair.

High Resolution versus Low Resolution: High-resolution tools can distinguish between internal and external corrosion and provide more extensive information to more accurately assess the potential for an anomaly to pose a risk.

Mechanical Damage: Internal inspection tools to measure dents or geometric deformations are common and are typically run routinely following installation of new pipelines. Technology has advanced such that geometry tools can normally withstand even the most extreme pipeline conditions. The tool is able to pass restrictions (*e.g.,* deformations) of up to 25%, and with the high sensitivity of gauging systems now on the market and large number of sensing fingers, current tools can detect even very small ovalities (0.6%).

Crack Detection: Since the early 1990's, pipeline operators have successfully field tested internal inspection tools capable of non-destructively identifying fatigue cracks and stress corrosion cracking in the longitudinal seam. Research and development continues on these tools to strive for reliable identification of other types of seam defects, such as hook cracks. With the use of ultrasonic and MFL (transverse orientation) technology, pipeline segments that have experienced fatigue cracking can now be inspected. Cracks with a potential to rupture can be identified and repaired prior to growing to a critical stage. This is particularly important as this type of defect could survive initial and subsequent pressure tests but then with pressure cycling, grow over time to a critical stage and leak or rupture.

The rule also permits integrity assessment of the line pipe by pressure test. An operator must conduct a pressure test according to the requirements prescribed in Part 195, subpart E.

The purpose of a pressure test is to remove defects that might impair the integrity of the pipeline during operation. Defects might exist as a result of the manufacturing process or damage to the pipe during shipping, construction or operation. The defects are identified by failure of the pipe during the test, the defective pipe is removed, new pipe is installed, and the pipe is tested again until no failure occurs. The pressure test provides a margin of safety for the pipeline by being conducted at a pressure higher than the maximum pressure at which pipeline safety regulations allow the pipeline to be operated.

OPS expects that an operator choosing this method of integrity assessment for a pipeline segment will review its corrosion control monitoring program for that segment. OPS inspectors will review these documents when evaluating an operator's choice of pressure test as an assessment method.

To encourage innovation, the final rule also allows an operator to use other technology for the integrity assessment, if the operator demonstrates that an alternative technology can provide an equivalent understanding of the condition of the line pipe as the other permitted assessment methods.

An operator choosing this option must notify OPS at least 90 days before conducting the assessment with the other technology. The rule specifies

how notification can be made: by mail or facsimile. Advance notice is necessary so that OOPS enforcement personnel have adequate time to review the operator's basis for using the technology.

When Must the Baseline Assessment Be Completed? Section 195.452(d)

The rule requires an operator to establish a baseline assessment schedule to determine the priority for assessing the pipeline segments covered by the rule. An operator must complete the baseline integrity assessment within seven years after the rule's effective date. An operator is further required to assess at least 50% of the covered line pipe, beginning with the highest risk pipe, within 3.5 years from the rule's effective date. This requirement, in conjunction with the requirement to base the assessment intervals on risk-based factors, should ensure that an operator assesses the highest risk pipeline segments earlier in the cycle.

The final rule allows an operator to use an integrity assessment method conducted five years before the rule's effective date as the baseline assessment if the method is at least equivalent to the requirements for internal inspection, pressure testing or alternative technology. However, if an operator decides to use a prior integrity assessment as its baseline assessment, the operator must then re-assess the integrity of the line pipe within five years. The re-assessment would have to comply with the continual integrity assessment requirements in § 195.452(j). As we discuss later in this document when explaining § 195.452(j), the rule allows for deviations from the five-year requirement in certain limited instances.

Because population and ecological changes may occur around an operator's pipeline, an operator must, as part of its periodic evaluation and information analysis, keep informed about how such changes are affecting each pipeline segment. If the population density around a pipeline segment changes so as to fall within the definition of a high population area or another populated area, the rule requires an operator to incorporate the area into its baseline assessment plan as a high consequence area. This must be done within one year from when the area is identified. An operator must then assess the integrity of any line pipe that could affect that newly identified high consequence area within five years from when the area is identified. Similarly, the rule requires an operator to incorporate a new unusually sensitive environmental area into its baseline plan within one year from when the area is identified and to assess the new area within five years.

What are the Risk Factors for Establishing an Assessment Schedule? Section 195.452(e)

For both the baseline and continual integrity assessments, an operator must establish a schedule that prioritizes the pipeline segments for assessment so that the higher risk segments are assessed earlier in the cycle. The rule requires an operator to base the assessment schedule on all risk factors that reflect the risk conditions on each pipeline segment. The rule further specifies some factors an operator must consider in establishing a schedule. An operator is not limited to these factors; rather, an operator must supplement the listed factors with those that are specific or unique to the pipeline segment being assessed.

In Appendix C, we provide guidance to an operator on how to determine risk factors for a pipeline segment and use them to develop an integrity assessment schedule. The guidance includes an example of risk factors that we apply to a hypothetical pipeline segment to establish an assessment frequency.

What Are the Elements of an Integrity Management Program? Section 195.452(f)

The final rule requires an operator to include certain minimum elements in its integrity management program. Initially, an operator must develop a framework containing these elements. The framework evolves into a program as the operator gains experience, makes decisions and implements actions. The required program elements include—

- A process for identifying which pipeline segments could affect a high consequence area. The Appendix gives guidance to help an operator evaluate how a pipeline segment could affect an area, which will help an operator in developing this process. The guidance lists factors an operator needs to consider when evaluating the pipeline segment's ability to affect a high consequence area.
- A baseline assessment plan (discussed in § 195.452(c));
- An analysis that integrates all available information about the integrity of the entire pipeline, its relevance to the particular segment, and the consequences of a failure;
- Criteria for repair actions to address integrity issues raised by the assessment methods and information analysis;
- A continual process of assessment and evaluation to maintain a pipeline's integrity;
- Identification of preventive and mitigative measures to protect the high consequence area;
- Methods to measure the program's effectiveness; and
- A process for review of integrity assessment results and information analysis by a person qualified to evaluate the results and information. An operator must use qualified persons with the necessary technical expertise to evaluate and analyze the results and data from the integrity assessments, the periodic evaluation, the information analyses, etc.

To be effective, an integrity management program must constantly change. OPS expects that the initial program will consist of a framework that specifies the criteria for making decisions to implement each of the required elements. The program evolves from the framework and must continue to change to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area.

What is an Information Analysis? Section 195.452(g)

The final rule requires an operator to periodically evaluate the integrity of each pipeline segment that could affect a high consequence area by analyzing all available information about the integrity of the entire pipeline and the consequences of a failure. The analysis applies to the entire pipeline to determine the relevance to a particular pipeline segment. Required information an operator must evaluate includes—

- Information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;
- Data gathered through the required baseline and continual integrity assessments;
- Data gathered in conjunction with other inspections, tests, surveillance and patrols required in Part 195. This would include information from corrosion control monitoring and cathodic protection surveys;
- Information about how a failure would affect the high consequence area, such as location of the water intake.

Through this requirement to integrate and analyze information from diverse sources, OPS expects an operator to analyze its entire pipeline to evaluate the entire range of threats to each pipeline segment that could affect a high consequence area. An operator will

conduct this analysis in conjunction with the required periodic evaluation discussed below (section 195.452(j)).

What Actions Must Be Taken To Address Integrity Issues? Section 195.452(h)

The rule requires an operator to take prompt action to address all pipeline integrity issues raised by the integrity assessment and information analysis. By prompt action we mean that an operator must prioritize repairs according to the severity of the anomaly and address first those anomalies that pose the greatest risk to the pipeline's integrity. The rule clarifies that an operator must evaluate all anomalies and repair those that could affect the pipeline's integrity. Any repair made must be done according to the pipeline repair requirements in 49 CFR § 195.422.

The rule requires that an operator develop a schedule that prioritizes the anomalies found during the integrity assessment and information analysis for evaluation and repair. In this schedule, an operator would have to provide for prompt review and analysis of the integrity assessment results by a date certain. For the first three years after the rule's effective date, an operator would determine the period by which the results would have to be reviewed and analyzed and commit to that date in its schedule. After the third year, an operator's schedule must provide for reviewing and analyzing the results of the integrity assessment within 120 days of conducting the assessment.

An operator's schedule also has to provide time frames for evaluating and completing repairs. The rule provides that an operator is to base the schedule on specified risk factors and pipeline-specific risk factors the operator develops. For conditions not specified in the rule and those the rule identifies as other conditions, the operator determines the schedule for evaluation and repair. However, the rule provides the time frames in which an operator must complete repair of certain conditions on the pipeline. These conditions are listed as immediate repair conditions, 60-day conditions and 6-month conditions. Of course, the rule cannot identify all conditions that an operator will have to evaluate and repair. A condition an operator discovers may qualify as an immediate repair, 60-day or 6-month condition even though it is not listed in the rule. The rule simply provides common examples of such conditions.

The schedule required for repair starts at the time the operator discovers the condition on the pipeline, which occurs when an operator has adequate information about the condition to determine the need for repair. Depending on circumstances, an operator could have adequate information when the operator receives the preliminary internal inspection report, gathers and integrates information from other inspections or the periodic evaluation, excavates the anomaly or, receives the final internal inspection report.

An operator may deviate from the rule's specified repair times (immediate repair, 60-day, 6-month) if the operator justifies the reasons why the schedule cannot be met and that the changed schedule will not jeopardize public safety or environmental protection. An operator's justification for a deviation would be one of the records the operator is required to maintain for inspection. (See section 195.452(l).) An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure until a permanent repair is made. The operator would have to provide OPS 90-days notice by mail or facsimile.

What Preventive and Mitigative Measures Must an Operator Take To Protect the High Consequence Area? Section 195.452(i)

The final rule requires an operator to take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. An operator must conduct a risk analysis of each pipeline segment to identify additional actions to enhance public safety or environmental protection. The rule lists some additional preventive or mitigative measures an operator needs to consider for the pipeline segment, including installing emergency flow restricting devices and modifying the leak detection systems. An operator is not limited to the listed measures but should also identify additional protective measures not listed.

The rule requires that, in identifying the need for additional preventive and mitigative measures, the operator evaluate the likelihood of a pipeline release occurring and how a release could affect the high consequence area. An operator must consider all relevant risk factors in making this determination; the rule lists some that an operator must consider. An operator is to supplement the listed risk factors with any other factors specific or unique to the pipeline segment. Listed factors include—terrain surrounding the pipeline, including drainage systems such as small streams and other smaller waterways that could act as a conduit to the high consequence area; elevation profile; characteristics of the product transported; amount of product that could be released; possibility of a spillage in a farm field following the drain tile into a waterway; ditches along side a roadway the pipeline crosses; physical support of the pipeline segment such as by a cable suspension bridge; and exposure of the pipeline to operating pressure exceeding established maximum operating pressure. In addition, Appendix C to the rule provides an operator with further guidance on evaluating how each pipeline segment could affect a high consequence area.

Leak Detection

The final rule requires an operator to have some means to detect leaks on its pipeline system. The rule further requires an operator to evaluate the capability of its leak detection means and modify the capability, as necessary, to protect the high consequence area.

The rule lists factors that an operator must consider when making this evaluation. Again, the list is not exclusive. It is simply a starting point that an operator must supplement with factors relevant to each pipeline segment being evaluated.

Some examples of leak detection systems include—

Dynamic flow modeling: This model simulates the operating conditions of the pipeline through hydraulic calculations, then compares the computed pressures (based on flow rate, temperature, pipe profile, and density) against real time data obtained from various measuring points along the pipeline. Deviations are compared against alarm set points. When the deviations exceed the set points, the system alarms. These systems are normally integrated with the pipeline SCADA communications technology. Leak location information is not provided.

Tracer chemical: This approach requires mixing a very small amount (ppb to ppm of total volume) of a specific volatile chemical tracer with the contents of a pipeline. The chemical tracer is not a component of the pipeline contents and does not occur naturally in the soil. After the pipeline is inoculated with the tracer chemical, samples of the vapor contained in the soil outside the pipeline are collected. The soil vapor samples are obtained from probes or other devices installed intermittently along the pipeline. The vapor samples are analyzed by a gas chromatograph for the specific tracer chemical that was mixed with the pipeline contents. Presence of the tracer chemical in the

sample can only occur through an active release of pipeline product mixed with the tracer into the soil. These systems are able to provide single or continuous liquid tightness tests and will provide release location information.

Release Detection Cable: Release detection sensing cables are designed to alarm after contact with liquid hydrocarbons at any point along their length. The presence of hydrocarbons creates a circuit between two sensing wires and triggers an alarm. Typically, leak detection cable is installed in slotted PVC conduit that is buried in the pipe trench along or below the pipeline. These systems provide continuous monitoring via electronic control units capable of interfacing with SCADA technology and are able to provide leak location information.

Shut-in (static) released detection: This technique consists of a pressure test, with the pipeline filled with its normal contents. Between shipments, the pipeline is pressured against a closed valve(s). This release detection tool allows the operator to analyze the pipeline in a static (no flow) mode, without the complications of dynamic modeling. With the pipeline blocked, the pressure (compensated for temperature fluctuations) in a section should remain constant. The pressure is then monitored for any unexplained pressure losses. This test does not provide leak location information.

Pressure point analysis release detection software: Software for this system incorporates two independent methods of release detection: pressure point analysis and mass balance. Pattern recognition algorithms that distinguish normal operating events from leaks are used. With an appropriate communications system, this system can provide the calculated location of a release.

Emergency flow restricting devices (EFRDs)

The rule requires an operator to install an EFRD if the operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release. The rule lists certain factors that an operator must consider in making this determination, to be supplemented with other factors the operator determines are relevant to the pipeline segment being evaluated. Listed factors an operator must consider include the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline and the high consequence area, and benefits expected by reducing the spill size.

Installing an EFRD on a pipeline segment is only one of several possible preventive or mitigative measure that an operator can take to provide additional protection to a high consequence area.

What is a Process for Continual Evaluation and Assessment to Maintain a Pipeline's Integrity? Section 195.452(j)

The integrity assessment requirements do not stop with the baseline integrity assessment. An operator must continue to assess the integrity of the line pipe and evaluate the integrity of each pipeline segment that could affect a high consequence area. The rule requires an operator to conduct a periodic evaluation of each pipeline segment, as frequently as needed, to assure the pipeline's integrity. An operator would determine frequency based on specified risk factors plus other factors specific to the pipeline segment.

The evaluation is based, in part, on the information analysis the operator has made of the entire pipeline to determine what history and operations elsewhere could be relevant to the segment. The evaluation must also consider the past and present integrity assessment results, and decisions about repair, and preventive and mitigative actions. The evaluation must be done by a person qualified to evaluate the results and other related data.

As with the baseline assessment, the continual integrity assessment method must be by internal inspection, pressure test, or other technology that provides an equivalent understanding of the condition of the line pipe. As with the baseline assessment, if an operator chooses other technology as a re-assessment method, the operator must give 90-days advance notice (by mail or facsimile) to OPS.

An operator must conduct the integrity re-assessment at intervals not to exceed five years, except in those limited instances where the operator can clearly justify an extended interval. The rule requires that an operator base the continual assessment intervals on the risk the line pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. An operator must establish the assessment intervals using specified risk factors (supplemented by risk factors relevant to the pipeline segment), the information analysis, and analysis of the results from the last integrity assessment.

The rule recognizes limited exceptions to the five-year period.

- An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The operator must support the justification by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technologies. An operator would also have to demonstrate that the other technology would provide an understanding of the line pipe equivalent to that obtained by an assessment conducted at an interval of five years or less.
- The other exception is that an operator may not be able to conduct an integrity assessment on a segment of pipe within the required period because sophisticated internal inspection devices or other technology is not available. An operator must justify the reasons why it cannot comply with the required assessment period of not more than five years and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim.

In either instance, the operator must inform OPS of its proposed variance from intervals of not more than five years. A 90-day advance notice before the end of intervals of not more than five years is needed if the operator will require a longer assessment interval because sophisticated technology is not available. If the operator is justifying a longer assessment interval on an engineering basis, notice must be given nine months before the end of the interval of five years or less.

- The engineering-based exception has been included in the rule to encourage the use of advanced alternative technologies. It is intended for use in those instances where an operator is employing an advanced alternative technology and should therefore be dictated by the use of such technology. It is intended to be a limited exception to the interval of five years or less and not to exceed an additional two years whenever possible.

What Methods To Measure Program Effectiveness Must Be Used? Section 195.452(k)

The final rule requires that an operator include in its integrity management program methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. Because performance measures must be tailored to an individual

program, the rule does not specify the measures an operator has to include.

However, in the Appendix C to this rule we have provided guidance on performance measures. The guidance also gives examples of categories of performance measures that an operator should consider. Examples of measures that an operator could adapt for its program include—

- Selected Activity Measures—Measures that monitor the surveillance and preventive activities the operator has implemented.
- Deterioration Measures—Operation and Maintenance trends that indicate when the integrity of the system is weakening despite preventive measures.
- Failure Measures—Leak History, incident response, product loss, etc. These measures will indicate progress towards fewer spills and less damage.
- Internal vs. External Comparisons. Comparing data that could affect a high consequence area with data from pipeline segments in other areas of the system, and comparing data external to the pipeline segment.

What Records Must Be Kept? Section 195.452(l)

The final rule requires that an operator maintain certain records for inspection, including its written integrity management program. This requirement is not any different from the procedural manual an operator is required to maintain for operations, maintenance and emergencies. An operator would also be required to maintain for review during inspection documents that support the decisions and analyses made, and actions taken to implement and evaluate each element of the integrity management program. This would also include records documenting any modifications, justifications, variances, deviations and determinations made. Again, this requirement is no different from the myriad documents an operator now maintains to comply with the other provisions of the pipeline safety regulations.

The rule cannot possibly list all records that an operator would have to maintain to demonstrate its compliance with the integrity management program requirements. Appendix C provides examples of some documents that an operator would need to maintain for inspection. The list is not exhaustive. Listed examples include:

- Record identifying all pipeline segments that could affect a high consequence area;
- Baseline assessment plan that includes each required plan element;
- Modifications to the baseline assessment plan and reasons for the modifications;
- Use of and support for alternative practices;
- An integrity management program framework that includes each of the required program elements, updates and modifications to the initial framework and eventual program;
- Process for establishing the baseline and continual re-assessment intervals;
- Process for identifying population changes around a pipeline segment;
- Any variance from the required re-assessment intervals, and reasons for the deviation;
- Results of the baseline and continual integrity assessments;
- Results of the information analyses and periodic evaluations;
- Process for integrating and analyzing information about the integrity of a pipeline;
- Process and risk factors used for determining the frequency of periodic evaluations;
- Schedule for reviewing and analyzing integrity assessment results;
- Schedule for evaluating and repairing anomalies found during the integrity assessment;
- Any deviation from the required repair schedule for the listed conditions;
- Criteria for repair actions; records of anomalies detected actions taken to evaluate and repair the anomalies;
- Records of other remedial actions planned or taken;
- Risk analysis to identify additional preventive or mitigative measures, records of preventive and mitigative actions planned or taken;
- Criteria and process for determining EFRD installation;
- Criteria and process for evaluating leak detection capability;
- Program performance measures.

Appendix C

We are adding a new Appendix C to Part 195. This Appendix gives guidance to help an operator implement the requirements of the integrity management program rule. An operator is not required to use this guidance. The Appendix contains guidance on—

- Information an operator may use to identify a high consequence area and factors an operator may use to consider the potential impacts of a release on a high consequence area;
- Risk factors an operator may use to determine an integrity assessment schedule;
- Safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category.
- Types of internal inspection tools an operator may use to find pipeline anomalies;
- Measures an operator could use to measure an integrity management program's performance; and
- Types of records an operator will have to maintain.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation (DOT) considers this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, it was forwarded to the Office of Management and Budget. This final rule is significant under DOT's regulatory policies and procedures (44 FR 11034: February 26, 1979).

Consideration of Public Comments

We received a number of comments that related to the draft Regulatory Evaluation that accompanied the proposed rule (65 FR 21695). OPS has considered those comments and has made changes in this evaluation where appropriate. Provided below is a summary of the comments and any changes made to the Regulatory Evaluation.

1. *Costs for Developing Integrity Management Programs.* Commenters suggested that the costs for developing integrity management programs were underestimated. The comments suggested that integrity management programs can cost $75–$300 thousand, rather than the $25–$75 thousand range used in the draft evaluation. OPS acknowledges that its estimate of the costs to prepare integrity management programs may have been too low. OPS has used the suggested range in this evaluation. OPS has continued to assume that 10 percent of the operators covered by the rule (those who own or operate 500 or more miles of hazardous liquid pipeline) will have already developed company-specific integrity management programs. Operators' costs to develop these programs have already been expended; operators will incur no further costs as a result of this rule. OPS has revised the estimated cost that will be incurred by the remaining 90 percent of covered operators for developing programs to $100 thousand. (It is assumed that the programs operators develop that comply with the final rule will be less costly than the comprehensive programs that some operators have developed voluntarily.)

2. *Costs for Periodic Update and Documentation.* Commenters also suggested that the costs for periodic program updates and documentation (called ''reports'' in the draft evaluation) were underestimated. They estimated a range of $50–150 thousand for this work. OPS agrees that the estimate in the draft evaluation was unrealistically low. In that evaluation, the only documentation considered was records of assessments, which were assumed to be produced by lower level personnel under general supervision. The draft evaluation failed to consider the need to evaluate whether changes to the program are needed, because technology or the pipeline changes or because high consequence areas are redrawn (as they will be periodically), and to make those changes. Operators will expend resources to evaluate these things, even if few changes are made. This will add costs. No update or changes will be required in some years, when the only expense will be to consider new information to ascertain whether an update is needed. OPS cannot accept, however, the presumption that the range of such annual costs will significantly overlap the range of costs to develop the programs in the first place, as suggested by the comment. Significantly less work is involved in updating an existing program. For purposes of this evaluation, OPS included the need to update an integrity management program. Costs for this effort were estimated at $8,000 per year, which is considered reasonable compared to the estimated cost for developing the program initially. Routine documentation is estimated at $2,000 annually, an increase of a factor of two from the estimate included in the draft evaluation. The net annual cost for updates and documentation is thus $10,000 per operator or $660 thousand in total.

OPS also included in this final evaluation costs for data integration. These costs will include a need to realign company-internal data management systems in the first year and continuing costs for the professional review of the integrated data related to the integrity of pipelines in high consequence areas. OPS has estimated costs for these activities at $50,000 per operator in the first year after the rule (when internal data management realignment will occur) and $25,000 per year thereafter.

3. *New Assessment will be Required.* Commenters disagreed with the assumption in the draft evaluation that no additional integrity assessment would be required, since operators were conducting internal inspection and pressure testing at a rate sufficient to complete all required baseline assessment in the first seven years after the effective date of the rule. The total number of affected pipeline miles has also increased since the proposed rule. Because of these changes, OPS agrees that integrity assessment of the number of pipeline miles affected by the final rule will require an increase in the rate of assessment represented by recent industry practice. OPS continues to assume that initial assessment would have proceeded at the current rate if there were no rule. OPS has estimated costs for assessment that will be required above that rate to assure that all affected pipeline is assessed in the seven years following the effective date of the rule.

4. *Need for More Detailed Cost-benefit Analysis.* Commenters, including the Technical Hazardous Liquid Pipeline Safety Standards Committee (Advisory Committee), contended that the Regulatory Evaluation is not consistent with the OPS framework for cost-benefit analyses or in conformance with applicable standards. They suggested that OPS perform a more rigorous evaluation, perhaps in parallel with the rulemaking. They recommended that the suggested analysis quantify the benefits of the proposed rule, which was not done for the draft evaluation. The Advisory Committee unanimously voted that the Cost-Benefit Analysis was not sufficient. Commenters also cited failure to identify a specific target problem.

OPS has revised the regulatory evaluation to more closely follow the form of the framework. This included identifying the target problem. OPS agrees with the concerns of the Advisory Committee and other commenters but notes that it does not have adequate data on pipeline spills to accurately gauge the benefits of this rule. The DOT Inspector General, in its audit report, ''Pipeline Safety Program Report No. RT–2000–069, March 12, 2000, stated, ''OPS accident database contains inaccurate causal information and underestimates property damage.'' These problems make it difficult to prepare a more rigorous analysis. OPS has done some further research to examine the availability of additional data. OPS turned to data from the National Oceanographic and Atmospheric Administration (NOAA), the lead Federal Agency on quantifying the costs of hazardous liquid spills.

In their paper, *Putting Response and Natural Resource Damage Costs in Perspective,* Douglas Helton and Tony Penn, employees of NOAA, wrote that, ''[t]he total private and social cost of oil spills is of great interest to industry, responders, and regulators, but relatively few incidents have been examined in detail. Furthermore, publicly available cost data are often limited to State and Federal response costs and natural resource damages. Significant categories of costs, such as private response costs, third party claims, and vessel or facility repair costs, are often not publicly available.'' The authors further warn that, ''[w]hen cost estimates are reported, they should be considered partial and spill volumes should be viewed with some skepticism.'' They conclude that, ''[f]ailure to consider these additional cost categories because of unavailable data may result in erroneous conclusions regarding the total cost of spills and the significance of any one category.''

Helton and Penn studied 48 spills between 1984 and 1997. (Note that most were not from pipelines.) Cost categories varied widely. Third party claims varied from less than 1% to more than 95% of total damages. Natural resource damages also varied from under 3% to 95%. Response costs also varied widely. The data set included 5 pipeline oil spills. The total known costs of the pipeline spills ranged from $4.3 million to $71.4 million.

The report concludes that, ''[s]pills are costly events, and depending on the size and location of the spill may cost millions of dollars * * * The inability to account for all the costs of spills also has implications in other regulatory programs. Costs per unit spilled are often used in regulatory settings and the lack of complete data on the total costs of spills might result in inadequate liability limits.''

OPS recognizes its data problems. To illustrate a few examples, the original estimate of the PEPCO spill the operator provided was $50,000 + of property damage. On further prodding the operator responded with supplemental reports raising costs to over $50 million. Note that OPS reporting of accidents lumps together the categories of product lost, property damage and response costs, and environmental damage. This makes any kind of analysis extremely difficult.

A closer examination of OPS spill reports confirmed the DOT Inspector General's audit conclusion that OPS data collection concerning costs of oil spills is poor. The cause of this problem is two-fold.

(1) The need to collect improved data by requiring operators to report their data by category, for example to separately indicate cost of product loss, property damage to the operator, private parties, and to the public in terms of

natural resource damages. A more detailed listing of the costs of restoration and clean-up is necessary for better analysis, and

(2) Presently, accident reporting regulations require that operators report accident cost no later than 30 days from the incident occurrence. Supplemental reports are required thereafter when new information is available. Because of the complexity of some major oil spills, cleanup and restoration costs may not be known for several years after the spill. In a 1997 accident that OPS recently reexamined, the final costs have not been decided because the case is still under litigation.

Pipeline operators, as well as OPS, have not been diligent in requesting and providing supplemental reports. OPS will soon be taking corrective actions to ensure that timely and accurate supplemental reports are provided. In the absence of appropriate data OPS recognizes that it cannot appropriately determine the benefits of regulations which reduce the number of oil spills. However, as the data from NOAA indicate as well as the recent information from the PEPCO spill, even the reported costs from oil spills represent a significant social cost to society. OPS regrets its data problems. However, as NOAA reports, OPS is not alone among Federal regulatory agencies in collecting insufficient spill data. OPS has recently proposed changes to its gas accident reporting. It will be proposing changes to its oil spill accident reporting requirements in the future.

However, the importance of this regulation in preventing the consequences of releases from hazardous liquid pipelines that could affect high consequence areas requires that OPS place this requirement on the industry in the absence of complete spill data. As stated in this evaluation, OPS concludes that the rule is justified based on the modest costs to implement and the subjective benefits of improving knowledge of pipe condition, addressing public concerns, and reducing the frequency and consequence of pipeline releases that affect high consequence areas. OPS concludes that this is adequate justification.

5. *The definition of high consequence areas should be expanded to include all national parks and fish hatcheries.* The Department of the Interior and the Environmental Protection Agency strongly recommended that the National Parks and National Fish Hatcheries be included as high consequence areas. We have not included these areas in the definition of high consequence areas. We will consider additional protection for these areas, among others, in a future rulemaking.

The following section summarizes the final regulatory evaluation's findings.

Hazardous liquid pipeline spills can adversely affect human health and the environment. The magnitude of this impact differs. There are some areas in which the impact of a spill will be more significant than it would be in others due to concentrations of people who could be affected or to the presence of environmental resources that are unusually sensitive to damage. Because of the potential for dire consequences of pipeline failures in certain areas, these areas merit a higher level of protection. OPS is promulgating this regulation to afford the necessary additional protection to these high consequence areas.

Numerous investigations by OPS and the National Transportation Safety Board (NTSB) have highlighted the importance of protecting the public and environmentally sensitive areas from pipeline failures. NTSB has made several recommendations to ensure the integrity of pipelines near populated and environmentally sensitive areas. These recommendations included requiring periodic testing and inspection to identify corrosion and other damage, establishing criteria to determine appropriate intervals for inspections and tests, determining hazards to public safety from electric resistance welded pipe and requiring installation of automatic or remotely-operated mainline valves on high-pressure lines to provide for rapid shutdown of failed pipelines.

Congress also directed OPS to undertake additional safety measures in areas that are densely populated or unusually sensitive to environmental damage. These statutory requirements included having OPS prescribe standards for identifying pipelines in high density population areas, unusually sensitive environmental areas, and commercially navigable waters; issue standards requiring periodic inspections using internal inspection devices on pipelines in densely-populated and environmentally sensitive areas; and survey and assess the effectiveness of emergency flow restricting devices, and prescribe regulations on circumstances where an operator must use the devices.

This rulemaking addresses the target problem described above, and is a comprehensive response to NTSB's recommendations and Congressional mandates, as well as pipeline safety and environmental issues raised over the years.

This rule focuses on a systematic approach to integrity management to reduce the potential for hazardous liquid pipeline failures that could affect populated and unusually sensitive environmental areas, and commercially navigable waterways. This rulemaking requires pipeline operators to develop and follow an integrity management program that continually assesses, through internal inspection, pressure testing, or equivalent alternative technology, the integrity of those pipeline segments that could affect areas we have defined as high consequence areas i.e., populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways. The program must also evaluate the segments through comprehensive information analysis, remediate integrity problems and provide additional protection through preventive and mitigative measures.

This final rule (the first in a series of integrity management program regulations) covers hazardous liquid pipeline operators that own or operate 500 or more miles of pipeline used in transportation. OPS intends to propose integrity management program requirements for the liquid operators not covered by this final rule and for natural gas transmission operators. OPS chose to start the series with this group of hazardous liquid operators because the pipelines they operate have the greatest potential to adversely affect the environment, based on the volume of product these pipelines transport. Further, by focusing first on these liquid operators, OPS is addressing requirements for an estimated 86.7 percent of hazardous liquid pipelines. It is estimated that approximately 35.5 thousand miles (of the 157,000 miles of hazardous liquid pipeline in the U.S.) will be impacted by this final rule.

We have estimated the cost to develop the necessary program at approximately $5.94 million, with an additional annual cost for program upkeep and reporting of $660,000. An operator's program begins with a baseline assessment plan and a framework that addresses each required program element. The framework indicates how decisions will initially be made to implement each element. As decisions are made and operators evaluate the effectiveness of the program in protecting high consequence areas, the program will be continually updated and improved.

The rule requires a baseline assessment of covered pipeline segments through internal inspection, pressure test, or use of other technology capable of comparable performance. The baseline assessment must be completed

within seven years after the final rule becomes effective. After this baseline assessment, an operator is further required to periodically re-assess and evaluate the pipeline segment to ensure its integrity. It is estimated that the cost of periodic reassessment will generally not occur until the sixth year unless the baseline assessment indicates significant defects that would require earlier reassessment. Integrating information related to the pipeline's integrity is a key element of the integrity management program. Costs will be incurred in realigning existing data systems to permit integration and in analysis of the integrated data by knowledgeable pipeline safety professionals. The total costs for the information integration requirements in this rule are $2.95 million in the first year and $1.5 million annually thereafter.

The rule requires operators to identify additional preventive or mitigative measures that would enhance public safety or environmental protection based on a risk analysis of the pipeline segment. One of the many preventive or mitigative actions an operator may take is to install an EFRD on the pipeline segment. OPS could not estimate the total cost of installing EFRDs because OPS does not know how many operators will install them. Additionally, requirements have been added for an operator to evaluate its leak detection capability and modify that capability, if necessary. OPS does not know how many operators currently have leak detection systems or how many will be installed or upgraded as a result of this rule. OPS was therefore also unable to estimate the total costs of the leak detection requirements.

Affected operators will be required to assess more line pipe in segments that could affect high consequence areas as a result of this rule than they would have been expected to assess if the rule had not been issued. Integrity assessment consists of a baseline assessment, to be conducted over the first seven years after the effective date of the rule, and subsequent re-assessment at intervals not to exceed every five years.

OPS has estimated the annual cost of additional baseline assessment that will be required by this rule as $9.95 million. The cost for additional re-assessment that will be required to meet the five-year re-assessment requirement is $17 million per year. Cost impact will be greater in the sixth and seventh years after the effective date of the rule due to an overlap between baseline inspection and the initial subsequent testing. The additional costs in these two years are estimated at $38.2 million.

The benefits of this rule can not easily be quantified but can be described in qualitative terms. Issuance of this final rule ensures that all operators will perform at least to a baseline safety level and will contribute to an overall higher level of safety and environmental performance nationwide. It will lead to greater uniformity in how risk is evaluated and addressed and will provide more clarity in discussion by government, industry and the public about safety and environmental concerns and how they can be resolved.

Much of the final rule is written in performance-based language. A performance-based approach provides several advantages: encouraging development and use of new technologies; supporting operators' development of more formal, structured risk evaluation programs and OPS's evaluation of the programs; and providing greater ability for operators to customize their long-term maintenance programs.

The rule has also stimulated the pipeline industry to begin developing a supplemental consensus standard to support risk-based approaches to integrity management. The rule has further fostered development of industry-wide technical standards, such as repair criteria to use following an internal inspection.

Our emphasis on an integrity-based approach encourages a balanced program, addressing the range of prevention and mitigation needs and avoiding reliance on any single tool or overemphasis on any single cause of failure. This orientation will lead to addressing the most significant risks in populated areas, unusually sensitive environmental areas, and commercially navigable waterways. Commercially navigable waterways are included because of their importance as a supply route of vital resources to many American communities as well as their role in the national defense system. This integrity-based approach is the best opportunity to improve industry performance and assure that these high consequence areas get the protection they need. It also addresses the interrelationships among failure causes and benefits the coordination of risk control actions, beyond what a solely compliance-based approach would achieve.

The final rule provides for a verification process, which gives the regulator a better opportunity to influence the methods of assessment and the interpretation of results. OPS will provide a beneficial challenge to the adequacy of an operator's decision process. Requiring operators to use the integrity management process, and having regulators validate the adequacy and implementation of this process, should expedite the operators' rates of remedial action, thereby strengthening the pipeline system and reducing the public's exposure to risk.

A particularly significant benefit is the quality of information that will be gathered as a result of this proposal to aid operators' decisions about providing additional protections. Two essential elements of the integrity management program are that an operator continually assess and evaluate the pipeline's integrity, and perform an analysis that integrates all available information about the pipeline's integrity. The process of planning, assessment and evaluation will provide operators with better data on which to judge a pipeline's condition and the location of potential problems that must be addressed.

Integrating this data with the environmental and safety concerns associated with high consequence areas will help prompt operators and the Federal and state governments to focus time and resources on potential risks and consequences that require greater scrutiny and the need for more intensive preventive and mitigation measures. If baseline and periodic assessment data is not evaluated in the proper context, it is of little or no value. It is imperative that the information an operator gathers is assessed in a systematic way as part of the operator's ongoing examination of all threats to the pipeline integrity. The rule is intended to accomplish that.

The public has expressed concern about the danger hazardous liquid pipelines pose to their neighborhoods. The integrity management process leads to greater accountability to the public for both the operator and the regulator. This accountability is enhanced through our choice of a map-based approach to defining the areas most in need of additional protection—the visual depiction of the populated areas, unusually sensitive environmental areas, and commercially navigable waterways in need of protection focuses on the safety and environmental issues in a manner that will be easily understandable to everyone. The system integrity requirements and the sharing of information about their implementation and effectiveness will assure the public that operators are continually inspecting and evaluating the threats to pipelines that pass through or close to populated areas to better ensure that the pipelines are safe.

OPS has not provided quantitative benefits for the continual integrity management evaluation required in this final rule. OPS does not believe, however, that requiring this comprehensive process, including the re-assessment of pipelines in high consequence areas at a minimum of once every five years, will be an undue burden on hazardous liquid operators covered by this proposal. OPS believes the added security this assessment will provide and the generally expedited rate of strengthening the pipeline system in populated and important environmental areas and commercially navigable waterways, is benefit enough to promulgate these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). OPS must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This rulemaking was designed to impact only those hazardous liquid operators that own or operate 500 or more miles of pipeline. Because of this limitation on pipeline mileage, only 66 hazardous liquid pipeline operators (large national energy companies) covering 86.7 percent of regulated liquid transmission lines are impacted by this final rule. Based on this, and the evidence discussed above, I certify that this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted a copy of the Paperwork Reduction Act Analysis to the Office of Management and Budget for its review. The name of the information collection is ''Pipeline Integrity Management in High Consequence Areas.'' The purpose of this information collection is designed to require operators of hazardous liquid pipelines to develop a program to provide direct integrity testing and evaluation of hazardous liquid pipelines in high consequence areas.

Several commenters (pipeline operators and trade associations), suggested that OPS underestimated the time and cost to develop the necessary program as well as the time and costs to revise the program. OPS concurs with these comments and has revised the costs burden hours as shown below.

Sixty-six hazardous liquid operators will be subject to this final rule. It is estimated that 59 of these operators will have to develop integrity management programs taking approximately 2800 hours per program. (Ten percent of hazardous liquid operators are estimated to already have sufficient programs to comply with the rule.) Each of the 59 operators would also have to devote 1,000 in the first year to integrate this data into current management information systems.

Additionally, all 66 operators will be required to update their programs on a continual basis. This will take approximately 330 hours per program annually. An additional 500 hours per operator (for the 90% of operators who do not have a program or whose program does not comply with the rule) will be required to annually integrate the data into the operator's current management information systems.

Operators are required to either use hydrostatic testing or smart pigging as a method to assess their pipelines. However, operators can use another technology if it can demonstrate it provides an equivalent understanding of the condition of the line pipe as the other two assessment methods. Operators have to provide OPS 90-days notice (by mail or facsimile) before using the other technology. OPS believes that few operators will choose this option. If they do choose an alternate technology, notice preparation should take approximately one hour. Because OPS believes few if any operators will elect to use other technologies, the burden was considered minimal and therefore not calculated.

Additionally, operators could seek a variance in limited situations from the required five-year continual re-assessment interval if they can provide the necessary justification and supporting documentation. Notice would have to be provided to OPS when an operator seeks a variance. OPS believes that approximately 10% of operators may request a variance. This is approximately 7 operators. The advance notification can be in the form of letter or fax. OPS believes the burden of a letter or fax is minimal and therefore did not add it to the overall burden hours discussed above.

Organizations and individuals desiring to submit comments on the information collection should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503: Attention Desk Officer for the Department of Transportation. Comments must be sent within 30 days of the publication of this final rule.

The Office of Management and Budget is specifically interested in the following issues concerning the information collection:

- Evaluating whether the collection is necessary for the proper performance of the functions of the Department, including whether the information would have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the collection of information, including the validity of assumptions used;
- Enhancing the quality, usefulness and clarity of the information to be collected; and minimizing the burden of 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.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless a valid OMB control number is displayed. The valid OMB control number for this information collection will be published in the **Federal Register** after it is approved by the OMB. For more details, see the Paperwork Reduction Analysis available for copying and review in the public docket.

Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10,

1999) do not apply. Nevertheless, in a November 18–19, 1999 public meeting, OPS invited National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. Again in January, and February 2000, OPS held conference calls with NAPSR, to receive their input before proposing an integrity management rule.

Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the final rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. Section 4332), the Council on Environmental Quality regulations (40 CFR Sections 1500–1508), and DOT Order 5610.1D, and have determined that this action would not significantly affect the quality of the human environment. We updated the Environmental Assessment that supported the proposed rule (65 FR 21695) to reflect the provisions of the final rule.

The final Environmental Assessment determined that the combined impacts of the initial baseline assessment (pressure testing or internal inspection), the subsequent periodic assessments, and additional preventive and mitigative measures that may be implemented to protect high consequence areas will result in positive environmental impacts. The number of incidents and the environmental damage from failures in and near high consequence areas are likely to be reduced. However, from a national perspective, the impact is not expected to be significant for the pipeline operators covered by the final rule. The following discussion summarizes the analysis provided in the final Environmental Assessment.

Many operators covered by the final rule already have internal inspection and testing programs. These operators typically place a high priority on the pipeline's proximity to populated areas, recreation and conservation areas, and environmental resources when making decisions about where and when to inspect and test pipelines. As a result, pipelines that could affect some of the defined high consequence areas have already been recently assessed, and a sizeable fraction of pipelines in the remaining locations would likely have been assessed in the next several years, without the provisions of the rule. The primary effect of the rule—accelerating integrity assessment of pipeline segments that could affect some high consequence areas—only shifts the improved integrity assurance forward for a few years for most high consequence areas. Because pipeline failure rates are low, shifting the time at which these segments are assessed forward by a few years, has only a small effect on the likelihood of pipeline failures in or near high consequence areas.

Neither internal inspection nor pressure testing protect against all threats to pipeline integrity. Specifically, they do not prevent outside force damage, the most significant contributor to hazardous liquid pipeline failures. However, the rule does require operators to conduct an integrated analysis and evaluation of all the potential threats to pipeline integrity, and to consider additional preventive or mitigative risk control measures to provide enhanced protection. If there is a vulnerability to a particular failure cause—like third party damage—these evaluations should result in additional risk controls to address these threats. However, without knowing the specific high consequence area locations, the specific risks present at these locations, and the existing operator risk controls (including those that surpass the current minimum regulatory requirements), it is difficult to determine the impact of this requirement.

A number of liquid operators covered by the rule already perform integrity evaluations or formal risk assessments that consider the impacts of pipeline system failures on the environment and population in proximity to their lines. These evaluations have already led to additional risk controls beyond existing requirements to improve protection for these locations. Thus, it is expected that additional risk controls resulting from the integrated evaluation will be limited with most new actions customized to address site-specific integrity issues that the operator may not have previously recognized. For many high consequence areas, it is probable that operators will determine the existing preventive and mitigative activities provide adequate protection, and that the small risk reduction benefits of additional risk controls are not justified.

The primary benefits of the final rule will be to establish requirements for conducting integrity assessments and periodic evaluations of the pipeline segments that could affect high consequence areas. In effect, this will establish uniform integrity management programs across the pipeline industry and enhance the integrity assessment activities many operators are currently implementing. It will also require operators who have minimal, or no, integrity assessment and evaluation programs to raise their level of performance. Thus, the rule is expected to ensure a more consistent, and overall higher level of integrity assurance for high consequence areas across the industry.

In accordance with 40 CFR Section 1508.13, based on the updated Environmental Assessment, and no receipt of comment or information showing otherwise, we have prepared a Finding of No Significant Impact (FONSI) for this final rule. The updated Environmental Assessment and the Finding of No Significant Impact are available for review in the docket.

List of Subjects in 49 CFR Part 195

Carbon dioxide, High consequence areas, Integrity assurance, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, OPS is amending part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

Subpart F—Operation and Maintenance

2. New §§ 195.450 and 195.452 are added under new undesignated centerheadings of ''High Consequence Areas'' and ''Pipeline Integrity Management'', respectively, to subpart F to read as follows:

High Consequence Areas

195.450 Definitions.

Pipeline Integrity Management

195.452 Pipeline integrity management in high consequence areas.

High Consequence Areas

§ 195.450 Definitions.

The following definitions apply to this section and § 195.452:

Emergency flow restricting device or *EFRD* means a check valve or remote control valve as follows:

(1) *Check valve* means a valve that permits fluid to flow freely in one direction and contains a mechanism to

automatically prevent flow in the other direction.

(2) *Remote control valve* or *RCV* means any valve that is operated from a location remote from where the valve is installed. The RCV is usually operated by the supervisory control and data acquisition (SCADA) system. The linkage between the pipeline control center and the RCV may be by fiber optics, microwave, telephone lines, or satellite.

High consequence area means:

(1) A *commercially navigable waterway,* which means a waterway where a substantial likelihood of commercial navigation exists;

(2) A *high population area,* which means an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;

(3) An *other populated area,* which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;

(4) An *unusually sensitive area,* as defined in § 195.6.

Pipeline Integrity Management

§ 195.452 Pipeline integrity management in high consequence areas.

(a) *Which operators must comply?* This section applies to each operator who owns or operates a total of 500 or more miles of hazardous liquid pipeline subject to this part.

(b) *What must an operator do?* (1) No later than March 31, 2002, an operator must develop a written integrity management program that addresses the risks on each pipeline segment that could affect a high consequence area. An operator must include in the program:

(i) An identification of all pipeline segments that could affect a high consequence area. A pipeline segment in a high consequence area is presumed to affect that area unless the operator's risk assessment effectively demonstrates otherwise. (See Appendix C of this part for guidance on identifying pipeline segments.) An operator must complete this identification no later than December 31, 2001;

(ii) A plan for baseline assessment of the line pipe (see paragraph (c) of this section);

(iii) A framework addressing each element of the integrity management program, including continual integrity assessment and evaluation (see paragraphs (f) and (j) of this section). The framework must initially indicate how decisions will be made to implement each element.

(2) An operator must implement and follow the program it develops.

(3) In carrying out this section, an operator must follow recognized industry practices unless the section specifies otherwise or the operator demonstrates that an alternative practice is supported by a reliable engineering evaluation and provides an equivalent level of public safety and environmental protection.

(c) *What must be in the baseline assessment plan?* (1) An operator must include each of the following elements in its written baseline assessment plan:

(i) The methods selected to assess the integrity of the line pipe. For low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure, an operator must select integrity assessment methods capable of assessing seam integrity and of detecting corrosion and deformation anomalies. An operator must assess the integrity of the line pipe by:

(A) Internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

(B) Pressure test conducted in accordance with subpart E of this part; or

(C) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment, by sending a notice to the address specified in § 195.58 or to the facsimile number specified in § 195.56;

(ii) A schedule for completing the integrity assessment;

(iii) An explanation of the assessment methods selected and evaluation of risk factors considered in establishing the assessment schedule.

(2) An operator must document, prior to implementing any changes to the plan, any modification to the plan, and reasons for the modification.

(d) *When must the baseline assessment be completed?* (1) *Time period.* An operator must establish a baseline assessment schedule to determine the priority for assessing the pipeline segments. An operator must complete the baseline assessment by March 31, 2008. An operator must assess at least 50% of the line pipe subject to the requirements of this section, beginning with the highest risk pipe, by September 30, 2004.

(2) *Prior assessment.* To satisfy the requirements of paragraph (c)(1)(i) of this section, an operator may use an integrity assessment conducted after January 1, 1996, if the integrity assessment method meets the requirements of this section. However, if an operator uses this prior assessment as its baseline assessment, the operator must re-assess the line pipe according to the requirements of paragraph (j)(3) of this section.

(3) *Newly-identified areas.* (i) When information is available from the information analysis (see paragraph (g) of this section), or from Census Bureau maps, that the population density around a pipeline segment has changed so as to fall within the definition in § 195.450 of a high population area or other populated area, the operator must incorporate the area into its baseline assessment plan as a high consequence area within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

(ii) An operator must incorporate a new unusually sensitive area into its baseline assessment plan within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

(e) *What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)?* (1) An operator must establish an integrity assessment schedule that prioritizes pipeline segments for assessment (see paragraphs (d)(1) and (j)(3) of this section). An operator must base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to:

(i) Results of the previous integrity assessment, defect type and size that the assessment method can detect, and defect growth rate;

(ii) Pipe size, material, manufacturing information, coating type and condition, and seam type;

(iii) Leak history, repair history and cathodic protection history;

(iv) Product transported;

(v) Operating stress level;

(vi) Existing or projected activities in the area;

(vii) Local environmental factors that could affect the pipeline (*e.g.,* corrosivity of soil, subsidence, climatic);

(viii) geo-technical hazards; and

(ix) Physical support of the segment such as by a cable suspension bridge.

(2) Appendix C of this part provides further guidance on risk factors.

(f) *What are the elements of an integrity management program?* An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(1) A process for identifying which pipeline segments could affect a high consequence area;

(2) A baseline assessment plan meeting the requirements of paragraph (c) of this section;

(3) An analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (see paragraph (g) of this section);

(4) Criteria for repair actions to address integrity issues raised by the assessment methods and information analysis (see paragraph (h) of this section);

(5) A continual process of assessment and evaluation to maintain a pipeline's integrity (see paragraph (j) of this section);

(6) Identification of preventive and mitigative measures to protect the high consequence area (see paragraph (i) of this section);

(7) Methods to measure the program's effectiveness (see paragraph (k) of this section);

(8) A process for review of integrity assessment results and information analysis by a person qualified to evaluate the results and information (see paragraph (h)(2) of this section).

(g) *What is an information analysis?* In periodically evaluating the integrity of each pipeline segment (paragraph (j) of this section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:

(1) Information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;

(2) Data gathered through the integrity assessment required under this section;

(3) Data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; and

(4) Information about how a failure would affect the high consequence area, such as location of the water intake.

(h) *What actions must be taken to address integrity issues?* (1) *General requirements.* An operator must take prompt action to address all pipeline integrity issues raised by the assessment and information analysis. An operator must evaluate all anomalies and repair those anomalies that could reduce a pipeline's integrity. An operator must comply with § 195.422 in making a repair.

(2) *Discovery of a condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine the need for repair. Depending on circumstances, an operator may have adequate information when the operator receives the preliminary internal inspection report, gathers and integrates information from other inspections or the periodic evaluation, excavates the anomaly, or when an operator receives the final internal inspection report. The date of discovery can be no later than the date of the integrity assessment results or the final report.

(3) *Review of integrity assessment.* An operator must include in its schedule for evaluation and repair (as required by paragraph (h)(4) of this section), a schedule for promptly reviewing and analyzing the integrity assessment results. After March 31, 2004, an operator's schedule must provide for review of the integrity assessment results within 120 days of conducting each assessment. The operator must obtain and assess a final report within an additional 90 days.

(4) *Schedule for repairs.* An operator must complete repairs according to a schedule that prioritizes the conditions for evaluation and repair. An operator must base the schedule on the risk factors listed in paragraph (e)(1) of this section and any pipeline-specific risk factors the operator develops. If an operator cannot meet the schedule for any of the conditions addressed in paragraphs (h)(5)(i) through (iv) of this section, the operator must justify the reasons why the schedule cannot be met and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure until a permanent repair is made. An operator must send a notice to the address specified in § 195.58 or to the facsimile number specified in § 195.56.

(5) *Special requirements for scheduling repairs*—(i) *Immediate repair conditions.* An operator's evaluation and repair schedule must provide for immediate repair conditions. To maintain safety, an operator will need to temporarily reduce operating pressure or shut down the pipeline until the operator can complete the repair of these conditions. An operator must base the temporary operating pressure reduction on remaining wall thickness. An operator must treat the following conditions as immediate repair conditions:

(A) Metal loss greater than 80% of nominal wall regardless of dimensions.

(B) Predicted burst pressure less than the maximum operating pressure at the location of the anomaly. Burst pressure has been calculated from the remaining strength of the pipe, using a suitable metal loss strength calculation, e.g., ASME/ANSI B31G (''Manual for Determining the Remaining Strength of Corroded Pipelines'' (1991)) or AGA Pipeline Research Committee Project PR–3–805 (''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 1989)). These documents are available at the addresses listed at § 195.3.

(C) Dents on the top of the pipeline (above 4 and 8 o'clock position) with any indicated metal loss.

(D) Significant anomaly that in the judgment of the person evaluating the assessment results requires immediate action.

(ii) *60-day conditions.* Except for conditions listed in paragraph (h)(5)(i) of this section, an operator must schedule for evaluation and repair all dents, regardless of size, located on the top of the pipeline (above 4 and 8 o'clock position) within 60 days of discovery of the condition.

(iii) *Six-month conditions.* Except for conditions listed in paragraph (h)(5)(i) or (ii) of this section, an operator must schedule evaluation and repair of the following within six months of discovery of the condition:

(A) Dents with metal loss or dents that affect pipe curvature at a girth or seam weld.

(B) Dents with reported depths greater than 6% of the pipe diameter.

(C) Remaining strength of the pipe results in a safe operating pressure that is less than the current established MOP at the location of the anomaly using a suitable safe operating pressure calculation method (e.g., ASME/ANSI B31G (''Manual for Determining the Remaining Strength of Corroded Pipelines'' (1991)) or AGA Pipeline

Research Committee Project PR–3–805 (''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 1989)). These documents are available at the addresses listed at § 195.3.

(D) Areas of general corrosion with a predicted metal loss of >50% of nominal wall.

(E) Predicted metal loss of >50% of nominal wall at crossings of another pipeline.

(F) Weld anomalies with a predicted metal loss >50% of nominal wall.

(G) Potential crack indications that when excavated are determined to be cracks.

(H) Corrosion of or along seam welds.

(I) Gouges or grooves greater than 12.5% of nominal wall.

(iv) *Other conditions.* An operator must schedule evaluation and repair of the following conditions:

(A) Data that reflect a change since last assessed.

(B) Data that indicate mechanical damage that is located on the top half of the pipe.

(C) Data that indicate anomalies abrupt in nature.

(D) Data that indicate anomalies longitudinal in orientation.

(E) Data that indicate anomalies over a large area.

(F) Anomalies located in or near casings, crossings of another pipeline, and areas with suspect cathodic protection.

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?* (1) *General requirements.* An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. These measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.

(2) *Risk analysis criteria.* In identifying the need for additional preventive and mitigative measures, an operator must evaluate the likelihood of a pipeline release occurring and how a release could affect the high consequence area. This determination must consider all relevant risk factors, including, but not limited to:

(i) Terrain surrounding the pipeline segment, including drainage systems such as small streams and other smaller waterways that could act as a conduit to the high consequence area;

(ii) Elevation profile;

(iii) Characteristics of the product transported;

(iv) Amount of product that could be released;

(v) Possibility of a spillage in a farm field following the drain tile into a waterway;

(vi) Ditches along side a roadway the pipeline crosses;

(vii) Physical support of the pipeline segment such as by a cable suspension bridge;

(viii) Exposure of the pipeline to operating pressure exceeding established maximum operating pressure.

(3) *Leak detection.* An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider, the following factors—length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

(4) *Emergency Flow Restricting Devices (EFRD).* If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?* (1) *General.* After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

(2) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in paragraph (e) of this section. The evaluation must consider the past and present integrity assessment results, information analysis (paragraph (g) of this section), and decisions about repair, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

(3) *Assessment intervals.* An operator must establish intervals not to exceed five (5) years for continually assessing the line pipe's integrity. An operator must base the assessment intervals on the risk the line pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. An operator must establish the assessment intervals based on the factors specified in paragraph (e) of this section, the analysis of the results from the last integrity assessment, and the information analysis required by paragraph (g) of this section.

(4) *Variance from the 5-year intervals in limited situations*—(i) *Engineering basis.* An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which is obtainable under paragraph (j)(2) of this section. An operator must notify OPS nine months before the end of the intervals of five years or less of the reason why the operator intends to justify a longer interval. An operator must send a notice to the address specified in § 195.58 or to the facsimile number specified in § 195.56. The notice must state a proposed alternative interval.

(ii) *Unavailable technology.* An operator may require a longer assessment period for a segment of line pipe (for example, because sophisticated internal inspection technology is not available). An operator must justify the reasons why it cannot comply with the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must notify OPS 180 days before the end of the intervals of five years or less that the operator may require a longer assessment interval. An operator must

send a notice to the address specified in § 195.58 or to the facsimile number specified in § 195.56. The Operator may have up to an additional 180 days to complete the assessment.

(5) *Assessment methods.* An operator must assess the integrity of the line pipe by:

(i) Internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

(ii) Pressure test conducted in accordance with subpart E of this part; or

(iii) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 60 days before conducting the assessment, by sending a notice to the address specified in § 195.58 or to the facsimile number specified in § 195.56.

(6) However, for low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure, an operator must select integrity assessment methods capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

(k) *What methods to measure program effectiveness must be used?* An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. See Appendix C of this part for guidance on methods that can be used to evaluate a program's effectiveness.

(l) *What records must be kept?* An operator must maintain for review during an inspection:

(i) A written integrity management program in accordance with paragraph (b) of this section.

(ii) Documents to support the decisions and analyses, including any modifications, justifications, variances, deviations and determinations made, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

(2) See Appendix C of this part for examples of records an operator would be required to keep.

3. A new Appendix C is added to part 195 to read as follows:

Appendix C to Part 195—Guidance for Implementation of Integrity Management Program

This Appendix gives guidance to help an operator implement the requirements of the integrity management program rule in §§ 195.450 and 195.452. Guidance is provided on:

(1) Information an operator may use to identify a high consequence area and factors an operator can use to consider the potential impacts of a release on an area;

(2) Risk factors an operator can use to determine an integrity assessment schedule;

(3) Safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category;

(4) Types of internal inspection tools an operator could use to find pipeline anomalies;

(5) Measures an operator could use to measure an integrity management program's performance; and

(6) Types of records an operator will have to maintain.

I. Identifying a high consequence area and factors for considering a pipeline segment's potential impact on a high consequence area.

A. The rule defines a High Consequence Area as a high population area, an other populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping System (NPMS). An operator, member of the public, or other government agency may view and download the data from the NPMS home page http://www.npms.rspa.dot.gov. OPS will maintain the NPMS and update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to § 195.452(d)(3).) For more information to help in identifying high consequence areas, an operator may refer to:

(1) Digital Data on populated areas available on U.S. Census Bureau maps.

(2) Geographic Database on the commercial navigable waterways available on *http://www.bts.gov/gis/ntatlas/networks.html.*

(3) The Bureau of Transportation Statistics database that includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from the BTS website at *http://www.bts.gov/gis/ntatlas/networks.html.*

B. The rule requires an operator to include a process in its program for identifying which pipeline segments could affect a high consequence area and to take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. (See §§ 195.452 (f) and (i).) Thus, an operator will need to consider how each pipeline segment could affect a high consequence area. The primary source for the listed risk factors is a US DOT study on instrumented Internal Inspection devices (November 1992). Other sources include the National Transportation Safety Board, the Environmental Protection Agency and the Technical Hazardous Liquid Pipeline Safety Standards Committee. The following list provides guidance to an operator on both the mandatory and additional factors:

(1) Terrain surrounding the pipeline. An operator should consider the contour of the land profile and if it could allow the liquid from a release to enter a high consequence area. An operator can get this information from topographical maps such as U.S. Geological Survey quadrangle maps.

(2) Drainage systems such as small streams and other smaller waterways that could serve as a conduit to a high consequence area.

(3) Crossing of farm tile fields. An operator should consider the possibility of a spillage in the field following the drain tile into a waterway.

(4) Crossing of roadways with ditches along the side. The ditches could carry a spillage to a waterway.

(5) The nature and characteristics of the product the pipeline is transporting (refined products, crude oils, highly volatile liquids, etc.) Highly volatile liquids becomes gaseous when exposed to the atmosphere. A spillage could create a vapor cloud that could settle into the lower elevation of the ground profile.

(6) Physical support of the pipeline segment such as by a cable suspension bridge. An operator should look for stress indicators on the pipeline (strained supports, inadequate support at towers), atmospheric corrosion, vandalism, and other obvious signs of improper maintenance.

(7) Operating condition of pipeline (pressure, flow rate, etc.) Exposure of the pipeline to operating pressure exceeding established maximum operating pressure.

(8) The hydraulic gradient of pipeline.

(9) The diameter of pipeline, the potential release volume, and the distance between the isolation points.

(10) Potential physical pathways between the pipeline and the high consequence area.

(11) Response capability (time to respond, nature of response).

(12) Potential natural forces inherent in the area (flood zones, earthquakes, subsidence areas, etc.)

II. Risk factors for establishing frequency of assessment.

A. By assigning weights or values to the risk factors, and using the risk indicator tables, an operator can determine the priority for assessing pipeline segments, beginning with those segments that are of highest risk, that have not previously been assessed. This list provides some guidance on some of the risk factors to consider (see § 195.452(e)). An operator should also develop factors specific to each pipeline segment it is assessing, including:

(1) Populated areas, unusually sensitive environmental areas, National Fish Hatcheries, commercially navigable waters, areas where people congregate.

(2) Results from previous testing/inspection. (See § 195.452(h).)

(3) Leak History. (See leak history risk table.)

(4) Known corrosion or condition of pipeline. (See § 195.452(g).)

(5) Cathodic protection history.

(6) Type and quality of pipe coating (disbonded coating results in corrosion).

(7) Age of pipe (older pipe shows more corrosion—may be uncoated or have an ineffective coating) and type of pipe seam. (See Age of Pipe risk table.)

(8) Product transported (highly volatile, highly flammable and toxic liquids present a

greater threat for both people and the environment) (see Product transported risk table.)

(9) Pipe wall thickness (thicker walls give a better safety margin)

(10) Size of pipe (higher volume release if the pipe ruptures).

(11) Location related to potential ground movement (e.g., seismic faults, rock quarries, and coal mines); climatic (permafrost causes settlement—Alaska); geologic (landslides or subsidence).

(12) Security of throughput (effects on customers if there is failure requiring shutdown).

(13) Time since the last internal inspection/pressure testing.

(14) With respect to previously discovered defects/anomalies, the type, growth rate, and size.

(15) Operating stress levels in the pipeline.

(16) Location of the pipeline segment as it relates to the ability of the operator to detect and respond to a leak. (*e.g.,* pipelines deep underground, or in locations that make leak detection difficult without specific sectional monitoring and/or significantly impede access for spill response or any other purpose).

(17) Physical support of the segment such as by a cable suspension bridge.

(18) Non-standard or other than recognized industry practice on pipeline installation (*e.g.,* horizontal directional drilling).

B. *Example:* This example illustrates a hypothetical model used to establish an integrity assessment schedule for a hypothetical pipeline segment. After we determine the risk factors applicable to the pipeline segment, we then assign values or numbers to each factor, such as, high (5), moderate (3), or low (1). We can determine an overall risk classification (A, B, C) for the segment using the risk tables and a sliding scale (values 5 to 1) for risk factors for which tables are not provided. We would classify a segment as C if it fell above ⅔ of maximum value (highest overall risk value for any one segment when compared with other segments of a pipeline), a segment as B if it fell between ⅓ to ⅔ of maximum value, and the remaining segments as A.

i. For the baseline assessment schedule, we would plan to assess 50% of all pipeline segments covered by the rule, beginning with the highest risk segments, within the first 3½ years and the remaining segments within the seven-year period. For the continuing integrity assessments, we would plan to assess the C segments within the first two (2) years of the schedule, the segments classified as moderate risk no later than year three or four and the remaining lowest risk segments no later than year five (5).

ii. For our hypothetical pipeline segment, we have chosen the following risk factors and obtained risk factor values from the appropriate table. The values assigned to the risk factors are for illustration only.

Age of pipeline: assume 30 years old (refer to ''Age of Pipeline'' risk table)—
Risk Value=5

Pressure tested: tested once during construction—
Risk Value=5

Coated: (yes/no)—yes

Coating Condition: Recent excavation of suspected areas showed holidays in coating (potential corrosion risk)—
Risk Value=5

Cathodically Protected: (yes/no)—yes—Risk Value=1

Date cathodic protection installed: five years after pipeline was constructed (Cathodic protection installed within one year of the pipeline's construction is generally considered low risk.)—Risk Value=3

Close interval survey: (yes/no)—no—Risk Value =5

Internal Inspection tool used: (yes/no)—yes. *Date of pig run?* In last five years—Risk Value=1

Anomalies found: (yes/no)—yes, but do not pose an immediate safety risk or environmental hazard—Risk Value=3

Leak History: yes, one spill in last 10 years. (refer to ''Leak History'' risk table)—Risk Value=2

Product transported: Diesel fuel. Product low risk. (refer to ''Product'' risk table)—Risk Value=1

Pipe size: 16 inches. Size presents moderate risk (refer to ''Line Size'' risk table)—Risk Value=3

iii. Overall risk value for this hypothetical segment of pipe is 34. Assume we have two other pipeline segments for which we conduct similar risk rankings. The second pipeline segment has an overall risk value of 20, and the third segment, 11. For the baseline assessment we would establish a schedule where we assess the first segment (highest risk segment) within two years, the second segment within five years and the third segment within seven years. Similarly, for the continuing integrity assessment, we could establish an assessment schedule where we assess the highest risk segment no later than the second year, the second segment no later than the third year, and the third segment no later than the fifth year.

III. Safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported.

LEAK HISTORY

Safety risk indicator	Leak history (Time-dependent defects) [1]
High	> 3 Spills in last 10 years
Low	< 3 Spills in last 10 years

[1] Time-dependent defects are those that result in spills due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc.

LINE SIZE OR VOLUME TRANSPORTED

Safety risk indicator	Line size
High	≥ 18″
Moderate	10″—16″ nominal diameters
Low	≤ 8″ nominal diameter

AGE OF PIPELINE

Safety risk indicator	Age Pipeline condition dependent) [1]
High	> 25 years
Low	< 25 years

[1] Depends on pipeline's coating & corrosion condition, and steel quality, toughness, welding.

PRODUCT TRANSPORTED

Safety risk indicator	Considerations [1]	Product examples
High	(Highly volatile and flammable)	(Propane, butane, Natural Gas Liquid (NGL), ammonia).
	Highly toxic	(Benzene, high Hydrogen Sulfide content crude oils).
Medium	Flammable—flashpoint <100F	(Gasoline, JP4, low flashpoint crude oils).
Low	Non-flammable—flashpoint 100+F	(Diesel, fuel oil, kerosene, JP5, most crude oils).

[1] The degree of acute and chronic toxicity to humans, wildlife, and aquatic life; reactivity; and, volatility, flammability, and water solubility determine the Product Indicator. Comprehensive Environmental Response, Compensation and Liability Act Reportable Quantity values may be used as an indication of chronic toxicity. National Fire Protection Association health factors may be used for rating acute hazards.

IV. Types of internal inspection tools to use.

An operator should consider at least two types of internal inspection tools for the integrity assessment from the following list. The type of tool or tools an operator selects will depend on the results from previous internal inspection runs, information analysis and risk factors specific to the pipeline segment:

(1) Geometry Internal inspection tools for detecting changes to ovality, e.g., bends, dents, buckles or wrinkles, due to construction flaws or soil movement, or other outside force damage;

(2) Metal Loss Tools (Ultrasonic and Magnetic Flux Leakage) for determining pipe wall anomalies, e.g., wall loss due to corrosion.

(3) Crack Detection Tools for detecting cracks and crack-like features, e.g., stress corrosion cracking (SCC), fatigue cracks, narrow axial corrosion, toe cracks, hook cracks, etc.

V. Methods to measure performance.

A. *General.* (1) This guidance is to help an operator establish measures to evaluate the effectiveness of its integrity management program. The performance measures required will depend on the details of each integrity management program and will be based on an understanding and analysis of the failure mechanisms or threats to integrity of each pipeline segment.

(2) An operator should select a set of measurements to judge how well its program is performing. An operator's objectives for its program are to ensure public safety, prevent or minimize leaks and spills and prevent property and environmental damage. A typical integrity management program will be an ongoing program and it may contain many elements. Therefore, several performance measure are likely to be needed to measure the effectiveness of an ongoing program.

B. *Performance measures.* These measures show how a program to control risk on pipeline segments that could affect a high consequence area is progressing under the integrity management requirements. Performance measures generally fall into three categories:

(1) Selected Activity Measures—Measures that monitor the surveillance and preventive activities the operator has implemented. These measure indicate how well an operator is implementing the various elements of its integrity management program.

(2) Deterioration Measures—Operation and maintenance trends that indicate when the integrity of the system is weakening despite preventive measures. This category of performance measure may indicate that the system condition is deteriorating despite well executed preventive activities.

(3) Failure Measures—Leak History, incident response, product loss, etc. These measures will indicate progress towards fewer spills and less damage.

C. *Internal vs. External Comparisons.* These comparisons show how a pipeline segment that could affect a high consequence area is progressing in comparison to the operator's other pipeline segments that are not covered by the integrity management requirements and how that pipeline segment compares to other operators' pipeline segments.

(1) Internal—Comparing data from the pipeline segment that could affect the high consequence area with data from pipeline segments in other areas of the system may indicate the effects from the attention given to the high consequence area.

(2) External—Comparing data external to the pipeline segment (e.g., OPS incident data) may provide measures on the frequency and size of leaks in relation to other companies.

D. *Examples.* Some examples of performance measures an operator could use include—

(1) A performance measurement goal to reduce the total volume from unintended releases by -% (percent to be determined by operator) with an ultimate goal of zero.

(2) A performance measurement goal to reduce the total number of unintended releases (based on a threshold of 5 gallons) by ____-% (percent to be determined by operator) with an ultimate goal of zero.

(3) A performance measurement goal to document the percentage of integrity management activities completed during the calendar year.

(4) A performance measurement goal to track and evaluate the effectiveness of the operator's community outreach activities.

(5) A narrative description of pipeline system integrity, including a summary of performance improvements, both qualitative and quantitative, to an operator's integrity management program prepared periodically.

(6) A performance measure based on internal audits of the operator's pipeline system per 49 CFR Part 195.

(7) A performance measure based on external audits of the operator's pipeline system per 49 CFR Part 195.

(8) A performance measure based on operational events (for example: relief occurrences, unplanned valve closure, SCADA outages, etc.) that have the potential to adversely affect pipeline integrity.

(9) A performance measure to demonstrate that the operator's integrity management program reduces risk over time with a focus on high risk items.

(10) A performance measure to demonstrate that the operator's integrity management program for pipeline stations and terminals reduces risk over time with a focus on high risk items.

VI. Examples of types of records an operator must maintain.

The rule requires an operator to maintain certain records. (See § 195.452(l)). This section provides examples of some records that an operator would have to maintain for inspection to comply with the requirement. This is not an exhaustive list.

(1) a process for identifying which pipelines could affect a high consequence area and a document identifying all pipeline segments that could affect a high consequence area;

(2) a plan for baseline assessment of the line pipe that includes each required plan element;

(3) modifications to the baseline plan and reasons for the modification;

(4) use of and support for an alternative practice;

(5) a framework addressing each required element of the integrity management program, updates and changes to the initial framework and eventual program;

(6) a process for identifying a new high consequence area and incorporating it into the baseline plan, particularly, a process for identifying population changes around a pipeline segment;

(7) an explanation of methods selected to assess the integrity of line pipe;

(8) a process for review of integrity assessment results and data analysis by a person qualified to evaluate the results and data;

(9) the process and risk factors for determining the baseline assessment interval;

(10) results of the baseline integrity assessment;

(11) the process used for continual evaluation, and risk factors used for determining the frequency of evaluation;

(12) process for integrating and analyzing information about the integrity of a pipeline, information and data used for the information analysis;

(13) results of the information analyses and periodic evaluations;

(14) the process and risk factors for establishing continual re-assessment intervals;

(15) justification to support any variance from the required re-assessment intervals;

(16) integrity assessment results and anomalies found, process for evaluating and repairing anomalies, criteria for repair actions and actions taken to evaluate and repair the anomalies;

(17) other remedial actions planned or taken;

(18) schedule for reviewing and analyzing integrity assessment results;

(19) schedule for evaluation and repair of anomalies, justification to support deviation from required repair times;

(20) risk analysis used to identify additional preventive or mitigative measures, records of preventive and mitigative actions planned or taken;

(21) criteria for determining EFRD installation;

(22) criteria for evaluating and modifying leak detection capability;

(23) methods used to measure the program's effectiveness.

Issued in Washington DC on November 14, 2000.

Kelley S. Coyner,

Administrator.

[FR Doc. 00–29570 Filed 11–30–00; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Friday,
December 1, 2000

Part IV

Securities and Exchange Commission

17 CFR Part 240

Disclosure of Order Execution and Routing Practice; and

Firm Quote and Trade-Through Disclosure Rules for Options; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43590; File No. S7–16–00]

RIN 3235–AH95

Disclosure of Order Execution and Routing Practices

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting two rules to improve public disclosure of order execution and routing practices. Under Rule 11Ac1–5, market centers that trade national market system securities will be required to make available to the public monthly electronic reports that include uniform statistical measures of execution quality. Under Rule 11Ac1–6, broker-dealers that route customer orders in equity and option securities will be required to make publicly available quarterly reports that, among other things, identify the venues to which customer orders are routed for execution. In addition, broker-dealers will be required to disclose to customers, on request, the venues to which their individual orders were routed. By making visible the execution quality of the securities markets, the rules are intended to spur more vigorous competition among market participants to provide the best possible prices for investor orders.

DATES: *Effective date:* January 30, 2001.

Compliance dates: For specific phase-in dates for compliance with the rules, see section V of this release. In addition, the national securities exchanges and the national securities association subject to § 240.11Ac1–5(b)(2) shall comply with that provision by submitting a national market system plan to the Commission by no later than February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Susie Cho, Attorney, at (202) 942–0748, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

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I. Introduction

The Securities and Exchange Commission (''Commission'') is adopting two rules to increase the visibility of execution quality of the U.S. securities markets for public investors.[1] Market centers that execute investor orders will be required to make monthly disclosures of basic information concerning their quality of executions. Broker-dealers will be required to disclose the identity of the market centers to which they route orders on behalf of customers. Taken together, the rules should significantly improve the opportunity for public investors to evaluate what happens to their orders after they submit them to a broker-dealer for execution.

The rules arise out of the Commission's extended inquiry into market fragmentation—the trading of orders in multiple locations without interaction among those orders. In today's markets, investor order flow in the same security can be divided among many different ''market centers''—*e.g.,* exchanges, over-the-counter (''OTC'') market makers, and electronic communications networks (''ECNs''). The primary structural component linking these market centers in the national market system is the consolidated public quote. Pursuant to Commission rules, the best displayed bid and offer for each equity security are collected from all significant market centers and disseminated to the public on a real-time basis. This centralized source of information, however, may convey an inaccurate impression of the significant extent to which the quality of order execution can vary across different market centers. At some market centers, for example, as many as 50% of certain orders, particularly market orders for small sizes (less than 500 shares), are executed at prices *better* than the public quotes. Similarly, for investors seeking to use limit orders to obtain better prices than the public quotes, there can be wide variations among market centers in the opportunity for such orders to be executed.

At present, few market centers provide detailed public disclosure concerning their execution quality. Rule 11Ac1–5 will assure that all market centers publicly disclose, on a monthly basis, basic standardized information concerning their handling and execution of orders. Such information will include, for example, how market orders in various size categories are executed relative to the public quotes. Also, investors for the first time will be informed not just about quoted spreads,

[1] The two rules, 17 CFR 240.11Ac1–5 and 17 CFR 240.1Ac1–6, were proposed for public comment in Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406 (''Proposing Release''). Section 11A of the Securities Exchange Act of 1934, 15 U.S.C. 78k–1, grants the Commission authority to promulgate rules necessary or appropriate to assure the fairness and usefulness of information on securities transactions and to assure that broker-dealers transmit orders in a manner consistent with the establishment and operation of a national market system. The principal national market system objectives set forth in section 11A(a)(1) include the efficient execution of securities transactions, fair competition among market participants, the public availability of information on securities transactions, and the best execution of investor orders. The rules adopted today should significantly further these objectives.

but also about *effective* spreads—the spreads *actually paid by investors* whose orders are routed to a particular market center. In addition, market centers will disclose the extent to which they provide to investors using limit orders executions at prices better than the public quotes.

To complement the improved public disclosure of execution quality by market centers, the Commission also is adopting a rule to improve disclosure of order routing by broker-dealers. Under Rule 11Ac1–6, broker-dealers that route orders as agent on behalf of their customers will be required to disclose, on a quarterly basis, the identity of the market centers to which they route a significant percentage of their orders. Broker-dealers also will be required to disclose the nature of their relationships with such market centers, including any internalization or payment for order flow arrangements, that could represent a conflict of interest between the broker-dealer and its customers. In the past, such information has been available, if at all, only by individual customer request on a transaction-by-transaction basis. As a result, there has been very little opportunity for the public to evaluate the routing practices of a broker-dealer as a whole.

In a fragmented market structure with many different market centers trading the same security, the order routing decision is critically important, both to the individual investor whose order is routed and to the efficiency of the market structure as a whole. The decision must be well-informed and fully subject to competitive forces. Currently, given the lack of comparable public information on execution quality, retail investors may conclude that the most rational strategy is simply to opt for a broker-dealer that offers the lowest commission and a fast execution. As a result, there may be limited opportunities for market participants to compete on their ability to obtain the best prices for these investor orders. By increasing the visibility of order execution and routing practices, the rules adopted today are intended to empower market forces with the means to achieve a more competitive and efficient national market system for public investors.

II. Disclosure as Minimum Step Necessary to Address Market Fragmentation

The Commission is adopting Rule 11Ac1–5 and Rule 11Ac1–6 primarily to address the serious problems that can arise from market fragmentation. For most stocks actively traded in the U.S. markets, there are a variety of market centers from which to choose in determining where to route orders for execution. Particularly for equity securities qualified for inclusion in the Nasdaq Stock Market, Inc. (''Nasdaq''), trading is widely dispersed among many different market centers. These include a large number of securities dealers that act as Nasdaq market makers. In September 2000, there were an average of 59 market makers per issue in the top 1% of Nasdaq stocks by dollar trading volume, 29 market makers per issue in the next 9% of stocks, and an overall average of 13 market makers per issue. In addition, eight ECNs operate agency markets, which together accounted for 25.8% of Nasdaq share volume in September 2000.[2] For exchange-listed equities, in contrast, the primary exchanges still retain a high percentage of order flow. In September 2000, for example, the New York Stock Exchange, Inc. (''NYSE'') accounted for 83.3% of share volume in NYSE equities.[3]

The Commission initiated its formal inquiry into market fragmentation in December 1999 when the NYSE submitted a proposed rule change to rescind Rule 390, its rule restricting off-board trading by NYSE members. In February 2000, the Commission issued a release that published the NYSE's proposal for public comment and also requested comment on a wide range of issues relating to market fragmentation (''Fragmentation Release'').[4] It noted that the rescission of off-board trading rules raised at least the potential for increased fragmentation of the market for exchange-listed stocks. The Commission particularly highlighted its concerns that dealer practices such as internalization and payment for order flow have contributed to the isolation of investor limit orders and to less vigorous quote competition.[5]

Among the commenters responding to the Fragmentation Release, the investors (both institutional and retail) were unanimous in their view that fragmentation was a problem that the Commission needed to address. Many securities industry participants, in contrast, believed that fragmentation merely was an inevitable adjunct of competition among market centers, and that such competition produces many benefits for investors. Although the comments reflected wide disagreement about a number of potential options for Commission action that would have addressed market fragmentation most directly, the majority of commenters supported some form of increased disclosure by market centers and broker-dealers concerning their execution quality and order routing practices. In July 2000, the Commission issued a release proposing Rule 11Ac1–5 and Rule 11Ac1–6 to implement this option (''Proposing Release'').[6]

In considering the issue of fragmentation, the overriding objective of the Commission's inquiry has been quite pragmatic—to assure that investors receive the best possible prices for their orders.[7] For example, do investors who seek liquidity by submitting market orders pay the lowest possible effective spread, or liquidity premium, for their orders? Similarly, do investors who supply liquidity by submitting limit orders have the best possible opportunity for their orders to be executed? The Commission believes that vigorous competition among buyers and sellers in an individual security, particularly through an opportunity for their orders to interact directly,[8] is the only reliable means to achieve the best prices for investors. To the extent that

[2] Source: NASD Economic Research Dept., *www.nasdaq.marketdata.com* (visited Oct. 31, 2000). It is doubtful that the emergence of agency market centers operated by ECNs has significantly worsened fragmentation in the market for Nasdaq securities. Since the creation of the Nasdaq market in the 1970's, order flow in such securities always has been fragmented among a significant number of market makers.

[3] Source: NYSE. In addition, the American Stock Exchange LLC (''Amex'') accounted for 69.9% of share volume in Amex equities during September 2000. Source: Amex.

[4] Securities Exchange Act Release No. 42450 (Feb. 28, 2000), 65 FR 10577. The Commission subsequently approved the rescission of Rule 390, in part because the rule had tended to restrict the competitive opportunities in listed securities of ECNs that operate agency markets. Securities Exchange Act Release No. 42758 (May 5, 2000), 65 FR 30175. It emphasized, however, that its desire to clear away any regulatory barriers to competition should not be interpreted as an indication of whether the ECNs would or should attractive a significant amount of listed market share. That will be determined by competition. The Commission also emphasized that its criticism of Rule 390 should not be interpreted as criticism of the quality of the NYSE's market, noting that studies repeatedly had demonstrated its high quality of execution and important public price discovery function. *Id.* at note 28 and accompanying text.

[5] These dealer practices are discussed in section IV.A.2 of the Fragmentation Release.

[6] Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406.

[7] Section IV.A.1 of the Fragmentation Release discusses the various ways in which investors seek to obtain the best prices, including the use of market orders by investors seeking liquidity and the use of limit orders by investors supplying liquidity. In addition, it discusses the alternatives used by large investors to interact with smaller orders (often by offering better prices for such orders) without being forced to display their full trading interest, which might move the market significantly against them.

[8] An opportunity for investor orders to be executed without the participation of a dealer is, subject to efficiency and best execution objectives, one of the five principal objectives for a national market system. Exchange Act section 11A(a)(1)(C)(v), 15 U.S.C. 78k–1(a)(1)(C)(v).

substantial fragmentation of order flow stands in the way of such competition, the harm that results is not merely theoretical. Rather, investors are forced to incur higher transaction costs, and the efficiency of the U.S. markets is diminished.

The Commission's concerns about fragmentation and order interaction should not be construed as meaning that it fails to recognize the essential importance of competition among market centers, which almost by definition entails some fragmentation of order flow. The Commission repeatedly has emphasized the substantial benefits to investors of such competition, including innovative trading services, lower trading fees, and faster executions. Accordingly, the relevant issue in addressing fragmentation is not whether the objective of order interaction should be pursued to the exclusion of market center competition, but how best to secure the benefits of both market center competition and order interaction. Although these two objectives may not be entirely congruous, they both serve to further the interests of investors and therefore must be reconciled in the structure of the national market system.

Determining how best to assure an appropriate balance between market center competition and order interaction is unquestionably a difficult task. Nevertheless, the Commission's year-long inquiry has led it to conclude that increased public disclosure of execution quality and order routing practices is a minimum step necessary to address fragmentation. There currently is little or no publicly available information that would enable *investors* to compare and evaluate execution quality among different market centers and order routing practices among broker-dealers. Some market centers make order execution information privately available to independent companies, which then prepare reports on execution quality that are sold to broker-dealers. Other market centers provide reports on execution quality directly to broker-dealers or to their members. The information in these reports generally has not been publicly disseminated. Moreover, some broker-dealers have reported difficulty in obtaining useful information on execution quality from market centers. For example, participants in a Commission roundtable on the on-line brokerage industry indicated that not all market centers were willing to make order execution information available and, even when such information was made available, not all of it was useful or in a form that allowed for cross-market comparisons.[9]

Consequently, most investors have few tools with which to assess the execution quality of different market centers and the order routing practices of different broker-dealers. Execution quality can, however, vary significantly across different market centers trading the same security. If improved disclosure leads to the tightening of effective spreads across market centers, the savings to investors could be quite substantial. For example, the Commission staff has estimated that investors who submit market orders for Nasdaq securities could save $110 million in annual trading costs if market centers that currently execute such orders at effective spreads wider than the median for all Nasdaq market centers improved their effective spreads to the median.[10] The variation of execution quality across market centers also has been shown by previous analyses of trading. In 1997, for example, the Commission issued a Report on the Practice of Preferencing that analyzed trading in the listed equity markets (''Preferencing Report''). The sole objective of the Preferencing Report was to evaluate the impact of two preferencing programs that had been formally implemented by the Cincinnati Stock Exchange (''CSE'') and Boston Stock Exchange.[11] In this limited context, the Preferencing Report found that the programs had not had an adverse effect on the national market system as a whole (particularly given that the programs were quite limited and represented only a small fraction of listed order flow).[12] When NYSE trading was compared directly with trading on the regional exchanges, however, and such comparisons were made on an ''apples-to-apples'' basis (*i.e.,* categorized by trading in the same stocks and by orders of the same size), the Preferencing Report found significant variations in executions across market centers.[13] For example, the effective spreads on the regional exchanges for small market orders were 20% to 39% higher than those on the NYSE.[14]

In addition to public analyses of equity market trading, the Commission staff is aware of similar data obtained during the examination process indicating that execution quality can vary across market centers. In 1999, for example, the Commission's Office of Compliance Inspections and Examinations (''OCIE'') conducted examinations of 21 broker-dealers for compliance with the firms' responsibility to examine regularly and rigorously the execution quality likely

[9] *See* Report by Commissioner Laura S. Unger, *On-Line Brokerage: Keeping Apace of Cyberspace* 40–41 (Nov. 1999) (available at *http://www.sec.gov*). One of the recommendations in Commissioner Unger's Report was that the Commission should consider requiring market centers to make publicly available certain uniform information on execution quality and requiring broker-dealers to provide their customers with plain English information about the execution quality available at different market centers, order handling practices, and the broker-dealer's receipt of inducements for order flow. *Id.* at 45. In addition, one of the largest broker-dealers noted in its comment letter on the Fragmentation Release that even it had been frustrated in its own attempts to obtain useful order execution data from certain markets. Letter from Lon Gorman, Vice Chairman and President, Capital Markets & Trading Group, Charles Schwab & Co., to Jonathan G. Katz, Secretary, SEC, dated July 5, 2000, at 7.

[10] This estimate is described in the cost-benefit discussion in section VII.A.1 below.

[11] The practice of preferencing, under which orders are directed to a particular exchange specialist that is entitled to take priority in execution over same-priced orders entered prior in time, is quite similar to internalization by OTC market makers.

[12] The Preferencing Report specifically noted (p. 172) that preferencing programs would require reconsideration if ''a significant increase in the amount of preferencing activity as a percentage of overall national market system activity'' resulted in the decline of execution quality on the national market system.

[13] Commenters on the Proposing Release correctly noted that the Preferencing Report found higher fill rates for non-marketable limit orders on the regional exchanges than on the NYSE. Letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, Cincinnati Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Sept. 25, 2000, at 9 (''CSE Letter''); Letter from Richard Brueckner, Chief Operating Officer, Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation, to Jonathan Katz, Secretary, SEC, dated Sept. 29, 2000, at 3 (''Pershing Letter''). The fill rates are reported in Tables V–17 and V–18 of the Preferencing Study. Only a small number of non-marketable limit orders, however, were routed to the regional exchanges, even when evaluated as a percentage of total order flow (and therefore adjusting for the much smaller share volume of the regional exchanges). *See* Preferencing Report, Table V–2 (regional exchanges' non-marketable limit orders represented 11.5% to 17.3% of their total order executions compared to 45.7% of NYSE executions). Indeed, the Preferencing Study found that four of the five largest broker-dealer participants in the CSE preferencing program (all that were examined) generally did not use the CSE's limit order book, but preferred either to place limit orders on their proprietary limit order books or to route the limit orders to the primary market. Preferencing Report at 114.

[14] Preferencing Report, Table V–7. In addition, Table V–11 indicates that, when compared for same stocks and order sizes, the NYSE average price improvement rate for small market orders was 45% to 180% higher than that of the regional exchanges. Analogous results were reflected in other tables (V–12, V–14, V–15, V–16) that were adjusted for trading in the same stocks and order sizes. Most of the tables in the Preferencing Report, however, compared NYSE trading for one week in all of its stocks with regional exchange trading for four weeks in a smaller number of NYSE stocks. They therefore did not attempt to capture distinctions between trading in comparable stocks during the same time period, as will be facilitated by the monthly market center reports to be made available under Rule 11Ac1–5.

to be obtained from different market centers. In the course of these examinations, OCIE found that the firms had obtained private analyses of trading from independent companies showing marked differences in execution quality among market centers trading the same security, as well as across securities traded in different market structures.

The Commission anticipates that the two rules adopted today could provoke more vigorous competition on execution quality and order routing performance. The rules will reveal if broker-dealers are routing a significant volume of orders to market centers that execute orders at prices substantially inferior to those available at other market centers trading the same security. This improved visibility, in turn, could shift order flow to those market centers that consistently generate the best prices for investors. Finally, by facilitating comparisons among securities traded in different market structures, the disclosures required by the rules may bring competitive forces more directly to bear on broader market structure issues, such as by prompting investors and issuers to choose markets with more efficient structures.

Nevertheless, the Commission shares the concerns of many commenters responding to both the Fragmentation Release and the Proposing Release that improved disclosure alone might not prove sufficient to address all of the problems that can arise from substantial market fragmentation.[15] Accordingly, the Commission intends to monitor closely the effects of the disclosure rules on trading in the coming months. The Commission also plans to monitor the pending move to decimal trading in actively-traded equities, which potentially could address fragmentation concerns by enabling more vigorous competition on quoted price. After assessing the impact of the rules and decimals, it will consider whether additional action is necessary to address market fragmentation and further the Exchange Act's objectives for a national market system.

III. Rule 11Ac1–5—Disclosure of Order Execution Information

The Commission has decided to adopt Rule 11Ac1–5 substantially as it was proposed, subject to certain technical modifications. The Rule will require market centers to prepare and make available to the public monthly reports in electronic form that categorize their order executions and include statistical measures of execution quality. To facilitate comparisons across market centers, the Rule adopts basic measures of execution quality (such as effective spread, rate of price improvement and disimprovement, fill rates, and speed of execution) and sets forth specific instructions on how the measures are to be calculated. The statistical information will be categorized by individual security, by five types of order (*e.g.,* market and inside-the-quote limit), and four order sizes (*e.g.,* 100–499 shares and 500–1999 shares). As a result, users of the market center reports will have great flexibility in determining how to summarize and analyze statistical information. Users of the data will be able to analyze order executions for a particular security or for any particular group of securities, as well as for any size or type of orders across those groups of securities.

A. Comments on the Disclosure Approach of the Proposed Rule

The Commission received 51 comment letters on the disclosure of order execution practices reflected in the proposed rule.[16] A majority of letters were supportive of the objective of improved disclosure, although several expressed serious reservations regarding the implementation of this objective in the proposed rule. Those who supported the rule's approach noted the current lack of useful, public information with which to compare execution quality among market centers. They believed that the information required by the rule would help address this problem.[17] The Investment Company Institute, for example, noted that ''[c]urrently, it can be very difficult to obtain significant and meaningful data on the execution quality of market centers. In the absence of such data, it is difficult to compare execution quality across markets.'' Interactive Brokers believed that the rule ''will be a major step forward in improving investor awareness of the real costs they pay, both in time and money, for trade execution.'' Others noted that improved disclosure could benefit investors by acting as a spur to competition. Knight Trading Group believed that the proposed rules ''will serve to enhance investor protection and further competition for retail orders by enabling investors and their fiduciaries to evaluate more effectively the market centers to which their orders are routed.'' Salomon Smith Barney noted that ''an educated investor will force firms and market centers to compete vigorously with each other for customer order flow and improve the quality of executions and our capital markets.'' Marshall E. Blume stated that ''[t]hrough disclosure, investors will learn which markets provide better execution, and competition, not the SEC, will determine which markets will thrive.''[18] Another commenter agreed, noting that ''transparency and disclosure are the foundation of fair competition.''[19]

Although fully supporting the objective of improved disclosure of order execution practices, five commenters expressed reservations regarding the implementation of this objective in the proposed rule. Three suggested that the Commission should require much more detailed disclosure of individual orders and transactions, rather than the rule's approach of aggregating such data into statistical categories on a stock-by-stock basis.[20]

[15] *See, e.g.,* Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated Sept. 22, 2000, at 1 (''ICI Letter''); Letter from Robin Roger, Managing Director and Counsel, Morgan Stanley Dean Witter & Co., to Jonathan G. Katz, Secretary, SEC, dated Sept. 25, 2000, at 1 (''Morgan Stanley Letter''); Letter from Mary A. Burnes, Principal, OTC Trading, Edward D. Jones & Co., to Jonathan G. Katz, Secretary, SEC, dated Sept. 19, 2000, at 1 (''Edward Jones Letter''); Letter from Robert C. Gasser, Managing Director, J.P. Morgan Securities Inc., to Jonathan Katz, Secretary, SEC, dated Oct. 5, 2000, at 2 (''J.P. Morgan Letter'').

[16] The comment letters and a comprehensive summary of comments have been placed in Public File No. S7–16–00, which is available for inspection in the Commission's Public Reference Room.

[17] *See, e.g.,* ICI Letter, note 15 above, at 2; Letter from James E. Buck, Senior Vice President & Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated Oct. 17, 2000, at 1 (''NYSE Letter''); Letter from Thomas Peterffy, Chairman, and David M. Battan, Vice President and General Counsel, Interactive Brokers LLC, to Jonathan G. Katz, Secretary, SEC, dated Sept. 22, 2000, at 2 (''Interactive Brokers Letter''); Letter from Michael T. Dorsey, Senior Vice President and General Counsel, Knight Trading Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated Oct. 25, 2000, at 2 (''Knight Trading Letter''); Letter from William R. Harts, Managing Director, Salomon Smith Barney Inc., to Jonathan G. Katz, Secretary, SEC, dated Nov. 3, 2000, at 1 (''Salomon Smith Barney Letter''); Letter from Andrew A. Davis, Chairman and CEO, The Rock Island Company, and William R. Surman, Senior Vice President—Equity, Rock Island Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated Sept. 8, 2000, at 2 (''Rock Island Letter''); Letter from Alan R. Shapiro, President, and Howard Kohos, Executive Vice President, Transaction Auditing Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated Sept. 22, 2000, at 8 (''TAG Letter'').

[18] Letter from Marshall E. Blume, Howard Butcher III Professor of Financial Management, The Wharton School, University of Pennsylvania, to Jonathan G. Katz, Secretary, SEC, dated Sept. 7, 2000, at 1 (''Blume Letter'').

[19] Letter from Meng-yuan Wang, Executive Director of EMM, UBS Warburg, to Jonathan G. Katz, Secretary, SEC, dated Sept. 25, 2000, at 1.

[20] CSE Letter, note 13 above, at 9; Blume Letter, note 18 above, at 1; Letter from Cameron Smith, General Counsel, Island ECN, to Jonathan Katz, Secretary, SEC, dated Sept. 27, 2000, at 9 (''Island Letter''). The Proposing Release requested comment

Continued

Two other commenters expressed reservations about the usefulness of many statistical categories included in the proposed rule, and also noted the need for additional categories that were not included.[21]

The commenters that opposed the disclosure approach of the proposed rule did so for varying reasons. Five of the commenters were opposed to the approach primarily because they believed the Commission should address fragmentation by mandating a unified national linkage system with price/time priority.[22] The reasons identified by other commenters opposed to the disclosure approach can be divided into three major categories: (1) The proposed rule would over-emphasize quantitative factors, particularly execution price and speed, in obtaining best execution of investor orders; (2) the information on execution quality required by the proposed rule would be too complex and not very useful to investors; and (3) the statistical disclosures required by the proposed rule would greatly increase the risk of meritless private litigation. These issues are discussed below.

1. Emphasis on Execution Price and Speed

Many of the commenters opposing the disclosure approach of the proposed rule, as well those criticizing the rule's implementation of a disclosure approach, believed that it would over-emphasize the quantitative factors of execution price and speed in obtaining the best execution of investor orders.[23] The Commission agrees with these commenters that execution price and speed are not the sole relevant factors in obtaining best execution of investor orders. It repeatedly has noted that other factors may be relevant, such as (1) the size of the order, (2) the trading characteristics of the security involved, (3) the availability of accurate information affecting choices as to the most favorable market center for execution and the availability of technological aids to process such information, and (4) the cost and difficulty associated with achieving an execution in a particular market center. Rule 11Ac1–5 does not address, much less alter, the existing legal standards that apply to a broker-dealer's duty of best execution.

For example, the Commission previously has stated that a broker-dealer must regularly and rigorously evaluate the quality of execution it obtains for customers' orders.[24] This responsibility is not changed by Rule 11Ac1–5. Indeed, the monthly market center reports will encompass *all* the orders received by a market center from any number of different broker-dealers. In contrast, a broker-dealer is responsible only for the execution quality of its own customers' orders. If a market center's overall statistics do not reflect the quality of execution of the orders of the broker-dealer's customers, the broker-dealer appropriately should consider this disparity in meeting its duty of best execution. In sum, the rules adopted today do not define, either explicitly or implicitly, a broker-dealer's duty of best execution.

The Commission strongly believes, however, that most investors care a great deal about the quality of prices at which their orders are executed, and that an opportunity for more vigorous competition among market participants to provide the best quality of execution will enhance the efficiency of the national market system. Rule 11Ac1–5 is needed, not because price is the only important factor in routing orders, but because there currently is little or no public information that would allow investors to assess a broker-dealer's handling of its customer orders. For example, the Rule will allow investors to monitor the extent to which, in choosing execution venues, there are, in fact, systematic trade-offs that must be made between price and other factors, and the amount of those trade-offs. For example, if the best prices are consistently produced by one of the leading market centers with cutting-edge, highly-reliable trading systems, there would be little, if any, trade-off between price and systems reliability. Similarly, the rules will help customer weigh the trade-off between a market center that provided immediate executions at the quote, and a market center that executed orders on average in under 30 seconds, but that consistently generated prices resulting in average effective spreads that were a significant amount per share better than those paid by investors at other market centers. Currently, however, investors have little or no information that would allow them to evaluate how their broker-dealer has responded to such trade-offs. Rule 11Ac1–5 is intended to remedy this glaring absence of public information.

The Rule's disclosure of the average spreads at which investor orders are executed should not be construed as meaning that only price ''improvement''—defined as the execution of an order at a price better than the public quote at the time the market center received the order—is important. Price improvement is likely to be important to many small investors because small orders are the most likely, at least at some market centers, to receive significantly better prices than the public quotes. The Rule does not, however, focus solely on orders that receive price improvement. It requires the same types and degree of disclosure for orders that are executed at the quotes and at prices outside the quotes. Moreover, many commenters mistakenly believed that Rule 11Ac1–5 focused on price ''improvement'' to the exclusion of other important aspects of execution that relate to price, particularly the amount of liquidity available at different market centers. However, liquidity and price are integrally related. Liquidity reflects the extent to which larger size orders can be executed at prices that are equal to or not far away from the quotes when the order is submitted. To measure the amount of liquidity available at different market centers, Rule 11Ac1–5 requires separate disclosures concerning the extent to which orders are executed at prices better than the quotes, equal to the quotes, and outside the quotes. Each of these disclosures will be categorized by the following order sizes: 100–499, 500–1999, 2000–4999, and 5000 or more shares. Thus, these categories of information enable the comparison of the performance of market centers in

on disclosure of ''raw data'' as an alternative. The Commission is not adopting the alternative. If a market center believes, however, that the basic statistical measures included in the Rule do not adequately reflect the complexity of its order flow and execution quality, it also could make its raw data publicly available as a means to promote greater understanding of its performance.

[21] Letter from Mark B. Sutton, Chairman, Market Structure Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC, dated Sept. 26, 2000, at 1 (''SIA Market Structure Committee Letter''; Letter from Lon Gorman, Vice Chairman, Charles Schwab & Co., to Jonathan G. Katz, Secretary, SEC, dated Sept. 28, 2000, at 1–2 (''Schwab Letter'').

[22] *See, e.g.,* Morgan Stanley Letter, note 15 above, at 1; Letter from Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, to Jonathan G. Katz, Secretary, SEC, dated Sept. 6, 2000, at 3 (''Peake Letter'').

[23] *See, e.g.,* Pershing Letter, note 13 above, at 1 (''The Commission seems to be trying to create a quantitative definition of best execution.''); SIA Market Structure Committee Letter, note 21 above, at 3 (the proposed rules ''elevate price and speed over other, less easily quantifiable, measures that may be important to certain investors in assessing execution quality''); Schwab Letter, note 21 above, at 9 (''by focusing on price and speed, the Commission is explicitly endorsing these elements and implicitly indicating that all others are not relevant in the determination of best execution'').

[24] *See, e.g.,* Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (''Order Handling Rules Release''), at section III.C.2.

executing larger orders at prices equal to the public quotes. Moreover, one particular measure included in the Rule—the average effective spread—will capture the net effect of *all* executions in an order size. For example, a market center's average effective spread for market orders of 2000–4999 shares in a security will reflect the share-weighted average of the executions it provided for all of those orders. Thus, if a market center gave only a few orders price improvement, but executed most orders at prices outside the quotes, its average effective spread would be higher than the average effective spread reported by a market center that executed a high percentage of orders at prices equal to the public quotes.

The Commission also wishes to emphasize that Rule 11Ac1–5 is intended to establish a baseline level of disclosure that all market centers must meet in order to facilitate cross-market comparisons of execution quality. It does not preclude market centers from disclosing whatever additional information concerning their order execution practices that they believe would more fully convey the quality of their services.

2. Usefulness to Investors of Execution Quality Information

Commenters opposed to the proposed rule also questioned the usefulness to investors of the information on execution quality that would be included in the market center reports. In particular, they believed that the information was too complex for investors to understand, that the reports would overwhelm investors with statistical data, and that, as a result, investors would be vulnerable to being misled by those willing to ''spin'' the data to serve their own self interest.[25]

As an initial matter, the Commission disagrees with the notion that investors are incapable of understanding the fundamental principles of execution quality reflected in Rule 11Ac1–5.[26] Investors' current lack of *familiarity* with the statistical measures, rather than their inherent complexity, may contribute to an impression that the measures are complex. To date, very few market centers have made any public disclosures concerning their execution quality, such as their effective spread and rate of price improvement for different types of orders. The quoted spread, in contrast, has been widely disseminated pursuant to Commission rules and that is what investors have come to know. Given the enormous appetite of investors in recent years for better information about the markets (fueled largely by improved technology and lower communication costs), the Commission anticipates that many investors will come to appreciate the important distinction between quoted prices and the prices they actually receive. Nearly every statistical measure included in Rule 11Ac1–5, each of which is based on execution price and speed of execution, is straightforward in principle.

Commenters correctly observed, however, that a large volume of statistical data will be disclosed in the monthly execution quality reports. As discussed in the Proposing Release, the large volume of statistics reflects a deliberate decision by the Commission to avoid the dangers of overly-general statistics. Assigning a single ''execution quality'' score to market centers, for example, would hide major differences in execution quality, potentially creating far more problems that it solved. Instead, Rule 11Ac1–5, taking advantage of improved and more efficient information technology, requires electronic disclosure of basic order execution information that is categorized on a stock-by-stock basis. After this basic information is disclosed by all market centers in a uniform manner, market participants and other interested parties will be able to determine the most appropriate classes of stocks and orders to use in comparing execution quality across market centers.

Given the large volume of data that will be included in the reports, most individual investors likely would not obtain and digest the reports themselves.[27] The Commission anticipates that independent analysts, consultants, broker-dealers, the financial press, and market centers will analyze the information and produce summaries that respond to the needs of investors. Some commenters expressed discomfort with the varied and unstructured analysis that might arise once execution quality statistics become available to the public. However, many market participants will have an interest in clearly communicating to investors the salient information in ways that investors can understand. In time, investors should be able to assess the credibility of these analyses and use them in evaluating execution performance. Indeed, one of the most serious problems investors currently face with respect to choosing a broker is assessing the quality of order routing and execution services provided by various broker-dealers. After the rules adopted today become effective, competitive forces can be brought to bear on broker-dealers *both* with respect to the explicit trading costs associated with brokerage commissions and the implicit trading costs associated with execution quality. The Commission believes that investors ultimately will be the beneficiaries of this expanded competition.[28]

3. Risk of Meritless Litigation

Several commenters expressed concern that the required disclosures of order execution and routing practices would greatly increase the risk of private securities litigation alleging that broker-dealers failed to meet their duty of best execution.[29] The Commission

[25] *See, e.g.,* Morgan Stanley Letter, note 15 above, at 12–13; Pershing Letter, note 13 above, at 2; Letter from Robert H. Forney, President and Chief Executive Officer, Chicago Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Oct. 5, 2000, at 9 (''CHX Letter''); Letter from Lanny A. Schwartz, Executive Vice President and General Counsel, Philadelphia Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated Sept. 22, 2000, at 1 (''Phlx Letter'').

[26] For example, the quoted spread and the effective spread are analogous to the manufacturer's suggested retail price (''MSRP'') for a product and the varying prices actually charged at different stores. The first reflects the price that might be charged; the second reflects the price actually charged, which could be better or worse than the first, and often is. The Commission similarly believes that investors, with proper explanation, can grasp the concept underlying average realized spread. This statistic is calculated by comparing the execution price of an order with the public quotes as they stand five minutes after the time of execution. As discussed further in section III.C.1 below, it measures the extent to which a market center receives order flow that is difficult to handle—either because it arrives during times when the markets are stressed or it comes from informed traders. It highlights those market centers that are willing to accept such difficult order flow, a praiseworthy quality that the Commission does not want the Rule's disclosure requirements to discourage.

[27] If interested, however, investors with access to the Internet and capable of using widely-available office application software could readily download and analyze a market center's monthly execution quality report. Private vendors also may offer services that enable individual investors to access and review market center reports.

[28] A commenter suggested that, without an independent verification requirement, some market centers might produce reports that were materially misleading. Morgan Stanley Letter, note 15 above, at 17. The Commission does not believe that an independent verification requirement is necessary at this time. Market centers subject to Rule 11Ac1–5 will be regulated entities that have met the integrity and competence standards of the Exchange Act. In addition, all market centers will be subject to inspection by the Commission. If registered as a broker-dealer, they also will be subject to inspection by their respective self-regulatory organizations (''SROs''). The Exchange Act grants the Commission and SROs ample enforcement powers to deal with any market center that makes materially misleading disclosures concerning its execution quality.

[29] SIA Market Structure Committee Letter, note 21 above, at 5; Letter from Bruce E. Coolidge of Wilmer, Cutler & Pickering, to Jonathan G. Katz, Secretary, SEC, dated Oct. 10, 2000; Letter from

Continued

expresses no opinion on some of the broader criticisms of private litigation made by these commenters. It is concerned, however, about comments that the required disclosures, particularly the detailed statistical information required by Rule 11Ac1–5, could be subject to misinterpretation that might pose a risk of *meritless* litigation. The Commission wishes to make clear its views as to the limits of these data in evaluating a broker-dealer's compliance with its legal duty of best execution. Both Rule 11Ac1–5 and Rule 11Ac1–6 are designed to require disclosure pursuant to Section 11A of the Exchange Act. They are not antifraud rules, nor do they create new duties under the antifraud provisions of the federal securities laws. The rules themselves create neither express nor implied private rights of action. Furthermore, Rule 11Ac1–5 and Rule 11Ac1–6 do not address and therefore do not change the existing legal standards that govern a broker-dealer's duty of best execution. The market center reports will provide statistical disclosures regarding certain of the factors relevant to a broker-dealer's order routing decision, but these factors alone are not determinative of whether the broker-dealer achieved best execution.

Rule 11Ac1–5 and Rule 11Ac1–6 are designed to generate uniform, general purpose statistics that will prompt more vigorous competition on execution quality. The information that will be generated as a result of these rules will not, by itself, be sufficient to support conclusions regarding a broker-dealer's compliance with its legal responsibility to obtain the best execution of customer orders. Any such conclusions would require a more in-depth analysis of the broker-dealer's order routing practices than will be available from the disclosures required by the rules.

For example, as discussed in section III.A.1 above, the execution quality statistics included in Rule 11Ac1–5 do not encompass every factor that may be relevant in determining whether a broker-dealer has obtained best execution. In addition, the statistics in a market center's reports typically will reflect orders received from a number of different routing broker-dealers. Legal conclusions about any one broker-dealer's routing practices require an assessment of additional information concerning how that broker-dealer's customer orders were executed. Moreover, under Rule 11Ac1–6, a broker-dealer's quarterly report will provide a general overview of its order routing practices. The information on where orders were routed during the quarter will be broken out only by the listing status of the security—NYSE, Nasdaq, Amex/other, and options. Within these categories, a broker-dealer may have varied its routing of different types of orders, or orders in different securities, so as to obtain results that would not be evident from the general statistics presented in the market center reports.

In sum, while the order execution and routing disclosures will represent a significant step forward in the quality of information that is currently publicly available, they alone will not provide a reliable basis to assess a broker-dealer's compliance with its duty of best execution. Therefore, the resulting statistics, by themselves, do not demonstrate whether or not broker-dealers have complied with their legal duties to their customers,[30] and to conclude otherwise would be contrary to the Commission's prior statements, discussed below, about the duty of best execution. Furthermore, the Commission believes that the possibility of multiple, inconsistent standards in interpreting this information in relation to various state law claims could tend to frustrate the statutory objective of establishing and monitoring the development of a national market system[31] and would undermine the Commission's effort to assure the practicability of brokers achieving best execution.[32]

The Commission previously has expressed three conclusions inconsistent with an overly-simplistic determination that a broker-dealer breached the duty of best execution. First, a broker-dealer is required to seek to obtain the most favorable *terms* reasonably available under the circumstances for a transaction (which may not in every case necessarily be the best price that might be available).[33] Second, the duty of best execution does not necessarily require broker-dealers with a large volume of orders to determine individually where to route each order. Third, a broker-dealer does not violate its best execution obligation solely because it receives payment for order flow or trades as principal with customer orders.[34]

To emphasize these points, we have added a ''Preliminary Note'' to Rule 11Ac1–5. It provides as follows:

> Section 240.11Ac1–5 requires market centers to make available standardized, monthly reports of statistical information concerning their order executions. This information is presented in accordance with uniform standards that are based on broad assumptions about order execution and routing practices. The information will provide a starting point to promote visibility and competition on the part of market centers and broker-dealers, particularly on the factors of execution price and speed. The disclosures required by this Section do not encompass all of the factors that may be important to investors in evaluating the order routing services of a broker-dealer. In addition, any particular market center's statistics will encompass varying types of orders routed by different broker-dealers on behalf of customers with a wide range of objectives. Accordingly, the statistical information required by this Section alone does not create a reliable basis to address whether any particular broker-dealer failed to obtain the most favorable terms reasonably available under the circumstances for customer orders.

The Commission believes that this clear statement will substantially address the danger of meritless litigation that might impose significant indirect costs on broker-dealers.

B. Scope of Rule

Paragraph (b)(1) of Rule 11Ac1–5 provides that every market center shall make available for each calendar month an electronic report on the covered orders in national market system securities that it received for execution from any person. Thus, the Rule is limited in scope to market centers, covered orders, and national market system securities.

1. Market Center

Paragraph (a)(14) of the Rule defines the term ''market center'' as any exchange market maker, OTC market maker, alternative trading system, national securities exchange,[35] or

Roger D. Blanc of Wilkie Farr & Gallagher, to Jonathan G. Katz, Secretary, SEC, dated Oct. 5, 2000, at 10 (''Wilkie Farr & Gallagher Letter''); Schwab Letter, note 21 above, at 13–17; Morgan Stanley Letter, note 15 above, at 17; Letter from the Regulatory Studies Program of the Mercatus Center at George Mason University, to Jonathan G. Katz, Secretary, SEC, dated Sept. 22, 2000, at 14 (''Mercatus Center Letter''). *But see* Knight Trading Letter, note 17 above, at 12–14.

[30] For this reason, broker-dealers will be able to explain in their disclosures to customers the full range of factors that influenced their order routing decisions.

[31] Exchange Act Section 11A(a)(2). *See also Guice* v. *Charles Schwab & Co.,* 674 N.E.2d 282 (N.Y. 1996), *cert. denied,* 520 U.S. 1118 (1997).

[32] Exchange Act Section 11A(a)(1)(C)(iv).

[33] Similarly, the Commission has noted that ''in evaluating its procedures for handling limit orders, the broker-dealer must take into account any *material* differences in execution quality.'' Order Handling Rules Release, note 24 above, at section III.C.2 (emphasis added).

[34] *See id.* at section III.C.2.

[35] A national securities exchange is an exchange registered under Section 6 of the Exchange Act. An exchange exempted from registration pursuant to Section 5 of the Exchange Act therefore is not included within the Rule's definition of market center.

national securities association. This definition is intended to cover entities that hold themselves out as willing to accept and execute orders in national market system securities. In addition, the language in paragraph (b)(1) that a market center must report on orders that it ''received for execution from any person'' is intended to assign the disclosure obligation to the entity that is expected to control whether and when an order will be executed.[36]

The Commission anticipates that the reporting entity for the vast majority of orders will be an exchange specialist, OTC market maker, or ATS. Although specialists and market makers frequently operate under the auspices of an SRO (and such an SRO likely will greatly assist its members in meeting the disclosure requirements of the Rule),[37] the responsibility for executing orders generally is handled by the individual firms, and execution quality may vary significantly among them. This is particularly true where an exchange has multiple market makers in a security. It therefore is appropriate for the monthly reports to reflect these potential differences. In some cases, however, orders may be executed through a facility operated by an SRO without a member significantly controlling the order executions. Examples may include (1) the Small Order Execution System (''SOES'') operated by Nasdaq, and (2) floor brokers who receive orders on the floor of an exchange and obtain an execution of the orders with little participation by a specialist. The definition of market center includes exchanges and associations to cover these situations.[38]

2. Covered Order

The definition of ''covered order'' in paragraph (a)(8) of Rule 11Ac1–5 contains several conditions and exclusions that are intended to limit its scope to those orders that provide a basis for meaningful and comparable statistical measures of execution quality. First, the Rule applies only to market orders or limit orders that are received by a market center during regular trading hours and, if executed, executed during such time. The term ''regular trading hours'' is defined in paragraph (a)(19) of the Rule to mean between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to paragraph (b)(2) of the Rule. There are substantial differences in the nature of the market between regular trading hours and after-hours, and orders executed at these times should not be blended together in the same statistics.[39] In addition, covered orders must be received during the time that a consolidated BBO is being disseminated.[40] This restriction is necessary because nearly all of the statistical measures included in the Rule depend on the availability of a consolidated BBO at the time of order receipt. The term ''consolidated best bid and offer'' is defined in paragraph (a)(7) as the highest firm bid and the lowest firm offer for a security that is calculated and disseminated on a current and continuous basis pursuant to an effective national market system plan. The two plans that currently provide for the calculation and dissemination of a consolidated best bid and offer for national market system securities are the Consolidated Quotation Plan for listed equities and the Nasdaq/National Market System Plan for Nasdaq equities.[41]

The definition of covered order excludes any orders for which the customer requested special handling for execution and that, if not excluded, could skew general statistical measures of execution quality. Types of orders specifically excluded from the Rule include, but are not limited to, orders to be executed at a market opening or closing price, stop orders, orders such as short sales that must be executed on a particular tick or bid, orders submitted on a ''not held'' basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price at the time of execution. All of these exclusions are retained from the proposed rule. In addition, the Rule as adopted now specifically excludes all-or-none orders on the basis that they often may be more difficult to execute than orders without a substantial minimum quantity requirement.[42]

Two types of orders warrant further discussion. The first type—immediate-or-cancel orders—is included in the Rule. The second—orders to be executed at a market opening price—is excluded for operational reasons, notwithstanding the significant issues of quality of disclosure for investors submitting these orders, particularly in Nasdaq securities.

a. Immediate-Or-Cancel Orders. The Commission has determined that ''immediate-or-cancel'' orders should be included in Rule 11Ac1–5. Immediate-or-cancel orders are immediately subject to execution under normal conditions. These orders are functionally nearly the same as orders that are submitted and cancelled almost immediately thereafter, which are included in the Rule. If not executed, they simply will be included in the statistic for a market center's cancelled orders under subparagraph (b)(1)(i)(C) of the Rule. Moreover, ECNs trading Nasdaq securities receive a substantial number of immediate-or-cancel orders, particularly those that are marketable limit orders. Thus, including these orders may be important to accurately assess the quality of these ECNs, and statistics that reflect the execution quality of these orders in ECNs may be of significant interest to investors.

b. Market Opening Orders. The Proposing Release requested comment on the appropriateness of excluding orders that are to be executed at a market opening price. Several commenters believed that such orders should be included in the Rule. Edward D. Jones & Co., for example, observed that approximately 10–20% of its order flow typically was executed at the opening and that it would be useful, particularly for Nasdaq securities, to segregate opening orders into a separate statistic. The Investment Company Institute stated that ''the quality of

[36] When a market center receives an order for execution, the order must be included in its statistical disclosures of execution quality even if the order is routed to another venue for execution. *See* section III.C.1 below.

[37] Indeed, the Commission anticipates that many SROs may, on behalf of their members, assume substantially all responsibility for complying with the Rule. Such an assumption of responsibility would be an acceptable way for an SRO and its members to meet the Rule's requirements.

[38] The Commission's staff will be available to provide interpretive guidance to market centers on how orders should be reported under the Rule.

[39] *See* Division of Market Regulation, SEC, Report on Electronic Communications Networks and After-Hours Trading (June 2000), at 29 (for the 15 largest capitalization stocks in the Nasdaq 100 index, average quoted spread, average effective spread, and trade price volatility increased significantly after the close of regular trading hours).

[40] The Proposing Release requested comment on orders received when the consolidated BBO is locked or crossed. One commenter suggested that such orders be excluded, as well as orders received during ''fast'' markets. TAG Letter, note 17 above, at 4. The adopted Rule continues to encompass such orders. Its statistical measures can all be calculated during periods when markets are locked, crossed, and fast. Moreover, one of the important characteristics of a market center is its ability to handle orders well during difficult market conditions.

[41] The full title of the Nasdaq Plan is ''Joint Self-Regulatory Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on an Unlisted Trading Privilege Basis.''

[42] One commenter requested clarification concerning orders that are not sent to a market center for prompt execution, as are traditional market orders, or that are not priced orders. Letter from P. Mats Goebels, Senior Vice President & General Counsel, ITG, Inc., to Jonathan G. Katz, Secretary, SEC, dated Sept. 29, 2000, at 5. Such orders would not fall within the definition of ''covered order'' in subparagraph (a)(8), which applies only to market orders and limit orders.

execution of market opening orders in the Nasdaq market has been an issue of significant concern to market participants'' and that ''information on the quality of execution at the opening would assist market participants in determining how to trade securities at the opening of the market.''

The Commission fully shares the concerns of commenters over the need for improved information on the quality of execution of opening orders in Nasdaq securities. In this respect, the market for Nasdaq securities differs significantly from the market for exchange-listed securities, where the primary exchange generates and disseminates a single opening price. Moreover, it is the Commission's understanding that it is industry practice in the listed markets to provide investors with this single opening price for opening orders that are executed away from the primary exchange. In the market for Nasdaq securities, in contrast, it appears to be the common practice of many market centers to execute opening orders to buy at the quoted offer and opening orders to sell at the quoted bid, thereby charging a liquidity premium for a large volume of orders that effectively cross each other at a single point in time.

The Commission is aware that several important market centers trading Nasdaq securities have begun to offer services that give investors an opportunity to avoid paying a liquidity premium on opening orders. Such services can include, for example, ''mid-point pricing,'' pursuant to which both buy and sell orders are executed at the midpoint of the opening quoted bid and offer.[43]

The Commission is concerned that many investors may not be fully aware of the significant distinction between Nasdaq and listed securities with respect to the execution of opening orders. The Commission also is concerned that many investors may not be aware of the differing services offered by market centers for execution of opening orders in Nasdaq securities, and their impact on execution quality. Without question, including a separate category for opening orders in the Rule 11Ac1–5 statistics would highlight the differences in quality of execution of opening orders across market centers. Nevertheless, the Commission is reluctant to expand the quantity of the Rule's continuing and marketwide disclosure requirements to address an issue that is limited to a specific segment of the equities markets. Including additional statistics for opening orders in market center reports alone would increase the size of the reports by 20%. All market centers, both those trading listed and Nasdaq securities, would be required to include the opening order information, even though it would be nearly the same for all market centers offering a single price execution of these orders. In addition, Nasdaq is actively considering new opening procedures that could reduce disparities in execution quality.

Instead of substantially expanding the quantity of statistics required by the Rule to address this issue, the Commission believes that the markets and broker-dealers handling customer orders should be given a further opportunity to improve execution quality at the opening in Nasdaq securities. Market centers generally inform broker-dealers in advance how they will execute opening orders. Broker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders. Broker-dealers are encouraged to communicate clearly to customers the choices available for execution of opening orders, as well as the broker-dealer's policy for obtaining best execution of such orders. If necessary in the future, the Commission will consider requiring statistical disclosure of order execution quality at the opening.

3. National Market System Securities

Rule 11Ac1–5 applies only to securities that are designated as national market system securities under Exchange Act Rule 11Aa2–1. Currently, this designation applies to exchange-listed equities and equities included in the National Market tier of Nasdaq.[44] It does not apply to Nasdaq SmallCap securities, Over-the-Counter Bulletin Board securities, and exchange-listed options. SmallCap stocks tend to be inactively traded and, as a group, generate less than 5% of the dollar volume on Nasdaq while making up nearly 25% of Nasdaq companies.[45] Given the relatively light dollar amount of trading in these and Bulletin Board securities, the Commission believes at this time that the value of statistical measures of trading may not justify the costs to produce the information. After gaining experience with the Rule's operation, it will consider whether the scope of the Rule should be expanded.

The Proposing Release requested comment on whether Rule 11Ac1–5 should apply to orders for listed options. Interactive Brokers LLC strongly believed that the Rule should apply to options trading.[46] The Chicago Board Options Exchange (''CBOE''), in contrast, did not think that the Rule's disclosure approach was appropriate for options trading, although it did express support for the objective of improved disclosure in general.[47] The Commission continues to believe that there is a need for improved disclosure of execution quality in the options markets, particularly now that there is widespread trading of options on multiple exchanges and expanding payment for options order flow. Nevertheless, potentially difficult issues would have to be addressed before options could be included within Rule 11Ac1–5. For example, a consolidated BBO is not, at this time, calculated and disseminated for options trading. A consolidated BBO is an essential element for nearly every statistical measure in the Rule, such as calculating price improvement and classifying types of limit orders (*e.g.,* inside-the-quote and at-the-quote limit orders). Although each exchange potentially could calculate its own consolidated BBO, the calculations might vary at times and fail to provide a uniform basis for comparable statistics. In addition, categorization of orders on a security-by-security basis would be much less practical for the options markets, where there may be hundreds of series of options for one underlying security. The Commission's Office of Economic Analysis and OCIE currently are preparing a report on payment for order flow in the options markets. The report necessarily will address the quality of execution of options orders. After the report is completed, the Commission will consider whether additional action is needed to improve the quality of disclosure of execution quality in the options markets.

[43] The market centers that offer these improved prices for opening orders may, however, exclude them from their payment for order flow schedules, thereby potentially reducing the payments to broker-dealers that obtain these better prices for their customers.

[44] Rule 11Aa2–1 incorporates the definition of ''reported security'' that is used in Exchange Act Rule 11Aa3–1—any security for which transaction reports are made available pursuant to a reporting plan approved under Rule 11Aa3–1. Only exchange-listed equities and Nasdaq National Market equities currently fall within this definition.

[45] *See* NASD Economic Research Dept., *http://www.marketdata.nasdaq.com* (visited June 27, 2000).

[46] Interactive Brokers Letter, Note 17 above, at 4.

[47] Letter from Thomas A. Bond, Chicago Board Options Exchange, to Jonathan G. Katz, Secretary, SEC, dated Oct. 9, 2000 at 3 (''CBOE Letter'').

C. Required Information

Paragraph (b)(1) of Rule 11Ac1–5 requires market center reports to be categorized by individual security, order type, and order size. These categories are defined in paragraphs (a)(4) through (a)(6) of the Rule. The five types of orders are market, marketable limit, inside-the-quote limit, at-the-quote limit, and near-the-quote limit. The four buckets of order size are 100–499, 500–1999, 2000–4999, and 5000 or more shares. With this degree of categorization, a market center will, for example, produce statistical information for the subcategory of market orders for 100–499 shares in an individual stock.

Several commenters criticized the categories specified in the proposed rule.[48] The Commission has decided to retain the categories at this time, although experience with the Rule may indicate ways in which they could be improved in the future. The categories are intended to strike a balance between (1) sufficient aggregation of orders to produce statistics that are meaningful, and (2) sufficient differentiation of orders to facilitate fair comparisons of execution quality across market centers. If a market center believes that the categories do not fully reflect its order flow and execution practices, it is encouraged to make any additional information publicly available that it believes would be helpful to investors.

1. Information Required for All Types of Orders

For each subcategory of security/order type/order size, paragraph (b)(1)(i) specifies eleven columns of information that must be provided. The first five columns provide general information on the orders received by a market center in a subcategory and the disposition of those orders. The first column is ''the number of covered orders.'' The second, however, is ''the cumulative number of shares of covered orders'; and thereafter all statistics required by the Rule are expressed either in number of shares or in share-weighted amounts. The Rule uses share-based statistics primarily to deal with those situations in which a single order receives less than a full execution or more than one partial execution.

The Rule requires disclosure of the number of shares cancelled prior to execution,[49] and the number of shares executed at both the receiving market center and at any other venue (after being routed elsewhere by the receiving market center). Thereafter, all statistical measures of order execution for a market center will encompass *both* orders that were executed at the receiving market center and orders that were executed elsewhere. In calculating its statistics, a market center will use the time it received the order and the consolidated BBO at the time it received the order, not the time and consolidated BBO when the venue to which an order was forwarded received the order. The Commission believes that a market center should be held accountable for all orders that it receives for execution and should not be given an opportunity to exclude difficult orders from its statistical measures of execution quality by routing them to other venues. In addition, from the perspective of the customer who submitted the order, the fact that a market center chooses to route the order elsewhere does not reduce the customer's interest in a fast execution that reflects the consolidated BBO as close to the time of order submission as possible. Consequently, in evaluating the quality of order routing and execution services, it is important for customers to know how a market center handles all orders that it receives, not just those it chooses to execute.

The term ''time of order receipt'' is defined in paragraph (a)(21) of the Rule as the time (to the second) that an order was received by a market center for execution. The definition is intended to identify the time that an order reaches the control of the market center that is expected, at least initially, to execute the order. In many cases, a broker-dealer may receive an order from a customer in a security for which the broker-dealer also is an OTC market maker or an exchange specialist. In such cases, the market center will be considered to have received an order for execution only when the order is transmitted to the department of the firm responsible for making a market in the security.

A commenter noted the danger that a market center might attempt to manipulate the time of receipt for its order flow. It stated, for example, that ''a market maker executing captive market orders pursuant to an internalization or payment for order flow arrangement who has agreed to ''step up and match'' the NBBO can create for itself a free option by monitoring market movements before and/or after receipt of any order and assigning as an execution price for that order whatever ''NBBO'' is most favorable to the market maker during the brief option period.'' [50] The Commission agrees that it is critically important for market centers to assign a time of receipt (including seconds) to orders in a prompt, consistent, and non-manipulatory manner. The Commission's inspections of market centers will include a review for compliance with this standard, and failure to meet the standard would be a serious violation of the Rule.

The next five columns required by paragraph (b)(1)(i) of the Rule ask for the number of shares that were executed within specified periods of time after order receipt (such as ''from 0 to 9 seconds'' and ''from 10 to 29 seconds''). Although required for all types of orders, the Commission anticipates that this information will be most useful for evaluating the execution of non-marketable limit orders. These statistics are intended to provide useful comparisons to the overall fill rates for non-marketable limit orders.[51] Particularly for inside-the-quote and at-the-quote limit orders, the submitter of the order reasonably may expect that the order should be executed relatively quickly, and information on the likelihood that such an order will be executed with 10 seconds, 30 seconds, and so on, at different market centers may be helpful in guiding the order routing decision.

The final column of information required for all types of orders is the average realized spread. The term ''average realized spread'' is defined in paragraph (a)(3) of the Rule and is calculated by comparing the execution price of an order with the midpoint of the consolidated BBO as it stands five minutes after the time of order

[48] Phlx Letter, note 25 above, at 4; CSE Letter, note 13 above, at 6–7; Schwab Letter, note 21 above, at 10–11.

[49] A commenter suggested that the Rule should exclude cancelled orders in calculations of execution quality measures. Letter from Richard G. Ketchum, National Association of Securities Dealers, Inc., to Jonathan G. Katz, Secretary, SEC, dated Oct. 17, 2000, at 3. In fact, the Rule does not specify whether cancelled orders should or should not be included in calculating measures such as price improvement rates for market orders and fill rates for limit orders. Instead, market centers will disclose the number of cancelled shares, and analysts are free to use or exclude cancelled orders in performing their calculations as they think most appropriate.

[50] Interactive Brokers Letter, note 17 above, at 3–4.

[51] The overall fill rates for such orders can be calculated by comparing the number of shares executed with the total number of shares received. Such overall fill rates for non-marketable limit orders can be difficult to interpret because of the problem of cancelled orders. An aggressive user of non-marketable limit orders frequently will submit orders with limit prices at or inside the current consolidated BBO. If market prices move away from the order, the order submitter may cancel and resubmit the order at a new limit price that reflects the changing consolidated BBO. Consequently, the same person potentially may cancel and resubmit an order several times to maintain the aggressiveness of the limit price. These cancellations can make it difficult to evaluate overall fill rates and cancellation rates.

execution.[52] The smaller the average realized spread, the more market prices have moved adversely to the market center's liquidity providers after the order was executed, which shrinks the spread ''realized'' by the liquidity providers. In other words, a low average realized spread indicates that the market center was providing liquidity even though prices were moving against it for reasons such as news or market volatility.

Many commenters questioned the usefulness of this statistic and recommended that it be eliminated.[53] The Commission believes, however, that the average realized spread is an essential measure for evaluating a market center's order execution practices and so we have retained the measure in the Rule. Most importantly, marketwide disclosure of realized spreads will help address a potentially serious incentive problem that could arise during ''stressed'' markets (*i.e.,* when prices are moving quickly). A market center of ''last resort''—one that executes a greater proportion of orders when the market is stressed—generally will post wider effective spreads during those periods, even though the realized spread may remain quite low or negative (because prices are moving rapidly against those providing liquidity during the stressed period). Thus, marketwide disclosure of realized spreads can help identify those market centers willing to supply liquidity during difficult times. If average realized spread were not included in the Rule, it might create an incentive for market centers to avoid trading in times of stress, leading to a drop in liquidity at the very time when it is most needed.

In addition, for market orders (as well as marketable limit orders), average realized spread can measure the extent to which ''informed'' and ''uninformed'' orders are routed to different market centers. Informed orders are those submitted by persons with better information than is generally available in the market. They therefore represent a substantial risk to liquidity providers that take the other side of these informed trades. In contrast, orders submitted by persons without an information advantage (often small orders) present less risk to liquidity providers and in theory should receive the most favorable effective spreads available in the market. Market centers may attempt to identify and secure a substantial flow of uninformed orders, while avoiding, and perhaps even rejecting, informed orders. The average realized spread statistic for market and marketable limit orders can highlight the extent to which market centers receive uninformed orders (as indicated by higher realized spreads than other market centers), thereby potentially helping to spur more vigorous competition to provide the best prices to these orders to the benefit of many retail investors. Other market centers, for example, may seek to obtain such profitable order flow by offering to execute the orders at narrower effective spreads (which also would result in narrower realized spreads for these orders).

Finally, average realized spread can generate useful information for non-marketable limit orders. The most significant risk of using such orders is that they will not be executed and will miss the market. The likelihood of execution can vary depending on the extent to which traders that are able to see all the orders (such as specialists, floor traders, and OTC market makers) are able to step in front of displayed limit orders by improving on the limit price as market orders arrive on the other side of the market. This can lead to another type of trading cost for limit orders that is commonly referred to as ''adverse selection''—the greater likelihood that limit orders will be executed when the market is moving significantly against them. The frequency with which local traders step in front of limit orders can heighten the cost of adverse selection for limit order investors. This ''last mover'' advantage for local trading interest can be substantial, and the average realized spread can indicate the extent to which it affects the execution costs of limit orders.[54]

For market centers that comply with Rule 11Ac1–5 by comparing their order data with a record of the consolidated quote stream (the method commonly used today to prepare analyses of execution quality), calculating the statistic is not significantly more burdensome than calculating the Rule's other statistics. As with effective spread (discussed below), execution prices are compared with a record of the consolidated quote stream. Effective spread is calculated using the quotes at the time of order receipt; realized spread is calculated using the quotes five minutes after the time of order execution.

2. Information Required for Market and Marketable Limit Orders

Subparagraph (b)(1)(ii) of Rule 11Ac1–5 specifies an additional nine columns of information for subcategories of market orders and marketable limit orders. These columns are intended to help evaluate how well these orders are executed by comparing their execution prices with the consolidated BBO at the time of order receipt. The time of order receipt is used rather than the time of order execution primarily based on an understanding that customers, at least for purposes of evaluating execution quality, generally expect orders to be executed at prices that reflect, as closely as possible, the displayed quotes at the time they submit their orders. The earliest time at which a market center can be held responsible for executing an order is the time of receipt.

The first of these columns is the average ''effective'' spread (in contrast to the average ''realized'' spread that was discussed above). Average effective spread is defined in paragraph (a)(2) of the Rule and is calculated by comparing the execution price of an order with the midpoint of the consolidated BBO at the time of order receipt. The larger the effective spread, the higher the transaction costs for market and marketable limit orders in that security. The average effective spread is a comprehensive statistic that summarizes the extent to which market and marketable limit orders are given price improvement, executed at the quotes, and executed outside the quotes. As such, it is a useful single measure of the overall liquidity premium paid by those submitting market and marketable limit orders to a market center.

The final eight columns of information required for market and marketable limit orders essentially break out the major determinants of execution quality that are summarized in the average effective spread. They also are intended to provide a substantial basis to weigh any potential trade-offs between execution speed and execution price. Orders are classified based on whether they were ''executed with price improvement,'' ''executed at the quote,'' or ''executed outside the quote,'' as defined in paragraphs (a)(10) through (a)(12). For shares executed with price

[52] The proposed rule incorporated a 30-minute time period for calculating average realized spread. Several commenters suggested that, given the volatility of stock prices, five minutes would be a more appropriate time period and would generate more useful information. ICI Letter, note 15 above, at 4; Rock Island Letter, note 17 above, at 2. The Commission agrees and has incorporated a five-minute time period in the Rule as adopted.

[53] *See, e.g.,* NYSE Letter, note 17 above, at 9–10; NASD Letter, note 49 above, at 4–5; SIA Market Structure Committee Letter, note 21 above, at 4.

[54] For example, if local traders at a particular market center display a great deal of expertise in deciding when to step ahead of displayed limit orders, the average realized spread for those limit orders would be comparatively high (they would almost always be executed only when the market was moving significantly against them).

improvement and shares executed outside the quote, market centers will disclose the number of shares, the average amount per share of price improvement or price disimprovement, and the average speed of execution. For shares executed at the quote, market centers will disclose the number of shares and the average speed of execution. Not only will these statistics help broker-dealers and investors evaluate where to find the fastest executions at the best prices, they also will indicate the extent to which market centers are able to execute larger orders at prices equal to or better than the quotes. They thereby indicate the volume of liquidity available at different market centers.

Many commenters suggested including an additional statistic for ''size improvement'' or ''liquidity enhancement'' in the Rule. These measures generally are calculated by comparing the size of order executions at the quotes with the size associated with the consolidated BBO at the time of order receipt. The Commission did not add this type of measure to the Rule, primarily because of its desire to minimize as much as possible the complexity and quantity of statistics to be disclosed. As discussed in section III.A.1 above, Rule 11Ac1–5 already includes several measures that will reflect the extent to which a market center is able to execute larger orders at prices equal to the public quotes, such as the average effective spread and number of shares executed at the quotes for larger sizes of orders. Moreover, the size associated with the consolidated BBO may not provide a useful basis on which to compare execution quality among market centers. For example, consolidated size varies substantially between Nasdaq and listed securities. For listed securities, the quoted size nearly always reflects the quotes of the primary exchanges and generally is much larger than the size associated with the public quotes for Nasdaq securities.

The Proposing Release requested comment on the usefulness of all the basic measures of execution quality included in the proposed rule, as well as on any alternative measures that commenters might suggest. For non-marketable limit orders, the Proposing Release specifically mentioned (1) the length of time that an order remained on a market center's order book while the limit price was at the consolidated BBO or better, and (2) the number of trades or share volume printed on the consolidated tape at prices equal to or less favorable than the limit order price. Several commenters expressed support for including these alternatives in the Rule.[55] In addition, commenters suggested many other statistical measures of execution quality that could be included.[56] At this time, however, the Commission has decided not to expand the volume of statistics required by the Rule. Many of the suggested alternatives would have substantially increased the complexity of the Rule. For simplicity reasons, the Commission therefore has retained the basic measures that were included in the proposal. Market centers are encouraged, however, to make publicly available any additional measures of execution quality that they believe will be helpful to broker-dealers and investors, particularly if they are concerned that the Rule's basic measures do not adequately capture the complexity of their order flow and executions.

D. Procedures for Making Reports Available to the Public

In light of the large volume of data the monthly order execution reports necessarily will include, they must be made available by market centers in electronic form rather than in writing. Consequently, paragraph (b)(2) of Rule 11Ac1–5 directs the SROs to act jointly in establishing procedures for market centers to follow in making their monthly reports available to the public in a readily accessible, uniform, and usable electronic format.[57] Given that the reports will be made available each month by a large number of market centers, the Commission's primary concern is that interested parties have the ability to access the reports easily and efficiently. Thus, for example, it will be helpful for all the reports to be prepared in a compatible electronic format, and for users to have ready access to the locations where reports can be obtained. The volume of data included in the monthly reports, while large in written form, will not be large when compared with many electronic files commonly made available to the public over the Internet.

Rule 11Ac1–5 will be effective 60 days after publication of this release in the **Federal Register**. Market centers must comply with the Rule according to the phase-in schedule set forth in section V below. The SROs are directed to prepare and submit a joint national market system plan to the Commission for approval under Exchange Act Rule 11Aa3–2 by no later than February 15, 2001. At that point, public comment will be invited on the proposed plan prior to Commission approval. Many of the more detailed issues relating both to the format of the reports and to the means of access to the reports can perhaps more appropriately be addressed in the context of approval of a joint plan.

In the event that a joint-SRO plan has not been approved by the Commission prior to the compliance date of the Rule, paragraph (b)(2) also provides that market centers shall prepare their reports in a consistent, usable, and machine-readable electronic format, and make such reports available for downloading from an Internet web site that is free and readily accessible to the public. This backstop requirement will assure that valuable information on order execution quality will be made available to the public without undue delay. If necessary, the Commission will take additional action to specify in more detail a uniform format and means of dissemination for the monthly market center reports.

Paragraph (b)(3) of Rule 11Ac1–5 requires market centers to make their reports available within one month after the end of the month addressed in the report. Market centers must make their reports available without charge. If a market center believes that its particular circumstances warrant an exemption from the provisions of the Rule, it may request an unconditional or conditional exemption pursuant to paragraph (c) of the Rule, which has been added to the proposed rule. Such an exemption will be granted if the Commission finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors.

IV. Rule 11Ac1–6—Disclosure of Order Routing Information

The Commission is adopting Rule 11Ac1–6 with significant changes from the proposed rule. Primarily in response to concerns of commenters, it has substantially cut back the amount of information that broker-dealers will be required to disclose concerning their order routing practices. The majority of commenters supported disclosures that would enable investors to better understand where orders are routed for execution and the relationships between

[55] *See, e.g.,* TAG Letter, note 17 above, at 5; Edward Jones Letter, note 15 above, at 3.

[56] *See, e.g.,* NASD Letter, note 49 above, at 5; Schwab Letter, note 21 above, at 9–10.

[57] Section 11A(a)(3)(B) of the Exchange Act authorizes the Commission, by rule or order, to require SROs to act jointly with respect to matters as to which they share authority in planning, developing, operating, or regulating the national market system.

broker-dealers and trading venues.[58] Several, however, expressed concern about the length and usefulness of some of the disclosure requirements included in the proposed rule.[59] In addition, a number of other commenters generally questioned the value of the required disclosures.[60] As discussed in section II above, the Commission believes that quarterly reports identifying the venues to which broker-dealers routed their customer orders and discussing potential conflicts of interest will be useful to investors. To maintain the brevity and reduce the compliance burdens of the reports, it has decided to delete several provisions from the proposed rule that would have required potentially long and complex explanations of order routing choices of broker-dealers.

Under Rule 11Ac1–6 as adopted, a broker-dealer that routes orders on behalf of customers will be required to prepare quarterly reports that disclose the identity of the venues to which it routed orders for execution. The reports also will disclose the nature of the broker-dealer's relationship with those venues, including the existence of any internalization or payment for order flow arrangements. Finally, broker-dealers will be required to disclose, on customer request, where they routed a customer's individual orders for execution.

In a significant change from the rule as proposed, a broker-dealer will not be required to prepare a narrative section for the reports that discusses and analyzes its order routing practices. The Commission agrees with commenters that such a requirement could result in reports that were overly long and complex. In addition, a broker-dealer will not be required to identify every venue to which it routed any orders. Instead, only the most significant venues—the top ten and any others that received 5% or more of the broker-dealer's orders—must be disclosed. The primary purpose of the Rule as adopted is simply to assure public disclosure of the significant venues to which a broker-dealer routes its customer's orders and to facilitate an evaluation of potential conflicts of interest between the broker-dealer and its customers. When combined with the information to be made available by market centers under Rule 11Ac1–5, the quarterly reports should provide a much clearer picture of a broker-dealer's order routing practices than has previously been available to the public.

A. Scope of Rule

The scope of Rule 11Ac1–6 is broader than the scope of proposed Rule 11Ac1–5. First, Rule 11Ac1–6 covers a wider range of securities. The definition of ''covered security'' in paragraph (a)(1) includes not only national market system securities (*i.e.,* exchange-listed equities and Nasdaq National Market equities), but also Nasdaq SmallCap equities and listed options.[61] Second, the Rule applies to all broker-dealers that route orders on behalf of their customers. The term ''customer order'' is defined as any order to buy or sell a covered security that is not for the account of a broker-dealer. It excludes, however, any order for a quantity of a security having a market value of at least $50,000 for a covered security that is an option contract and a market value of at least $200,000 for any other covered security. Large orders are excluded in recognition of the fact that a general overview of order routing practices is more useful for smaller orders that tend to be homogenous.[62]

Finally, Rule 11Ac1–6 applies to all types of orders (*e.g.*, pre-opening orders and short sale orders), but broker-dealers must give an overview of their routing practices only for ''non-directed orders.'' Paragraph (a)(5) defines a non-directed order as any customer order other than a directed order. Paragraph (a)(3) defines a directed order as a customer order that the customer specifically instructs the broker-dealer to route to a particular venue for execution. Consequently, all customer orders are non-directed orders in the absence of specific customer instructions on where they are to be routed.

B. Quarterly Reports

Paragraph (b)(1) of the Rule 11Ac1–6 requires broker-dealers to make publicly available for each calendar quarter a report on its routing of non-directed orders in covered securities. The term ''make publicly available'' is defined to require broker-dealers to do three steps—post on a free Internet web site, furnish a written copy on request, and notify customers at least annually that a written copy will be furnished on request. The Commission expects that the broker-dealer quarterly reports on order routing will be of direct interest to investors, and so is requiring that broker-dealers make them readily available via the Internet. In addition, a primarily Internet method of dissemination will ease the burden of compliance on broker-dealers by reducing paperwork and costs. The reports must be provided on request for customers that may lack Internet access.

Paragraph (b)(2) requires that a quarterly report be made publicly available within one month after the end of the quarter addressed in the report. A longer two-month period was included in the proposed rule to allow broker-dealers an opportunity to evaluate the monthly market center reports under Rule 11Ac1–5 prior to preparing their narrative discussion and analysis of order routing practices. Because this narrative disclosure has been eliminated from the Rule as adopted, the lag-period between end-of-quarter and report dissemination has been shortened to one month to provide more timely disclosures to the public.

Rule 11Ac1–6 as adopted requires that a quarterly report be divided into four separate sections for four different types of covered securities—one for equity securities listed on the NYSE, one for equity securities qualified for inclusion in Nasdaq, one for equity securities listed on the Amex or any other national securities exchange, and one for options. These sections reflect potentially significant differences in routing practices for the four types of securities and should enhance the usefulness of the quarterly reports to investors. For each of these four sections, paragraphs (b)(1)(i) and (ii) of the Rule require broker-dealers to give a quantitative description of the *aggregate* nature of their order flow. In this

[58] *See, e.g.,* Letter from Edward J. Nicoll, Chairman and CEO, Datek Online Holdings Corp., to Jonathan G. Katz, Secretary, SEC, dated Sept. 25, 2000, at 1 (''Datek Letter''); Letter from James H. Lee, President Momentum Securities, LLC, to Jonathan G. Katz, Secretary, SEC, dated Oct. 11, 2000, at 5; ICI Letter, note 15 above, at 5.

[59] NASD Letter, note 49 above, at 4; CHX Letter, note 25 above, at 11; Edward Jones Letter, note 15 above, at 4.

[60] Morgan Stanley Letter, note 15 above, at 15; Schwab Letter, note 21 above, at 3–4; Wilkie Farr & Gallagher Letter, note 29 above, at 3.

[61] To include Nasdaq SmallCap equities, paragraph (a)(1)(i) of Rule 11Ac1–6 incorporates the language of current Rule 11Ac1–1(a)(1)—''any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act.'' This language covers SmallCap equities, but excludes equities quoted on the OTC Bulletin Board operated by the NASD. To include option securities, paragraph (a)(1)(ii) of the Rule includes ''any option contract traded on a national securities exchange for which last sale reports and quotation information are made available pursuant to a national market system plan.'' This language includes any option securities for which market information is disseminated on a real-time basis pursuant to the national market system plan administered by the Options Price Reporting Authority (''OPRA'').

[62] In addition, a new paragraph (d) has been included in the Rule explicitly providing that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of Rule 11Ac1–6. Such an exemption will be granted if the Commission determines that it is necessary or appropriate in the public interest, and is consistent with the protection of investors.

respect, Rule 11Ac1–6 is unlike Rule 11Ac1–5, which requires market centers to categorize their orders on a security-by-security basis. As noted above, the quarterly reports on order routing are intended to provide a general overview of a broker-dealer's practices that is accessible and useful to individual investors. Broker-dealers are free, however, to disclose any additional information concerning their order routing practices that they believe will be helpful to customers.

A broker-dealer's quantitative description of order routing must include the percentage of total customer orders for a particular section that were non-directed orders, and the percentages of total non-directed orders for a section that were market orders, limit orders, and other orders. This general description of a broker-dealer's order flow should facilitate customer understanding of its routing practices. For example, a customer may use the reports to evaluate whether the broker-dealer specializes in the type of orders that the customer typically uses. The quantitative description also will include the identity of the ten venues to which the largest number of non-directed orders for the section were routed for execution, as well as any venue to which five percent or more of non-directed orders were routed.[63] In contrast, the proposed rule would have required disclosure of all venues to which non-directed orders were routed. A commenter noted that large broker-dealers may route a relatively small number of orders to many different venues.[64] Disclosure therefore has been limited to the most significant venues.[65]

For each of the venues identified in each section of the report, the broker-dealer must disclose the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, non-directed limit orders, and non-directed other orders for the section that were routed to the venue. The percentages, rather than numbers, of orders are used to facilitate customer understanding of the probability that particular types of orders will be routed to different venues without the need for calculations, as well as to protect potentially sensitive order flow information.

Under paragraph (b)(1)(iii), a broker-dealer also will be required to discuss the material aspects of its relationship with each venue identified in each section of the report, including a description of any payment for order flow arrangement or profit-sharing relationship as it relates to the type of securities for that section. The term ''payment for order flow'' is defined very broadly in Exchange Act Rule 10b–10(d)(9) to include any payment or benefit that results in compensation to the broker-dealer for routing orders to a particular venue. This definition encompasses a wide range of practices in addition to monetary payments, such as ''research, clearing, custody, products or services,'' ''reciprocal agreements for the provision of order flow,'' and ''discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense or financial obligation.'' The term ''profit-sharing relationship'' is defined in paragraph (a)(7) of Rule 11Ac1–5 to mean any ownership or other type of affiliation under which the broker-dealer, directly or indirectly, shares in any profits that may be derived from the execution of non-directed orders. It therefore specifically covers internalization of customer orders by a broker-dealer that executes customer orders as principal.

The purpose of requiring disclosure concerning the relationships between a broker-dealer and the venues to which it routes orders is to alert customers to potential conflicts of interest that may influence the broker-dealer's order-routing practices. Currently, Rule 10b–10(a)(2)(i)(C) requires a broker-dealer, when acting as agent for the customer, to disclose on the confirmation of a transaction whether payment for order flow was received and that the source and nature of the compensation for the transaction will be furnished on written request. In addition, Exchange Act Rule 11Ac1–3(a) requires broker-dealers to disclose in new and annual account statements its policies on the receipt of payment for order flow and its policies for routing orders that are subject to payment for order flow. The Commission believes that disclosure of potential conflicts of interest *in conjunction with* a quantitative description of where all non-directed orders are routed may provide customers with a clearer understanding of a broker-dealer's order routing practices than is provided under current rules. The Commission intends to consider in the near future whether to modify or rescind, as necessary, the disclosure requirements currently in effect concerning payment for order flow, in light of the new quarterly disclosure requirements.

Rule 11Ac1–6 does not require that broker-dealers provide a quantitative estimate of the *aggregate* dollar amount of payment for order flow received during a quarter from each order execution venue. First, there are potentially a multitude of varying arrangements for payment for order flow. Estimating the amounts produced by such arrangements could be difficult, subjective, and costly. Second, the Commission is concerned that disclosure of the aggregate dollar amounts of payment for order flow, without requiring comparable disclosure of the dollar amount of trading profits that redound to the benefit of broker-dealers pursuant to profit-sharing relationships, potentially could paint an inaccurate picture of the relative financial incentives generated by the two types of relationships.

Although the Rule 11Ac1–6 does not require an estimate of the aggregate dollar amount of payment for order flow, a broker's description of a payment for order flow arrangement must include disclosure of the material aspects of the arrangement. These would include a description of the terms of the arrangement, such as any amounts per share or per order that the broker receives. Similarly, in describing a profit-sharing relationship, a broker would be expected to disclose the extent to which it could share in profits derived from the execution of non-directed orders. An example would be the extent of the ownership relation

[63] The term ''venue'' is intended to be interpreted broadly to cover ''market centers'' within the meaning of Rule 11Ac1–5(a)(14), as well as any other person or entity to which a broker routes non-directed orders *for execution*. Consequently, the term excludes an entity that is used merely as a vehicle to route an order to a venue selected by the broker-dealer. Interpretive issues may arise in determining the applicability of the Rule when a person or entity trades under the auspices of an exchange. To assure meaningful disclosure of significant execution venues, all orders routed to a particular exchange for execution should be aggregated when calculating a broker-dealer's top ten market centers and those with 5% of orders. If a particular market maker or dealer at the exchange receives orders pursuant to any arrangement that gives it a preference to trade with the order as principal, such arrangement must be specifically included in the discussion of the relationship between broker-dealer and venue that is required by Rule 11Ac1–6(b)(1)(iii).

[64] Schwab Letter, note 21 above, at 5.

[65] Interpretive issues could arise in the case of an order that is routed to multiple venues *by the broker-dealer* (if an execution venue alone makes the decision to forward an order to a second venue, the second venue generally would not be included in a broker-dealer's report). If an order is executed after being routed by the broker-dealer to multiple venues, the venue that executed the order should be considered the venue to which the order was routed for purposes of the Rule. If an order is *not* executed after being routed to multiple venues (*e.g.,* it was cancelled or expired), the first venue should be considered the venue to which the order was routed for purposes of the Rule. The Commission's staff will be available to provide further interpretive guidance on compliance with the Rule.

between the broker and execution venue.

Finally, as noted above, the Rule as adopted does not include a requirement that broker-dealers provide a narrative discussion and analysis of their order routing practices. Broker-dealers remain free, of course, to communicate such information concerning their order routing practices that they believe would be helpful to customers.

C. Customer Requests for Information

A broker-dealer's quarterly reports should provide a useful picture of its order routing practices as a whole, but will not inform individual customers where their own orders were routed. Currently, there is no market-wide requirement that brokers disclose where they route individual orders on behalf of customers. Although NYSE Rule 409(f) requires NYSE members, when confirming transactions, to disclose ''the name of the securities market on which the transaction was made,'' transactions executed at venues other than exchanges typically are classified as ''OTC.'' Thus, the identity of the particular OTC market maker or ATS that executed an order is not required to be disclosed. Moreover, the NYSE's rule does not cover non-members or securities that are not listed on the NYSE.

To assure that customers have ready access to routing information concerning their own orders, paragraph (c) of Rule 11Ac1–6 requires broker-dealers, on request of a customer, to disclose to the customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.[66] To alert customers to the availability of individual order routing information, paragraph (c)(2) of the Rule requires broker-dealers to notify their customers at least annually of their option to request such information.

With Rule 11Ac1–6, those customers interested in monitoring the broker-dealer's routing their orders will be entitled to learn important information about how their orders were handled. When combined with information that such customers may already maintain, such as the time they submitted an order to their broker-dealer, the consolidated BBO at the time they submitted the order, and the price at which an order was executed, the information to be provided on request potentially could give customers a considerable capacity to monitor and evaluate their broker-dealer's order routing decisions and the quality of executions obtained at different venues. Broker-dealers would not, however, be required to bear the expense of providing individualized order routing information to those who had not asked to receive it.

V. Effective Dates and Phase-In of Compliance Dates

Rule 11Ac1–5 is effective on January 30, 2001. The first phase-in of securities subject to the Rule will begin on Monday, April 2, 2001. As of this date, the Rule will apply to the 1000 NYSE securities, 1000 Nasdaq securities, and 200 Amex securities with the highest average daily share volume for the quarter ending December 31, 2000. On this first phase-in date, market centers must begin collecting the necessary data to prepare their monthly reports. In addition, they must make their first report, for April 2001, available by the end of May 2001. The second phase-in date will be July 2, 2001. From this date forward, the Rule will apply to the next 1000 NYSE securities, the next 1000 Nasdaq securities, and the next 200 Amex securities with the highest average daily share volume for the quarter ending March 31, 2001. The third and final phase-in of Rule 11Ac1–5 will begin on October 1, 2001. From this date forward, the Rule will apply to all national market system securities. As discussed in section VI.B below, the Commission believes that all market centers currently collect the basic order data that is necessary to generate the Rule's statistical measures. In addition, many market centers already prepare, or retain independent companies to prepare, similar statistical reports for private use. It is likely, therefore, that market centers will be able to make arrangements for production of reports under Rule 11Ac1–5 in advance of the compliance dates. If a market center believes that it will be unable to meet the compliance dates for good cause, it may request a temporary exemption from the Commission pursuant to paragraph (c) of the Rule. Finally, the Commission directs the national securities exchanges and the national securities association subject to Rule 11Ac1–5(b)(2) to comply with that provision by submitting a national market system plan to the Commission by no later than February 15, 2001.

Rule 11Ac1–6 also is effective on January 30, 2001. Broker-dealers must comply with the Rule for all covered securities on July 2, 2001. Accordingly, a broker-dealer's first report, for the quarter beginning in July and ending in September, must be made publicly available by the end of October 2001. In addition, broker-dealers would be required to respond to customer requests for information on orders that were routed on July 2, 2001, and after.

VI. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of Rule 11Ac1–5 and Rule 11Ac1–6 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[67] Accordingly, the Commission submitted the collection of information requirements contained in the rules to the Office of Management and Budget (''OMB'') for review. They were approved by OMB, which assigned the following control numbers: Rule 11Ac1–5, control number 3235–0542, and Rule 11Ac1–6, control number 3235–0541, with an expiration date for each of November 30, 2003. The collections of information are in accordance with section 3507 of the PRA.[68] With regard to Rule 11Ac1–5, the Commission staff has adjusted its PRA burden estimate in response to comments to include the potential for upfront preparations to comply with the data collection requirements of the Rule. With regard to Rule 11Ac1–6, the Commission staff has adjusted its PRA burden estimate to reflect a change from the rule as proposed that reduces the amount of information that broker-dealers will be required to disclose concerning their order routing practices. Accordingly, the Commission has submitted PRA change worksheets to OMB to reflect the adjusted estimates of the burden of compliance.

The collections of information relate to rules that will help further the national market system objectives set forth in Exchange Act section 11A(a)(1)(C). These objectives include the economically efficient execution of

[66] Currently, Rule 10b–10(a)(1) requires a broker-dealer to include the time of transaction on the confirmation of a transaction or a statement that the time of transaction will be furnished on written request. To assure consistency, paragraph (a)(9) of Rule 11Ac1–6 adopts the definition of the term ''time of the transaction'' set forth in Rule 10b–10(d)(3)—''the time of execution, to the extent feasible, of the customer's order.'' Broker-dealers must maintain customer order information to comply with Rule 10b–10 and other existing regulatory requirements. The Commission therefore disagrees with a commenter's assertion that the ''on request'' disclosures of Rule 11Ac1–6 would be costly and redundant. Schwab Letter, note 21 above, at 6. Another commenter doubted, as a matter of agency law, that ''any firm would presently fail to honor such a customer request.'' Datek Letter, note 58 above, at 5.

[67] 44 U.S.C. 3501 *et seq.*

[68] 44 U.S.C. 3507.

orders, fair competition among broker-dealers and among markets, the availability to broker-dealers and investors of information with respect to transactions in securities, and the practicability of brokers executing investors' orders in the best market. The collection of information obligations imposed by Rule 11Ac1–5 and Rule 11Ac1–6 are mandatory. The monthly order execution reports prepared and disseminated in electronic form by market centers pursuant to proposed Rule 11Ac1–5 will be available to the public and will not be kept confidential. Likewise, the quarterly order routing reports prepared and disseminated by broker-dealers pursuant to Rule 11Ac1–6 will be available to the public and will not be kept confidential. The individual responses by broker-dealers to customer requests for order routing information required by Rule 11Ac1–6 will be made available the customer and not to the general public. The Commission, SROs, and other securities regulatory authorities would gain possession of the responses only upon request. Any responses received by the Commission, SROs, and other securities regulatory authorities will be kept confidential to the extent permitted by the Freedom of Information Act.[69] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number.

A. Comments on Collection of Information Requirements

The Commission requested public comment on the collection of information requirements contained in the Proposing Release. Commenters that addressed recordkeeping and reporting burdens generally focused their attention on the statistical disclosures required by Rule 11Ac1–5. Knight Trading Group, Inc. believed that Rule 11Ac1–5 would be "feasible and implementable without undue burden on market centers because they already must produce much of the required information" pursuant to existing regulatory requirements. Knight also noted that third party vendors could generate the required reports for market centers and that "such an approach would offer an alternative for market centers that do not wish to incur the costs associated with developing and administering any systems needed to collect and disseminate the required information."[70] The Investment Company Institute stated that "given technological advances in the dissemination of information and the wide use of the Internet by retail investors, we believe that the reports can be made available to the public in a reasonably efficient manner at a low cost."[71] In addition, the Transaction Auditing Group, Inc., a third party service provider for the analysis and reporting of execution quality, noted that "as long as dissemination is permitted via the Internet, the collection, analysis and publication of large volumes of information would be feasible.[72]

Several other commenters, in contrast, suggested generally that complying with the recordkeeping and reporting requirements of Rule 11Ac1–5 would be burdensome for many market centers.[73] A comment letter submitted on behalf of five broker-dealer firms, for example, stated that, although the firms had "not done a rigorous cost analysis with respect to the proposals, the Firms expect that the cost of compliance would be considerable, in terms of programming and monitoring tasks."[74] The CHX stated that the "data capture, preparation and reporting burden involved in complying with proposed Rule 11Ac1–5 would be significant, even for the CHX, and, in all likelihood, excessive for many other market centers."[75] The Phlx estimated that "the cost of creating the reporting system, as well as creating the interfaces with our members to meet their requirements under the Rule, would be at least $500,000 and require between six months and one year to fully implement."[76]

The Commission does not agree with these high estimates concerning the recordkeeping and reporting burden of Rule 11Ac1–5. As a basis for compliance, market centers themselves need maintain only the most basic order information, such as the type and size of order, the time of order receipt, the time of order execution, and execution price.[77] The Commission believes that all market centers retain this basic order data.[78] This data must then be compared with a record of the consolidated quote stream to generate the statistics required by Rule 11Ac1–5. Although some market centers may choose to program their own systems to perform this task, third party vendors already provide this service for many market centers. Based on Commission staff discussions with industry sources, it appears that individual market centers could obtain this service for approximately $2500 per month, and smaller market centers may be able to obtain this same service at an even lower cost. Accordingly, the Commission believes that the total costs to prepare the monthly order execution reports do not appear to be large for any market center.[79]

While the Commission received no comments that specifically addressed the PRA discussion of Rule 11Ac1–6, it did receive several comments that touched on PRA related issues. Most commenters supported improved disclosure of order routing practices by broker-dealers. Some, however, were concerned about the potentially long length and limited usefulness of some of the disclosure requirements included in the rule as proposed.[80] To maintain the brevity and reduce the compliance

[69] 5 U.S.C. 552 *et seq.*

[70] Knight Trading Letter, note 17 above, at 6, 9.

[71] ICI Letter, note 15 above, at 5.

[72] TAG Letter, note 17 above, at 2.

[73] *See, e.g.,* Charles Schwab Letter, note 21 above, at 12; CHX Letter, note 25 above, at 6; Morgan Stanley Letter, note 15 above, at 18; Letter from Deborah A. Lamb, Chair, Advocacy Advisory Committee, and Maria J.A. Clark, Associate, Association for Investment Management and Research, to Jonathan G. Katz, Secretary, SEC, dated Sept. 22, 2000, at 3–4.

[74] Wilkie Farr & Gallagher Letter, note 29 above, at 4.

[75] CHX Letter, note 25 above, at 6.

[76] Phlx Letter, note 25 above, at 3.

[77] In its comment letter, BRUT ECN disputed the Proposing Release's estimate of six hours per month to collect the data necessary to generate the monthly reports. It stated that its compliance would require "upwards of 100 hours initially to ensure for the efficient generation of required data, although said process would streamline future compliance efforts." Letter from William O'Brien, Senior Vice President & General Counsel, The BRUT ECN, L.L.C., to Jonathan G. Katz, Secretary, SEC, dated Oct. 5, 2000, at 1 n. 3 ("BRUT Letter"). To reflect the potential for upfront preparations to comply with data collection requirements, the estimated burden of compliance in section VI.B below has been updated.

[78] For example, NASD rules require members trading Nasdaq securities to submit electronic data on individual order executions to the NASD pursuant to its Order Audit Trail System ("OATS") requirements. NASD Rules 6950–6957. This data includes the basic order information that would be necessary to calculate the statistical measures of execution quality required by Rule 11Ac1–5. One commenter stated that it believed "the NASD's OATS project, which entailed the development of data collection and warehousing on a similar scale, is a useful comparison of the development costs' of Rule 11Ac1–5. Schwab Letter, note 21 above, at 12. Market centers that already comply with the OATS data requirements, however, will have the Nasdaq order information necessary to comply with the data collection requirements of Rule 11Ac1–5.

[79] The CHX stated that the Proposing Release's "estimate of six hours per month for each market center to generate the required reports seems to us unrealistically low." CHX Letter, note 25 above, at 6. The Proposing Release, however, separately addressed the issues of (1) data collection and (2) generation of the monthly reports from such data. The estimate of six hours per month applied solely to the burden of data *collection.* After the data is collected by market centers, it can be transferred to third party vendors with programs in place to generate the necessary reports. The Proposing Release estimated that vendors could provide this service for approximately $2500 per month.

[80] *See, e.g.,* Morgan Stanley Letter, note 15 above, at 15; NASD Letter, note 49 above, at 4; CBOE Letter, note 47 above, at 4–5.

burdens of the quarterly reports, the Commission has deleted several provisions from the proposed rule that would have required potentially long and complex disclosures. In particular, it has eliminated paragraph (b)(iv) of the proposed rule, which would have required a discussion of the significant objectives that the broker or dealer considered in determining where to route non-directed orders, the extent to which order executions achieved those objectives, a comparison of the quality of executions actually obtained with those produced by other venues for comparable orders during the relevant time period, and whether the broker or dealer has made or intends to make any material change in its order routing practices in the succeeding quarter. In addition, paragraph (b)(ii) has been altered so that a broker-dealer will not be required to identify every venue to which it routed any orders. Instead, only the top ten venues and any others that received 5% of more of the broker-dealer's orders must be disclosed.

One commenter addressed the burden of complying with paragraph (c) of Rule 11Ac1–6, which requires broker-dealers to provide, upon customer request, information regarding the customer's orders routed for execution in the six months prior to the request. The commenter asserted that ''it is apparent that this would be a time-consuming, burdensome and expensive requirement to fulfill.'' [81] The Commission strongly believes that those brokerage customers who express an interest in obtaining information about the routing of their own orders should have ready access to such information. Indeed, another commenter doubted that, as a matter of agency law, ''any firm would presently fail to honor such a customer request.'' [82] Particularly considering that the level of disclosure contained in the quarterly broker-dealer reports has been reduced, a requirement that broker-dealers respond to customer requests for order information will help assure that customers can obtain the data they need to evaluate the quality of their broker-dealer's services. Broker-dealers must retain customer order information to comply with existing regulatory requirements. The Commission does not believe that responding to customer requests for such information will constitute an unduly burdensome requirement for broker-dealers.

B. Total Annual Reporting and Recordkeeping Burdens

The collection of information obligations of Rule 11Ac1–5 will apply to all market centers that receive covered orders in national market system securities. Market centers are defined as exchange market makers, OTC market makers, alternative trading systems, national securities exchanges, and national securities associations. The Commission estimates that approximately 140 exchange market makers, 450 OTC market makers, 29 alternative trading systems, seven national securities exchanges, and one national securities association will be subject to the collection of information obligations of Rule 11Ac1–5. Each of these respondents will be required to respond to the collection of information on a monthly basis.

Rule 11Ac1–5 will require market centers to make available to the public monthly order execution reports in electronic form. To prepare the reports, market centers first will need to collect basic data on orders and executions (*e.g.,* type and size of order, time of order receipt and execution). Second, this data will need to be processed to calculate the statistics required by the Rule and present those statistics in an electronic report.

The Commission believes that market centers covered by the Rule retain all of the underlying raw data necessary to generate these reports in electronic format. Consequently, it does not appear that the Rule will require substantial additional data collection burdens. Commenters noted, however, that market centers may incur startup costs to prepare their systems to generate the specific data required by the Rule.[83] The Commission staff estimates that, on average, market centers could spend 90 hours to complete these preparations. Assuming internal staff costs of $53 per hour, the estimated 627 market centers could expend a total of approximately $3 million in startup costs, or a total of approximately $600,000 per year annualized over an expected useful life of five years. In addition, the Commission staff estimates that, on an ongoing basis, the Rule will cause respondents to spend an average of 6 hours per month in additional time to collect the data necessary to generate the reports, or 72 hours per year.[84] With an estimated 627 market centers subject to the Rule, the total data collection burden to comply with the monthly reporting requirement is estimated to be $600,000 per year for startup costs and 45,144 hours per year on an ongoing basis.

Once the necessary data is collected, market centers can either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or an SRO) that will generate the statistics and reports. Although the largest market centers and SROs may choose to generate the reports themselves, the Commission anticipates that the great majority of market centers will rely on service providers to prepare the reports for them. It is significantly more efficient to consolidate the processing and reporting function in a limited number of entities than for each market center to prepare its own reports. Once an entity has incurred the upfront costs of programming its systems to process data and generate a report for a single market center, there is very little additional cost to performing the same function for many additional market centers. Based on discussions with industry sources, the Commission staff estimates that an individual market center could retain a service provider to prepare a monthly report for approximately $2,500 per month. This per-respondent estimate is based on the rate that a market center could expect to obtain if it negotiated on an individual basis. Based on discussions with industry sources, we believe it is likely that a group of market centers, particularly the smaller members of a particular SRO, could obtain a much lower per-respondent rate on a collective basis. Thus, particularly for the smaller members of an SRO, the monthly cost to retain a service provider could be substantially less than $2,500. Based on the $2,500 estimate, however, the monthly cost to the 627 market centers to retain service providers to prepare reports would be $1,567,500, or an annual cost of approximately $18.8 million.

Rule 11Ac1–6 will require broker-dealers to prepare and disseminate quarterly order routing reports. Much of the information needed to generate these reports already should be collected by broker-dealers in

[81] Schwab Letter, note 21 above, at 6. In addition, another commenter believed that the proposed retention period of six months was ''onerous and unnecessary'' and that a 90-day time period would be sufficient. Edward Jones Letter, note 15 above, at 5. The Commission has retained the six-month period to assure that individual customers, after having an opportunity to review the quarterly reports giving a general overview of their broker-dealers' order routing practices, can obtain information concerning their own orders for the full period covered by the quarterly report.

[82] Datek Letter, note 58 above, at 5.

[83] *See* BRUT Letter, note 77 above, at 1.

[84] These figures could vary substantially among market centers. In addition, some SROs may provide this data collection service for their members because such centralized data collection is more efficient than data collection by individual members.

connection with their periodic evaluations of their order routing practices. To comply with the Rule, however, broker-dealers will incur additional burdens in preparing the reports and disseminating them on a free Internet web site (and responding to requests for written copies of the reports).

The collection of information obligations of Rule 11Ac1–6 will apply to all broker-dealers that route non-directed customer orders in covered securities. The Commission estimates that there are currently approximately 3800 broker-dealers that could be subject to the collection of information obligations of the Rule.[85] Each of these respondents (if engaged in the business of routing non-directed orders on behalf of customers) will be required to respond to the collection of information on a quarterly basis with respect to the Rule's reporting obligations, and on an ongoing basis with respect to the Rule's requirement to respond to customer requests for order routing information.

There are extreme differences in the nature of the securities business conducted by the approximately 3,800 broker-dealers that could be subject to the Rule. They range from the very largest firms with nationwide operations, which are relatively few in number, to thousands of much smaller introducing firms. To handle their customer accounts, these small firms rely primarily on clearing brokers. There currently are approximately 330 clearing brokers. The Commission previously has noted that ''from a functional perspective, introducing and clearing brokers act as a unit in handling a customer's account. In most respects, introducing brokers are dependent on clearing firms to clear and to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing confirmations of customer trades and customer account statements.'' [86] The Commission anticipates that clearing brokers primarily will bear the burden of complying with the reporting and recordkeeping requirements of the Rule on behalf of many small introducing firms. In addition, however, there are approximately 610 introducing brokers that receive funds or securities from their customers.[87] Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden of the Rule.

As discussed above, the reporting requirements of Rule 11Ac1–6 have been cut back from the proposed rule. The Commission staff estimates that each firm significantly involved in order routing practices will incur an average burden of 20 hours to prepare and disseminate a quarterly report required by Rule 11Ac1–6, or a burden of 80 hours per year. With an estimated 940 broker-dealers significantly involved in order routing practices, the total burden per year to comply with the quarterly reporting requirement in Rule 11Ac1–6 is estimated to be 75,200 hours.

Rule 11Ac1–6 also would require broker-dealers to respond to individual customer requests for information on orders handled by the broker-dealer for that customer. Clearing brokers generally would bear the burden of responding to these requests. The Commission staff estimates that each clearing broker will incur an average burden of 0.2 hours to prepare, deliver, and retain a response to a customer required by Rule 11Ac1–6. The annual burden could vary significantly among clearing brokers based on the number of customers and number of inquiries by each customer. The Commission staff estimates that an average clearing broker will incur an annual burden of 400 hours (2,000 responses × 0.2 hours/response) to prepare, disseminate and retain responses to customers required by the Rule. With an estimated 330 clearing brokers subject to the Rule, the total burden per year to comply with the customer response requirement in Rule 11Ac1–6 is estimated to be 132,000 hours.

VII. Cost-Benefit Analysis

The Commission is adopting two rules to improve public disclosure of broker-dealer and market center practices in the routing and execution of customer orders. The rules are intended to increase access to information about how investors' securities transactions are executed, thereby enhancing an investor's ability to make choices on the basis of execution criteria important to the particular investor. The required disclosures also should aid broker-dealers in satisfying their duty of best execution. The disclosures and enhanced investor knowledge should promote vigorous and beneficial competition among broker-dealers to seek out, and among market centers to provide, superior execution of customer orders.

A. Costs and Benefits of Rule 11Ac1–5

Under Rule 11Ac1–5, each market center (defined as any national securities exchange, national securities association, exchange market maker, OTC market maker, or alternative trading system) will be required to make monthly disclosure of certain statistical measures of execution quality on a security-by-security basis.[88] The Commission anticipates that the Rule will generate the benefits and costs described below.

1. Benefits

There currently is little or no publicly available information that would allow investors and broker-dealers to compare and evaluate execution quality among different market centers. Some market centers make order execution information privately available to independent companies, which then prepare reports on execution quality that are sold to broker-dealers. Other market centers provide reports on execution quality directly to broker-dealers or to their members. The information in these reports generally has not been publicly disseminated. Moreover, some broker-dealers have reported difficulty in obtaining useful information on execution quality from market centers. For example, participants in a Commission roundtable on the on-line brokerage industry indicated that not all market centers were willing to make order execution information available and, even when such information was made available, not all of it was useful or in a form that allowed for cross-market comparisons.

By improving public disclosure of execution quality, the Commission anticipates that the Rule will help broker-dealers fulfill their duty of best execution. That duty requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer's order. Routing orders to a market center that merely guarantees an execution at the best published quote does not necessarily satisfy that duty; best

[85] This estimate is based on FYE 1999 FOCUS Reports received by the Commission. While there are currently approximately 7500 broker-dealers registered with the Commission, only approximately 3800 broker-dealers potentially route non-directed orders in covered securities.

[86] Securities Exchange Act Release No. 40122 (June 30, 1998), 63 FR 35508, n. 65.

[87] This estimate is based on FYE 1999 FOCUS Reports received by the Commission.

[88] As set out more specifically in section III.C above, the required disclosures will reflect statistical measures of such things as number of orders, number of shares, number of cancelled orders, size of spreads, frequency and size of price improvement, frequency of executions at the quote, frequency of executions outside the quote, and speed of execution (both with and without price improvement).

execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution (which is particularly important for customer limit orders), the speed of execution, and the trading characteristics of the security, together with other non-price factors such as reliability and service. While broker-dealers currently may be able to obtain order execution information from some market centers, that information may be of limited use and may not allow broker-dealers to compare execution quality among the different market centers. Although these statistics are by no means determinative of best execution, the Commission expects that the monthly reporting of the uniform statistical measures required by the Rule will provide broker-dealers with a clearer sense of execution quality among market centers, and will be helpful to broker-dealers in seeking to fulfill their duty of best execution.

The Commission also believes that the reporting required by Rule 11Ac1–5 will facilitate investors' ability to evaluate the quality of order executions provided by different market centers and to have meaningful input into how their broker-dealer executes their orders. Differences in execution quality across market centers can be very important to investors. For example, a difference in execution price of 1/16 for a 1000 share order can equal a savings of $62.50 for an investor. Currently, investors possess few tools to compare order executions on different markets, and they typically leave routing decisions to their broker-dealer. Different investors, however, may have different concerns and priorities related to execution of their orders, such as an opportunity for price improvement and the speed of execution. The Rule will require disclosure of information that will enhance investors' evaluation of these matters.

The Commission believes that Rule 11Ac1–5 will have the additional benefit of stimulating competition between market centers to improve the quality of their executions. Market centers compete to attract order flow. An important way in which market centers seek to attract order flow is by providing—and developing a reputation for providing—superior executions. The Rule will give broker-dealers and investors meaningful information, which they have not previously had, bearing on execution quality. Access to that information will allow broker-dealers and investors to direct orders to market centers on the basis of their order execution performance. Improved disclosure should result in some increase in the number of shares executed with price improvement and a reduction in the number of shares executed with price ''disimprovement.'' Price disimprovement can occur, for example, because of quote exhaustion—the cumulative volume of orders is greater than quoted size and the market center does not provide liquidity enhancement. The Commission anticipates that public disclosure will benefit investors by putting competitive pressure on market centers to reduce inefficiencies, to increase opportunities for price improvement, to decrease instances of price disimprovement, and to improve the quality of execution in all other respects. Market centers that are able to provide better service should be rewarded with more order flow. Ultimately, the Commission anticipates that these improvements in execution also will benefit investors by leading to reduced trading costs, increased trading quality, and possibly increased trading volume.

For example, if investors that now pay more than the median effective spread were able to obtain executions at the median effective spread, the required disclosures could save investors in Nasdaq stocks $110 million in annual trading costs.[89] Moreover, the savings to investors would be even greater if effective spreads improved to the level of the 25th percentile of Nasdaq market centers.[90] There also could be a similar type of benefit for investors in the listed markets, although possibly to a lesser extent given the smaller number of market centers. Finally, over time the disclosures rules may provide the impetus for new market structures that provide further reductions in trading costs.

In commenting on the costs and benefits of Rule 11Ac1–5, the Mercatus Center asserted that the potential savings in transaction costs for investors must also be counted as a cost to market intermediaries, noting that ''this sum is simply a transfer of wealth from brokers and market centers to investors'' and that ''when calculating the net benefits or costs of a rule, such wealth transfers cancel each other out.'' [91] In contrast, we believe that the savings to investors described above may be associated with an additional net benefit that would be realized at the market centers. The ultimate result depends on what causes the differences in execution quality that we currently observe across market centers. If these differences are all due to differences in efficiency, then the potential savings to investors discussed above would necessarily be the result of transfers of order flow to the more efficient market centers. This consolidation would likely result in further efficiencies due to economies of scale.

On the other hand, the differences in transaction costs across market centers may reflect differing abilities by market centers to thwart competitive pressures and earn quasi-monopoly rents in the absence of adequate disclosure. If this were the case, then any investor savings might simply be the result of squeezing out some of these excess profits, with no attendant change in order routing practices. As the Mercatus Center points out, under this scenario the savings to investors represent a wealth transfer from the owners of the market centers. Of course, there are several other benefits to investors, discussed below, that flow from reduced transactions costs, even if one assumes that there are no net efficiency improvements available.

The savings calculation presented above implicitly assumes no change in the amount or type of transactions made by investors. Apart from direct savings to investors, a reduction in transaction costs will allow investors to manage their portfolios to better match their needs and desires, through a combination of rebalancing more frequently and incorporating a different mix of securities.[92] For example, some investors currently may avoid holding certain less-liquid securities because of transaction costs. After the Rule is implemented, they may want to include these securities in their portfolio if the Rule leads to a significant reduction in transaction costs.

Another potential benefit of reduced transactions costs is a reduction in the cost of capital applied to new investments. Amihud and Mendelson (1986) [93] provide both theoretical and empirical evidence that lower relative

[89] These savings are based on a sample of market orders for 10 high-volume Nasdaq securities from June 2000, and represent the projected benefits summed over all Nasdaq stocks for one year. The annual savings exclude changes in effective spread for marketable limit orders and for any trade greater than 4999 shares.

[90] Under this assumption, annual savings to Nasdaq investors would be approximately $175 million. These savings are calculated in the manner described in the preceding note.

[91] Mercatus Center Letter, note 29 above, at 16.

[92] The Mercatus Center's comment letter addresses the potential benefits associated with more frequent rebalancing, but ignores the potential changes in securities that investors choose.

[93] Yakov Amihud & Haim Mendelson, *Asset Pricing and the Bid-Ask Spread,* 17 J. Financial Economics 223 (1986).

spreads are associated with lower required returns. Further, their empirical conclusions are supported by Brennan and Subrahmanyam (1996).[94] The intuition behind these studies is simple: in considering how much they are willing to pay for securities up front, investors consider how much of the future value will be lost to transaction costs.[95]

2. Costs

For purposes of the Paperwork Reduction Act, the Commission staff has estimated that compliance with Rule 11Ac1–5 by the estimated 627 market centers could require 56, 430 hours for initial preparations and, on an ongoing basis, impose 45,144 in burden hours for data collection and $18.8 million in other costs ($2,500 per month for preparation of reports by service vendors). The staff estimates that 100% of the burden hours could be expended by market centers' internal staff. Assuming internal staff costs of $53 per hour, the estimated 627 market centers could expend a total of approximately $600,000 per year in startup costs (a total of $3 million annualized over an expected useful life of five years) and a total of approximately $2.4 million per year in ongoing data collection costs. The estimated aggregate annual cost for compliance with the Rule could be approximately $21.8 million ($18.8 million+$2.4 million+$0.6 million).

Several commenters asserted that the costs of disclosing the execution quality information required by Rule 11Ac1–5 would be substantial. Many of these same commenters asserted that the benefits of the rules would be minimal and that the costs associated with the rules would outweigh the benefits.[96]

As discussed above in connection with the PRA, the Commission disagrees with these commenters' estimates regarding the direct costs of compliance with Rule 11Ac1–5. As a basis for compliance, market centers themselves need maintain only the most basic order information, such as the type and size of order, the time of order receipt, the time of order execution, and execution price. The Commission believes that all market centers retain this basic order data.[97] Such data then must be compared with a record of the consolidated quote stream to generate the statistics required by the Rule. Although some market centers may choose to program their own systems to perform this task, independent companies already provide this service for many market centers. These independent companies have expended the up-front costs of automating the processes and maintaining a record of the consolidated quote stream. Market centers need only transmit their basic order information to the service provider, which then is able to generate the necessary reports from the information. Based on discussions with industry sources, it appears that individual market centers could obtain this service for approximately $2,500 per month, and it is possible that smaller market centers could obtain this same service at an even lower cost. Accordingly, the total costs to prepare the monthly order execution reports do not appear to be large for any market center. The Commission believes the significant potential benefits from disclosure justify these costs.

B. Costs and Benefits of Rule 11Ac1–6

Under Rule 11Ac1–6, broker-dealers that route orders in equity and options securities on behalf of customers will be required to prepare quarterly reports that give an overview of their order routing practices. The Rule also will require broker-dealers to disclose to customers, on request, where that customer's individual orders were routed for execution.

1. Benefits

The Commission anticipates that improved disclosure of order routing practices will result in better-informed investors, will provide broker-dealers with more incentives to obtain superior executions for their customer orders, and will thereby increase competition between market centers to provide superior executions. Currently, the decision about where to route a customer order is frequently made by the broker-dealer, and broker-dealers may make that decision, at least in part, on the basis of factors that are unknown to their customers. The Rule's disclosure requirements will provide investors with a clearer picture of the overall routing practices of different broker-dealers. The Commission contemplates that this will lead to greater investor involvement in order routing decisions and, ultimately, will result in improved execution practices. Because of the disclosure requirements, broker-dealers may be more inclined (or investors may direct their broker-dealers) to route orders to market centers providing superior executions. Broker-dealers who fail to do so may lose customers to other broker-dealers who will do so. In addition, the improved visibility could shift order flow to those market centers that consistently generate the best prices for investors. This increased investor knowledge and involvement could ultimately have the effect of increasing competition between market centers to provide superior execution.

The order routing disclosures of Rule 11Ac1–6, when combined with the execution quality disclosure made by market centers, will allow investors to monitor the extent to which, in choosing execution venues, there are, in fact, systematic trade-offs that must be made between price and other factors, and the amount of those trade-offs. For example, if the best prices are consistently produced by one of the leading market centers with cutting-edge, highly-reliable trading systems, there would be little, if any, trade-off between price and systems reliability. Similarly, the rules will help customers weigh the trade-off between a market center that provided immediate executions at the quote, and a market center that executed orders on average in under 30 seconds, but that consistently generated prices resulting in average effective spreads that were a significant amount per share better than those paid by investors at other market centers. Currently, however, investors have little or no information that would allow them to evaluate how their broker-dealer has responded to such trade-offs. Rule 11Ac1–6, along with Rule 11Ac1–5, is intended to remedy this glaring absence of public information. After the rules become effective, competitive forces can be brought to bear on broker-dealers *both* with respect to the explicit trading costs associated with brokerage commissions and the implicit trading costs associated with execution quality. The Commission believes that investors ultimately will be the beneficiaries of this expanded competition.

[94] Michael J. Brennan & Avanidhar Subrahmanyam, *Market Microstructure and Asset Pricing: On the Compensation for Illiquidity in Stock Returns,* 41 J. Financial Economics 441 (1996).

[95] Both studies examine cross-sectional differences in required returns associated with cross-sectional differences in transaction costs so their empirical estimates may not be indicative of the size of the reduction in market-wide required returns that would accompany a market-wide reduction in transaction costs.

[96] Mercatus Center Letter, note 29 above, at 18; Phlx Letter, note 25 above, at 3; Morgan Stanley Letter, note 15 above, at 18; Wilkie Farr & Gallagher Letter, note 29 above, at 4.

[97] For example, NASD rules require members trading Nasdaq securities to submit electronic data on individual order executions to the NASD pursuant to its Order Audit Trail System requirements. NASD Rules 6950–6957. This data includes the basic order information that would be necessary to calculate the statistical measures of execution quality required by Rule 11Ac1–5.

2. Costs

For purposes of the Paperwork Reduction Act, the Commission staff has estimated that the Rule 11Ac1–6 could, on an annual basis, impose 75,200 burden hours on broker-dealers to comply with the quarterly reporting requirement of the Rule. The staff estimates that 100% of those burden hours will be expended by broker-dealers' internal staff. Assuming internal staff costs that average $85 per hour,[98] the aggregate annual cost of compliance with the quarterly reporting requirement could be approximately $6.4 million. In addition, compliance with the Rule will require staff time to respond to requests by customers for disclosure of the market centers to which their orders have been routed. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that compliance with such requests could, on an annual basis, impose 132,000 burden hours. Assuming average internal staff costs of $53 per hour, the annual cost of compliance with the customer response requirement could be approximately $7 million.

As noted in section III.A.3 above, several commenters have raised concerns over the potential risk of meritless class-action suits faced by brokers as a result of increased disclosure. From society's perspective, the time and effort spent both asserting and defending any *meritless* action is a net cost. The Commission believes, however, that the potential for meritless litigation has been minimized by its inclusion of a Preliminary Note to Rule 11Ac1–5. The Note, with the attendant discussion in this release, states, among other things, that the statistical disclosures do not encompass all of the factors that may be important to investors in evaluating the order routing services of a broker-dealer and that the disclosures alone do not create a reliable basis to address whether any particular broker-dealer failed to meet its legal duty of best execution. This clear statement should substantially address the risk that the required disclosures will be misinterpreted and misused in private litigation. In light of the addition of the Preliminary Note and the best execution considerations addressed above, the Commission believes that the benefits of better visibility of execution quality justify any residual risk of meritless litigation arising after the additional information is publicly available.

[98] A higher average rate of internal staff costs is used for the preparation of quarterly reports based on the assumption that they would be prepared, at least in part, by higher level staff than that involved with responding to customer requests.

VIII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition.[99] In addition, section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[100]

The Commission has considered Rule 11Ac1–5 and Rule 11Ac1–6 in light of these standards and believes that the rules will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. To the contrary, by enhancing the disclosure of order execution and order routing practices, the Rules should promote fair and vigorous competition. Investors currently have little information to evaluate the order routing practices of their broker-dealers. As a result, there currently may be limited opportunities for fair competition among broker-dealers based on the quality of their order routing services. By requiring broker-dealers to disclose information on their order routing practices, the Rules may stimulate competition among broker-dealers based on the quality of their order routing services. Similarly, by requiring market centers to disclose order execution information in a manner that permits comparative analysis, the rules may stimulate competition among market centers based on the quality of their order execution services. In addition, because the rules would apply equally to market centers, with respect to order execution disclosure, and broker-dealers, with respect to order routing disclosure, the rules would not result in disparate treatment of these entities that could hinder competition.

The Commission also believes that the rules will allow investors and broker-dealers to make better-informed choices in finding the best market for orders to be executed. Accordingly, the rules may promote market efficiency. In addition, the availability of information on order execution and order routing quality may bolster investor confidence, thereby promoting capital formation.

[99] 15 U.S.C. 78w(a).

[100] 15 U.S.C. 78c(f).

IX. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[101] It relates to Rule 11Ac1–5 and Rule 11Ac1–6 under the Exchange Act. The rules will require market centers to make disclosures of order execution information and broker-dealers to make disclosures of order routing information.

A. Need for the Rules

The Commission believes that there is a need for improved disclosure of order execution information by market centers. Investors today can obtain consolidated quote information that represents the best bid and offer from among different market centers. This information, however, may not accurately reflect the quality of order executions that may be obtained from the different market centers. Many market centers offer significant opportunities for execution of orders at prices better that the consolidated quote. Conversely, some market centers execute orders at prices less favorable than the consolidated quote at the time of order receipt. The amount of price improvement or disimprovement may result in significant savings or costs to investors. Although some market centers make order execution information available to private companies or to their members, this information generally has not been publicly disseminated. Moreover, the lack of uniformity in the way this information is prepared has made it difficult for users of the information to compare execution quality across market centers.

The Commission also believes that there is a corresponding need for disclosure of order routing information by broker-dealers. If investors do not know where their broker-dealers route orders for execution, the order execution information provided by market centers will be of little benefit to investors. The lack of availability of order routing information also may make it difficult for investors to monitor their broker-dealer's order-routing decisions.

Rule 11Ac1–5 is designed to address the need for improved disclosure of order execution information by market centers. In particular, the Rule is intended to provide investors and broker-dealers with uniform information

[101] 5 U.S.C. 601 *et seq.*

on execution quality that can be used to compare execution quality across market centers. This information should assist investors and broker-dealers in finding the best market for orders to be executed, thereby promoting competition among market centers and broker-dealers on the basis execution quality and leading to more efficient transactions in securities.

Rule 11Ac1–6 is designed to address the complementary need for broker-dealers to disclose to customers where their orders are routed for execution. The primary objective of the rule is to afford customers a greater opportunity to monitor their broker-dealer's order routing practices. Supplied with information on where their orders are routed, as well as information about the quality of execution from the market centers to which their orders are routed, investors will be able to make better informed decisions with respect to their orders. The information also may assist investors in selecting a broker-dealer.

B. Significant Issues Raised By Public Comment

No commenter specifically addressed the Initial Regulatory Flexibility Analysis that was included in the Proposing Release. Some commenters stated, however, that they believed compliance with the proposed rules, particularly Rule 11Ac1–5, could be significantly more burdensome for smaller firms than for large ones.[102] As discussed below, the Commission does not agree that compliance with the rules will be unduly burdensome for those entities that are considered small entities for purposes of the Regulatory Flexibility Act.

C. Small Entities Subject To the Rules

Both Rule 11Ac1–5 and Rule 11Ac1–6 will affect entities that are considered small entities for purposes of the Regulatory Flexibility Act.

1. Small Entities Affected By Rule 11Ac1–5

Rule 11Ac1–5 will impose disclosure requirements on every market center that receives covered orders in national market system securities. Market centers are defined as exchange market makers, OTC market makers, alternative trading systems, national securities exchanges, and national securities associations.

Exchange market makers, OTC market makers, and alternative trading systems that are not registered as exchanges are required to register as broker-dealers. Accordingly, these entities would be considered small entities if they fall within the standard for small entities that applies to broker-dealers. Under Exchange Act Rule 0–10(b), a broker-dealer is considered a small entity for purposes of Regulatory Flexibility Act if (1) it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, of, if not required to prepare such statements, it had total capital of less than $500,000 on the last business day of the preceding fiscal year, and (2) it is not affiliated with any person (other than a natural person) that is not a small entity.[103] Based on this standard, the Commission estimates that two exchange market makers, one OTC market maker, and no alternative trading systems that will be subject to Rule 11Ac1–5 are small entities.[104]

None of the national securities exchanges or the national securities association subject to the Rule is a small entity. Paragraph (e) of the Exchange Act Rule 0–10 [105] provides that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of 17 CFR 240.11Aa3–1. Under this standard, none of the national securities exchanges affected by the Rule is a small entity. Similarly, the national securities association subject to the Rule is not a small entity as defined by 13 CFR 121.201.

2. Small Entities Affected By Rule 11Ac1–6

Rule 11Ac1–6 will impose disclosure requirements on every broker-dealer that routes non-directed customer orders in covered securities. Under the standard for determining whether a broker-dealer is a small entity in Exchange Act Rule 0–10(b), the Commission estimates that approximately 41 broker-dealers subject to Rule 11Ac1–6 are small entities.[106]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

1. Reporting Requirements Under Rule 11Ac1–5

Rule 11Ac1–5 will impose new reporting requirements on market centers, including those considered small entities. Under the Rule, market centers will be required to prepare and make available to the public monthly reports that categorize and summarize their order executions. For purposes of the Paperwork Reduction Act, the Commission staff estimates that individual market centers will spend 90 hours in initial preparations and, on an annual basis, spend 72 burden hours and incur $30,000 ($2,500 per month) in monetary costs to comply with the monthly reporting requirement. Assuming internal compliance staff costs of $53 per hour, the total cost per small entity for burden hours will be $4,770 for initial preparations and $3,816 on an annual basis. The Commission estimates the total cost, on an ongoing basis, required to prepare and disseminate the monthly reports by the estimated three small entities subject to the Rule will be $108,360 per year ($3 \times ($30,000 + $3,816)$). As discussed further above, small entities likely could obtain a much reduced rate through the auspices of an SRO or other organization.

2. Reporting Requirements Under Rule 11Ac1–6

Rule 11Ac1–6 will impose new reporting requirements on broker-dealers, including those considered small entities. Under the Rule, broker-dealers will be required to prepare and make available to the public quarterly reports that give an overview of their routing of non-directed orders in covered securities. In addition, broker-dealers, on request of a customer, will be required to disclose the identity of the venues to which the customer's orders were routed in the six months prior to the request, whether the orders were directed or non-directed orders, and the time of the transactions resulting from such orders.

As discussed in section VI.B above, it is unlikely that many small entities will have significant involvement in order routing practices, primarily because they are affiliated with a clearing broker. With respect to the 41 small entities that are subject to the Rule and are not affiliated with a clearing broker, the Commission does not anticipate that they engage in significant order routing on behalf of customers. If any of the 41 small entities were required to comply with the Rule, the Commission staff estimates that they would expend, on average, 32 hours to prepare quarterly reports and 2 hours to respond to eight customer requests.[107] Assuming internal

[102] Morgan Stanley Letter, note 15 above, at 18; Wilkie Farr & Gallagher Letter, note 29 above, at 4.

[103] Exchange Act Rule 0–10(b), 17 CFR 240.0–10(c).

[104] These estimates are based on the FYE 1999 FOCUS Reports received by the Commission from exchange market makers, OTC market makers, and ATSs that would be subject to Rule 11Ac1–5.

[105] 17 CFR 240.0–10(e).

[106] This estimate is based on the FYE 1999 FOCUS Reports received by the Commission from broker-dealers subject to Rule 11Ac1–6.

[107] These estimates are smaller than those used generally to estimate the burden costs for purposes of the Paperwork Reduction Act. Assuming any of

Continued

compliance costs that average $85 per hour, the aggregate cost for each small entity to comply with the Rule is estimated to be $2890.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with Rule 11Ac1–5 and Rule 11Ac1–6, the Commission considered the following 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 and reporting requirements under the rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities.

1. Rule 11Ac1–5

Rule 11Ac1–5 is designed to provide uniform order execution information from the different market centers to allow investors and broker-dealers to compare execution quality across markets. Accordingly, the Commission believes that establishing differing reporting requirements for small entities would be inconsistent with the objectives of the Rule. Similarly, the Commission believes that the clarification, consolidation, or simplification of reporting requirements for small entities would be inconsistent with the objective of providing uniform order execution information from the different market centers.

Regarding the use of performance standards rather than design standards, Rule 11Ac1–5 specifies the statistical measures that must appear in the monthly order execution reports. The Commission considered whether the Rule should require market centers only to make available electronic files with raw data on an order-by-order basis. Under this alternative, market centers would provide the necessary fields of information, and analysts could calculate the statistical measures of execution quality that they consider appropriate. The Commission has not adopted this alternative because it would be inconsistent with the objective of assuring a uniform basis for comparing execution quality across market centers. The Rule does not establish a particular technology for disseminating the required reports to the public, other than requiring that market centers make their data available for downloading from a free website in a consistent, usable, and machine-readable electronic format.

As to whether Rule 11Ac1–5 should exempt small entities from its coverage, the Commission considered several alternatives that could minimize the impact of the Rule on small entities. Specifically, the Commission considered an exemption for market centers that execute relatively few orders in total. Also, the Commission considered an exemption to eliminate the disclosure requirement for individual securities in which a market center executes relatively few orders. Finally, as discussed above, the Commission considered whether it would be feasible to allow small market centers to provide raw data rather than the statistical measures required by the proposed rule. No commenters expressed support for these types of exemptions or exceptions for small entities. Given the need for a uniform basis to compare execution quality across market centers, the Commission has determined not to adopt exemptions or exclusions specifically for small entities.

2. Rule 11Ac1–6

Rule 11Ac1–6 is designed to provide investors with information on the order routing practices of their broker-dealers. The Rule requires broker-dealers to prepare quarterly order routing reports and respond to requests from individual investors for information on how their orders were routed. As to the establishment of different reporting requirements or timetables and the clarification, consolidation, or simplification of reporting requirements for small entities, the Commission does not believe that the proposal could be formulated differently for small entities and still achieve its stated objectives.

The Commission requested comment on whether to exclude from the Rule broker-dealers that route a relatively small number of customer orders. No commenter expressed support for such an exclusion. Moreover, an exemption from the Rule for small entities would be inconsistent with the objectives of the Rule. Its primary objective is to afford customers a greater opportunity to monitor their broker-dealer's order routing practices. All broker-dealers currently have an obligation to periodically review their order routing practices to meet their duty of best execution to their customers. The Commission does not believe that the disclosures required by Rule 11Ac1–6 will be unduly burdensome for small entities, particularly now that the requirement of a narrative discussion and analysis of order routing objectives and results has been eliminated from the rule as it was proposed.

the 41 small entities actually route non-directed orders on behalf of customers, it is likely that the number of orders would be very small. The burden of preparing quarterly reports and responding to customer requests would therefore be substantially less than the overall industry average.

X. Statutory Authority

Pursuant to the Exchange Act and particularly Sections 3(b), 5, 6, 11A, 15, 17, 19, 23(a), and 36 thereof, 15 U.S.C. 78c, 78e, 78f, 78k–1, 78o, 78q, 78s, 78w(a), and 78mm, the Commission proposes to adopt Sections 240.11Ac1–5 and 240.11Ac1–6 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Rules

For the reasons set forth in the preamble, the Commission is amending Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Sections 240.11Ac1–5 and 240.11Ac1–6 are added before the undesignated center heading ''Securities Exempted from Registration'' to read as follows:

§ 240.11Ac1–5 Disclosure of order execution information.

Preliminary Note: Section 240.11Ac1–5 requires market centers to make available standardized, monthly reports of statistical information concerning their order executions. This information is presented in accordance with uniform standards that are based on broad assumptions about order execution and routing practices. The information will provide a starting point to promote visibility and competition on the part of market centers and broker-dealers, particularly on the factors of execution price and speed. The disclosures required by this section do not

encompass all of the factors that may be important to investors in evaluating the order routing services of a broker-dealer. In addition, any particular market center's statistics will encompass varying types of orders routed by different broker-dealers on behalf of customers with a wide range of objectives. Accordingly, the statistical information required by this Section alone does not create a reliable basis to address whether any particular broker-dealer failed to obtain the most favorable terms reasonably available under the circumstances for customer orders.

(a) *Definitions.* For the purposes of this section:

(1) The term *alternative trading system* shall have the meaning provided in § 242.300(c) of this chapter.

(2) The term *average effective spread* shall mean the share-weighted average of effective spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the consolidated best bid and offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the consolidated best bid and offer at the time of order receipt and the execution price.

(3) The term *average realized spread* shall mean the share-weighted average of realized spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the consolidated best bid and offer five minutes after the time of order execution and, for sell orders, as double the amount of difference between the midpoint of the consolidated best bid and offer five minutes after the time of order execution and the execution price; provided, however, that the midpoint of the final consolidated best bid and offer disseminated for regular trading hours shall be used to calculate a realized spread if it is disseminated less than five minutes after the time of order execution.

(4) The term *categorized by order size* shall mean dividing orders into separate categories for sizes from 100 to 499 shares, from 500 to 1999 shares, from 2000 to 4999 shares, and 5000 or greater shares.

(5) The term *categorized by order type* shall mean dividing orders into separate categories for market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders.

(6) The term *categorized by security* shall mean dividing orders into separate categories for each national market system security that is included in a report.

(7) The term *consolidated best bid and offer* shall mean the highest firm bid and the lowest firm offer for a security that is calculated and disseminated on a current and continuous basis pursuant to an effective national market system plan.

(8) The term *covered order* shall mean any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a consolidated best bid and offer is being disseminated, and, if executed, is executed during regular trading hours, but shall exclude any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening price or a market closing price, orders submitted with stop prices, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted on a ''not held'' basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price of the security at the time of execution.

(9) The term *exchange market maker* shall mean any member of a national securities exchange that is registered as a specialist or market maker pursuant to the rules of such exchange.

(10) The term *executed at the quote* shall mean, for buy orders, execution at a price equal to the consolidated best offer at the time of order receipt and, for sell orders, execution at a price equal to the consolidated best bid at the time of order receipt.

(11) The term *executed outside the quote* shall mean, for buy orders, execution at a price higher than the consolidated best offer at the time of order receipt and, for sell orders, execution at a price lower than the consolidated best bid at the time of order receipt.

(12) The term *executed with price improvement* shall mean, for buy orders, execution at a price lower than the consolidated best offer at the time of order receipt and, for sell orders, execution at a price higher than the consolidated best bid at the time of order receipt.

(13) The terms *inside-the-quote limit order, at-the-quote limit order, and near-the-quote limit order* shall mean non-marketable buy orders with limit prices that are, respectively, higher than, equal to, and lower by $0.10 or less than the consolidated best bid at the time of order receipt, and non-marketable sell orders with limit prices that are, respectively, lower than, equal to, and higher by $0.10 or less than the consolidated best offer at the time of order receipt.

(14) The term *market center* shall mean any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.

(15) The term *marketable limit order* shall mean any buy order with a limit price equal to or greater than the consolidated best offer at the time of order receipt, and any sell order with a limit price equal to or less than the consolidated best bid at the time of order receipt.

(16) The term *effective national market system plan* shall have the meaning provided in § 240.11Aa3–2(a)(2).

(17) The term *national market system security* shall have the meaning provided in § 240.11Aa2–1.

(18) The term *OTC market maker* shall mean any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, a national market system security for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(19) The term *regular trading hours* shall mean the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to paragraph (c)(2) of this section.

(20) The term *time of order execution* shall mean the time (to the second) that an order was executed at any venue.

(21) The term *time of order receipt* shall mean the time (to the second) that an order was received by a market center for execution.

(b) *Monthly electronic reports by market centers.* (1) Every market center shall make available for each calendar month, in accordance with the procedures established pursuant to paragraph (b)(2) of this section, a report on the covered orders in national market system securities that it received for execution from any person. Such report shall be in electronic form; shall be categorized by security, order type, and order size; and shall include the following columns of information:

(i) For market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders:

(A) The number of covered orders;

(B) The cumulative number of shares of covered orders;

(C) The cumulative number of shares of covered orders cancelled prior to execution;

(D) The cumulative number of shares of covered orders executed at the receiving market center;

(E) The cumulative number of shares of covered orders executed at any other venue;

(F) The cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt;

(G) The cumulative number of shares of covered orders executed from 10 to 29 seconds after the time of order receipt;

(H) The cumulative number of shares of covered orders executed from 30 seconds to 59 seconds after the time of order receipt;

(I) The cumulative number of shares of covered orders executed from 60 seconds to 299 seconds after the time of order receipt;

(J) The cumulative number of shares of covered orders executed from 5 minutes to 30 minutes after the time of order receipt; and

(K) The average realized spread for executions of covered orders; and

(ii) For market orders and marketable limit orders:

(A) The average effective spread for executions of covered orders;

(B) The cumulative number of shares of covered orders executed with price improvement;

(C) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;

(D) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution;

(E) The cumulative number of shares of covered orders executed at the quote;

(F) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution;

(G) The cumulative number of shares of covered orders executed outside the quote;

(H) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote; and

(I) For shares executed outside the quote, the share-weighted average period from the time of order receipt to the time of order execution.

(2) Every national securities exchange on which national market system securities are traded and national securities association shall act jointly in establishing procedures for market centers to follow in making available to the public the reports required by paragraph (b)(1) of this section in a uniform, readily accessible, and usable electronic form. In the event there is no effective national market system plan establishing such procedures, market centers shall prepare their reports in a consistent, usable, and machine-readable electronic format, and make such reports available for downloading from an Internet web site that is free and readily accessible to the public.

(3) A market center shall make available the report required by paragraph (b)(1) of this section within one month after the end of the month addressed in the report.

(c) *Exemptions.* The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

§ 240.11Ac1–6 Disclosure of order routing information.

(a) *Definitions.* For the purposes of this section:

(1) The term *covered security* shall mean:

(i) Any national market system security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as defined in Section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)); and

(ii) Any option contract traded on a national securities exchange for which last sale reports and quotation information are made available pursuant to an effective national market system plan.

(2) The term *customer order* shall mean an order to buy or sell a covered security that is not for the account of a broker or dealer, but shall not include any order for a quantity of a security having a market value of at least $50,000 for a covered security that is an option contract and a market value of at least $200,000 for any other covered security.

(3) The term *directed order* shall mean a customer order that the customer specifically instructed the broker or dealer to route to a particular venue for execution.

(4) The term *make publicly available* shall mean posting on an Internet web site that is free and readily accessible to the public, furnishing a written copy to customers on request without charge, and notifying customers at least annually in writing that a written copy will be furnished on request.

(5) The term *non-directed order* shall mean any customer order other than a directed order.

(6) The term *effective national market system plan* shall have the meaning provided in § 240.11Aa3–2(a)(2).

(7) The term *national market system security* shall have the meaning provided in § 240.11Aa2–1.

(8) The term *payment for order flow* shall have the meaning provided in § 240.10b–10(d)(9).

(9) The term *profit-sharing relationship* shall mean any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders.

(10) The term *time of the transaction* shall have the meaning provided in § 240.10b–10(d)(3).

(b) *Quarterly report on order routing.* (1) Every broker or dealer shall make publicly available for each calendar quarter a report on its routing of non-directed orders in covered securities during that quarter. For covered securities other than option contracts, such report shall be divided into three separate sections for securities that are listed on the New York Stock Exchange, Inc., securities that are qualified for inclusion in the Nasdaq Stock Market, Inc., and securities that are listed on the American Stock Exchange LLC or any other national securities exchange. Such report also shall include a separate section for covered securities that are option contracts. Each of the four sections in a report shall include the following information:

(i) The percentage of total customer orders for the section that were non-directed orders, and the percentages of total non-directed orders for the section that were market orders, limit orders, and other orders;

(ii) The identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed for execution, the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, total non-directed limit orders, and total non-directed other orders for the section that were routed to the venue; and

(iii) A discussion of the material aspects of the broker's or dealer's relationship with each venue identified pursuant to paragraph (b)(1)(ii) of this section, including a description of any arrangement for payment for order flow and any profit-sharing relationship.

(2) A broker or dealer shall make the report required by paragraph (b)(1) of this section publicly available within one month after the end of the quarter addressed in the report.

(c) *Customer requests for information on order routing.* (1) Every broker or dealer shall, on request of a customer, disclose to its customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (c)(1) of this section.

(d) *Exemptions.* The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Dated: November 17, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30131 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43591; File No. S7–17–00]

RIN 3235–AH96

Firm Quote and Trade-Through Disclosure Rules for Options

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting an amendment to Rule 11Ac1–1 under the Securities Exchange Act of 1934 (''Exchange Act'') to require options exchanges and options market makers to publish firm quotes. The Commission also is adopting new Rule 11Ac1–7 under the Exchange Act to require a broker-dealer to disclose to its customer when its customer's order for listed options is executed at a price inferior to a better published quote and what that better quote was, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission. These rules will facilitate the ability of market participants to obtain the best price for customer orders.

EFFECTIVE DATE: February 1, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Flynn, Senior Special Counsel, at (202) 942–0075, Kelly Riley, Special Counsel, at (202) 942–0752, John Roeser, Attorney, at (202) 942–0762, Terri Evans, Special Counsel, at (202) 942–4162, and Heather Traeger, Attorney, at (202) 942–0763, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

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I. Executive Summary

Recent increases in the multiple listing of options classes previously listed on a single exchange have intensified the competition among the option exchanges and heightened the need to further integrate the options markets into the national market system. The marked increase in multiple trading is indicative of the dynamic environment in which the options markets currently operate.[1] While the growth in multiple trading has increased the competition between markets, it also has dramatically altered the environment in which options market participants conduct their trading. In particular, multiple trading raises new best execution challenges for brokers.[2] When an option is listed on only one exchange, brokers do not have to decide where to route an order, and consequently, satisfying their best execution obligations is simpler than when they must consider the relative merits of routing an order to two or more market centers. With as many as five options exchanges currently trading

[1] For example, in August 1999, only 32% of equity options classes were traded on more than one exchange. By the end of September 2000, the number of equity options classes that were multiply-traded had risen to 45%. In addition, aggregate options volume traded only on a single exchange fell from 61% to 15% over this same period.

[2] In accepting orders and routing them to an exchange for execution, brokers act as agents for their customers and owe them a duty of best execution. A broker's duty of best execution is derived from common law agency principles and fiduciary obligations. It is incorporated both in self-regulatory organizations' rules and in the antifraud provisions of the federal securities laws through judicial and Commission decisions. This duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction. As a result, brokers must periodically assess the quality of competing markets. See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

certain options classes, brokers are required to regularly and rigorously evaluate the execution quality available at each options exchange.

Directly relevant to a broker's ability to obtain best execution for its customers is the ability to get the best price available. The considerable growth in the number of options classes traded on more than one exchange has significantly increased the likelihood that an order may be executed at a price that is inferior to a quoted price available on another exchange (''intermarket trade-through''). According to preliminary data analyzed by the Commission's Office of Economic Analysis, during the week of June 26, 2000, 5 percent of all trades in the 50 most active multiply-traded equity options were executed at prices inferior to the best price quoted on a competing market. Currently, it is difficult to ensure that a customer order sent to one exchange will receive the best available price because of the absence of fair access and an efficient mechanism allowing a market participant at one exchange to reach a better price published by another exchange. As a result, better prices quoted on another exchange do not always receive price priority, and customer orders may receive inferior executions.

Because of our concerns about the increasing likelihood of intermarket trade-throughs in the options markets, on October 19, 1999, the Commission issued an Order directing the options exchanges to act jointly to file a national market system plan for linking the options markets.[3] On July 28, 2000, the Commission approved an intermarket linkage plan proposed by three of the options exchanges (''Linkage Plan'')[4] and subsequently, the other two exchanges filed with the Commission amendments to permit their participation in the Linkage Plan.[5]

In conjunction with its approval of the Linkage Plan, the Commission proposed a new rule, Exchange Act Rule 11Ac1–7 (''Trade-Through Disclosure Rule''),[6] to require a broker-dealer to disclose to its customer when the customer's order for a listed option is executed at a price inferior to a better published quote and that better quote, unless the transaction was effected on a market that participates in an intermarket linkage plan approved by the Commission.[7] In addition, the Commission proposed to amend Exchange Act Rule 11Ac1–1 (''Quote Rule'')[8] to require options exchanges and options market makers to publish firm quotes.[9] These proposed rules were intended to facilitate the ability of market participants to obtain the best price for customer orders without mandating a specific linkage.

With the current expansion of multiple trading in options, the Commission is increasingly concerned about intermarket trade-throughs of customer orders. The Commission believes that adoption of the new rule and amendment to the Quote Rule are necessary at this time to encourage the removal of barriers to access to, and the use of efficient vehicles to reach, better prices on another market. Consequently, as discussed below, the Commission today is adopting the Trade-Through Disclosure Rule[10] and amending the Quote Rule,[11] substantially as proposed, with certain modifications recommended by commenters.

II. Background

Section 11A of the Exchange Act,[12] enacted as part of the Securities Acts Amendments of 1975,[13] sets forth Congress' findings concerning the establishment of a national market system. Congress found, among other things, that it was in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of quote and transaction information.[14] Congress also found that linking all of the markets for qualified securities would ''foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.''[15]

The national market system was intended by Congress to potentially encompass ''all segments of corporate securities including all types of common and preferred stocks, bonds, debentures, warrants, and options.''[16] Congress included all types of securities because it believed that many of the goals of a national market system, such as the availability of information with respect to price, volume, and quotations, would be universally beneficial.[17]

Congress did, however, recognize the differences between the markets and granted the Commission broad powers to implement a national market system without forcing all securities markets into a single mold.[18] Accordingly, Congress granted the Commission the authority to implement the objectives of the 1975 Amendments,[19] while allowing the Commission to recognize and classify markets, firms, and securities in any manner appropriate or necessary in the public interest or for the protection of investors.[20]

Many of the national market system initiatives were implemented in the equities markets at a time when

[3] *See* Securities Exchange Act Release No. 42029, 64 FR 57674 (October 26, 1999) (''October 19, 1999 Order''). The October 19, 1999 Order directed the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), Pacific Exchange, Inc. (''PCX''), and Philadelphia Stock Exchange, Inc. (''Phlx'') to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan. The Commission's Order also requested the International Securities Exchange LLC (''ISE'') to participate with the options exchanges in the development of an intermarket linkage plan. The ISE was subsequently registered as a national securities exchange for options trading on February 24, 2000. *See* Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[4] *See* Securities Exchange Act Release No. 43086, 65 FR 48023 (August 4, 2000). As originally approved, the Amex, CBOE, and ISE were the only participants in the Linkage Plan.

[5] *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000); and 43574 (November 16, 2000). The Commission issued orders to permit Phlx and PCX to participate in the Linkage Plan.

[6] Exchange Act Rule 11Ac1–7, 17 CFR 240.11Ac1–7.

[7] *See* Securities Exchange Act Release No. 43085 (July 28, 2000), 65 FR 47918 (August 4, 2000) (''Proposing Release'').

[8] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[9] *See* Proposing Release, supra note 7.

[10] Exchange Act Rule 11Ac1–7, 17 CFR 240.11Ac1–7.

[11] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[12] 15 U.S.C. 78k–1.;

[13] Pub. L. No. 94–29, 89 Stat. 97 (1975) (''1975 Amendments''). In the 1975 Amendments, Congress directed the Commission to oversee the development of a national market system. Congress granted the Commission broad, discretionary powers to oversee the development of a fully integrated national market system for the processing and settlement of securities transactions. See also infra note 16.

[14] Section 11A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C).

[15] Section 11A(a)(1)(D) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(D).

[16] Senate Committee on Banking, Housing, and Urban Affairs, Report to Accompany S. 249, S. Rep. 94–75, 94th Cong., 1st Sess. 7 (1975) (''Senate Report''). *See* also Committee of Conference, Report to Accompany S. 249, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 2 (1975) (''Conference Report'').

[17] Id.

[18] *See* Senate Report. See also Conference Report. In the Conference Report, the Committee stated that the unique characteristics of securities other than common stocks may require different treatment in a national market system.

[19] The two primary objectives of the 1975 Amendments were (1) ''the maintenance of stable and orderly markets with maximum capacity for absorbing trading imbalances without undue price movements,'' and (2) ''the centralization of all buying and selling interest so that each investor will have the opportunity for the best execution of his order, regardless of where in the system it originates.'' See Senate Report.

[20] Section 11A(a)(2) of the Exchange Act authorizes the Commission to designate, by rule, securities qualified for trading in the national market system. 15 U.S.C. 78k–1(a)(2).

standardized options trading was relatively new.[21] Therefore, even though Congress had intended to include options in a national market system, the Commission deferred applying many of the national market system initiatives to options to give options trading an opportunity to develop.[22] Today, the options markets continue to operate with limited market integration facilities.[23]

A. Prior Attempts To Limit Intermarket Trade-Throughs

To address the limited market integration facilities in the options market, the Commission has repeatedly encouraged the exchanges to implement mechanisms to limit trade-throughs.[24] For example, in 1980, at the time the Commission ended the voluntary moratorium on expansion of standardized options trading, it asked for comment on several approaches to more fully integrate the options markets into the national market system, including a market linkage system similar to the Intermarket Trading System (''ITS''),[25] requiring brokerage firms to route retail orders on an order-by-order basis to the market center showing the best quotation, and an order exposure system for options public limit orders.[26]

Subsequently, the Commission's adoption of Exchange Act Rule 19c-5 in 1989 [27] created the need for some mechanism to ensure that customers' orders for multiply-traded options could be executed at the best available price. Accordingly, in 1990, the Amex, CBOE, New York Stock Exchange (''NYSE''),[28] and PCX filed with the Commission a proposed Joint Industry Plan providing for the creation and operation of an Options Intermarket Communications Linkage (''Proposed Plan'').[29] The Commission sought comment on the Proposed Plan,[30] but neither the Proposed Plan nor its Model Trade-Through Rule was adopted, in part, because the options exchanges could not reach a consensus on several critical elements.

During the comment period on the Proposed Plan, an alternative plan was considered that involved the gradual phase-in of multiple trading, along with the adoption of exchange rules and operational enhancements linking the markets non-electronically (''Phase-In Plan'').[31] Specifically, the Phase-In Plan would have provided for the re-routing of orders received through automated systems to other execution facilities, in conjunction with a trade-or-fade rule.[32] Again, however, the exchanges did not agree to the Phase-In Plan and it was not adopted.

In 1994, the markets adopted trade-or-fade rules, which require a market maker to revise its quote if it is unwilling to trade at its published quote with an order sent to it by a market maker from another exchange.[33] The trade-or-fade rules do not provide efficient means of access between the markets. They also provide little incentive to try to reach a better quote

[21] The trading of standardized options on securities exchanges began in 1973 with the organization of the CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973) 1 S.E.C. Doc. 11 (February 13, 1973). Currently, Amex, CBOE, ISE, PCX, and Phlx are the only national securities exchanges that trade standardized options.

[22] In October 1977, in response to allegations of widespread manipulation in the market for exchange-traded options, the Commission initiated an investigation and special study of the options markets. The result of the Commission's investigation was The Report of the Special Study of the Options Markets, issued on December 22, 1978 (''Options Study''). Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading). In the Options Study, the Commission acknowledged that Congress had intended to include options in a national market system, and set forth a number of issues to be explored before the options markets could be fully integrated into the national market system. Options Study at 1029–1030. The Options Study delineated the following as among the issues to be explored in the options market: (1) A comprehensive quotation system for the dissemination of firm quotes; (2) market linkage and order routing systems to enable the best execution of orders; (3) nationwide limit order protection to ensure that agency orders receive auction-type trading protections; and (4) off-board trading restrictions. Subsequently, the Commission approved, pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder, a national market system plan that collects and disseminates consolidated quotes and trades for the options markets, the Options Price Reporting Authority (''OPRA'') Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). See Securities Exchange Act Release No. 17638 (March 18, 1981).

[23] The Commission has repeatedly called for increased national market system initiatives in the options markets. See Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, ''The Effects of Multiple Trading on the Market for OTC Options'' (November 1986); Office of the Chief Economist, ''Potential Competition and Actual Competition in the Options Market'' (November 1986); and Securities Exchange Act Release No. 26871 (May 26, 1989), 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an intermarket linkage). In 1989, the Commission adopted Exchange Act Rule 19c-5, which generally prohibits any exchange from adopting rules limiting its ability to list any stock options class because that options class is listed on another exchange. See Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (June 5, 1989). In 1990, then Chairman Breeden requested that the options exchanges develop an intermarket linkage plan. See letter from Chairman Breeden to the Registered Options Exchanges dated January 9, 1990.

[24] Id.

[25] In the equity markets, the ITS Plan includes a trade-through rule protecting displayed bids and offers for ITS-eligible exchange-listed securities. *See* Securities Exchange Act Release No. 17703 (April 9, 1981), 22 S.E.C. Doc. 707. In conformance with the ITS Plan, each participating exchange and the National Association of Securities Dealers (''NASD'') has adopted rules that limit trade-throughs in exchange-listed securities. *See* Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520 (April 17, 1981). The NASD submitted a proposed trade-through rule for exchange-listed stocks, which the Commission approved on May 6, 1982. *See* Securities Exchange Act Release No. 18714, 47 FR 20429 (May 12, 1982). On June 21, 1985, the Commission requested comment on, among other things, the extent to which securities listed on The Nasdaq Stock Market, Inc. (''Nasdaq'') should be subject to trade-through rules. *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584 (June 27, 1985). In addition, in recently adopting amendments to the ITS Plan to expand the linkage to all listed securities, the Commission concluded that the NASD should continue to consider modifications to its existing trade-through rule to cover non-ITS participants, but that such modifications were not a precondition to approval of the expanded linkage. *See* Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

[26] *See* Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980) (''Moratorium Termination Release'').

[27] Exchange Act Rule 19c–5, 17 CFR 240.19c–5. *See* Securities Exchange Act Release No. 26870, *supra* note 23.

[28] The NYSE has since sold its options business to the CBOE. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[29] The filing was amended on April 29, 1991, when the signatories to the Proposed Plan submitted a Model Option Trade-Through Rule as Exhibit A to the Proposed Plan (''Model Trade-Through Rule''). The Model Trade-Through Rule would have been incorporated into each of the options exchanges' rules. The Model Trade-Through Rule provided that, absent reasonable justification or excuse, a member in a participant market should avoid initiating a trade-through when purchasing or selling an options contract permitted to be transmitted through the proposed linkage.

[30] *See* Securities Exchange Act Release No. 30187 (January 14, 1992), 57 FR 2612 (January 22, 1992).

[31] The Phase-In Plan was put forth by the Securities Industry Association (''SIA'') and endorsed by the Committee on Options Proposals (''COOP''). *See* letters to Jonathan G. Katz, Secretary, SEC, from Thomas P. Hart, Chairman, SIA Options and Derivative Products Committee, dated March 10, 1992; and Michael Schwartz, Chairman, COOP, dated March 11, 1992.

[32] *Id. See also* letter from Richard C. Breeden, Chairman, SEC, to Alger B. Chapman, Chairman & CEO, CBOE, dated June 30, 1992 (setting forth the Commission's understanding of the elements of the Phase-In Plan).

[33] *See* Securities Exchange Act Release Nos. 34431, 34432, 34444, 34434, and 34435 (July 22, 1994), 59 FR 38994 (August 1, 1994) (orders approving proposed rule changes filed by Amex, CBOE, NYSE, Phlx, and PCX, respectively). *See also* Amex Rule 958A, Commentary 01; CBOE Rule 8.51(b); PCX Rule 6.37(d); Phlx Rule 1015(b); and ISE Rule 804.

in another market, because that quote need not be firm when reached. Thus, the trade-or-fade rules have done little to promote price priority or discourage intermarket trade-throughs. As described below, the rules adopted by the Commission today respond to changes in the options markets and reflect a different approach to limiting intermarket trade-throughs and promoting price priority.

B. Application of the Quote Rule in the Options Market

As a testament to the importance of firm quotes in the securities markets, one of the first national market system initiatives implemented by the Commission in the equity markets was the Quote Rule.[34] The Quote Rule requires all national securities exchanges and associations to establish procedures for collecting from their members bids, offers, and quotation sizes with respect to reported securities, and for making such bids, offers, and sizes available to quotation vendors. It also requires that quotation information made available to vendors be ''firm,'' subject to certain exceptions.

By its terms, the Quote Rule currently does not apply to options. At the time the Quote Rule was adopted in 1978,[35] standardized options had been listed and traded on the options exchanges for only a few years, and the Commission had imposed a moratorium that restricted the expansion of options trading.[36] For example, in 1980, when the Commission lifted the moratorium on options listings, it also set forth its vision on the future of options multiple trading, including the feasibility of firm quotes.[37] Successful implementation of a linkage among the markets was thought to depend upon the quality and reliability of quotation information disseminated by each market center. At that time, however, the Commission believed that the imposition of a firm quote requirement on the options markets and market participants was unworkable.[38]

In conjunction with the Commission's adoption in 1989 of Rule 19c-5 [39] relating to multiple trading of options, the Commission published a staff concept release that discussed options market structure issues associated with multiple trading, and outlined suggestions for possible market structure enhancements.[40] The release emphasized that the availability and reliability of comprehensive quotation information for options are important elements in considering the concerns traditionally associated with multiple trading.

The release discussed whether the then-existing quote and trade reporting mechanism for options needed to be adapted for multiple trading by requiring that equity options quotes be firm. Market participants had, in the past, argued against a firm quote requirement in the options markets for a number of reasons.[41] These concerns, however, were recognized as largely moot due to the development of autoquote [42] and automatic execution [43] systems, which indicated that firm quotes were, at the very least, possible.[44]

Today, each options market requires its market makers to have firm quotes for some types of orders. [45]Therefore, the Commission believes that imposing a market-wide firm quote obligation on options market participants should not be unduly burdensome. While the exchanges' firm quote rules and automatic execution systems provide their public customers with firm quote guarantees, these rules currently do not extend to other market participants. As described below, the amendments to the Quote Rule adopted by the Commission today require that options quotes be firm for broker-dealer orders for at least one contract.

III. Description of Proposed Rulemaking [46]

A. Proposed Trade-Through Disclosure Rule

In the Proposing Release, the Commission proposed new Rule 11Ac1–7 under the Exchange Act [47] to require a broker-dealer to disclose to a customer when the customer's order to buy or sell a listed option is executed at a price inferior to the best quote published at the time of execution of the customer's order. The proposal identified seven circumstances in which a trade executed at a price inferior to a published price on another market would, nevertheless, not be considered a trade-through for purposes of the

[34] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1. The reliability and availability of quotation information are basic components of a national market system and are needed so that broker-dealers are able to make best execution decisions for their customers' orders, and customers are able to make order entry decisions. *See* Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856 (August 5, 1976) (proposing Exchange Act Rule 11Ac1–1).

[35] *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978), as amended in Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996); and 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[36] *See supra* notes 21 and 22 and accompanying text.

[37] *See* Moratorium Termination Release, *supra* note 26.

[38] In 1980, quotes were updated manually; thus, the options exchanges argued that it would be virtually impossible for a market maker to update its quotes in a timely fashion each time the underlying stock price moved.

[39] *See* Securities Exchange Act Release No. 26870, *supra* note 23.

[40] *See* Securities Exchange Act Release No. 26871, *supra* note 23.

[41] One major concern of market participants was that due to the derivative nature of options, and the need to adjust quotes in numerous series in response to a single price change in the underlying security, it would be impossible, or at least impractical, to require options market makers to honor their disseminated quotes. Further, it was thought to be difficult for an exchange to identify which member of a trading crowd was responsible for a quote and to provide a mechanism for quotes to be modified or withdrawn.

[42] Autoquote systems enable options market professionals to update their quotes in numerous options series simultaneously.

[43] Automatic execution systems provide, in effect, firm quotes for public customer orders.

[44] *See* Securities Exchange Act Release No. 26871, *supra* note 23.

[45] *See generally* Amex Rule 958A (requiring a specialist to sell/buy at least 10 contracts at the offer/bid displayed when the order reaches the trading post); CBOE Rule 8.51 (generally requiring a trading crowd to sell/buy at least the RAES contract limit applicable to a particular options class at the offer/bid displayed when a customer order reaches the trading station); PCX Rule 6.86 (generally requiring a trading crowd to provide a depth of 20 contracts for all non-broker-dealer orders at the bid/offer disseminated at the time an order is announced at the trading post); Phlx Rule 1015 (requiring that public customer orders be filled at the best market for a minimum of 10 contracts); and ISE Rule 804 (requiring a market maker to enter the number of contracts it is willing to buy or sell at its quote and prohibiting a market maker from entering a bid or offer for less than 10 contracts).

[46] In response to the Proposing Release, the Commission received comment letters from fourteen commenters representing the views of four exchanges, seven firms, and four other interested parties. *See* letters to Jonathan G. Katz, Secretary, SEC, from Samuel F. Lek, Chief Executive Officer, Lek Securities Corporation, dated September 20, 2000 (''Lek Letter''); Michael J. Simon, Senior Vice President and Secretary, ISE, dated September 18, 2000 (''ISE Letter''); George Brunelle, Brunelle & Hadjikow, dated September 15, 2000 (''Brunelle Letter''); Juan Carlos Pinilla, Managing Director, J.P. Morgan Securities, Inc. (''JPMorgan Letter''); Thomas A. Bond, CBOE, dated October 9, 2000 (''CBOE Letter''); Phillip D. DeFeo, Chairman and Chief Executive Officer, PCX, dated October 10, 2000 (''PCX Letter''); Michael G. Vitek, President, Botta, dated September 29, 2000 (''Botta Letter''); Joel Greenberg, Managing Director, Susquehanna Investment Group, dated September 22, 2000 (''Susquehanna Letter''); Chris Delzio, Amex Member, dated August 15, 2000 (''Delzio Letter''); Lewis Singletary, Journeyman Holdings Corporation, dated September 30, 2000 (''Singletary Letter''); Meyer S. Frucher, Phlx, dated September 18, 2000 (''Phlx Letter''); Edward Provost, Executive Vice President, Business Development Division, CBOE, dated September 13, 2000 (asking for an extension of the comment period); Robert Bellick, Co-Managing Partner, Wolverine Trading, L.L.P., dated October 25, 2000 (''Wolverine Letter''); Robin Roger, Managing Director and Counsel, Morgan Stanley Dean Witter, dated October 25, 2000 (''Morgan Stanley Letter''); and William McGowen, Chairman, Options Committee, SIA, dated October 31, 2000 (''SIA Letter'').

[47] *See* Proposing Release, *supra* note.

rule.[48] In addition, as an incentive for markets to cooperate in developing effective means to access the quotes of other markets to avoid intermarket trade-throughs, the Commission's proposal excepted broker-dealers from the proposed disclosure requirements if they effected their customer orders on options markets that participated in an intermarket linkage plan approved by the Commission that had provisions reasonably designed to limit intermarket trade-throughs.

B. Proposed Amendments to the Quote Rule

The Commission also proposed to amend Exchange Act Rule 11Ac1–1 to require options exchanges and options market makers to publish firm quotes.[49] Because OPRA currently does not have the ability to collect from the exchanges and disseminate to quotation vendors size information, the Commission proposed to amend the Quote Rule so that broker-dealers would not be required to communicate, and options exchanges would not be required to collect and make available on a quote-by-quote basis, the size associated with each quotation in listed options. Instead, an options exchange would be required to establish by rule and periodically publish the size for which its best bid or offer in each options series that is listed on the exchange is firm. If, however, an exchange does collect quotations with size from its broker-dealers, it would have to make such information available as currently required under the rule.[50]

In addition, the Commission proposed two alternatives relating to the flexibility an exchange would have to establish the size for which its quotes were firm for different types of orders. Specifically, under proposed Alternative A, the size for which an exchange's best bid or offer is firm would have to be the same for orders received from customers as for orders received from broker-dealers. Under proposed Alternative B, however, an exchange could allow market makers to establish different firm quote sizes for broker-dealer orders and for customer orders.

Finally, the Commission proposed to require a responsible broker or dealer to respond to an order within 30 seconds by either executing the entire order or executing at least that portion of the order equal to its applicable firm quote size and revising its quote.

IV. Discussion

A. Trade-Through Disclosure Rule

After carefully reviewing the comment letters, the Commission has decided to adopt the Trade-Through Disclosure Rule, with several modifications from the proposal. Under this rule, a broker is required to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, and to disclose the better published quote available at that time.[51] This disclosure must be made to the customer in writing at or before the completion of the transaction,[52] and may be provided in conjunction with the confirmation statement routinely sent to investors. Such disclosure must be displayed as prominently as the transaction price disclosed to the customer.

The Trade-Through Disclosure Rule provides, however, that a broker-dealer is not required to disclose to its customer an intermarket trade-through if the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price.[53] In addition, broker-dealers will not be required to provide the disclosure required by the Trade-Through Disclosure Rule if the order is executed as part of a block trade.[54]

A number of commenters supported the Commission's proposal to require broker-dealers to disclose trade-throughs.[55] In particular, one commenter believed that intermarket trade-throughs virtually would be eliminated if a broker-dealer were required to disclose to a customer that an order was executed at a price that was inferior to the best-published quote.[56] Another commenter disagreed with this view, however, stating that the imposition of a disclosure requirement would not have a significant impact on the frequency of intermarket trade-throughs.[57]

In addition, several commenters noted that the disclosure required by the Trade-Through Disclosure Rule would never need to be made by broker-dealers if all exchanges join the Linkage Plan.[58] The Commission notes, however, that under the current terms of the Linkage Plan, any participant may withdraw from the plan with 30 days prior written notice to each of the other plan participants and the facilities manager, if any.[59] In addition, there may be new options exchanges entering the market in the future and those exchanges may decide not to participate in the Linkage Plan or any other intermarket linkage plan approved by

[48] The seven exceptions to the proposed definition of a trade-through included when: (1) The market publishing the better price was experiencing systems problems, which made the quote inaccessible; (2) OPRA was experiencing queuing; (3) the market publishing the better price was experiencing unusual market conditions; (4) the market showing the better price was in a trading rotation; (5) the customer order was executed as part of a trading rotation in that options class; (6) the customer order was executed as part of a complex trade; or (7) the market publishing the better quote fails to respond to an order routed to it within 30 seconds of receiving the order. *See* Proposing Release, *supra* note.

[49] *See* Proposing Release, *supra note*.

[50] As noted above, OPRA does not have the capability to collect size information from the options exchanges, but it anticipates implementing systems changes to accommodate quotes with size in January 2001.

[51] Exchange Act Rule 11Ac1–7(b)(1), 17 CFR 240.11Ac1–7(b)(1). The Commission believes that a broker-dealer should be allowed to rely on the market of execution to notify the broker-dealer when a trade-through has occurred and the best quote available at that time. One commenter suggested that the Trade-Through Disclosure Rule require that exchanges provide all relevant information to the broker-dealers, including a determination of whether a trade-through has occurred. See Morgan Stanley Letter. The Commission does not believe it is necessary at this time to impose such a requirement and expects that an exchange that does not participate in a linkage plan will have strong incentives to provide a broker-dealer executing orders on its market with any information the broker-dealer needs to comply with disclosure obligations.

[52] The term ''completion of the transaction'' in the Trade-Through Disclosure Rule shall have the meaning provided in Exchange Act Rule 15c1–1(b)(1), 17 CFR 240.15c1–1(b)(1). Exchange Act Rule 11Ac1–7(b), 17 CFR 11Ac1–7(b).

[53] Exchange Act Rule 11Ac1–7(b)(2)(i), 17 CFR 240.11Ac1–7(b)(2)(i). The Trade-Through Disclosure Rule also provides the Commission with the authority to exempt any broker or dealer from the requirements of the rule. Exchange Act Rule 11Ac1–7(c), 17 CFR 240.11Ac1–7(c).

[54] Exchange Act Rule 11Ac1–7(b)(2)(ii), 17 CFR 240.11Ac1–7(b)(2)(ii). The Commission sought comment on whether broker-dealers should be excepted from the trade-through disclosure requirement if they systematically route customer orders on an order-by-order basis to the exchange with the best price at the time the order is routed. Only one commenter addressed this issue, noting that simply routing orders to an exchange displaying the best price at the time the order is routed is not sufficient because of variances in the national best bid and offer (''NBBO''), the possibility that the receiving market does not offer trade-through protection, or the possibility of price improvement. At this time, the Commission has decided not to provide broker-dealers with an exemption from the disclosure requirements of the Trade-Through Disclosure Rule on this basis.

[55] *See* Lek Letter; PCX Letter; JPMorgan Letter; and ISE Letter.

[56] *See* Lek Letter.

[57] *See* CBOE Letter.

[58] See JPMorgan Letter; ISE Letter; CBOE Letter; Phlx Letter; and Wolverine Letter. Another commenter argued that the focus of the Commission and the options industry should be on preventing the occurrence of intermarket trade-throughs by moving ahead aggressively on implementing the Linkage Plan, rather than by disclosing intermarket trade-throughs to investors after the fact. See SIA Letter.

[59] See Linkage Plan, Section 12.

the Commission. Moreover, as discussed further below, the Linkage Plan approved by the Commission must still be amended before the Commission would consider it to be reasonably designed to limit intermarket trade-throughs and, therefore, satisfy the exception from trade-through disclosure. Therefore, the Commission continues to believe that the Trade-Through Disclosure Rule is needed to ensure that, if the exchange on which their orders are executed does not belong to an approved linkage plan designed to limit intermarket trade-throughs, investors receive disclosure when their orders are not executed at the best price.

It is an important feature of the Trade-Through Disclosure Rule adopted today that it does not prohibit intermarket trade-throughs. At times, investors may value speed, size, or liquidity over price. By not prohibiting intermarket trade-throughs, the rule permits investors to achieve their goals and provides them with information that will facilitate their ability to actively monitor whether the quality of executions they receive is satisfactory.[60] Therefore, the Commission believes that the rule will help to ensure that the decision not to pursue publicly-displayed, superior prices is rooted in the interests of customers, not that of intermediaries. In addition, the Commission believes that in the absence of direct linkages, the rule will encourage broker-dealers to develop effective means of accessing better quotes published by other markets and thereby, avoid intermarket trade-throughs.[61]

1. Minimum Requirements for Linkage Plans

The Trade-Through Disclosure Rule excepts from its requirements any broker-dealer that executes customer orders on exchanges that participate in an intermarket linkage plan that is reasonably designed to limit intermarket trade-throughs. The Commission believes that to be reasonably designed to limit intermarket trade-throughs, a plan should contain, at a minimum, provisions to: (1) Limit participants from trading through, not only the quotes of other linkage plan participants, but also, the quotes of exchanges that are not participants in an approved linkage plan; (2) require plan participants to actively surveil their markets for trades executed at prices inferior to those publicly quoted on other exchanges; and (3) make clear that the failure of a market with a better quote to complain within a specified period of time that its quote was traded-through may affect potential liability, but does not signify that a trade-through has not occurred. Accordingly, the Linkage Plan must be amended before broker-dealers effecting transactions on exchanges participating in the plan would be excepted from the disclosure requirements of the Trade-Through Disclosure Rule.[62] The Commission does not agree that these modifications to the Linkage Plan would add significant costs without adding significant additional deterrence to intermarket trade-throughs, as stated by one commenter,[63] and believes that the minimum requirements are important factors to consider in assessing whether a linkage plan is ''reasonably designed to limit trade-throughs'' and therefore, vitiate the need for broker-dealers to provide disclosure to their customers.

The Commission requested comment on what provisions a linkage plan should include and whether the minimum factors set forth above are sufficient. In particular, the Commission asked for comment on whether, instead of requiring that a linkage plan limit intermarket trade-throughs of the quotes disseminated by markets that do not participate in an approved linkage plan, a linkage should only be required to limit intermarket trade-throughs of markets that participate in an approved linkage plan. In this regard, one commenter asserted that the Commission should not require a linkage plan to protect against trading through those markets that are not participants of the same linkage plan because those markets would be difficult to access effectively. This commenter noted that a linkage plan provides an efficient and almost instantaneous means by which one exchange participating in the plan can access another exchange participating in the plan, as well as minimum size guarantees for orders routed through the linkage, and therefore, assures customers and dealers access to the best bid or offer. In contrast, for markets that do not participate in the linkage plan, the lack of effective access simply increases the time needed to execute a customer order without any corresponding guarantee of execution.[64]

Other commenters, however, supported the notion that a linkage plan must provide some form of protection against trading through any exchanges that do not participate in the linkage plan.[65] One of the commenters stated that options exchanges should adopt reasonable rules and procedures to address trade-throughs of markets that do not participate in an approved linkage plan because, to instill investor confidence in the options market, there must be the same basic protections against trade-throughs as are available in the equity market.[66] Another commenter argued that firms that do not execute transactions on an exchange that participates in a linkage plan should be required to disclose intermarket trade-throughs of both participant and non-participant markets, particularly in light of the possibility that a market could opt out of the plan.[67]

In proposing this rule, the Commission recognized that, by providing an incentive for markets to cooperate in developing effective means to access other markets, intermarket trade-throughs would be minimized. However, the value of the Trade-Through Disclosure Rule would be greatly diminished to the extent that: (1) One or more options exchanges decide not to participate in an approved linkage plan; (2) intermarket trade-throughs were not minimized by the implementation of a linkage plan because the plan fails to provide protection across all markets, including markets that do not participate in the linkage plan; (3) away markets fail to complain about intermarket trade-throughs; or (4) market makers or specialists were not subject to potential sanctions for intermarket trade-throughs. Accordingly, the Commission believes that to provide sufficient

[60] One commenter contended that the proposal would do nothing to improve the transparency of execution quality. *See* Wolverine Letter. The Commission disagrees with this assertion. Although the disclosures about execution quality adopted today for the equity markets provides much more information to investors than the Trade-Through Disclosure Rule does, the Commission believes that, before execution quality disclosures could be required for options trading, potentially difficult issues, such as the absence of a consolidated NBBO in the options market, would have to be resolved. *See* Securities Exchange Act Release No. 43590 (November 17, 2000).

[61] The Commission notes, however, that the Trade-Through Disclosure Rule does not replace the well-established duty that brokers provide best execution to their customers. To the contrary, brokers remain obligated to seek the most favorable terms possible under the circumstances for their customers. *See supra* note.

[62] In addition, to comply with these standards, an exchange participating in a linkage would have to adopt rules to allow the exchange to sanction specialists or market makers that trade through better prices of other exchanges, maintain policies and procedures that would limit the occurrence of intermarket trade-throughs, and maintain records that would identify intermarket trade-throughs and any review or remedial action taken by the exchange in response to such intermarket trade-throughs.

[63] *See* JPMorgan Letter.

[64] *See* CBOE Letter.

[65] *See* ISE Letter and Phlx Letter.

[66] *See* ISE Letter.

[67] *See* Phlx Letter.

incentives to markets to avoid intermarket trade-throughs under the Trade-Through Disclosure Rule, an intermarket linkage plan must contain the provisions described above provide broker-dealers executing orders on markets participating in the plan with an exception to the disclosure requirements of the rule. Specifically, the Commission believes that to maintain the integrity and value of a Trade-Through Disclosure Rule, a linkage plan must provide protection against orders trading through the quotes of all markets, regardless of whether that market participates in the plan. However, to allow the options exchanges to retain greater flexibility, the Commission is not mandating participation in a particular intermarket linkage plan.

2. Mandatory Participation in a Linkage Plan

The Commission also sought comment on whether it should order the options exchanges to become participants in the Linkage Plan or any other intermarket linkage plan. In response, several commenters expressed their view that the proposed Trade-Through Disclosure Rule was a vehicle to compel options exchanges to join an intermarket linkage plan,[68] and one argued that the Commission should directly require all options exchanges to become participants in a qualified linkage plan rather than ''creating a disclosure-based exception that accomplishes *de facto* the same result.'' [69] Another commenter, however, expressly stated that it did not believe that participation in a single linkage plan should be mandatory. This commenter concurred with the Commission's contention in the Proposing Release that a single linkage may fail to adapt over time and may impede the entry of new market participants.[70]

The Commission intends for the intermarket linkage plan exception to the Trade-Through Disclosure Rule to encourage options markets to participate in a Commission-approved intermarket linkage plan. In fact, all five options exchanges are now participants in the Linkage Plan.[71] However, at this time, the Commission continues to be reluctant to force, by government mandate, all options exchanges to participate in a single linkage system that may, for example, fail to maintain up-to-date technology. The Commission believes that, in the absence of barriers to access, the growth of electronic order-routing systems may enable the options exchanges to access one another's markets directly through agreed-upon methods, or indirectly through broker-dealers. As a result, the Commission continues to believe that, given effective access, there may well be a variety of equally effective, or more effective, ways in which technology may be employed by the markets to encourage price priority and decrease the likelihood of intermarket trade-throughs in the options markets. Consequently, rather than mandating exchange participation in any one linkage plan, the Commission is adopting the more flexible approach, as proposed, that provides incentives for the markets and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs, while allowing market participants to choose the form of mechanism employed.

3. Exception From Disclosure Requirement for Block Trades

Finally, in response to comments, the Commission is adopting an exclusion from the trade-through disclosure requirement for block trades.[72] The Commission sought comment on whether to except block trades from the trade-through definition because of their size in relation to the quote, their special handling needs, and the greater resources of customers placing block orders to monitor the quality of executions they receive. Two commenters specifically supported such an exception.[73]

For ease of administration, the Commission has adopted, in part, the definition of ''block trade'' used in the Linkage Plan,[74] which was developed by the options exchanges. Because a block trade would involve 500 contracts or more and a premium value of at least $150,000, the Commission anticipates that only highly sophisticated investors will place such trades. Moreover, as noted by commenters, because of the size of these block orders, market participants placing such orders do not necessarily expect execution of the full order at the best-quoted price.[75] As a result, the Commission believes that the value of a trade-through disclosure for market participants placing such orders likely would be minimal.

4. Definition of Trade-Through

The Commission is adopting the definition of a trade-through and the exceptions to the definition of a trade-through, substantially as proposed. Specifically, a trade-through occurs when a customer order is executed at a price inferior to a quote published by another market at the time of execution.[76] The rule also identifies four circumstances in which a trade executed at a price inferior to a published price on another market would, nevertheless, not be considered a trade-through for purposes of the rule.[77]

a. OPRA Delays. Because a broker-dealer should not be required to disclose to its customer that its order was executed at a price inferior to a ''stale'' quote, a trade will not be considered a trade-through if it occurs while OPRA is experiencing queuing.[78] In the past, the aggregate message traffic generated by the options exchanges has, at times, surpassed OPRA systems capacity, which could result in the dissemination of quotes that are no longer accurate or accessible.

b. Systems Malfunctions. Similarly, the Commission believes that it is appropriate to exclude from the definition of trade-through trades that are executed at a time when an exchange has verified that the market publishing the better price was experiencing systems malfunctions, thus resulting in inaccessible quotes.[79] For example, this may occur when a broker-dealer has attempted to access the superior published quote and has been unsuccessful because of systems

[68] *See* ISE Letter; Phlx Letter; and CBOE Letter.

[69] *See* CBOE Letter.

[70] *See* PCX Letter. On the other hand, another commenter expressed concern that a disclosure-based approach to creating incentives for markets to link will not be as effective in fostering quote and order competition and interaction as a direct Commission role in mandating a universal linkage. *See* Morgan Stanley Letter. The Commission is not, however, attempting to foster quote and order interaction by adopting the Trade-Through Disclosure Rule, but is, instead, trying to achieve the more limited goal of reducing the possibility for investors' orders to be executed at a price inferior to the best available price.

[71] *See supra* notes 4 and 5.

[72] Exchange Act Rule 11Ac1–7(b)(2)(ii), 17 CFR 240.11Ac1–7(b)(2)(ii). The term ''block trade'' is defined as a transaction in an options series that is for 500 or more contracts and has a premium value of at least $150,000. Exchange Act Rule 11Ac1–7(a)(1), 17 CFR 240.11Ac1–7(a)(1).

[73] *See* JPMorgan Letter and SIA Letter.

[74] *See* Linkage Plan, Section 2 (3).

[75] *See* JPMorgan Letter and SIA Letter. One of these commenters noted that with respect to block-sized orders, the quote bears ''little relationship to the average price that the customer could get for the entire order.'' *See* JPMorgan Letter. The other of these commenters argued that ''because large orders are far more dependent on liquidity than smaller orders, the ability to get a block off on a timely, efficient basis may be severely impacted by strict adherence to a trade-through rule.'' *See* SIA Letter.

[76] Exchange Act Rule 11Ac1–7(b)(3), 17 CFR 240.11Ac1–7(b)(3).

[77] Exchange Act Rule 11Ac1–7(b)(4), 17 CFR 240.11Ac1–7(b)(4).

[78] Exchange Act Rule 11Ac1–7(b)(4)(ii), 17 CFR 240.11Ac1–7(b)(4)(ii).

[79] Exchange Act Rule 11Ac1–7(b)(4)(i), 17 CFR 240.11Ac1–7(b)(4)(i).

problems in the quoting market. The Commission believes that there is no value in requiring a broker-dealer to disclose an inability to access a market's quote that has been verified as inaccessible.

c. Relief from Firm Quote Obligation. The definition of trade-through also excludes a trade executed at a price inferior to a price published by another exchange if the other exchange or its members were relieved of their obligations under the Quote Rule because the exchange has determined, for example, that, as a result of unusual market conditions,[80] it is incapable of accurately collecting and disseminating quotes.[81]

One commenter recommended that the Commission provide brokers with discretion to interpret the exceptions broadly in light of their duty of best execution, instead of forcing a broker to incur the risk of subsequently providing an inferior price to a public customer against its better judgment. This commenter argued that a broker should have discretion to ''use the 'unusual market circumstances' exception to refuse to route a trade to an exchange that has a history of disseminating 'flickering' quotes, rather than being forced to disclose to the customer a trade-through of a phantom 'better' price that, in all likelihood, never existed.'' [82]

The Commission agrees that brokers must always consider their best execution obligations to their customers.[83] The Trade-Through Disclosure Rule does not prohibit intermarket trade-throughs; it merely requires a firm to provide information to its customer about the market at the time of execution. Therefore, the Commission does not agree that broker-dealers should be granted discretion to avoid disclosure if they trade through another market quote because of their discomfort with the quality of that market's quote. While the Commission appreciates the commenter's concerns regarding ''flickering quotes,'' the Quote Rule amendments adopted today are designed to address this issue by requiring that disseminated quotes be firm up to the applicable firm quote size.

d. Thirty-Second Delay. In addition, the Trade-Through Disclosure Rule excludes from the definition of trade-through a trade that occurs after an exchange member attempts to access a better-published quote for a customer order and the market publishing the better quote fails to respond to the order routed to it in a timely fashion.[84]

Although one commenter contended that the Commission should not adopt this exception to the definition of a trade-through because it condones the actions of a market maker who simply ignores an incoming customer order that is unfavorable or inconvenient,[85] the Commission believes that a broker-dealer should not be obligated to disclose a trade-through in the event that an exchange member attempted to access a better published quote for a customer order, but the market publishing the better quote failed to respond to the order routed to it within 30 seconds of receiving the order. In this instance, the exchange member has attempted to access the superior published quote and has been unsuccessful. The Commission believes that the originating broker-dealer should not be obligated to provide the disclosure when the member of another exchange has failed to satisfy its obligations under the Quote Rule. In addition, the Commission believes that there is no value in requiring an exchange member to repeatedly attempt to access an inaccessible quote, especially in a volatile market where substantial delays may result in far inferior executions for the investor. Further, the Commission believes that the amendments to the Quote Rule adopted today will ensure that responsible broker-dealers honor their quotes up to the size for which they are required to be firm, and expects exchanges to surveil their members to ensure compliance with the amended Quote Rule.

e. Trades Not Excluded from the Definition of Trade-Through. In the Proposing Release, the Commission sought comment on whether a trade-through disclosure requirement should apply to all trade-throughs, or only when an order is executed at a price that trades through a better price by a certain price increment or amount. The Commission noted that this question is particularly important in a decimals trading environment, where quotes may be for a smaller size and the trade-through price for smaller increments, and with respect to large orders, where the quote size may be small in relation to the order size.

Several commenters supported such a ''materiality'' standard.[86] For example, one commenter argued that all orders would benefit, regardless of size, from an exception to the disclosure requirement for trade-throughs of price increments immaterial in relation to the spread. This commenter believed that any trade-though disclosure should include the size of the traded-through quote, but that a materiality exception would be preferable to disclosure of the size of the quote, because such size disclosure would be more costly for market participants, including customers.[87] Another of these commenters believed the disclosure requirement should not apply if the price and size of the trade-through was *de minimus*. Although this commenter did not define *de minimus*, the commenter argued that given the imminent conversion to decimal pricing, the burdens of disclosing when an order trades through a quote that is better by a very small amount or is only for a small size would not be justified.[88] On the other hand, one commenter opposed adopting a *de minimus* exception to the trade-through definition due to the inherent difficulty in defining what constitutes *de minimus*, and the possibility that opportunities for the unbundling of orders to avoid trade-though liability would be created.[89]

The Commission believes that it is inappropriate at this time to attempt to establish a materiality standard. The Commission notes that, as of September 25, 2000, only 36 options are trading in decimals. As a result, the Commission does not believe that it, the options exchanges, or other market participants has had sufficient experience with a decimals environment. The Commission notes, however, that it will continue to evaluate this issue as decimal pricing is expanded to all options classes and the markets adapt to the decimals environment.

[80] Exchange Act Rule 11Ac1–1(b)(3), 17 CFR 240.11Ac1–1(b)(3). Currently, each options exchange has rules that allow the exchange to suspend its firm quote requirements if, for example, a systems malfunction or other circumstance impairs the exchange's ability to disseminate or update market quotes in a timely and accurate manner. *See* Amex Rule 958A; CBOE Rule 8.51(a); PCX Rule 6.86(d); Phlx Rule 1015(a)(ix); and ISE Rule 804(d). The options exchanges may have to amend these rules to conform to the Quote Rule's exception for unusual market conditions.

[81] Exchange Act Rule 11Ac1–7(b)(4)(iii), 17 CFR 240.11Ac1–7(b)(4)(iii).

[82] *See* JPMorgan Letter.

[83] *See supra* note 2. One commenter asserted that under the Commission's proposal, brokers would no longer have to make best execution evaluations. *See* Wolverine Letter. The Commission strongly disagrees with this view and expects brokers to continue to fulfill their obligations to seek the most favorable terms reasonably available under the circumstances for a customer's order.

[84] Exchange Act Rule 11Ac1–7(b)(4)(iv), 17 CFR 240.11Ac1–7(b)(4)(iv).

[85] *See* Brunelle Letter. Another commenter, however, supported this proposed exception. *See* ISE Letter.

[86] *See* JPMorgan Letter; CBOE Letter; and PCX Letter.

[87] *See* JPMorgan Letter.

[88] *See* PCX Letter.

[89] *See* CBOE Letter.

In addition, a few commenters recommended that the trade-through disclosure requirement not be applied to orders from upstairs broker-dealers and orders of customers who consent to the potential for an execution at an inferior price.[90]

Because upstairs broker-dealers' orders are not eligible to be transmitted through the linkage pursuant to the Linkage Plan, one commenter argued that broker-dealers should not be required to disclose an execution at a price inferior to the best price.[91] The Commission notes that the trade-through disclosure requirement would not require disclosure to upstairs broker-dealers because it only applies when a broker-dealer executes a non-broker-dealer order.

A commenter also recommended including an exception for trades of customers who request that their orders be executed on a particular market, regardless of whether a better price is available on another market. This commenter contended that a customer may give such consent because of its greater interest, for example, in the speed of execution.[92] Another commenter suggested an exception for when customers provide instructions to route, or avoid routing, their orders to a particular exchange, irrespective of price.[93]

The Commission does not believe that it is appropriate to except broker-dealers from the requirement to disclose a trade-through to its customer even when a customer requests that its order be executed on a particular market, regardless of price. While one commenter suggested that a trade-through disclosure to a customer that has explicitly requested an execution at an inferior price may be superfluous, the Commission is concerned that the adoption of such an exception may result in broker-dealers entering into blanket adhesion contracts with customers, solely to allow the broker-dealer to execute order flow on a particular options exchange even though that exchange does not provide the best price.[94] The Commission believes that such an exception would raise investor protection concerns, particularly with respect to unsophisticated investors who may not fully appreciate the impact of the agreement and may lack the ability to negotiate preferable terms. In addition, the Commission believes that in those instances where a customer has expressed a desire to have its order executed on a particular exchange regardless of a better published price available on another market, the customer will not perceive the disclosure of a trade-through as problematic.

Finally, the Commission's definition of a trade-through also includes transactions executed as part of a complex trade. Although the Commission proposed to exclude complex trades, which were defined as transactions in an option series that are executed in conjunction with related transactions occurring at or near the same time for the purpose of executing a particular investment strategy,[95] the Commission now believes that such an exclusion is not appropriate.[96] On further consideration, the Commission has determined that such disclosure is important, even to customers executing more complex trades. Because retail customers use these types of investment strategies, information about the execution price relative to other prices may be invaluable to their understanding and decision-making. Even the most sophisticated investors may find this information useful.

5. Compliance Date

The Trade-Through Disclosure Rule will become effective on February 1, 2001, and its compliance date is April 1, 2001. On April 1, 2000, broker-dealers will be required to make the required disclosures unless their transactions are effected on markets that are participants in an effective national market system options linkage plan that includes provisions reasonably designed to limit intermarket trade-throughs. The Commission believes that a linkage plan is not reasonably designed to limit intermarket trade-throughs unless it has been implemented and is operating. While one commenter expressed its view that the Commission should not require compliance with the Trade-Through Disclosure Rule until the Linkage Plan has been implemented,[97] the Commission is concerned that tying the compliance date to this event may provide a disincentive for the options markets to fully implement the Linkage Plan. Accordingly, the Commission does not, at this time, believe that it is necessary to delay the compliance date of this rule until the linkage is fully implemented and operating. The Commission will consider granting temporary exemptive relief to broker-dealers from the requirements of the rule if the markets continue to make substantial progress towards implementing the Linkage Plan.

B. Amendments to the Quote Rule

As discussed above, the Commission is adopting amendments to the Quote Rule to extend its application to options traded on national securities exchanges. Generally, the Quote Rule requires exchanges to collect quotations, and sizes associated with those quotations, from their members who are responsible broker-dealers and make those quotations and sizes available to quotation vendors for each subject security listed and admitted to unlisted trading privileges on the exchange.[98]

The Commission received several comment letters addressing the proposed Quote Rule amendments. A number of commenters voiced their support for amending the Quote Rule to include listed options,[99] stating, for example, that firm quotes will promote efficiency and increase customer confidence in the markets.[100] One commenter noted that the lack of such a rule in the options markets impeded firms' ability to execute customer orders in an efficient manner because they have to explore posted quotes to determine if a quote is firm for an entire order or only for an order of minimal size.[101]

Other commenters, however, opposed the proposed amendments to the Quote Rule.[102] Two of these commenters argued that the current exchange rules and exchange automatic execution systems sufficiently guarantee firm quotes to public customers. Thus, they contended that amending the Quote Rule would simply extend its application to broker-dealer orders, a result they opposed.[103] One commenter noted that current competition among market makers for public customer

[90] *See* PCX Letter and Brunelle Letter.

[91] *See* PCX Letter

[92] *See* PCX Letter.

[93] *See* Brunelle Letter.

[94] Payment for order flow and other similar arrangements increase the likelihood that such contracts could become commonplace.

[95] *See* Proposing Release, *supra* note 7.

[96] One commenter recommended narrowing the proposed definition of complex trades to exclude certain investment strategies that include stock trades, such as ''buy-writes,'' in which an investor buys stock and writes a call on that stock. *See* ISE Letter. The Commission believes, however, that other strategies, such as spreads (the simultaneous purchase or sale of options on the same underlying stock with different strike prices or expiration dates or both) and straddles (simultaneous purchase and sale of an equal number of calls and puts on the same underlying security with identical strike prices and expiration dates), are sufficiently similar to buy-writes to warrant similar treatment.

[97] *See* PCX Letter.

[98] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[99] *See* JPMorgan Letter; ISE Letter; PCX Letter; Lek Letter; Wolverine Letter; and SIA Letter.

[100] *See* Lek Letter and PCX Letter.

[101] *See* JPMorgan Letter.

[102] *See* Botta Letter; Susquehanna Letter; Brunelle Letter; and Phlx Letter.

[103] *See* Botta Letter and Susquehanna Letter.

orders is intense, and believed that the proposed amendments would force allocation of capital into areas of unacceptable risk, such as trading against other broker-dealers, and away from the facilitation of public customer orders. [104]

The Commission has carefully considered the issues raised by commenters and believes it is appropriate to adopt amendments to the Quote Rule to extend its application to the options markets. The Commission, however, has made accommodations for the way in which the options markets operate. The Commission believes that the amendments will provide significant and immediate benefits to investors. In particular, market participants, including customers and broker-dealers, will be able to rely on quotes up to their published size in routing orders that are not eligible for execution in the automatic execution systems. The Commission believes that this result should lead to increased competition on the basis of size among the options exchanges, which should enable investors to receive better executions for their orders. It will also enable market makers and other broker-dealers to more easily trade with displayed quotes, increasing the accuracy and efficiency of displayed quotes.

As noted above, the availability of quotation information is one of the key components of a national market system. While options quotation information is provided to market participants today through OPRA, the Commission believes that this information will be substantially enhanced by the amendments to the Quote Rule. Quotes are not useful to market participants if they are not honored. Further, because market participants will be required to disclose trade-throughs of superior quotes (unless an exception applies), these superior quotes must be firm for all market participants, including broker-dealers. Otherwise, the Trade-through Disclosure Rule would be unworkable, and market makers would be forced to either route customers' orders to anomalous quotes, or unwillingly match that quote to avoid trade-through disclosure. The Commission believes that requiring options quotes to be firm furthers the national market system goals of Section 11A [105] and will benefit all options market participants.

Because of developments in technology and changes in the options markets, the Commission also believes that the current exchange rules and automatic execution systems alone are no longer sufficient to provide adequate investor protections. Currently, the options markets are permitted to fade from their quotes without consequence, pursuant to their trade-or-fade rules.[106] In addition, as noted by one commenter, options market makers frequently change the terms of trades or ''break'' trades subsequent to execution, without prior notice to the customer.[107] Thus, options investors and their brokers cannot fully rely on the disseminated quotation information on which they base their order routing decisions. The Commission believes that options investors deserve the same protections as equity investors and therefore, the Commission is adopting amendments to extend the coverage of the Quote Rule to the options market with modifications to accommodate certain unique aspects of the options market. The Commission also believes that a market maker that executes a trade at its disseminated quote and then changes the terms or ''breaks'' the trade may well, absent exceptional circumstances, be in violation of the firm quote obligation adopted today.

1. Collecting and Making Available Quotation Sizes

Because the options markets currently do not disseminate to quotation vendors the size associated with their bids and offers [108] and due to the existing limitations on OPRA system capacity, the Commission is adopting amendments to the Quote Rule so that options exchanges may decide not to collect from their members and make available to vendors the size associated with each quotation in listed options. Instead, exchanges may choose to establish by rule and periodically publish the size for which their best bid and offer in each options series [109] that is listed on the exchange is firm. [110] If the rules of an exchange do not require its members to communicate to it quotation sizes for listed options, then responsible brokers or dealers that are members of that exchange will be relieved of their obligations under the Quote Rule to communicate to such exchange their quotation sizes. Instead, each such responsible broker or dealer may satisfy its firm quote obligation by executing any order to buy or sell a listed option that is a subject security, in an amount up to the size established by the exchange's rules. [111] An options exchange may, of course, choose to establish procedures for collecting from its members, and making available to vendors, the sizes of such members' quotes.

The Commission is not adopting the recommendation of a few commenters that exchanges be required to disseminate quotation sizes as soon as OPRA is capable of doing so. [112] One commenter raised the concern that the proposed amendments to the Quote Rule would result in each exchange using its portion of OPRA bandwidth differently, which could benefit exchanges that show relatively limited size information, and have a significant adverse effect on exchanges that collect and disseminate the ''real'' size of their trading interest. [113] This commenter suggested that the Commission use its exemptive authority under the Quote Rule to require all exchanges to disseminate size with their quotations, even if an exchange determines to establish by rule and periodically publish its firm quote size.

Another commenter, while also acknowledging OPRA capacity constraints, argued that the concept of the periodic publication of firm quote sizes is contrary to OPRA's plan to require the dissemination of size with every options quote by January 2001. [114] Thus, this commenter believed that the

[104] *See* Susquehanna Letter.

[105] 15 U.S.C. 78k–1.

[106] *See supra* note and accompanying text. The Commission expects the options exchanges will seek approval from the Commission to amend their existing rules to conform to the Quote Rule.

[107] *See* Brunelle Letter. This commenter believes that because options trades are broken so frequently, public investors, who are required to honor all of their commitments, are held to a much higher standard than exchange market makers. This commenter recommends that in addition to the rules proposed, the Commission require market makers to disclose their failures to honor quotes and completed transactions.

[108] Currently, OPRA does not have the systems capability to collect and disseminate quotes with size. OPRA is, however, scheduled to have this capability by January 2001. Some options markets may, however, choose to continue not to disseminate quote size.

[109] The Commission is including the definition of the term ''option series'' in the Quote Rule. Under Exchange Act Rule 11Ac1–1(a)(29), the term ''option series'' means contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions. 17 CFR 240.11Ac1–1(a)(29).

[110] Exchange Act Rule 11Ac1–1(d)(2), 17 CFR 11Ac1–1(d)(2).

[111] Exchange Act Rule 11Ac1–1(d)(2), 17 CFR 11Ac1–1(d)(2).

[112] In this regard, several commenters suggested that the Commission wait until OPRA is able to disseminate size before proceeding with the amendments. *See* Susquehanna Letter; Botta Letter; PCX Letter; Phlx Letter; and JPMorgan Letter. One commenter suggested that the Commission adopt this approach to quote size only temporarily. *See* Morgan Stanley Letter. Another commenter characterized the Commission's approach as an ''appropriate solution,'' arguing that the Commission should refrain from mandating that size be disseminated with each quotation until the existing limitations on OPRA systems capacity have been remedied. *See* SIA Letter.

[113] *See* ISE Letter.

[114] *See* Phlx Letter.

proposed amendments to the Quote Rule appeared to be unnecessary. Finally, one commenter recommended that any amendment to the Quote Rule require on-floor specialists and market makers, as well as the options exchanges, to publish on a quote-by-quote basis the size associated with each quote. [115]

The Commission has decided, at this time, not to require the options exchanges to disseminate quotes with size. Currently, OPRA does not have the capability to accept size with options quotes, although it does anticipate disseminating quotes with size in January 2001. The Commission notes that the options exchanges generate significantly more quotes than the equity exchanges. Adding size to quote messages will increase the bandwidth necessary to disseminate options market data, and possibly, increase the number of messages if a new quote is required every time its associated size is modified. As discussed above, over the past year, OPRA has suffered serious capacity constraints due to the tremendous amount of quote message traffic generated by the exchanges. Due to the limitations on OPRA systems capacity, the Commission, while supporting OPRA's efforts to modify its systems to accommodate size, does not believe that it is appropriate to mandate further burdens on OPRA systems capacity at this time.

Pursuant to the amendments to the Quote Rule adopted by the Commission today, the options exchanges will be required to publicize the size for which its quotes will be firm either on a quote-by-quote basis or by publicizing its rule establishing its firm quote sizes. The Commission believes that periodic publication will be sufficient to inform options market participants of the relevant size information they need to make informed order routing decisions. Although the Commission recognizes one commenter's concerns that disseminating quotes with size may require more OPRA systems capacity, the Commission believes that this is a competitive issue and consequently, so long as investors have access to the size information that they require, it is not necessary for the Commission to require the dissemination of quotes with size at this time.

2. Firm Quote Sizes for Customer and Broker-Dealer Orders

The Commission proposed two alternatives regarding the size for which responsible broker-dealers' quotes for listed options would be required to be firm. Under proposed Alternative A, the size for which a responsible broker-dealer's best bid or offer is firm would be required to be the same for orders received from customers and for orders received from broker-dealers. Proposed Alternative B would permit an exchange to establish different firm quote sizes for broker-dealer orders than for customer orders. The Commission requested commenters' views on these two alternatives.

Several commenters supported Alternative A under which the Commission proposed that the firm quote size be the same for both customer and broker-dealer proprietary orders. [116] One of these commenters argued that providing the same firm quote size to all market participants emboldens investor confidence in fair pricing because if the price of a security is too low, then another professional will be ready and able to bring the price in line by entering buy orders, and vice versa for sell orders. This commenter opposed a different firm quote sizes because it believed that this would permit a two-tiered market — one consisting of displayed quotes for non-professionals only, and another, ''shadow'' market for professionals. Further, the commenter argued that the supposition that market makers would widen their spreads if their quotes were exposed to other market professionals is unjustified and unsupported by empirical data, and in any case, the public is more harmed by non-competitive, un-real quotes than by wider spreads. [117] Another of these commenters, however, believed that applying the Quote Rule equally to all market participants would prove unworkable at this time because of the structure of the options market. [118]

On the other hand, several commenters preferred allowing responsible broker-dealers to be firm for different sizes for customers and broker-dealers, as proposed in Alternative B.[119] Some commenters argued that if market makers were required to establish a single quotation size for all market participants, they would likely decrease the disseminated size of their quotes and their execution guarantees, limiting liquidity available to customers.[120] They argued that the ability to establish differing quote sizes for broker-dealer and customer orders would allow market makers to provide customers with greater liquidity, while limiting their exposure to non-customers.[121] Other commenters argued that market makers, not the Commission, should determine how much liquidity they want to guarantee to professionals.[122]

One commenter explained that market makers provide different liquidity guarantees to professional orders to protect against being ''picked off,'' and noted that if market makers quote less aggressively, public customers whose orders are generally automatically executed at the NBBO could be adversely affected.[123] This commenter noted that market makers compete against each other by guaranteeing different sizes, which would be eliminated if only one quote size applied to all types of orders. Another commenter argued that options market makers are at far greater risk than stock specialists of being picked off by professionals and that it would be exponentially more difficult for an options market maker than for a stock specialist to provide continuously updated quotes that would be firm against professional interest.[124] However, another commenter noted that the equity market does not exempt traders and market makers from the Quote Rule when dealing with other broker-dealers.[125]

After careful review of the commenters' observations and suggestions, the Commission is adopting amendments to the Quote Rule that allow the options exchanges to establish different firm quote sizes for broker-dealer orders than for customer orders.[126] An exchange that chooses not to collect from their members and make available to vendors the size associated with each quotation in listed options may establish by rule and periodically publish the size at which its best bid or offer in each options series listed on the exchange is firm for orders from customers and orders from broker-dealers.[127] An exchange would also have the flexibility to collect from its members and make available to quotation vendors the quotation sizes at which such members are firm for customer orders and, at the same time, to establish by rule and periodically

[115] *See* Brunelle Letter.

[116] *See* JPMorgan Letter; ISE Letter; Lek Letter; Wolverine Letter; and Morgan Stanley Letter.

[117] *See* Lek Letter.

[118] *See* ISE Letter.

[119] *See* Botta Letter; CBOE Letter; PCX Letter; Susquehanna Letter; and SIA Letter.

[120] *See* Botta Letter; CBOE Letter; PCX Letter; ISE Letter; Susquehanna Letter; and SIA Letter.

[121] *See* PCX Letter; CBOE Letter; and ISE Letter.

[122] *See* Susquehanna Letter and Botta Letter.

[123] *See* Botta Letter.

[124] *See* Susquehanna Letter.

[125] *See* Lek Letter.

[126] Exchange Act Rule 11Ac1–1(d)(1), 17 CFR 240.11Ac1–1(d)(1). Exchange rules must require responsible broker-dealers to be firm for orders for the accounts of broker-dealers for at least one contract.

[127] Exchange Act Rule 11Ac1–1(d)(1)(ii), 17 CFR 240.11Ac1–1(d)(1)(ii).

publish a different size for which their members' quotes must be firm for broker-dealer orders.[128]

The Commission believes that the unique structure of the options markets, specifically, the tremendous number of products that must be continuously quoted by options market makers or specialists, warrants this specific accommodation. Currently, there are approximately 178,000 options series for which options market makers and specialists continuously provide two-sided quotations. Consequently, the Commission believes that permitting different quote size guarantees is the best course of action at this time to help ensure the continued availability of liquidity, which facilitates the maintenance of fair and orderly markets. The Commission will, however, continue to evaluate the markets to determine if, in fact, this provision is warranted.

3. Minimum Quote Size

In the Proposing Release, the Commission requested commenters' views on whether the Commission should establish a minimum number of contracts for which quotes should be firm. The Commission received no comments in support of mandating a minimum firm quote size.[129]

Two commenters did suggest that in absence of a mandated minimum firm quote size, quotes should be firm for at least one contract, which has the economic equivalent of 100 shares of stock, the minimum quote size in the equities markets.[130] One of these commenters believed that the minimum firm quote size should be viewed as a competitive, rather than a regulatory, issue.[131] Other commenters argued against a minimum firm quote size because any such minimum would facilitate and encourage wide-scale proprietary trading by broker-dealers on markets in which they are not members.[132] One of these commenters believed that non-members of an exchange should not be allowed to gain free access to the exchange, because such access could dilute the value of exchange memberships.[133]

The Commission agrees that quote size is a competitive issue and should not be dictated by regulation. Under the Quote Rule adopted today, each options exchange will be required to publicize the size at which their market makers or specialists are firm. The Commission believes that competitive market forces will dictate appropriate firm quote sizes for customer and broker-dealer orders in the options markets.

Nevertheless, the Commission believes that each disseminated quote must represent at least one contract — any less would mean that a quote was not actually firm. For this reason, the Commission is adopting a requirement that if an exchange allows quotes to be firm in different sizes for broker-dealer orders than for customer orders, its rules must require its market makers to be firm for a minimum of one contract. As noted by one of the commenters, one contract is the economic equivalent of 100 shares of stock and therefore, this requirement establishes in the options market a standard equivalent to that applied in the equities market.

On a related note, the Commission believes that in those instances in which a quote is disseminated by an exchange that collects and aggregates quotation sizes from several responsible broker-dealers, each responsible broker-dealer would be required to be firm for at least one contract for broker-dealer orders.[134] Therefore, for example, if an exchange collects and disseminates a quote, the size of which reflects the aggregate size of three competing responsible broker-dealers, the exchange quote must be firm to orders from broker-dealers for at least three contracts, one for each responsible broker-dealer.[135]

4. Automatic Execution Systems

The amendments to the Quote Rule adopted today do not affect the ability of the options exchanges to provide execution guarantees through their automatic execution systems. The exchanges' automatic execution systems are generally used for small, public customer market and marketable limit orders. Options exchanges will continue to have the flexibility to publish a different firm quote size for a particular options class than its automatic execution guarantee size. The Commission, however, may reevaluate this approach if it results in a decrease in liquidity available for customer orders.

5. Exception During Trading Rotations

Under the Quote Rule, responsible brokers or dealers are relieved of their obligations if, for example, the responsible broker or dealer is in the process of effecting a transaction and immediately thereafter, communicates a revised quotation. The amendments to the Quote Rule being adopted today also relieve responsible brokers or dealers from their firm quote obligations when an order for listed options is presented during a trading rotation in that listed option.[136] During trading rotations, market makers may be unable to generate quotes in a timely fashion. The Commission is adopting as part of the Quote Rule the definition of ''trading rotation'' proposed in the Trade-Through Disclosure Rule, with a slight modification.[137] Specifically, the definition of trading rotation has been modified to include references to reopening and closing rotations, as well as to opening rotations as proposed, because the same difficulties in providing firm quotes during opening rotations apply during those other types of trading rotations.[138]

6. Thirty-Second Response

As discussed above, if a responsible broker or dealer fails to respond to an incoming order within the 30 seconds, the Trade-Through Disclosure Rule permits the routing broker or dealer to execute its customer's order at an inferior quote without being required to disclose the better, but unresponsive, quote to its customer.[139] The Commission is adopting an amendment to the Quote Rule[140] to require a responsible broker or dealer to respond to an order to buy or sell a listed option in an amount greater than the firm quote size within 30 seconds by either: (i) executing the entire order; or (ii) executing at least that portion of the order equal to the applicable firm quote size and revising its bid or offer.[141] The

[128] Exchange Act Rule 11Ac1–1(d)(1)(iii), 17 CFR 240.11Ac1–1(d)(1)(iii).

[129] *See* PCX Letter; Phlx Letter; JPMorgan Letter; ISE Letter; CBOE Letter; and Susquehanna Letter.

[130] *See* PCX Letter and SIA Letter.

[131] *See* PCX Letter.

[132] *See* Phlx Letter and Morgan Stanley Letter.

[133] *See* Phlx Letter.

[134] For customer orders, each responsible broker-dealer will be firm for its published size.

[135] In comparison, exchanges that disseminate one quote for a trading crowd, based on a single, automatically generated quote would be required to be firm only for a minimum of one contract.

[136] Exchange Act Rule 11Ac1–1(d)(4)(ii), 17 CFR 240.11Ac1–1(d)(4)(ii).

[137] The Commission did not propose in the Proposing Release to include a definition of the term ''trading rotation'' in the Quote Rule.

[138] Exchange Act Rule 11Ac1–1(a)(30), 17 CFR 240.11Ac1–1(a)(30).

[139] Exchange Act Rule 11Ac1–7(b)(4)(iv), 17 CFR 240.11Ac1–7(b)(4)(iv).

[140] Exchange Act Rule 11Ac1–1(d)(3), 17 CFR 240.11Ac1–1(d)(3). A responsible broker's or dealer's applicable firm quote size would be its published quote size or, if a responsible broker or dealer has been relieved of the obligation to communicate its quotation sizes, the minimum firm quote size established by its exchange's rules. One commenter noted that the proposed amendments to the Quote Rule failed to incorporate the use of a defined term, ''published quotation size,'' where applicable. *See* ISE Letter. In response to the comment, the Commission is adopting technical amendments to the Quote Rule to more uniformly apply the defined term, published quotation size.

[141] When a responsible broker-dealer chooses to respond to an order in an amount greater than the firm quote size by executing only that portion of the

Quote Rule requires responsible brokers and dealers to *immediately* execute an order to buy or sell listed options in an amount equal to or less than its firm quote size.[142]

The Commission requested comment on its proposal to require responsible broker-dealers, within 30-seconds, to either execute an entire order or execute that portion of an order that is equal to its firm quote size, and thereafter revise its bid or offer. One commenter stated that, ultimately, the Commission should require that quotes be subject to automatic or nearly automatic executions.[143] Similarly, several other commenters considered 30 seconds too long because it imposed unnecessary market risk on customers and could result in market makers abusing the time period by holding orders until the last second in an attempt to gain an advantage.[144] One commenter suggested that market makers be required to immediately respond to orders that are not larger than the disseminated quote size and respond within 15 seconds, which is the turnaround time in the Linkage Plan, to orders of greater size.[145] Another commenter suggested a 10-second response time would be more appropriate.[146]

Further, because different types of orders require different handling procedures, which means that execution times will be different, one commenter opposed any requirement that would institute an across-the-board 30-second reporting requirement for all orders.[147] This commenter suggested that the Commission defer any decision on this issue until the Linkage Plan has been implemented and the exchanges have gained some experience and data regarding turnaround times. In addition, this commenter suggested that if the Commission extends trade-through protection to markets that do not participate in any approved linkage plan, 30 seconds may be too long a time period for those instances in which an order is routed to a market that does not participate in any approved linkage plan, because there may not be a guarantee of an execution in the event that such market backs away from its quote or is not firm for the entire order.

Finally, another commenter believed that the 30-second response time would not delay trades but suggested that the Commission make an exception for fast market conditions, and remain open to changing the response time as technology improves.[148]

For orders greater than an exchange's firm quote size, the Commission is adopting the 30-second response requirement, as proposed. The Commission believes that the Quote Rule currently requires responsible broker-dealers to immediately execute orders in a size up to its firm quote size and is not amending that requirement as applied to options. Accordingly, orders equal to or smaller than a responsible broker-dealers' firm quote size must be immediately executed.

The Commission believes that it is appropriate to establish a time limit by which a recipient market maker must execute an order larger than its quote, or change its quote. The Commission believes that a time period must be set forth in the rule to prevent broker-dealers from waiting an inordinate amount of time before executing an order or changing their quote. In this regard, the Commission is concerned that in the absence of a set time frame, the execution of orders may be unduly delayed. Therefore, at this time, the Commission believes that the 30-second time limit appropriately balances the need for price priority against the need for efficient execution of orders. The Commission will, however, evaluate this time frame as the exchanges implement these amendments and as technology progresses to determine if another time frame is more appropriate.

7. One-Percent Exception

Under the Quote Rule exchanges are required to collect and make available the quotes communicated to them by responsible broker-dealers for subject securities. A subject security is any exchange-traded security except a security for which an exchange's executed volume during the most recent calendar quarter comprised one percent or less of the aggregate trading volume for such security as reported to OPRA, and any security actually quoted by an exchange.[149] One commenter believed that this exception was not necessary for listed options.[150] This commenter argued that the possibility of a chilling effect on the liquidity of inactively-traded securities would not justify the monitoring burden that the exception would impose on brokers, who would be forced to keep track of which quotes were firm and which, due to the one percent exception, were not.

The Commission believes that the options markets and options market makers should be permitted to make use of the one percent exception. The Commission is not persuaded that this exception, applied for years in the equity markets, will impose significant compliance burdens on market participants. Any quote actually published by the exchange must be firm.

8. Amendments to Defined Terms

To effectuate the application of the Quote Rule to listed options, the Commission is amending several defined terms used in that rule. In particular, the Commission is expanding application of the Quote Rule to include transactions in listed options [151] by amending the definition of the term ''reported security,'' [152] to include any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan [153] or an effective national market system plan for reporting transactions in listed options.[154] Consequently, listed options are now also included within the definitions of ''covered security,'' [155]

order equal to the firm quote size, and thereafter, revising its bid or offer to an inferior price, the Commission expects that, in the absence of a price movement in the underlying security, the responsible broker-dealer will not reinstate its original bid or offer for at least thirty seconds. A responsible broker-dealer may not reinstate its bid or offer for at least thirty seconds even if a competing market maker independently quotes at the original price during the thirty second period.

[142] Exchange Act Rule 11Ac1–1(c)(2), 17 CFR 240.11Ac1–1(c)(2).

[143] *See* Morgan Stanley Letter.

[144] *See* Phlx Letter; ISE Letter; and Brunelle Letter.

[145] *See* ISE Letter.

[146] *See* Brunelle Letter.

[147] *See* CBOE Letter.

[148] *See* JPMorgan Letter.

[149] *See* Exchange Act Rule 11Ac1–1(a)(25), 17 CFR 240.11Ac1–1(a)(25).

[150] *See* JPMorgan Letter.

[151] The Commission defines the term ''listed option'' in the Quote Rule as any option traded on a registered national securities exchange or automated facility of a registered national securities association. *See* Exchange Act Rule 11Ac1–1(a)(27), 17 CFR 240.11Ac1–1(a)(27).

[152] One commenter noted that by changing the definition of reported security in the Quote Rule, options would be subject to the Limit Order Display Rule, Exchange Act Rule 11Ac1–4, 17 CFR 240.11Ac1–4, which incorporates by reference the definition of reported security in the Quote Rule. *See* JPMorgan Letter. As the Commission did not intend to amend the Limit Order Display Rule in this manner, the Commission is adopting a conforming amendment to the definition of reported security in the Limit Order Display Rule, to retain the existing definition in that rule.

[153] All national securities exchanges and national securities associations must file with the Commission a transaction reporting plan regarding transactions in listed equity and Nasdaq securities. *See* Exchange Act Rule 11Aa3–1(b)(1), 17 CFR 240.11Aa3–1(b)(1).

[154] Currently, the OPRA Plan is the only effective national market system plan that collects, processes, and makes available transaction reports for listed options.

[155] The term ''covered security'' is defined as any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Exchange Act, 15 U.S.C. 78c(a)(51)(A)(ii). *See* Exchange Act Rule 11Ac1–1(a)(6), 17 CFR 240.11Ac1–1(a)(6).

''exchange-traded security,''[156] and ''subject security.''[157] Thus, options exchanges and market makers are obligated to publish their quotes and, as importantly, be firm for those quotes.

In addition, the Commission is amending the definition of ''consolidated system'' under Rule 11Ac1–1(a)(5)[158] to include a transaction reporting system operating pursuant to an effective national market system plan, as proposed. The effect of this amendment is to make clear that listed options would be ''subject securities'' with respect to an exchange or association only if, during the most recent calendar quarter, the exchange or association chooses to publish quotes or the aggregate trading volume on such exchange or association is more than one percent of the aggregate trading volume as reported by OPRA.

9. Compliance Date

The amendments to the Quote Rule become effective on February 1, 2001, and have a compliance date of April 1, 2001. Although several commenters recommended that market makers and exchanges not be required to comply with the amendments to the Quote Rule until OPRA is able to disseminate quotes with size,[159] the Commission believes that these amendments will provide significant benefits to options market participants and does not believe that they should be delayed while OPRA develops new systems changes. Further, because the options exchanges will not be required to disseminate size on a quote-by-quote basis, market makers and exchanges can comply with the amendments to the Quote Rule even if OPRA is unable to accept quotes with size by April 1, 2001.

V. Paperwork Reduction Act

Certain provisions of the new rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[160] Accordingly, the Commission submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission proposed, and OMB approved, amendments to the collection of information titled ''Rule 11Ac1–1, Dissemination of Quotations'' (OMB Control Number 3235–0461). The Commission also proposed to create a new information collection entitled ''Rule 11Ac1–7, Trade-Through Disclosure Rule.'' OMB has approved the new collection, and has assigned it OMB Control Number 3235–0543, with an expiration date of November 30, 2003. 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 Proposing Release solicited comments on these collection of information requirements.[161] No comments were received that addressed the PRA portion of the Proposing Release. The Commission believes that its previously published estimates of the information collection burdens associated with the new rule and rule amendments are appropriate.

Any collection of information pursuant to the new rules would be mandatory. Market centers that are national securities exchanges or national securities associations would be required to retain the required collections of information for not less than five years, the first two years in an easily accessible place. Broker-dealers would be required to retain the collections of information for not less than three years, the first two years in an easily accessible place.

A. Use and Disclosure of the Information Collected

The information collected pursuant to the Trade-Through Disclosure Rule would be sent to customers and retained by broker-dealers. No information, however, will be collected or retained under this rule if all of the options exchanges participate in an effective national market system options linkage plan that is reasonably designed to limit intermarket trade-throughs. This information would be used by customers to evaluate the quality of the executions they receive. It would also be used by broker-dealers to evaluate and make determinations related to their best execution obligations. The Commission and the options markets would use the information collected pursuant to the rule for inspections, examinations, trading reconstructions, enforcement inquiries or investigations.

The information collected pursuant to the Quote Rule would be held by broker-dealers and markets. Customers of broker-dealers, as well as other market participants, would use this information to determine the sizes associated with the best prices available for listed options. The Commission and self-regulatory organizations (''SROs'') would use the information collected pursuant to the rule for inspections, examinations, trading reconstructions, enforcement inquiries or investigations.

The Commission and other securities regulatory authorities would obtain possession of the information only upon request. Any collection of information received by the Commission, SROs, and other securities regulatory authorities would not be disclosed under the terms of the proposal, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

B. Trade-Through Disclosure Rule

1. Capital Costs

As the Commission noted in the Proposing Release, if a broker-dealer effects trades on a market that participates in an approved linkage plan with provisions reasonably designed to limit intermarket trade-throughs, including trade-throughs of prices on markets not participating in a linkage plan, the broker-dealer will have no paperwork capital costs or paperwork burdens under the Trade-Through Disclosure Rule. The same will hold true if all options markets participate in such a linkage plan. As noted above, all five options exchanges are currently participants in the Linkage Plan approved by the Commission on July 28, 2000.[162] Only minor modifications to the Linkage Plan are necessary for it to be considered reasonably designed to limit intermarket trade-throughs.

The Trade-Through Disclosure Rule would require broker-dealers to make certain disclosures to customers if the broker-dealer effects trades on markets that do not participate in an approved linkage plan. Broker-dealers would incur paperwork costs to modify systems to permit them to: (1) Receive information about when a trade-through has occurred and the price that was traded through; (2) match information about trade-throughs with customer accounts; and (3) disclose to customers when trade-throughs occur. The Commission has estimated that it would take a computer programmer at an

[156] The term ''exchange-traded security'' is defined as any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange. *See* Exchange Act Rule 11Ac1–1(a)(10), 17 CFR 240.11Ac1–1(a)(10).

[157] The term ''subject security'' is defined to include any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system. *See* Exchange Act Rule 11Ac1–1(a)(25), 17 CFR 240.11Ac1–1(a)(25).

[158] Exchange Act Rule 11Ac1–1(a)(5), 17 CFR 240.11Ac1–1(a)(5).

[159] *See* Susquehanna Letter; Botta Letter; PCX Letter; Phlx Letter; and JPMorgan Letter.

[160] 44 U.S.C. 3501 *et seq.*

[161] *See* Proposing Release, *supra* note .

[162] *See* Linkage Plan, *supra* note 4.

hourly rate of approximately $50 [163] between 500 and 1,000 hours to modify the average broker-dealer's systems to receive trade-through information, at a cost of between $25,000 and $50,000 for each broker-dealer. Approximately 7,500 broker-dealers were registered with the Commission as of December 31, 1999. Of those, approximately 3,800 conduct business with the general public. Most introducing firms, however, rely on their clearing firms to generate confirmation statements for customers.[164] As a result, fewer than 330 broker-dealers would actually have to modify their systems, should any modifications be necessary. However, if all 330 registered broker-dealers that clear customer accounts pursuant to Exchange Act Rule 15c3–3 [165] were required to make these systems modifications, the one-time paperwork cost would be between $8,250,000 and $16,500,000.

2. Burden Hours

If a broker-dealer effects trades on markets that do not participate in an approved linkage plan with provisions reasonably designed to limit intermarket trade-throughs, including trade-throughs of prices on markets not participating in an approved linkage plan, the broker-dealer would be required to disclose trade-throughs to its customers. However, because broker-dealers' systems would have already been reprogrammed to receive information about trade-throughs and to appropriately disclose such trade-throughs to customers, the Commission has estimated that the paperwork burden of the disclosure for broker-dealers would be nominal, since it would merely require a small amount of additional information to be provided to customers at or before the completion of the transaction on confirmation statements, or in some equivalent fashion.[166]

C. Amendments to the Quote Rule

1. Capital Costs

In the Proposing Release, the Commission noted that options exchanges are obligated already, pursuant to their participation in the OPRA Plan, to collect bids and offers, and send them to OPRA for dissemination. However, under the amended Quote Rule, the options exchanges will be required to either collect and make available to vendors quotation sizes associated with such bids and offers, or to establish by rule and periodically publish the sizes for which a quote must be firm, and to file proposed rule changes to identify unusual market conditions.

If an exchange chooses not to collect and make available to vendors quotation sizes associated with its members' bids and offers, but instead chooses to implement rules and periodically publish such rules establishing the sizes for which its quotes will be firm, it would incur one-time costs to file and obtain approval of these rule changes, as well as other related rules. The Commission estimated that each of the five options exchanges would need to file two rule changes to comply with the proposed amendments to the Quote Rule, for a total of 10 rule changes. The Commission has estimated that a routine rule change requires approximately 25 hours of legal review at an hourly cost of $98.25,[167] plus one hour of secretarial time at an hourly cost of $30.40,[168] for a total cost of $2,487 per proposed rule change submitted for Commission approval. Therefore, the Commission has estimated that the aggregate cost of two proposed rule changes filed by each of the five options exchanges would total approximately $24,867.

Also, as noted in the Proposing Release, broker-dealers that are market makers or specialists have existing obligations under exchange rules to communicate their bids and offers to their exchanges, and already do so. Therefore, they would incur no additional paperwork costs from the amended Quote Rule beyond those related to systems changes, discussed below, to comply with the amended Quote Rule. Market makers and specialists may, to comply with the amended Quote Rule, change their quote-setting practices by changing the factors used to establish quotes through automated quoting systems (*i.e.*, resetting the parameters). The Commission notes that almost all option quotes are currently set by automated quoting systems. The Commission estimated broker-dealer systems changes made to comply with the amended Quote Rule would require changes estimated to take approximately three to five minutes per options class. As there are approximately 3,000 options classes eligible for multiple listing, the Commission estimated that the total burden for one market could range from 180 to 250 hours. For all five markets, the total burden could range from 900 to 1,255 hours. The hourly rate of an exchange clerk that would make the required system changes is $32.50;[169] therefore, the total cost for these changes could range from $29,250 to $40,787.

2. Burden Hours

The Commission estimated that the five options exchanges may, to comply with the Quote Rule, amend their rules at most once per year, for a total of five proposed rule changes. The Commission estimated that a routine proposed rule change takes 25 hours of legal review at an hourly cost of $98.25 [170] plus one hour of secretarial time at an hourly cost of $30.40,[171] for a total cost of $2,487 per proposed rule change. Therefore, the total annual cost of five exchanges' proposed rule changes would impose a burden of $12,433.

Broker-dealers would not incur any additional paperwork cost from the amended Quote Rule beyond the systems changes discussed above. Market makers and specialists already are required to make and provide quotes in options to their exchanges. As a result, the amendments to the Quote Rule to include options would require only that market makers and specialists be firm for their quotes, which would impose no additional paperwork burden on them.

VI. Costs and Benefits of Final Rules

Recent increases in the multiple listing of options classes previously listed on a single exchange have

[163] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Management and Professional Earnings in the Securities Industry 1999, published by the SIA (''SIA Report'').

[164] The Commission estimates that none of the 41 small broker-dealers who do not have a relationship with a clearing firm regularly represent customer options orders.

[165] 17 CFR 240.15c3–3.

[166] The Commission's adoption of an exception to the disclosure requirement of the Trade-Through Disclosure Rule for block orders would only reduce this burden. Because this burden was already determined to be nominal, this change does not affect the Commission's initial burden estimate. *See* Proposing Release, *supra* note 6.

[167] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 163.

[168] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Office Salaries in the Securities Industry 1999.

[169] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 163.

[170] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* SIA Report *supra* note 163.

[171] The hourly rate contains 35% overhead, which includes, among other costs, telephone, postage and copying. *See* Report on Office Salaries in the Securities Industry 1999.

intensified the competition among the option exchanges and heightened the need to further integrate the options markets into the national market system. While the growth in multiple trading has increased the competition between markets, it also has dramatically altered the environment in which options market participants conduct their trading. In particular, multiple trading raises new best execution challenges for brokers. When an option is listed on only one exchange, brokers do not have to decide where to route an order, and consequently, satisfying their best execution obligations is less complex than when they must consider the relative merits of routing orders to two or more market centers. With as many as five options exchanges currently trading certain options classes, brokers are required to regularly and rigorously evaluate on a more frequent basis the execution quality available at each options exchange.

Directly relevant to a broker's ability to obtain best execution for its customers is the ability to get the best price available. The considerable growth in the number of options classes traded on more than one exchange has significantly increased the likelihood of intermarket trade-throughs. With the current expansion of multiple trading in options, the Commission is increasingly concerned about customer orders, which are sent to one exchange, and executed at prices that are inferior to quotes published by another market. As a result, the Commission believes that adoption of the Trade-Through Disclosure Rule and amendments to the Quote Rule are necessary at this time to encourage the removal of barriers to access to, and the use of efficient vehicles to reach, better prices on another market.

A. Costs and Benefits of the Trade-Through Disclosure Rule

Under the Trade-Through Disclosure Rule, a broker generally will be required to disclose to its customer, in writing at or before the completion of the transaction, when the customer's order for listed options was executed at a price inferior to a better published quote and the better published quote available at that time.[172] A broker-dealer will not be required to make this disclosure if any of the four exceptions to the definition of a trade-through apply, which include when: (1) The market on which the order is executed has verified that the market publishing the better price is experiencing systems problems, which make the quote inaccessible, (2) OPRA is experiencing queuing, (3) the market publishing the better price is relieved of its obligations to publish firm quotes, or (4) the market publishing the better quote fails to respond to an order routed to it within 30 seconds.

A broker-dealer also will not be required to provide such disclosure to its customer if it effects the transaction on an exchange that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price or the customer order was executed as part of a block trade.[173] Exchanges also will be required to surveil and sanction specialists or market makers that trade through better prices published by other exchanges, particularly because under the intermarket linkage plan exception, broker-dealers need not disclose to their customers if their orders are executed at a price inferior to a quote published by another market.

1. Comments

In the Proposing Release, the Commission requested comments on all aspects of the costs and benefits of the rule, including identification of additional costs or benefits of the new rule. In addition, the Commission encouraged commenters to identify or supply any relevant data concerning the costs or benefits of the new rule.

None of the commenters specifically addressed the costs or benefits of the proposed Trade-Through Disclosure Rule. However, several commenters discussed certain aspects of the Commission's proposal, which implicitly addressed the costs or benefits of the proposal, such as the likelihood that the rule would help to prevent trade-throughs and therefore, implicitly the associated costs of trade-throughs to investors. For example, one commenter believed that trade-throughs would be virtually eliminated if a broker-dealer were required to disclose to a customer that an order was executed at a price that was inferior to the best-published quote.[174] In addition, another commenter believed that a linkage plan must provide some form of protection against trading through exchanges that do not participate in an approved linkage plan to instill investor confidence in the options markets.[175]

One commenter, however, did not believe that the imposition of a disclosure requirement would have a significant impact on the frequency of trade-throughs.[176] In addition, another commenter believed that the Commission should modify the provisions it requires for a linkage plan to satisfy the exception to the disclosure rule so that the recently approved Linkage Plan[177] qualified as reasonable without further amendment.[178] The commenter believed that the additional factors proposed as elements of a plan reasonably designed to limit trade-throughs would add significant costs to the Linkage Plan without adding significant additional deterrence.[179] In addition, this commenter believed that if all or almost all of the options exchanges are expected to join the Linkage Plan, the Commission should delay the adoption of the rule, because it would not be cost-effective to require firms to re-design their confirmation systems to comply with such a rule if the rule then became obsolete because all of the exchanges were members of an approved linkage that meets the rule's requirements. Another commenter believed that the Commission should not extend trade-through protection to those markets that are not members of the same linkage plan because they would be difficult to access effectively.[180]

2. Benefits

An intermarket trade-through may be costly to an investor primarily because the investor receives an execution at a price that is not the best price available. An intermarket trade-through also has potential costs for the broker-dealer or customer responsible for the best quote because that quote or customer order does not receive the execution it would have if the order that was executed at the inferior price were instead routed to it.[181] Consequently, intermarket trade-throughs may increase the incidence of unexecuted customer limit orders not being executed in a timely manner.

[172] Exchange Act Rule 11Ac1–7(b)(1), 17 CFR 240.11Ac1–7(b)(1). The Commission believes that a broker-dealer should be allowed to rely on the market of execution to notify the broker-dealer of when a trade-through has occurred and the best quote at that time.

[173] Exchange Act Rule 11Ac1–7(b)(2), 17 CFR 240.11Ac1–7(b)(2).

[174] *See* Lek Letter.

[175] *See* ISE Letter.

[176] *See* CBOE Letter.

[177] *See supra* notes 4 and 5 and accompanying text.

[178] *See* JPMorgan Letter.

[179] *See* JPMorgan Letter.

[180] *See* CBOE Letter.

[181] It is possible that an order may not be routed to the market publishing the best quote, if the original market matches the better quote. However, the Commission believes that the Trade-Through Disclosure Rule may ensure that the customer submitting the order will at least receive an execution at the better published price.

To attempt to gauge the incidence of intermarket trade-throughs, the staff looked at trading involving the 50 most active, multiple-listed options classes, in which there is a great deal of investor interest. The staff's review of these trades showed that approximately 5% of all trades (or 7,964 trades for a total of 156,403 contracts) in the 50 most active multiple-listed option classes took place at prices inferior to the best price quoted on a competing exchange during the week of June 26, 2000.[182] To better evaluate the execution quality of small customer orders, the staff also examined automatic execution trades in the 50 most active multiple-listed options classes. The staff also found that approximately 1% of all automatic execution trades (or 464 automatic execution trades for a total of 2,336 contracts) in the 50 most active multiple-listed option classes took place at prices inferior to the best price quoted on a competing exchange during the week of June 26, 2000.[183]

Investors would benefit from the Trade-Through Disclosure Rule because they would be informed when their orders are executed at a price inferior to the best available price. With that information, investors would have the opportunity to reduce the likelihood that their orders would be executed at a price inferior to a price displayed by another market by selecting broker-dealers that effect their transactions on markets that are participants in an approved linkage plan with provisions reasonably designed to limit trade-throughs. Even if only one-half of all orders executed through automatic execution systems were executed at the best-published quote (*i.e.,* trade-throughs of automatic execution trades were eliminated), the estimated annual savings to investors trading through exchanges' automatic execution systems would be approximately $5,500,000 each year.[184] If all trades were considered, the elimination of trade-throughs would result in substantially higher annual savings to investors.[185]

3. Costs

The Trade-Through Disclosure Rule may require broker-dealers and markets to incur capital costs, such as one-time costs to modify existing systems. For example, the new rule could impose one-time costs on markets and broker-dealers that must modify systems to determine when trade-throughs have occurred and to issue notifications to customers of trade-throughs. Further, to identify when an order trades through a posted quote, information systems would need to be developed that could identify the displayed quotes at the time of execution. Because the Commission would allow broker-dealers to rely on notifications from the markets when trade-throughs occur and the better available quote at that time, the costs of such information systems may be borne by the options markets.

In addition, implementing the rule could require broker-dealers to provide customer notifications at or before the completion of the transaction. A broker-dealer may provide this disclosure to its customers in conjunction with the confirmation statements routinely sent to customers and could be issued in either electronic or paper form.[186] An alternative to changing confirmation statements would be for broker-dealers to route orders to exchanges participating in an approved linkage plan.[187] Although the new rule does not require the implementation of such a plan, it does envision that an approved plan could be implemented. Thus, one possible cost to the options markets of the Trade-Through Disclosure Rule could be the capital investment to establish a linkage. In addition to the capital costs of establishing the linkage, costs could include regulatory costs, such as obtaining Commission approval of a linkage and of SRO rule changes necessary to implement a linkage. Further, there may be economic implications if a market chooses to participate in an approved linkage plan, because members may then be more likely to use the linkage to route orders to other exchanges that are quoting a better price. The Commission estimates that capital costs for a linkage plan range from $1,000,000 to $1,500,000 initially, and yearly costs could range from $300,000 to $1,000,000.[188]

The Commission recognizes that broker-dealers may incur certain capital costs to implement the Trade-Through Disclosure Rule. While the Commission recognizes that these costs cannot be avoided, the Commission believes that most of these costs will be one-time costs for broker-dealers with continuing savings to investors through the elimination of trade-throughs. Also, as members of the options exchanges, broker-dealers may have input into a decision by an exchange to participate in an options linkage plan and therefore, influence decisions that will impact their costs, including potential exchange fees.

The Commission is also sympathetic to the comment that the rule may become obsolete if all the options exchanges participate in an approved intermarket linkage plan.[189] The Commission is not mandating participation in a particular intermarket linkage plan to allow the options exchanges to retain greater flexibility. Because participation in an options linkage plan is voluntary and because, under the current terms of the Linkage Plan, any participant may withdraw from the plan at any time with 30 days prior written notice to each of the other plan participants and the facilities manager, if any,[190] the Commission continues to believe that the Trade-Through Disclosure Rule is needed to ensure that, if the exchange on which their orders are executed do not belong to an approved linkage plan with provisions designed to limit trade-throughs, investors at least receive

[182] The staff relied on data from OPRA for this analysis. All trades marked as spreads, straddles, late, or stopped were excluded from the sample. To determine the quote in effect at the time of the trade, the highest offer and lowest bid on each competing exchange for a period of one minute prior and two minutes after the reported execution were identified. Quotes from an exchange that indicated it was experiencing fast market conditions during the time when the trade was executed were not included. Quotes that indicated that an option class was in rotation were also excluded. The staff recognizes that not all these trades in the sample could be fully executed at the best available quoted price because of size or other factors.

[183] Trades executed through automatic execution systems account for about 36% of all trades and about 12% of all contracts traded in the 50 most active multiple-traded options classes during the week of June 26, 2000. The procedure used for the analysis of automatic execution trades is similar to that described for all trades, except only trades executed through the exchanges' automatic execution systems are included.

[184] The annual benefit estimate is obtained by applying the staff's trade-through findings for automatic execution trades in the 50 most active multiple-traded options classes to all multiple-listed classes and extending the results from one week to a full year. In the options market, market makers are almost always on the other side of the transaction and therefore, investors benefit from avoiding trade-throughs. If investors were on both sides of the transactions, any savings for avoiding trade-throughs would be offset by losses to investors on the opposite side of the transactions.

[185] The staff estimates the benefits of executing a maximum of 20 contracts at the best-quoted price for those trades identified as trade-throughs could total several hundred million dollars per year.

[186] See Securities Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996).

[187] The Commission notes that Trade-Through Disclosure Rule creates strong incentives for the options exchanges to participate in an approved intermarket linkage plan to attract order flow from broker-dealers wishing to avoid the disclosure requirement.

[188] The Commission published these numbers in the Proposing Release and specifically solicited comment on the costs of developing a linkage between the markets, as well as the costs for individual markets to integrate their systems into such a plan. The Commission did not receive any comments on the above data.

[189] *See* JPMorgan Letter.

[190] *See* Linkage Plan, Section 12.

disclosure if their orders are not executed at the best price.

The Commission recognizes that by providing an incentive for markets to cooperate in developing effective means to access other markets, trade-throughs will be minimized. However, to the extent that: (1) One or more options exchanges decide not to participate in a linkage plan; (2) trade-throughs are not minimized by the implementation of an intermarket linkage plan because the plan fails to provide protection across all markets, including markets that do not participate in a linkage plan; (3) away markets fail to complain about trade-throughs; or (4) broker-dealers are not subject to potential sanctions for trade-throughs, the value of the Trade-Through Disclosure Rule would be greatly diminished. Therefore, the Commission believes that despite the existing exchanges' participation in the Linkage Plan, the Trade-Through Disclosure Rule adopted by the Commission is also needed for the protection of investors. The Commission believes that the rule can only be effective if trade-throughs of any market are disclosed to investors, or effectively limited by an approved linkage plan.

B. Costs and Benefits of Amendments to the Quote Rule

The Commission is adopting amendments to the Quote Rule to extend its application to options traded on national securities exchanges. Generally, the Quote Rule requires exchanges to collect quotations and sizes from its responsible broker-dealers and make those quotations and sizes available to quotation vendors for each subject security listed and admitted to unlisted trading privileges on the exchange.

The Commission is adopting amendments to the Quote Rule to accommodate the unique structure of the options market to permit options exchanges to decide whether or not to collect from their members and make available to vendors the size associated with each quotation in listed options. Instead, exchanges may choose to establish by rule and periodically publish the size for which its best bid or offer in each options series that is listed on the exchange is firm. If the rules of the exchange do not require its members to communicate quotation sizes for listed options, responsible broker-dealers that are members of that exchange will be relieved of their obligations under the Quote Rule to communicate to that exchange their quotation sizes. Instead, each responsible broker-dealer may satisfy its firm quote obligation by executing any order to buy or sell a listed option that is a subject security, in an amount up to the size established by the exchange's rules.[191] An exchange may establish in its rules different firm quote sizes for broker-dealer orders than for customer orders.[192]

If, on the other hand, an options exchange chooses to establish procedures for collecting from its members, and making available to vendors, the sizes of its members' quotes, the exchange may permit its members' quotes to be firm for different sizes for customer orders than for broker-dealer orders.[193] In addition, an exchange will have the flexibility to collect and disseminate quote sizes for customer orders and establish by rule quote sizes for broker-dealer orders.

As discussed above, under the Trade-Through Disclosure Rule, if a responsible broker-dealer fails to respond to an incoming order within the 30 seconds, the routing broker-dealer may execute its customer's order at its own inferior quote and would not be required to disclose the trade-through to its customer because the quote traded through was unavailable. The Commission also is adopting an amendment to the Quote Rule to require a responsible broker-dealer to respond to an order to buy or sell a listed option in an amount greater than its firm quote size within 30 seconds by either: (1) executing the entire order; or (2) executing at least that portion of the order equal to the applicable firm quote size and revising its bid or offer.[194] The Quote Rule requires responsible brokers and dealers to *immediately* execute an order to buy or sell listed options in an amount equal to or less than its firm quote size.[195]

1. Comments

One commenter stated that the lack of a Quote Rule in the options markets has impeded firms' ability to execute customer orders in an efficient manner while they explore posted quotes to see whether they are firm for the entire order or only for an order of minimal size.[196] Another commenter suggested that a true linkage cannot occur so long as market makers are permitted to refuse to honor displayed quotes.[197] Two commenters also believe that the Quote Rule will promote efficiency and increase customer confidence in our markets.[198] In addition, another commenter argued that the supposition that market makers would widen their spreads if their quotes were exposed to other market professionals is unjustified and unsupported by empirical data, and in any case, the public is more harmed by non-competitive un-real quotes than by wider spreads.[199]

Alternatively, one commenter stated that extending the Quote Rule to options will not significantly improve the current situation because the options markets are already subject to exchange-created firm quote rules, and despite such rules, public investors have often found that quotations in these markets are not firm, and neither are many of their transactions.[200] In addition, one commenter suggested that current competition among market makers for public customer orders is intense, but the proposed amendments will force the allocation of capital into areas of unacceptable risk, such as trading against other broker-dealers, and away from the facilitation of public customer orders.[201] Two commenters believed that to compensate for the increased exposure to broker-dealers the amendments will cause market makers to be less aggressive, widen spreads, limit quote size, and reduce overall liquidity to public customers, despite the fact that the proposal is suppose to draw more liquidity into the market by requiring market makers to be firm to broker-dealers.[202]

One commenter also believed there is no need for an exception to the Quote Rule for exchanges whose aggregate trading volume in a listed option is less than or equal to one percent of the total trading volume reported by OPRA.[203] This commenter argues that the possibility of a chilling effect on the liquidity of inactively traded securities does not justify the monitoring burden that the exception would impose on brokers, who would be forced to keep

[191] Exchange Act Rule 11Ac1–1(d)(2), 17 CFR 240.11Ac1–1(d)(2).

[192] Exchange Act Rule 11Ac1–1(d)(1), 17 CFR 240.11Ac1–1(d)(1). Exchange rules must require responsible broker-dealers to be firm for orders for the account of broker-dealers for at least one contract.

[193] Exchange Act Rule 11Ac1–1(d)(1)(iii), 17 CFR 240.11Ac1–1(d)(1)(iii).

[194] Exchange Act Rule 11Ac1–1(d)(3)(i), 17 CFR 240.11Ac1–1(d)(3)(i). A responsible broker's or dealer's applicable firm quote size would be its published quote size or, if a responsible broker or dealer has been relieved of the obligation to communicate its quotation sizes, the minimum firm quote size established by its exchange's rules.

[195] Exchange Act Rule 11Ac1–1(c)(2), 17 CFR 240.11Ac1–1(c)(2).

[196] *See* JPMorgan Letter.

[197] *See* Lek Letter.

[198] *See* Lek Letter and PCX Letter.

[199] See Lek Letter.

[200] *See* Brunelle Letter. This commenter noted that subsequent to execution, specialists or market makers frequently change the terms of the transaction or ''break'' the trade.

[201] *See* Susquehanna Letter.

[202] *See* Susquehanna Letter and Botta Letter.

[203] See JPMorgan Letter.

track of which quotes were firm and which, because of the one percent exception, were not.

2. Benefits

Amending the Quote Rule would reduce discrepancies between the treatment of quotes in the options markets and the equity markets.[204] Although options trading is not currently covered by the Commission's Quote Rule, each exchange's rules require their members' quotes to be firm up to a certain minimum size and establish the process for handling orders in excess of the exchange's firm quote size. Exchange rules also establish whether members' quotes must be firm for all orders or only some orders, such as only for public customer orders.

The Commission believes that applying the Quote Rule to the options market would provide a number of benefits. Firm quotes reduce uncertainty surrounding order routing decisions for broker-dealers that are seeking to fill customer orders at the best available price. If broker-dealers are confident that quotes are firm, investor orders may be routed to the market with the best price and receive an execution at that price. Under current practices, because broker-dealers cannot be confident that a price on another market is firm (due to existing market rules, including trade-or-fade rules), orders do not always receive the best available price. As discussed above, the staff estimates that five percent of all trades in the 50 most active multiply-listed classes took place at prices inferior to the best price quoted on a competing market during a one-week period in June 2000. Broker-dealers often state that such trade-throughs occur when market makers believe the better price on the other market may not be firm and the quote may ''fade'' if the broker-dealer were to attempt to execute against it. By requiring that posted prices be firm up to a published size, a great deal of uncertainty about order execution quality could be reduced. This would be true even if the quote were permitted to be firm for different sizes for customer orders than for broker-dealer orders.

In addition to providing certainty to broker-dealers making order routing decisions and seeking to fill orders at the best available price, extending the Quote Rule to the options markets may benefit broker-dealers by enhancing their ability to satisfy their regulatory obligations, including best execution. The Commission believes that the Quote Rule may help broker-dealers to satisfy their best execution obligations by providing firm quote information and reducing concerns about ''fading'' quotes. In addition, the Commission believes that enhancing the ability of broker-dealers to satisfy their best execution obligations may reduce the liability exposure faced by broker-dealers as to their best execution obligations.

The Commission also believes that the proposed amendments to the Quote Rule would bolster investor confidence in the options markets by ensuring that quotes made by market makers or specialists are available for a specified number of options contracts, thus providing greater certainty for investors. The Commission believes that as a result of increased investor confidence, more investors may trade options and thereby, increase volume and reduce spreads on the options exchanges. In addition, by requiring the quotations in listed options to be firm, the amendments may also lead to better-informed investors, which should increase investor confidence in the market.

Another benefit of applying the Quote Rule to options trading is that it would likely increase competition between markets. Because all quotes would be firm, a market participant would know that a posted quote would be recognized as firm. Therefore, the posted quote may attract order flow. The ability to attract order flow with a market-improving quote encourages intermarket price competition, which benefits investors. In addition, the Commission believes that its proposal would result in (1) fewer unexecuted investor orders due to quote changes after order arrival, or (2) fewer orders executed at prices less favorable to the investor than those prevailing at the time of order arrival.

3. Costs

Applying the Quote Rule to the options market would require exchanges to collect bids and offers from their members. This would not impose a significant burden on the exchanges because bids and offers generally are collected already by the markets and sent to (and disseminated through) OPRA. Currently, each of the options markets has rules that establish the maximum size of orders that its automatic execution system will execute. The exchanges would, however, be required to publish the size (or sizes, if different categories are used) for which their quotes must generally be firm. There are likely to be expenses incurred by the markets related to collecting and making available to quotation venders or periodically publishing their firm quote sizes.

Amendment of the Quote Rule to include options may require markets to incur one-time costs. For example, options markets may need to enhance surveillance and enforcement mechanisms to ensure that its members are complying with the Quote Rule. Further, options market makers and specialists may need to reevaluate and change their quotes in light of the obligation to be firm that would be imposed by the amendment to the Quote Rule.[205]

The Commission recognizes that these costs cannot be avoided, although the impact of the costs may be minimized to the extent that a market already has surveillance and enforcement procedures in place to monitor its members for compliance with the existing rules of the Commission and the exchange. However, the Commission believes that the current situation, wherein the options markets are permitted to fade from their quotes without consequence, pursuant to their trade-or-fade rules,[206] is no longer acceptable. Currently, options investors cannot fully rely on the disseminated quotation information on which they base their order routing decisions. The Commission believes that options investors deserve the same protections as equity investors and therefore, the Commission is adopting amendments to extend the coverage of the Quote Rule to the options market.

In addition, with respect to the concern raised by two commenters regarding the increased financial exposure of broker-dealers under the Quote Rule, the Commission notes that under the rule being adopted today, the options exchanges may establish different quote sizes for broker-dealers' orders than for customer orders. The Commission also believes that the options markets and options market makers should be permitted to make use of the one percent exception. The Commission is not persuaded that this exception, applied for years in the equity markets, will impose significant compliance burdens on market participants.

C. Conclusion

With the current expansion of multiple trading in options, the Commission is increasingly concerned

[204] The equities markets have been subject to a firm quote requirement since 1978. See Securities Exchange Act Release No. 14415, *supra* note and accompanying text.

[205] In the Proposing Release, the Commission stated that it was unable to quantify these costs and further solicited comments on these costs. *See* Proposing Release, *supra* note 7. No commenters explicitly addressed this issue.

[206] *See supra* note 33.

about customer orders, which are sent to one exchange, and executed at prices that are inferior to quotes published by another market. The Commission, therefore, believes that adoption of the Trade-Through Disclosure Rule and amendments to the Quote Rule are necessary at this time to encourage the removal of barriers to access to, and the use of efficient vehicles to reach, better prices on other markets. The Commission recognizes that there may be some costs associated with the implementation of these rules, however, the Commission believes that the likely benefits justify the possible costs.

VII. Effects on Competition, Efficiency, and Capital Formation

Section 3(f) of the Exchange Act [207] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In the Proposing Release, the Commission requested comment on these issues.[208]

With regards to the amendments to the Quote Rule, several commenters supported the Commission's proposals because they believed that the amendments would promote efficiency and enhance public confidence in the options markets.[209] Another commenter that argued that the current lack of a Quote Rule in the options markets impeded firms' ability to execute customer orders in an efficient manner because firms are forced to explore quotes to determine the size for which the quotes represent.[210]

The Commission believes that the amendments to the Quote Rule are necessary and appropriate in the public interest. The amendments to the Quote Rule should bolster investor confidence in the options markets by ensuring that quotes made by market participants are available for a specified number of contracts, thus providing greater certainty for investors. Similarly, the increased investor confidence should promote market efficiency and capital formation.

The amendments to the Quote Rule should also assist broker-dealers in making their best execution determinations. Further, the amendment to the Quote Rule will help to ensure that important information relating to the size associated with disseminated quotes is available to all market participants. This should promote market efficiency, competition, and capital formation.

With regards to the Trade-Through Disclosure Rule, the Commission believes that it will bolster confidence in the options markets by better informing investors about the quality of their executions and the implications of their broker-dealers' execution decisions. This increased investor confidence should promote market efficiency and capital formation. The Trade-Through Disclosure Rule also should help to minimize the number of customer orders that do not receive an execution at the best available quote.

The Commission also believes that the Trade-Through Disclosure Rule will assist broker-dealers in evaluating and complying with their best execution obligations. Moreover, the Trade-Through Disclosure Rule will provide an incentive to develop effective means of access between the markets to avoid trade-throughs. One commenter agreed, stating that the Trade-Through Disclosure Rule should assure that the options markets participate in either the Linkage Plan or that they will develop alternative plans that will effectively address and limit trade-throughs.[211] The Commission believes that this will result in the more efficient execution of orders in the options markets.

Section 23(a)(2) of the Exchange Act [212] requires that the Commission, when promulgating rules under the Exchange Act, to consider the impact any rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in the public interest. In the Proposing Release, the Commission noted that because both the proposed amendments to the Quote Rule and the proposed Trade-Through Disclosure Rule would apply equally to all relevant market participants, the Commission believed the proposals would not have any anti-competitive impact.[213] The Commission, however, requested comment on any anti-competitive effects of the proposals. The Commission did not receive any comments regarding the competitive impact of the Trade-Through Disclosure Rule. Thus, the Commission continues to believe that the Trade-Through Disclosure Rule adopted today will not have an anti-competitive impact on the options markets because the rules apply equally to each options market and other relevant options market participants.

The Commission did, however, receive comments on the potential competitive impact of the amendments to the Quote Rule. Several commenters that addressed the potential competitive impact of a Commission-mandated firm quote size believed that the Commission should not mandate a firm quote size because they argued that competitive market forces should dictate an appropriate firm quote size minimum.[214] Another commenter, however, argued that the Commission should mandate that the exchanges be firm for one contract for non-customer orders, which would permit the exchanges to compete by providing greater than the one contract minimum to attract non-customer order flow.[215]

While agreeing that the Commission should not dictate a firm quote size minimum, two commenters disagreed on whether the options exchanges or options market makers should be permitted to establish firm quote minimums.[216] For example, one commenter noted that the options exchanges compete for order flow by establishing firm quote guarantees.[217] Another commenter, however, argued that it is the options market makers that compete for order flow by establishing quote sizes for which they are willing to guarantee and that requiring the exchanges to set minimum quote sizes would eliminate this competition.[218]

As discussed above, the Commission agrees that the minimum firm quote size for each exchange should be determined independently by each exchange as a competitive issue and should not be dictated by government regulation. Further, the Commission also agrees that each disseminated quote must be firm for at least one contract. The Commission believes that this approach will encourage competition among the exchanges, which should benefit all investors.

The amendments to the Quote Rule adopted by the Commission today permit the options exchanges to establish by rule and periodically publish the sizes for which quotes will be firm for listed options. While one commenter argued that options market makers should be able to compete on this basis, the Commission believes, at this time, that it is appropriate to permit the exchanges to determine firm quote

[207] 15 U.S.C. 78c(f).

[208] *See* Proposing Release, *supra* note 7.

[209] *See* Lek Letter; PCX Letter; and CBOE Letter.

[210] *See* JPMorgan Letter.

[211] *See* PCX Letter. *See also* ISE Letter.

[212] 15 U.S.C. 78w(a)(2).

[213] *See* Proposing Release, supra note 7.

[214] *See* Botta Letter; CBOE Letter; PCX Letter; and Susquehanna Letter.

[215] *See* ISE Letter.

[216] *See* CBOE Letter and Botta Letter.

[217] *See* CBOE Letter.

[218] *See* Botta Letter.

sizes. Currently, the options exchanges, other than the ISE, do not accept quotes from each competing market maker on their floors. Further, OPRA does not, at this time, have the capability to accept and disseminate to vendors quotes with size, although it plans to have such capability early next year. Thus, the Commission believes that, at this time, it is appropriate for the exchanges to establish by rule and periodically publish the size associated with quotes in listed options. The Commission will continue to consider this issue as technology advances because the Commission believes that permitting individual market makers to compete on the basis of size on each exchange floor as well as among competing exchanges could further enhance the competitiveness of the options markets.

Finally, the Commission received two comments on the potential competitive impact of the two alternative proposals regarding establishing firm quote sizes for broker-dealer orders and customer orders. As discussed above, proposed Alternative A would have required that firm quote size minimums be the same for all orders, while proposed Alternative B would have permitted the options exchanges to establish different firm quote size minimums for broker-dealer and customer orders. One commenter, while supporting proposed Alternative A, suggested that it believed that distinctions between broker-dealer and customer orders would ultimately be eliminated through competitive measures of the exchanges.[219] Another commenter, who supported Alternative A, argued that broker-dealers play an important role in keeping prices fair and should be permitted to participate in the competitive pricing process.[220]

As noted above, the amendments to the Quote Rule adopted today permit the exchanges to establish different firm quote sizes for broker-dealer orders than for customer orders. Due to the tremendous number of options products that must be continuously quoted by options market makers and specialists, the Commission believes that this distinction is appropriate at this time. The Commission will continue to consider whether this distinction is appropriate. The Commission notes, however, that the amendments to the Quote Rule do not mandate that the exchanges establish different quote sizes for broker-dealer orders and customer orders, it only permits the distinction. Thus, the options exchanges are free to establish their individual firm quotes sizes for broker-dealer and customer orders as they deem appropriate.[221] The Commission thinks that it is likely that the options exchanges will compete on this basis.

VIII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[222] It relates to the adoption of the Trade-Through Disclosure Rule and amendments to the Quote Rule. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with 5 U.S.C. 603 and was made available to the public.[223] The Commission is adopting the Trade-Through Disclosure Rule and the amendments to the Quote Rule substantially as proposed.

The Trade-Through Disclosure Rule, Exchange Act Rule 11Ac1–7,[224] will require a broker-dealer to disclose to its customer when the customer's order is executed at a price inferior to a price published by another market. However, a broker-dealer will not be required to provide such disclosure to its customer if it effects the customer's transaction on a market that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price, even if the better price is on a market that is not part of the linkage plan.

The Quote Rule, Exchange Act Rule 11Ac1–1,[225] currently requires exchanges to establish procedures for collecting from their members bids, offers, and quotation sizes for certain equity securities available to quotation venders. It also requires that the quotation information made available to vendors be firm, subject to certain exceptions. The amendments to the Quote Rule adopted by the Commission today apply the Quote Rule to options traded on a national securities exchange or an automated facility of a national securities association.

A. Need for, and Objectives of, the Rules

The significant increase in multiple trading that has occurred during the past year has dramatically altered the options trading environment and raised a number of issues, including new best execution challenges for broker-dealers. When an option is listed on only one market, broker-dealers do not have to decide where to route the order, and, consequently, satisfying their best execution obligations with respect to such options orders is less complex than when they must consider the relative merits of executing orders on several markets. Directly relevant to a broker's ability to get best execution for its customers is the ability to get the best price available. Currently, it is difficult to ensure that a customer order sent to one market will receive the best available price because there is no effective mechanism that allows broker-dealers on one market to access a better price displayed on another.

The Commission is adopting the Trade-Through Disclosure Rule and the amendments to the Quote Rule to help address this situation. The Trade-Through Disclosure Rule and the amendments to the Quote Rule are intended to bolster investor confidence in the options markets by better informing customers about the quality of their executions and the implications of their broker-dealers' execution decisions. The Trade-Through Disclosure Rule will require a broker-dealer to disclose to its customer when the customer's order is executed at a price inferior to the best-published quote. A broker-dealer will not be required to make this disclosure if the broker-dealer transacts the customer order on a market that participates in a Commission-approved intermarket linkage plan that has rules reasonably designed to limit trade-throughs, even when the better price is displayed by a market that is not a participant in the linkage plan. Amending the Quote Rule to apply it to the options markets should provide greater certainty about both options quotes and pricing generally in the options markets. The amendments to the Quote Rule, along with the Trade-Through Disclosure Rule, should assist broker-dealers in making their best execution evaluations.

The Trade-Through Disclosure Rule should help minimize the number of customer orders that do not receive an execution at the best available published quote. Further, the Trade-Through Disclosure Rule will assist broker-dealers in evaluating and complying with their best execution obligations. Finally, it will provide an incentive for options markets to develop effective means to access quotes on other markets to avoid trade-throughs.

The amendments to the Quote Rule also should bolster investor confidence

[219] *See* PCX Letter.

[220] *See* Lek Letter.

[221] Of course, Exchange Act Rule 11Ac1–1(d)(1) requires that exchange rules must require responsible broker-dealers to be firm for orders for the accounts of broker-dealers for at least one contract. 17 CFR 240.11Ac1–1(d)(1).

[222] 5 U.S.C. 604.

[223] *See* Proposing Release *supra* note 7.

[224] *See* Exchange Act Rule 11Ac1–7, 17 CFR 240.11Ac1–7.

[225] *See* Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

in the options markets by ensuring that quotes made by market participants are available for a specified number of options contracts, thus providing greater certainty for investors. The amendments to the Quote Rule also will assist broker-dealers in making their best execution determinations. Further, the amendments will provide information to the market as a whole as to the various factors affecting the market, including the current levels of buying and selling interest.

B. Significant Issues Raised by Public Comment

As required by the Regulatory Flexibility Act, this section (i) summarizes the significant issues raised by public comments in response to the IRFA, (ii) summarizes the Commission's assessment of such issues, and (iii) states any changes made in the proposed rules as a result of such comments.[226]

No comments were received in response to the IRFA.

C. Small Entities Subject to the Rules

Commission rules generally define a broker-dealer as a small entity for purposes of the Exchange Act and the Regulatory Flexibility Act if the broker-dealer had a total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, and it is not affiliated with any person (other than a natural person) that is not a small entity.[227] The Commission estimates that as of December 31, 1999, approximately 41 Commission-registered broker-dealers were small entities that would be subject to the Trade-Through Disclosure Rule.[228] However, the Commission estimates that none of the 41 registered broker-dealers that would be considered small entities for purposes of the statute regularly represent options orders on behalf of their customers. In addition, the Commission notes that only those broker-dealers that are also options specialists or market makers will be required to comply with the amendments to the Quote Rule. As of December 31, 1999, our data indicates that only one broker-dealer that was a small entity was an options specialist or market maker.

The amendments to the Quote Rule also will directly affect the national securities exchanges that trade listed options, none of which is a small entity as defined by Commission rules. Paragraph (e) of Exchange Act Rule 0–10[229] states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Exchange Act Rule 11Aa3–1.[230] The amendments to the Quote Rule also will directly affect national securities associations. There is one national securities association, which is not a small entity, as defined by 13 CFR 121.201.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Trade-Through Disclosure Rule will require a broker-dealer to disclose to its customer at or before the completion of the transaction when an options trade executed for the customer was made at a price inferior to a price published by another exchange. The broker-dealer will not be required to provide such disclosure to its customer if the options trade was executed on an exchange that participates in an approved linkage plan that has rules reasonably designed to limit customers' orders from being executed at prices that are inferior to a published price, even if that better published price is on a market that is not part of the linkage plan.

The amendments to the Quote Rule will require a broker-dealer that is either a specialist or market maker to honor its quote for a size determined and published by the options exchange where the specialist or market maker is quoting. The amendments also will require national securities exchanges and national securities associations either to collect from their members the size associated with their quotes and disseminate that information to quotation venders, or to establish by rule and periodically publish such information.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with adopting the Trade-Through Disclosure Rule and the amendments to the Quote Rule, the Commission considered the following 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 and reporting requirements under the rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities.

The Commission believes that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goals of bolstering investor confidence, assisting broker-dealers in best execution determinations, and providing information as to the various factors affecting the market, including the current levels of buying and selling interest. For example, if all broker-dealers quoting prices in options are not required to comply with the amendments to the Quote Rule, investors and market participants would be unable to determine true buying and selling interest, undermining investor confidence and the ability of a broker-dealer to make best execution decisions. Further, broker-dealers would not be certain that a quote was firm without knowing whether the broker-dealer making the quote is a small broker-dealer. In addition, if all broker-dealers were not obligated to comply with the Trade-Through Disclosure Rule, all investors (those that are customers of small broker-dealers) would not benefit fully from the rule, potentially reducing the benefits of the rule.

For the same reasons, the Commission believes that exempting small entities from the rules, in whole or in part, is not appropriate. In addition, the Commission has concluded that it is not feasible to further clarify, consolidate, or simplify the rules for small entities. The Commission has used performance elements in the rules. Specifically, the rules do not require a broker-dealer to satisfy its obligations in accordance with any specific design, but rather provide each broker-dealer, including small entities, with the flexibility to select the method of compliance that is most efficient and appropriate for its business operations. The Commission does not believe different performance standards for small entities would be consistent with the purpose of the Trade-Through Disclosure Rule and the amendments to the Quote Rule.

Further, the Commission believes that none of the above alternatives is applicable to the amendment with regard to national securities exchanges or national securities associations. The markets are directly subject to the requirements of the rules and are not

[226] *See* 5 U.S.C. 604(a)(2).

[227] 17 CFR 240.0–10(c).

[228] The Commission's estimate of 41 small entities includes all of the registered broker-dealers that do not have relationships with clearing firms.

[229] 17 CFR 240.0–10(e).

[230] Exchange Act Rule 11Aa3–1, 17 CFR 240.11Aa3–1.

''small entities'' because they are all national securities exchanges or national securities associations that do not meet the definition of small entity. Therefore, the Commission does not believe the alternatives to the rules are applicable to the markets.

IX. Statutory Authority

The Commission is adopting the Trade-Through Disclosure Rule and amendments to the Quote Rule pursuant to its authority under Exchange Act Sections 3(b), 5, 6, 15, 11A, 17 (a) and (b), 19, and 23(a).

List of Subjects in 17 CFR Part 240

Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

Text of the Final Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.11Ac1–1 is amended by revising paragraphs (a)(5), (a)(20) and (d); in the second sentence of paragraph (b)(3)(i) by revising the phrase ''under paragraph (c)(2)'' to read ''under paragraphs (c)(2) and (d)(3)'', and adding paragraphs (a)(26), (a)(27), (a)(28), (a)(29), and (a)(30), and (e) to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions.* * * *

(5) The term *consolidated system* means the consolidated transaction reporting system, including a transaction reporting system operating pursuant to an effective national market system plan.

* * * * *

(20) The term *reported security* means any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

* * * * *

(26) The term *customer* means any person that is not a registered broker-dealer.

(27) The term *listed option* means any option traded on a registered national securities exchange or automated facility of a national securities association.

(28) The term *options class* means all of the put option or call option series overlying a security, as defined in Section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)).

(29) The term *options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

(30) The term *trading rotation* means, with respect to an options class, the time period on an exchange during which:

(i) Opening, re-opening, or closing transactions in options series in such options class are not yet completed; and

(ii) Continuous trading has not yet commenced or has not yet ended for the day in options series in such options class.

* * * * *

(d) *Transactions in listed options.*

(1) An exchange or association:

(i) Shall not be required, under paragraph (b) of this section, to collect from responsible brokers or dealers who are members of such exchange or association, or to make available to quotation vendors, the quotation sizes and aggregate quotation sizes for listed options, if such exchange or association establishes by rule and periodically publishes the quotation size for which such responsible brokers or dealers are obligated to execute an order to buy or sell an options series that is a subject security at its published bid or offer under paragraph (c)(2) of this section;

(ii) May establish by rule and periodically publish a quotation size, which shall not be for less than one contract, for which responsible brokers or dealers who are members of such exchange or association are obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option for the account of a broker or dealer that is in an amount different from the quotation size for which it is obligated to execute an order for the account of a customer; and

(iii) May establish and maintain procedures and mechanisms for collecting from responsible brokers and dealers who are members of such exchange or association, and making available to quotation vendors, the quotation sizes and aggregate quotation sizes in listed options for which such responsible broker or dealer will be obligated under paragraph (c)(2) of this section to execute an order from a customer to buy or sell a listed option and establish by rule and periodically publish the size, which shall not be less than one contract, for which such responsible brokers or dealers are obligated to execute an order for the account of a broker or dealer.

(2) If, pursuant to paragraph (d)(1) of this section, the rules of an exchange or association do not require its members to communicate to it their quotation sizes for listed options, a responsible broker or dealer that is a member of such exchange or association shall:

(i) Be relieved of its obligations under paragraph (c)(1) of this section to communicate to such exchange or association its quotation sizes for any listed option; and

(ii) Comply with its obligations under paragraph (c)(2) of this section by executing any order to buy or sell a listed option, in an amount up to the size established by such exchange's or association's rules under paragraph (d)(1) of this section.

(3) *Thirty second response.* Each responsible broker or dealer, within thirty seconds of receiving an order to buy or sell a listed option in an amount greater than the quotation size established by an exchange's or association's rules pursuant to paragraph (d)(1) of this section, or its published quotation size must:

(i) Execute the entire order; or

(ii)(A) Execute that portion of the order equal to at least:

(*1*) The quotation size established by an exchange's or association's rules, pursuant to paragraph (d)(1) of this section, to the extent that such exchange or association does not collect and make available to quotation vendors quotation size and aggregate quotation size under paragraph (b) of this section; or

(*2*) Its published quotation size; and

(B) Revise its bid or offer.

(4) Notwithstanding paragraph (d)(3) of this section, no responsible broker or dealer shall be obligated to execute a transaction for any listed option as provided in paragraph (c)(2) of this section if:

(i) Any of the circumstances in paragraph (c)(3) of this section exist; or

(ii) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

(e) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission

determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

3. Section 240.11Ac1–4 is amended by revising paragraph (a)(10) to read as follows:

§ 240.11Ac1–4 Display of customer limit orders.

(a) *Definitions.* * * *

(10) The term *reported security* means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.

* * * * *

4. Section 240. 11Ac1–7 is added to read as follows:

§ 240.11Ac1–7 Trade-through disclosure rule.

(a) *Definitions.* For purposes of this section:

(1) The term *block trade* means a transaction in an option series that is for 500 or more contracts and has a premium value of at least $150,000.

(2) The term *customer* means any person that is not a registered broker-dealer.

(3) The term *effective national market system plan* shall have the meaning provided in § 240.11Aa3–2.

(4) The term *listed option* means any option traded on a registered national securities exchange or automated facility of a national securities association.

(5) The term *options class* means all of the put option or call option series overlying a security, as defined in Section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)).

(6) The term *options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

(7) The term *receipt* means, with respect to an order sent to an away market displaying a superior price, the time at which the order is either represented in the trading crowd or received by the specialist.

(b) *Broker-dealer disclosure requirements.* (1) Any broker or dealer that effects a transaction in a listed option for the account of its customer must disclose in writing to such customer, at or before completion of such transaction, as defined in § 240.15c1–1:

(i) When such transaction is effected at a price that trades through a better price published at the time of execution; and

(ii) That better published price.

(2) A broker-dealer shall not be required to provide the disclosure set forth in paragraph (b)(1) of this section if:

(i) It effects such transaction on a market that is a sponsor or participant in an effective national market system options linkage plan that includes provisions reasonably designed to limit the incidence of customer orders being executed at prices that trade through a better published price, including prices published other than by a linkage plan sponsor or participant, or

(ii) The customer order is executed as part of a block trade.

(3) A customer order is executed at a price that trades through a better published price if:

(i) The price at which an order to purchase a listed option is executed is higher than the lowest offer, at the time the order was executed, published pursuant to a national market system plan for reporting quotations in listed options; or

(ii) The price at which an order to sell a listed option is executed is lower than the highest bid, at the time the order was executed, published pursuant to a national market system plan for reporting quotations in listed options.

(4) Notwithstanding paragraph (b)(3) of this section, a customer order is not considered to be executed at a price that trades through a better published price if:

(i) The market on which the order is executed has verified that the market publishing such better price is experiencing a failure, material delay, or malfunction of its systems;

(ii) The quotations disseminated pursuant to the national market system plan for reporting quotations indicates that it is experiencing delays in transmitting such quotations;

(iii) Such better published price was published by an exchange whose members are relieved of their obligations under paragraph (c)(2) of § 240.11Ac1–1 because, pursuant to paragraphs (b)(3) or (d)(4) of § 240.11Ac1–1, such exchange is not required to meet its obligations under paragraph (b)(1) of § 240.11Ac1–1; or

(iv) The customer order is executed only after the market publishing the better price fails to respond to an order routed to it within 30 seconds of the order's receipt by that market.

(c) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker or dealer if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, or the removal of impediments to and perfection of the mechanism of a national market system.

Dated: November 17, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30132 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
December 1, 2000

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 59

Livestock and Grain Market News Branch: Livestock Mandatory Reporting; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[No. LS–99–18]

RIN 0581–AB64

Livestock and Grain Market News Branch: Livestock Mandatory Reporting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will establish a mandatory program of reporting information regarding the marketing of cattle, swine, lambs, and products of such livestock under the ''Livestock Mandatory Reporting Act of 1999.'' This rule requires the reporting of market information by certain livestock packers, and livestock product processors and importers. This program is intended to provide information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products, that can be readily understood by producers, packers, and other market participants.

EFFECTIVE DATE: This final rule is effective January 30, 2001.

FOR FURTHER INFORMATION CONTACT: If you have questions about the regulations, please call John E. Van Dyke, Chief, Livestock and Grain Market News Branch at (202) 720–6231, fax (202) 690–3732, or e-mail us at john.vandyke@usda.gov.

Information about these new regulations will be posted on the AMS web site: *http://www.ams.usda.gov/lsg/price.htm* as it becomes available.

SUPPLEMENTARY INFORMATION: The information that follows has been divided into three sections. The first one provides background information including questions and answers about this final rule, a short narrative introducing the Agency, and a summary of the history of this rulemaking process including an overview of the Livestock Mandatory Reporting Act of 1999 (Act) (Pub. L. 106–78; 113 Stat. 1188; 7 U.S.C. 1635–1636h) and of these final regulations. The second section provides a summary of the comments received in response to the proposed rule published in the **Federal Register** on March 17, 2000, and the Agency's responses to these comments including changes made in this final rule as a result of the comments. The last section provides the impact analysis section that addresses various legal requirements including the Regulatory Flexibility Act, the Paperwork Reduction Act, Civil Rights Review, and the relevant Executive Orders.

I. Background

Questions and Answers About This Final Rule

What Is USDA Market News?

USDA market news is a Federal program that collects and disseminates information on prices and quantities for commercial transactions involving a wide array of agricultural products. USDA market news provides all market participants with the information necessary to make intelligent and informed marketing decisions.

Who Uses USDA Market News?

Each day, the agricultural industry uses USDA market news reports in conducting their business. Further, a wide range of users outside of and peripheral to the agricultural industry depend on the information provided in these reports, including Federal and State governmental agencies, foreign governmental agencies, academia, analysts, and news media. Currently, there are a total of 800 individual reports that are released by market news. These reports are issued on a daily, weekly, monthly, and annual basis.

Why Is This Final Rule Being Published?

Currently, meat packers, processors and importers are not *required* to report prices or the terms of sale for the animals they buy from producers. Rather, under the current market news program, USDA collects information on daily sales and price information from packers and others on a *voluntary* basis. However, in recent years more animals are being bought and sold under marketing arrangements where neither the arrangements nor the final purchase prices are publicly disclosed. Likewise, much of the information regarding the imports of lamb cuts is not being captured by the current market news reporting program. Because of this void in information available to producers, Congress passed the Livestock Mandatory Reporting Act of 1999 (Act) that requires development of this mandatory reporting program for livestock and certain products of livestock.

Why Is Livestock Mandatory Reporting Needed?

USDA estimates that under the current market news reporting program, 35–40 percent of cattle transactions, 75 percent of hog transactions and 40 percent of lamb transactions are not being reported. With fewer publicly reported marketing arrangements, it has become more difficult for producers to determine the actual prevailing purchase prices of livestock. By making the reporting of market information mandatory, USDA will facilitate price discovery, make the market more open and provide all market participants with market information that can be easily understood.

Do I Have an Opportunity To Comment on This Document?

No. This is the final rule. The public was able to submit comments on the proposed rule in both written and electronic form for 30 days after it was published in the **Federal Register** on March 17, 2000. USDA has reviewed the comments received and has made any necessary revisions to the rule. A discussion of public comments, including AMS's responses, is included in this final rule.

What Segments of the Livestock and Meat Industry Are Required To Report Under This Final Rule?

This final rule requires the reporting of market information by certain livestock packers, and livestock product processors and importers who annually slaughter an average of 125,000 cattle or 100,000 swine, or slaughter or process an average of 75,000 lambs. Importers who annually import an average of 5,000 metric tons of lamb meat are also required to report.

What Market Information Does This Rule Require Packers and Importers To Report?

Packers subject to this final rule are required to report the details of all transactions involving purchases of livestock (cattle, swine, and lambs), and the details of all transactions involving domestic and export sales of boxed beef cuts including applicable branded product, sales of boxed lamb cuts, including applicable branded product, and sales of lamb carcasses to the Agricultural Marketing Service (AMS). Importers are required to report information concerning the sales of imported boxed lamb cuts.

How Often Will Packers and Importers Be Required To Report Information?

These regulations specify that purchases of swine are to be reported three times each day, purchases of cattle reported twice each day, purchases of lambs reported once daily, domestic and export sales of boxed beef cuts, including applicable branded boxed

beef cuts, reported twice each day, sales of lamb carcasses and boxed lamb cuts, including applicable branded boxed lamb cuts, reported once daily, and sales of imported lamb cuts once weekly.

Will AMS Publish Regional and Statewide Reports?

Initially, the mandatory information of national importance will be provided in market news reports. AMS will start with the issuance of reports of national importance to ensure that confidentiality is preserved regarding the identity of persons, including parties to a contract, and proprietary business information. In time, when and where possible, these reports may be further refined and subdivided to reflect regional and, possibly, statewide markets.

Will Guidance Be Provided To Assist Users in the Use of These New Mandatory Reports?

The new mandatory reports are intended to accurately convey the information in the most understandable manner to producers and other market participants. An educational and outreach effort will be undertaken by AMS to facilitate the transition from voluntary market news reporting to mandatory market news reporting.

What New Information Will This Reporting Provide to the Livestock and Meat Industry?

In many instances, mandatory reporting will provide new information that has not been previously reported under the existing voluntary reporting program. USDA anticipates that this information will provide the basis for newly published market news reports, including reports covering the prior day swine market; forward contract and formula marketing arrangement cattle purchases; packer-owned cattle and sheep information; sales of imported boxed lamb cuts; and live lamb premiums and discounts.

What Information Would Mandatory Reporting Cover That Is Already Being Reported Under the Voluntary Program?

This would include negotiated, or cash, livestock purchases, sales of boxed beef and lamb cuts, and sales of lamb carcasses.

Will the Mandatory Livestock Reports Duplicate Information in the Voluntary Reports?

USDA anticipates that where duplication occurs, the market reports reflecting this information will continue to be published but the basis of the market reports will become mandatory information.

What Information Currently Being Reported for Livestock and Meat Will Not Be Affected by Mandatory Reporting?

Many voluntary-based market news reports will not be affected by mandatory reporting, including reports covering livestock auction sales and packer sales of pork cuts and by-products, feeder cattle sales, feeder pig sales, and grain trading.

How Will This Program Affect Those States That Have Mandatory Market News Laws?

Several States have enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within a particular State. Currently, this includes the States of Iowa, Minnesota, Missouri, Nebraska, and South Dakota. Of these, only Minnesota and South Dakota are collecting mandated market information.

When USDA's Livestock Mandatory Reporting Program becomes effective, States are preempted from imposing mandatory reporting requirements that are in addition to or inconsistent with any requirement of the Act with respect to the submission, reporting or publication of information on the prices and quantities of livestock and livestock products. This preemption clause would affect all mandatory reporting programs currently in effect by the States and the implementation of any mandatory reporting programs currently developed, in the process of being developed, or that may be developed at a later date.

How Will the Security of the Information Collected Be Ensured?

The program developed to collect and manage data received from those entities required to report will ensure security of data transmission and storage, and confidentiality of information that is maintained by USDA. During program development, USDA will include industry participants, as well as technical experts, in discussions regarding issues surrounding data security and confidentiality.

Does This Final Rule Implement All of the Requirements of the Livestock Mandatory Reporting Act of 1999?

No. There are other sections of the Act that are not provided for in this final rule. Other sections of the Act pertaining to such areas as retail price reporting of beef, pork, lamb, chicken, turkey and veal and export certificates will be announced in separate USDA initiatives.

What Penalties Are Included for Violations of the Act?

The Act specifies what constitutes violations, such as failure to report the required information on time or failure to report accurate information. The section on enforcement establishes a civil penalty—$10,000—for each violation and provides for the Secretary's issuance of cease and desist orders. This section also provides for notice and hearing of violations before the Secretary, judicial review, issuance of an injunction or restraining order, and establishes a civil penalty for failure to obey a cease and desist order.

What Changes Have Been Made From the Proposed Rule?

Based on comments submitted and upon further review by AMS, the following changes and clarifications have been made in the final rule from the proposal.

Codification in the Code of Federal Regulations. This rule will establish and add a new Part 59 to Title 7 of the Code of Federal Regulations (CFR). Although the proposed rule referenced the establishment and addition of a new Part 57, upon further inspection by the Agency, it was determined that Part 59 of 7 CFR would be the appropriate codification of the final regulations.

Boxed Beef and Lamb and Lamb Carcasses. When reporting sales of boxed beef and lamb cuts and lamb carcasses, packers will not be required to report sales of product not sold at a carlot-based price (distributive trade), frozen boxed beef cuts (excluding beef trimmings, boneless processing beef, and cow product), distressed product, cuts in portion cut form (e.g. chops, steaks, etc.), and branded boxed beef and lamb cuts where the brand is based upon unique characteristics such as cutting style or packaging.

For sales of boxed beef cuts, the reporting requirements for ''cut date'', 'buyer', and 'destination' have been eliminated.

For sales of lamb carcasses and lamb cuts, the requirements for 'cut date', 'buyer', and 'destination' have been eliminated. For sales of boxed lamb cuts, packers will now be required to report product 'state of refrigeration'.

Imported Lamb Carcasses and Cuts. Importers are not required to report market information on purchases of imported lamb carcasses and imported boxed lamb cuts or of purchases and sales of imported boxed lamb cuts in portion cut form (*e.g.* chops, steaks,

etc.). For the weekly boxed lamb sales reports, importers will not be required to report product 'nation of origin', but will now be required to report product 'state of refrigeration'.

Live Cattle and Lambs. Packers will not be required to report purchases from auction markets made either by a salaried employee of the packer or a person that buys on commission for a packer.

For cattle purchases, the requirement for reporting 'slaughter date' has been deleted.

The twice-daily requirement for the reporting of all purchases of live lambs in the proposed rule has been reduced to once daily reporting at 2:00 p.m. Central Time. The regulations were clarified to require that packers are required to report 'class of lamb' and 'pelt type' for live lamb purchases. Additionally, the weekly reporting of lambs that were slaughtered will no longer require packers to report 'shrink factor' and the reporting time for this report has been moved from the first reporting day to the second reporting day of the week.

Live Swine. For the daily reporting of swine that were slaughtered, packers will now be required to report 'average loin depth' on the 'prior day report'.

Other Changes. Other miscellaneous changes were made to the regulatory text in response to the comments received and upon further review by AMS, including the addition of several new definitions to clarify the meaning of terms used in the regulations.

Overview

Market News

The current voluntary market news program of the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) for livestock and livestock products is authorized under the provisions of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). In the Agricultural Marketing Act of 1946, Congress declared that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential. Furthermore, it is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Nation. Agricultural products, capable of being produced in great abundance, must be marketed in an orderly manner and efficiently distributed. Some of the objectives of the Agricultural Marketing Act of 1946 are to improve marketing methods, reduce distribution costs, and narrow the price spread between the producer and consumer. Under the Agricultural Marketing Act of 1946, the Market News Program provides for the collection and dissemination of information to facilitate the orderly and efficient marketing of agricultural products while aiding in the maintenance of farm income. Market News provides all market participants with the information necessary to make intelligent and informed marketing decisions.

Market News relies upon voluntary cooperation from the livestock, red meat, grain, and wool industry. In addition, Market News maintains voluntary working agreements with many States to cooperatively collect and disseminate market information. Market News reporters collect information daily by telephone, including talking directly with producers, packers, feedlot operators, retailers, distributors, brokers, and other industry participants. Reporters are on site at major livestock markets, gathering market information first hand. Regular trips are made to observe livestock in feedlots, on farms, ranches, and in packer holding pens. Meat packing and processing facilities are visited to observe current industry practices and conditions. Reporters attend industry meetings, seminars, and trade shows to keep abreast of the latest information. The information collected by reporters is included in reports that are available to all interested parties. These reports provide data on cattle, hog, sheep, and lamb sales, carlot meat sales of boxed beef, lamb, veal, and pork cuts, weekly wool and mohair sales, and grain and feed sales. Currently, there are a total of 800 individual reports that are released by Market News. Each day, the livestock and red meat industry uses these reports in conducting their business. Further, a wide range of users outside of and peripheral to the livestock and red meat industry depend on the information provided in these reports, including Federal and State governmental agencies, foreign governmental agencies, academia, analysts, and news media.

The Livestock Mandatory Act of 1999 (Act) was enacted into law on October 22, 1999 (Pub. L. 106–78; 113 Stat. 1188; 7 U.S.C. 1635–1636(h)) as an amendment to the Agricultural Marketing Act of 1946. The Act provides for the mandatory reporting of market information by federally inspected livestock processing plants which have slaughtered an average number of livestock during the immediately preceding 5 calendar years (125,000 for cattle and 100,000 for swine), including any processing plant that did not slaughter during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the plant's capacity. For entities that did not slaughter during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

The Act gives the Secretary the latitude to provide for the reporting of lamb information. AMS is requiring the reporting of market information by federally inspected lamb processing plants who have slaughtered an average of 75,000 head of lambs or processed an average of 75,000 lamb carcasses during the immediately preceding 5 calendar years. Additionally, a lamb processing plant that did not slaughter an average of 75,000 lambs or process an average of 75,000 lamb carcasses during the immediately preceding 5 calendar years will be required to report information if the Secretary determines the processing plant should be considered a packer based on its capacity. An importer of lamb that, for any calendar year, imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years must report such lamb information as specified in these regulations. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years will be required to report information if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

These packers are required to report the details of all transactions involving purchases of livestock (cattle, swine, and lambs), and the details of all transactions involving domestic and export sales of boxed beef cuts, including applicable branded product, sales boxed lamb cuts, including applicable branded product, and sales of lamb carcasses. These importers are required to report the details of all transactions involving the sales of imported boxed lamb cuts. This information will be reported to AMS according to the schedule established by the Act and these regulations with purchases of swine reported three times each day, purchases of cattle and lambs reported twice each day, domestic and export sales of boxed beef cuts including applicable branded boxed beef cuts reported twice each day, sales

of lamb carcasses and boxed lamb cuts, including applicable branded boxed lamb cuts, to be reported once daily, and sales of imported lamb cuts once weekly.

In some instances, mandatory reporting will provide new information that has never been reported under the existing voluntary reporting program. AMS anticipates that this information will provide the basis for newly published market news reports not previously provided for under voluntary reporting, including reports covering the prior day swine market, forward contract and formula marketing arrangement cattle purchases, packer-owned cattle and sheep information, sales of imported boxed lamb cuts; and live lamb premiums and discounts. In other instances, mandatory reporting will provide information that is already being provided under voluntary reporting. This includes packer direct purchases of slaughter cattle, packer sales of boxed beef and lamb cuts including applicable branded boxed cuts, packer sales of lamb carcasses, and packer negotiated purchases of swine. In such cases the market reports reflecting this information will continue to be published but the basis of the market reports will become mandatory information. Lastly, many voluntary-based market news reports will not be affected by mandatory reporting, including reports covering livestock auction sales, packer sales of pork cuts and by-products, and grain trading.

Initially, the mandatory information will be reflected in market news reports of national importance. AMS will start with the issuance of reports of national importance to ensure the confidentiality is preserved regarding the identity of persons, including parties to a contract, and proprietary business information. In time, when and where possible, these reports may be further refined and subdivided to reflect regional and, possibly, statewide markets. Again, refinement and subdivision of reports will be made only where the confidentiality can be preserved regarding the identity of persons, including parties to a contract, and proprietary business information. In order to effectively address the statistical disclosure issues surrounding reporting of data elements below the national level, AMS has and will continue to consult with appropriate experts in the field of statistical disclosure limitation. AMS has and will continue to also include industry participants in discussions regarding confidentiality issues surrounding data aggregation and reporting.

The program developed to collect and manage data received from those entities required to report will ensure security of data transmission and storage, and confidentiality of information that is maintained by AMS. During program development, AMS has and will continue to include industry participants, as well as technical experts, in discussions regarding issues surrounding data security and confidentiality.

In all cases, AMS will continue to publish a mix of existing voluntary market reports along with the mandatory market reports where duplication and inferential disclosure (disclosing information in such a way that the identity of a respondent can be inferred) is not an issue. Any duplication has been resolved with the discontinuation of the voluntary report version.

The Livestock Mandatory Reporting Act of 1999 (Act)

The Act establishes a program of information regarding the marketing of cattle, swine, lambs and products of such livestock. AMS is responsible for implementing the mandatory reporting of market information on livestock and livestock products, which is contained in Sections 211 through 256 of the Act. The Sections on mandatory reporting of livestock are divided into five Chapters. Chapter 1 and Chapter 2, Definitions and Administration, respectively, apply to all species of livestock and livestock products required to be reported. Chapters 3, 4, and 5 apply to beef, swine, and lamb, respectively, and except for lamb, establish the requirements for mandatory reporting. AMS is implementing these sections of the Act through these regulations.

The Act also directs the Secretary to encourage continued voluntary reporting by packers to which these mandatory reporting requirements do not apply. Other Agencies in the Department are responsible for implementing the remaining sections of the Act. These sections include the following provisions. Section 257 of the Act provides for the compilation and monthly publication of retail prices of beef, pork, lamb, veal, chicken and turkey and the initiation of a meat price spreads report. The Act also contains Related Beef Reporting Provisions, Sections 921 through 924 which provides for export certificates for meat and meat food products, and obtain information on imports of beef, beef variety meats, and cattle. Related Swine Reporting Provisions, Sections 931 through 934 calls for improving the hogs and pigs inventory report, the collection of information on barrow and gilt slaughter, and to conduct an average trim loss correlation study and prepare a report. Swine Packer Marketing Contracts, Sections 221 and 222 require the establishment and maintenance of a library or catalogue of swine packer marketing contracts offered to producers and a monthly report of contracted swine numbers.

Cattle

The Act requires that a cattle packer whose federally inspected plant slaughtered an average of at least 125,000 cattle per year for the preceding 5 calendar years, or did not slaughter cattle during the preceding 5 calendar years but is considered a packer based on plant capacity as determined by the Secretary, report market information to the Secretary. They are required to report the prices for each type of cattle purchase, categorized to clearly delineate imported from domestic market purchases, negotiated purchase, formula marketing arrangement, and forward contract, the quantity of cattle, categorized to clearly delineate imported from domestic market purchases, purchased on a live weight basis and a carcass basis, the weight, the quality grade, and premiums and discounts. This information will be reported twice a day not later than 10:00 a.m. and 2:00 p.m. Central Time. The Secretary will issue reports to the public of this information at least three times each day.

The Act further requires that a packer report marketing information not later than 9 a.m. Central Time on the first reporting day of each week for cattle bought by the type of purchase for the prior week. In addition, packers must report weekly information on the first reporting day not later than 9 a.m. Central Time for cattle purchased on a formula or contract marketing arrangement and slaughtered the prior week. The Secretary will issue a public report not later than 10 a.m. Central Time on the first reporting day of the current slaughter week.

The Act also mandates that the packer report information on boxed beef cut sales to the Secretary at least twice each reporting day not less frequently than once before and once after 12:00 noon Central Time. This information includes the price per hundredweight, the quantity in each lot of boxed beef cuts sold, information regarding the characteristics of each lot (i.e., domestic vs. export sale, USDA Quality Grade, etc.), the type of beef cut and the trim specification. The Secretary will report this information to the public twice each reporting day.

Swine

The Act requires that a swine packer whose federally inspected plant slaughtered an average of at least 100,000 swine per year for the preceding 5 calendar years, or did not slaughter swine during the preceding 5 calendar years but is considered a packer based on plant capacity as determined by the Secretary, report market information to the Secretary.

The packer must report to the Secretary not later than 7:00 a.m. Central Time information on all swine purchased, priced, or slaughtered on the prior business day. The packer must report all purchasing data including the number of swine purchased, swine scheduled for delivery and the base price and purchase data for slaughtered swine for which a price has been established. The information also includes all slaughter data by class for the total number of swine slaughtered including information concerning the net price, average carcass weight, average sort loss, average backfat, average loin depth, average lean percentage, and total slaughter quantity. Packers reporting the average lean percentage must report the manner in which the average lean percentage is calculated as well as whenever a change in such calculation is made. In doing so, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary will convert to the carcass measurements or lean percentage of the swine of the individual packer to correlate to a common percent lean measurement. Additionally, the information to be reported includes packer purchase commitments, which shall be equal to the number of swine scheduled for delivery to a packer for slaughter each of the next 14 calendar days.

The Secretary will publish the information in a prior day report not later than 8:00 a.m. Central Time on the reporting day on which the information is received from the packer.

The Act also requires packers to report to the Secretary in the morning not later than 10:00 a.m. Central Time and in the afternoon not later than 2:00 p.m. Central Time each reporting day. The information to be reported is the same for the morning and afternoon reports and includes an estimate of (1) the total number of swine purchased by each method of pricing, (2) the total number of swine purchased up until the time of reporting, and (3) the base price paid for all negotiated purchases of market hogs and the base price paid for each type of purchase of market hogs other than through a negotiated purchase. The Secretary will make the morning report available to the public not later than 11:00 a.m. Central Time and the afternoon report at 3:00 p.m. Central Time on each reporting day.

The Secretary will compile and issue a weekly noncarcass merit premium report on the first reporting day of the week not later than 5:00 p.m. Central Time. This report is prepared from information furnished to the Secretary by packers who must report not later than 4:00 p.m. Central Time on the first reporting day of the week. The information required includes each category of standard noncarcass merit premiums and the amount in dollars per hundred pounds of carcass weight paid to producers by the packer.

Further, the Act provides that the Secretary review the information required to be reported by packers at least once every two years. Also, the Act directs the Secretary to promulgate regulations that specify additional information to be reported by packers if the Secretary determines information currently reported does not accurately reflect the methods by which swine are valued or priced, or account for the fact that packers that slaughter a significant majority of the swine produced in the United States no longer use backfat or lean percentage factors as indicators of price.

Lamb

The Act gives the Secretary the authority to establish a mandatory lamb price reporting program that will provide timely, accurate, and reliable market information. Through these regulations the Secretary is establishing a mandatory lamb price reporting program.

Although the Act does not specify the requirements for establishing a mandatory lamb price reporting program as it does for cattle and swine, AMS developed these requirements based upon its knowledge of the lamb industry and market information reporting of lamb under the voluntary reporting program. Following are the requirements for the mandatory lamb price reporting program.

A lamb packer whose federally inspected plant slaughtered or processed an average of at least the equivalent of 75,000 lambs each year for the preceding 5 calendar years will report to the Secretary once daily the price of each type of lamb purchase, negotiated purchase, formula marketing arrangements, forward contract, quantity of lamb purchased on live weight or carcass weight, a range and average estimated live weights, quality grade, premiums and discounts, class type, pelt type, state of origin, and estimated dressing percentage. The Secretary will issue a report to the public on this information not less than once each day.

Lamb packers will be required to report to the Secretary on a weekly basis on the second reporting day of the week information from the prior week. This information will include the quantity and certain carcass characteristics of lambs purchased through a negotiated purchase, formula marketing arrangement or forward contract that were slaughtered, the quantity and carcass characteristics of packer owned lamb that were slaughtered. Reported information will include, by type of purchase, the quantity of lamb purchased on live weight and carcass weight basis that were slaughtered, the quality grade, premiums and discounts paid, and dressing percentage. In addition, a lamb packer will be required to report the quantity and basis level for forward contracts, the range and average of intended premiums and discounts, and the expected slaughter date.

The Secretary will make available to the public the information on the second reporting day of the current slaughter week.

Packers will report information on daily sales of carcass lamb and sales of boxed lamb cuts each reporting day. For sales of carcass lamb, the information will include prices for sales, the type of sale, the branded product characteristics, the quantity of each sale, the USDA grade, trim specification, weight range, and delivery period. For sales of boxed lamb cuts, the packer will report the same information plus the quantity of boxes of each cut, the weight range of each cut, and the product state of refrigeration. The Secretary will issue to the public a report on carcass lamb sales and boxed lamb cut sales once each reporting day.

For any calendar year, a lamb importer who imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years will report to the Secretary weekly the prices received for imported lamb cuts sold on the domestic market. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years will also be required to report the above information, if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

Lamb importers will be required to report weekly, prices received for sales of imported boxed lamb cuts sold on the domestic market during the prior week including the quantity of each transaction, the type of sale, the branded product characteristics, the product state of refrigeration, the cut of lamb, the trim specification, the cut weight range, and the product delivery period.

Other Provisions of the Act Involving Administration

The administrative provisions of the Act set forth the requirements for maintaining confidentiality regarding the packer reporting of proprietary information and lists the conditions under which Federal employees can release such information. These administrative provisions also establish that the Secretary can make necessary adjustments in the information reported by packers and take action to verify the information reported, and directs the Secretary to report and publish reports by electronic means to the maximum extent practical. The Act provides for what constitutes violations of the Act, such as failure to report the required information on time or failure to report accurate information.

The section on enforcement establishes a civil penalty—of not more than $10,000—for each violation and provides for the Secretary's issuance of cease and desist orders. This section also provides for notice and hearing of violations before the Secretary, judicial review, issuance of an injunction or restraining order, and establishes a civil penalty for failure to obey a cease and desist order.

The fees section directs the Secretary to not charge or assess fees for the submission, reporting, receipt, availability, or access to published reports or information collected through this program.

The section on recordkeeping requires each packer to make available to the Secretary on request for 2 years the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products, as well as such records or other information that is necessary or appropriate to verify the accuracy of information required to be reported. Also, the Act provides that reporting entities are not required to report new or additional information that they do not generally have available or maintain, or the provisions of which would be unduly burdensome.

Further, the Act provides that the Secretary may suspend any requirement if the Secretary determines that the application of the requirement would be inconsistent with the Act.

Final Rule, New Part 59 of Title 7

This rule will establish and add a new Part 59 to Title 7 of the Code of Federal Regulations, implementing the mandatory livestock reporting provisions of the Act. Accordingly, these regulations include appropriate definitions; a description of which entities are required to report market information; a description of what information they will report, when they will report, and how they will report; a description of what information the Secretary will make available to the public and when this information will be made available; an explanation of what records will be required to be maintained and made available to the Secretary.

General Provisions

Part 59 implements the provisions of the Act. Subpart A of Part 59, General Provisions, covers those requirements pertinent to all aspects of mandatory reporting. Section 59.10 details how packers and importers will be required to report information and how reporting will be handled over weekends and holidays. Electronic reporting is required for all information collection. Electronic reporting will involve the transfer of data from a packer's or importer's existing electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS.

Once the required information has been entered into the AMS database, it will be aggregated and processed into various market reports that will be released according to the daily and weekly time schedule set forth in these regulations.

Section 59.10 also outlines the requirements for regional reporting and aggregation by the Secretary, adjustments in information by the Secretary, and lists reporting exemptions.

Section 59.20 identifies the recordkeeping requirements imposed by the Act and these regulations on packers and importers. Reporting packers and importers are required to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. In addition, they are required to maintain such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under these regulations. All of the above mentioned paperwork must be maintained by packers and importers for at least 2 years. Further, packers are required to maintain a record of the time of day a lot of cattle, swine, or lambs was purchased, either before 10:00 a.m. Central Time, between 10:00 a.m. and 2:00 p.m. Central Time, and after 2:00 p.m. Central Time. However, to allow packers and importers time to collect, assemble and submit the information to AMS by the prescribed deadlines, all covered transactions up to within one half hour of the specified reporting times will be reported.

Lastly, under Subpart A, § 59.30 establishes general definitions of terms used throughout the regulations, which are applicable to all subparts.

Cattle

Subpart B of Part 59 states what is required to be reported in the cattle and boxed beef sectors. § 59.100 establishes definitions of cattle terms used in Subpart B including the definition of packer which identifies which entities are required to report under this rule. In any calendar year, the term cattle packer includes any federally inspected cattle plant which slaughtered an average of 125,000 head of cattle a year for the immediately preceding 5 calendar years. Additionally, the term includes any processing plant that did not slaughter cattle during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on its capacity.

For entities that did not slaughter cattle during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

Section 59.101 discusses the daily reporting requirement for live cattle transactions including what information will be reported, when it will be reported, and when it will be published. Cattle plants covered under the rule will report the details of their cattle purchases twice each day to AMS (once by 10:00 a.m. Central Time, and once by 2:00 p.m. Central Time) and will include all covered transactions made up to within one half hour of the

specified reporting time. Packers completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. The Secretary will publish the information not less than three times each day. Section 59.102 discusses the same types of requirements for weekly live cattle reporting. Packers are required to report information regarding the prior slaughter week on the first reporting day of each week by 8:00 a.m. Central Time. This information will be published by the Secretary on the same day by 10:00 a.m. Central Time. Finally under Subpart B, § 59.103 details the information required to be reported concerning sales of boxed beef cuts including what will be reported, when it will be reported, and when it will be published. Cattle plants producing boxed beef cuts are required to report their domestic and export sales of boxed beef cuts including applicable branded boxed beef cuts to AMS twice each reporting day, once by 10:00 a.m. Central Time and once by 2:00 p.m. Central Time, including all covered transactions made up to within one half hour of the specified reporting time. Cattle plants completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. This information will be published twice each day by the Secretary. These plants are required to reference the Institutional Meat Purchase Specifications (IMPS) for Fresh Beef Products Series 100, United States Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program, when applicable.

Swine

Subpart C of Part 59 lists the requirements of swine reporting beginning with § 59.200 which establishes definitions for terms used throughout the subpart, including the definition of packer which identifies which entities are covered under the regulations. In any calendar year, the term swine packer includes any federally inspected swine plant which slaughtered an average of 100,000 head of swine a year for the immediately preceding 5 calendar years. Additionally, the term includes any processing plant that did not slaughter swine during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on its capacity.

For entities that did not slaughter swine during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

Section 59.202 discusses the daily reporting requirement for live hog transactions including what information will be reported, when it will be reported, and when it will be published.

Swine packers required to report under this rule will report the details of their swine purchases three times each day including a prior day report not later than 7 a.m. Central Time, a morning report not later than 10 a.m. Central Time, and an afternoon report not later than 2 p.m. Central Time, including all covered transactions made up to within one half hour of each specified reporting time. Packers completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. This information will be published by the Secretary each reporting day not later than 8 a.m. Central Time, 11 a.m. Central Time, and 3 p.m. Central Time, respectively. Section 59.203 details the requirements for reporting weekly swine information to AMS including what will be reported, when it will be reported, and when it will be published. On the first reporting day of each week, not later than 4 p.m. Central Time, packers are required to report information on noncarcass merit premiums used and paid to producers during the prior slaughter week by category. This information will be published on the first reporting day of each week not later than 5 p.m. Central Time.

Lamb

Subpart D of Part 59 covers the mandatory reporting of lambs. Section 59.300 provides definitions for terms used throughout Subpart D including definitions for packer and for importer which identifies which entities are required to report under this rule. For any calendar year, the term lamb packer includes only a federally inspected lamb processing plant which slaughtered or processed the equivalent of an average of 75,000 head of lambs a year for the immediately preceding 5 calendar years. Additionally, the term includes any processing plant that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the slaughter or processing capacity of the plant.

For entities that did not slaughter lambs during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

For any calendar year, the term lamb importer includes any importer that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, for any calendar year, the term importer includes any lamb importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

For importers of lamb carcasses and cuts, AMS will annually review import lamb volume data obtained from the United States Customs Service to determine which importers are required to report imported boxed lamb cut sales information under these regulations.

Entities that slaughter or process the equivalent of 75,000 lamb per year represent nearly all lamb packers and processors that currently report market information to AMS under voluntary reporting. The lamb packer definition varies from the definition of a cattle packer and swine packer in that it includes entities that process as well as slaughter. The trading of lamb carcasses continues to be a mainstay of the industry and many of the major processors of lamb carcasses into boxed lamb cuts do not slaughter but, rather, purchase carcasses from slaughterers. The 75,000 head per year provision for both slaughterers and processors was included to ensure comprehensive coverage of the lamb carcass and boxed lamb cut markets, similar to what is currently being reported to AMS under voluntary reporting.

Because imported products comprise 31% of the U.S. market and can affect prices for domestic lamb, lamb importers were included for more complete information on lamb meat products being imported into the U.S., including the types, quantities, and prices of these products.

Section 59.301 covers the daily reporting requirements for live lamb transactions including what will be reported, when it will be reported, and when it will be published. Lamb plants

covered under the rule will report the details of their live lamb purchases once each day to AMS, to include all covered transactions made up to within one half hour of the specified reporting time. Lamb plants completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. The Secretary will publish this information not less than once each day. Section 59.302 covers the same type of information for weekly reporting of live lamb transactions. Packers are required to report information regarding the prior slaughter week on the second reporting day of each week to be published by the Secretary on the same day. Finally, § 59.303 covers the reporting requirements for transactions of lamb carcasses and boxed lamb cuts including what will be reported, when it will be reported, and when it will be published. Packers are required to report details of their transactions of carcass lambs once each day and the Secretary will publish the information once each day. Packers are required to report details of their sales of boxed lamb cuts, including applicable branded product. This information will be published once each day. These plants are required to reference the Institutional Meat Purchase Specifications (IMPS) for Fresh Lamb and Mutton Series 200, United States Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program, when applicable.

Importers of boxed lamb cuts are required to report the required information of their prior week sales of imported boxed lamb cuts on the domestic market, including applicable branded product on the first reporting day of each week and this information will be published by the Secretary on the same day.

OMB Control Numbers

Subpart E of Part 59 covers the OMB control number 0581–0186 assigned pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) for the information collection requirements listed in Subparts B through D of Part 59. All required information must be reported to AMS in a standardized format. The standardized format is embodied in 16 OMB-approved data collection forms. Copies of these 16 forms are included in Appendix E at the end of this document. Cattle packers will utilize six of these forms (Appendix A) when reporting information to AMS including two for daily cattle reporting (LS–113 and LS–114), three for weekly cattle reporting (LS–115, LS–116, and LS–117), and one for daily boxed beef cuts reporting (LS–126). Swine packers will utilize three forms (Appendix B), two for daily reporting of swine purchases (LS–118 and LS–119) and one for weekly reporting of non-carcass merit premium information (LS–120). Lamb packers will utilize seven of these forms (Appendix C) when reporting information to AMS including two for daily lamb reporting (LS–121 and LS–122), three for weekly lamb reporting (LS–123, LS–124, and LS–125), one for daily and weekly boxed lamb cuts reporting (LS–128) and one for daily and weekly lamb carcass reporting (LS–129). Lamb importers will utilize one of these forms when reporting information to AMS on weekly imported boxed lamb cut sales (LS–128).

Appendices

The final section of this document contains a series of five appendices. These appendices will not appear in the Code of Federal Regulations. The first three appendices, Appendices A to C, have already been discussed above. They describe the forms that will be used by those required to report information under this program. Appendix D contains guidelines for those entities required to report information on how to use the forms. The forms are contained in Appendix E.

II. Comments and Responses

On March 17, 2000, AMS published a proposed rule in the **Federal Register** and invitation for comment (NPRM)(65 FR 14652–14691) establishing a mandatory program of reporting information regarding the marketing of cattle, swine, lambs, and products of such livestock under the Act. Comments were accepted for the 30-day period beginning March 17, 2000 and ending April 17, 2000. AMS received 703 comments covering a wide range of issues and concerns. The following is a breakdown of the commenters by type:

Commenter classification	Number
Packer-processor	36
Packer employee [1]	581
Livestock producer	29
Importer	6
Packer advocate	5
Producer advocate	35
Governmental agency	9
Trading company/academia	2
Total	703

[1] Includes 533 form letters sent in 10 separate comments and 48 form letters sent in 48 separate comments.

Specific comments are discussed in detail below.

Comments Relating to Cost Burden and Recordkeeping

Validity of Cost Burden Estimates

Summary of Comments: AMS received 468 comments concerning the validity of the cost burden estimates for implementing mandatory reporting in the propose rule. Four commenters agreed with AMS's estimate of the cost burden of mandatory reporting in the proposed rule. However, most commenters questioned AMS's cost burden estimates suggesting that the estimates were understated. Numerous commenters argued that the cost burden associated with mandatory reporting on small entities amounted to an economic hardship that would either force them to close their operations, sell out to a larger firm, or require they pass these additional costs on to producers and consumers which could negatively impact domestic markets for livestock and livestock products.

Many commenters offered a wide range of cost burden estimates for mandatory price reporting. These estimates ranged from $5,000 to $6,560,000, and included initial start-up costs and annual costs of compliance. The estimated initial setup costs ranged from $15,000 to $700,000 with most of the setup cost estimates ranging from $30,000 to $75,000. Estimates for annual operating costs ranged from $5,000 to $400,000 with most of the estimates ranging from $40,000 to $105,000. A few commenters submitted industry cost estimates on a cost per head basis, as a cost multiple of the AMS cost estimates, and on an hourly basis.

A few commenters suggested that AMS could reduce the reporting cost burden by changing some of the reporting requirements of the proposed rule. They recommended allowing lot aggregation, exempting branded boxed beef and lamb cuts, exempting lots of livestock consisting of fewer than 50 head, and exempting information which AMS would not be able to publish in reports due to confidentiality concerns as examples of reporting requirements that could be eliminated.

Agency Response: AMS's cost estimates along with the supporting assumptions and methodology used were stated in the proposed rule. These supporting assumptions and methodology used appeared in the Regulatory Impact Analysis, Regulatory Flexibility Analysis, and Paperwork Reduction Act Analysis sections of the proposed rule. The commenters did not provide any detailed supporting data and information on the methodology used in formulating their cost estimates or any information that would enable

AMS to determine how they derived their cost estimates. However, we do note that the wide range of estimates does raise concerns as to what assumptions and methodology were used by the commenters.

AMS believes that one explanation for the reason why some estimates submitted by commenters exceeded the estimates made by AMS is that commenters were estimating the costs of developing systems that far exceeded the minimum requirements of a system that would fulfill these regulations. Additionally, AMS believes that some commenters may have included other costs associated with normal recordkeeping and accounting practices that are already required by existing regulations for those engaged in the livestock and meat packing and importing industries and therefore are not new costs being required by the implementation of these regulations.

Nonetheless, AMS has carefully reviewed its analysis of the cost burden estimates for mandatory reporting using the same assumptions and methodology used in the proposed rule. In this regard, we have added tables in the Regulatory Impact Analysis, Regulatory Flexibility Analysis, and Paperwork Reduction Act Analysis sections of this final rule which even more clearly itemize the supporting assumptions and methodology used by AMS in formulating our cost estimates. Further, we have adjusted our cost estimates where appropriate.

Therefore, AMS believes we have done as comprehensive of an analysis as possible of the cost burden imposed by these regulations on those required to report.

AMS does not agree that allowing lot aggregation, exempting branded boxed beef and lamb cuts, or exempting lots of livestock consisting of fewer than 50 head as reporting requirements would reduce the cost burden on the industry. Eliminating these requirements will not have any effect on reducing the number of forms that are included in AMS's estimated reporting cost burden because the suggested changes are not unique to any one form. The amount of time required to submit the forms will not be result in any significant time savings as AMS expects all data submission to be accomplished through electronic means. These changes will not reduce the number of respondents required to report as none of the respondents are limited to selling only branded boxed beef and lamb cuts and buying livestock in lots of 50 head or less. Lastly, allowing respondents to aggregate information on lots of livestock prior to submission will require them to spend additional time to sort and aggregate the information, resulting in an increased time burden.

AMS does agree, however, that exempting entire product categories would reduce the annual cost burden on the industry. Specifically, eliminating entire product categories will reduce the number of responses specified in the Paperwork Reduction Act section of the proposed rule.

According to § 251(d)(3) of the Act, the Secretary shall make information obtained under this program available to the public only if it conforms to aggregation guidelines established by the Secretary. Pursuant to § 251(d)(3), the Secretary has established the following guidelines: Submitted information will only be published by USDA if (a) it is obtained from no fewer than 3 packers or importers representing a minimum of three companies, (b) the information from any one packer or importer represents not more than 60 percent of the information to be published, and (c) AMS does not have any reason to believe the information cannot be reported in a manner that protects the confidentiality of the source packer.

Because there is only one entity engaged in the business of purchasing imported lamb carcasses, AMS cannot report this information without disclosing the identity of the entity reporting. By requiring this entity to report its purchases of imported lamb carcasses that AMS would be unable to publish, the Agency believes this requirement would be an unnecessary burden placed upon the entity.

Accordingly, in this final rule, importers are not required to report market information on purchases of imported lamb carcasses. Consequently, the estimated annual reporting burden for Form LS–129—Lamb Carcass Report has been reduced by 43 hours or $860 per year. The total cost burden for lamb carcass reporting in this final rule has been adjusted accordingly.

Nevertheless, if a sufficient number of entities enter the business of importing lamb carcasses that AMS believes it would be able to publish the information obtained, AMS intends on initiating rulemaking to amend these regulations to require the reporting of information by importers on purchases of imported lamb carcasses.

Additionally, in contrast to the proposed rule, this final rule will not require lamb importers to report their purchases of imported boxed lamb cuts. Although the proposed regulations required lamb importers to report both their purchases and sales of imported boxed lamb cuts, the Agency has determined that because the reporting of lamb cuts sold in portion cut form (*e.g.,* chops, steaks, etc.) are not to be reported for either domestic or imported lamb, the reporting of both the purchases and sales of imported boxed lamb cuts would not provide a significant amount of additional market information over what will be obtained by only requiring importers to report information on their sales of imported boxed lamb cuts not sold in portion cut form.

AMS had originally intended to obtain market information concerning the purchases and sales of imported boxed lamb cuts in an effort to disseminate more complete market information concerning the prices being paid and received for imported lamb meat products entering the U.S. market. However, because packers and importers are exempt from reporting information concerning any boxed lamb cuts sold in portion cut form, the only product lamb importers produce from the processing of imported boxed lamb cuts not in portion cut form, AMS determined that requiring the reporting of this information was not necessary as these products could be processed into portion cut form before export to the United States, thereby being exempt from these reporting provisions. Further, information concerning the volume and value of imported boxed lamb cuts that are not sold in portion cut form from importers who buy and sell imported boxed lamb cuts not in portion cut form, this information is already being obtained by the requirement that importers report the prices they receive for their sales of those products.

Electronic Reporting of Information

Summary of Comments: Twenty-one commenters supported electronic reporting of market news information. They believed that electronic reporting would facilitate aggregation and dissemination and would reduce the cost burden associated with paperwork. A few commenters recommended that rarely should AMS grant packers and importers exemptions from electronic reporting. A few commenters also wanted to see the system designed to eventually handle real-time reporting. One commenter suggested AMS develop and make available web-based input forms for submitting data online.

Agency Response: AMS agrees with the points raised by the commenters regarding electronic data submission. AMS's own estimates of cost burdens indicated that the cost of submitting information by any method other than electronic would be cost-prohibitive, error prone, and unsecured. For the

same reasons, AMS will grant exceptions to electronic reporting only in emergency cases such as power failures or loss of Internet accessibility. AMS will also provide web-based input screens as an alternative option for entities to use when submitting information. AMS computer specialists have conducted on-site visits over the past year to many packers who will be required to report to discuss and evaluate electronic recordkeeping systems employed by the industry.

AMS understands commenter's concerns about their ability to comply with these reporting requirements in a timely, accurate manner, in order to avoid any enforcement penalties. This is particularly important in the context of an untested, electronic reporting process and disparate computing resources among reporting entities. AMS further understands that unforeseen technical difficulties may occur during the implementation of this rule which may, in some cases, prevent full compliance. Recognizing these concerns and acknowledging our responsibility to provide flexibility in dealing with small business as directed by the President in the 1995 Regulatory Reform—Waiver of Penalties and Reduction memorandum, entities acting in good faith in attempting to establish a data transfer technology and reporting process that will comply with the electronic reporting requirements will not be penalized under the enforcement provisions.

To further assist the industry in achieving compliance, educational and outreach sessions will be held around the country immediately upon publication of this final rule. In these sessions, AMS will actively assist each reporting entity in understanding how their information technology infrastructures and related resources should be configured in order to ensure interoperability with the electronic transaction system developed by AMS. AMS will document and provide the reporting entities with standards and protocols associated with the transaction. Among other topics, these sessions will also provide information on implementing and using digital certificates, acceptable submission formats, the newly designed web-based input method, output report designs, data aggregation guidelines, and AMS' electronic transaction system. In addition, AMS plans to beta test the technology to implement the rule during the time between publication of this final rule and its effective date and all entities required to report will be encouraged to participate in the beta testing program. Any feedback received during this outreach and testing period will be used to revise the reporting requirements, input and output formats, and process accordingly.

In response to the comment concerning AMS developing and making available a web-based input forms for submitting data online, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. Accordingly, AMS is developing such a system that will be ready in time for program implementation.

Maintenance of Records

Summary of Comments: AMS received 4 comments expressing concern that many of the records required for submission under mandatory price reporting are not normally maintained by their operation and argued that the requirement of such records is contrary to the intent of the Act.

Agency Response: The Agency has tried to make the records required to be submitted and maintained under this final rule the minimum needed to achieve the objectives of the Act. Further, based upon AMS's knowledge of common industry practices and in being consistent with the requirements of the Act, these regulations do not require the reporting of any new or additional information that is either not generally available or maintained by packers or the provision of which would be unduly burdensome.

Retention of Records

Summary of Comments: Five comments suggested that the 2-year record retention requirement for packers covered under mandatory price reporting be changed. They recommended that packers be required to maintain records for up to 10 years so that the records would be available for investigation purposes.

Agency Response: A 2-year recordkeeping requirement is required by § 255(a) of the Act.

Maintenance of Records of Oral Agreements

Summary of Comments: AMS received 9 comments recommending that packers be required to maintain data on oral agreements and verbal contracts. The commenters expressed concern that no provision was made in the proposed rule for clarifying how records of such transactions would be maintained.

Agency Response: Section 255(a)(2) of the Act requires packers to maintain such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported, including verification of oral agreements and verbal contracts of any transaction required to be reported under mandatory price reporting.

Comments Relating to Reporting Timeframes

Prior Day Swine Reporting

Summary of Comments: AMS received 27 comments regarding the proposed prior day swine reporting time of 7:00 a.m. Central Time (§ 57.202(a) of the proposal and § 59.202(a) of this final rule). Fourteen commenters supported this reporting requirement as being satisfactory to ensure timely availability of market information. Thirteen commenters argued that the requirement to report prior day swine information at 7:00 a.m. Central Time daily would not allow packers sufficient time to collect, audit, and review information prior to submission, thereby increasing the chance for error and the potential liability for penalties. These commenters stated that this requirement was unrealistic because the required information is not available in a complete and accurate form until later in the day. A few commenters stated they would have to hire additional personnel and alter their normal work schedules in order to comply with the 7:00 a.m. Central Time prior day swine reporting requirement. Commenters located in the Pacific Time zone stated that they would be particularly burdened by this requirement by being 2 hours behind the Central Time zone specified reporting times. Two commenters stated that their business day did not begin until after the required 7:00 a.m. Central Time reporting requirement for prior day swine information.

Agency Response: The time requirements for the reporting of prior day swine information are in accordance with the Act (section 232(c)(1)(B)) and this final rule reflects that provision of the Act. Nonetheless, information not available in time for the prior day swine reporting should be reported, and will be published, as a part of the next report.

Prior Slaughter Week Cattle Reporting

Summary of Comments: AMS received 5 comments stating that the 9:00 a.m. reporting time on the first reporting day of the week for prior slaughter week data (§ 57.102(c) of the proposal) for reporting cattle was unrealistic since complete information would not be available. They argued that, because standard industry practice

was to have cattle that are slaughtered on Friday and Saturday graded on Monday, all of the information required would not be available or even known until Tuesday at the earliest. These commenters recommended that the required reporting day be moved to later in the week.

Agency Response: The time requirements for the reporting of prior slaughter week cattle information are in accordance with the Act (section 222(d)(1) and (2)) and this final rule reflects those provisions of the Act. Nonetheless, information not available in time for the prior slaughter week reporting should be reported, and will be published, as a part of the next report.

Reporting Trades Within 30 Minutes of Reporting Times

Summary of Comments: AMS received 2 comments stating that it was impossible to report all trades occurring within 30 minutes of the 10:00 a.m. and 2:00 p.m. proposed reporting times. They argued that this requirement would disrupt their procurement practices by forcing their buyers to discontinue their purchases.

Agency Response: The 10:00 a.m. and 2:00 p.m. reporting time requirements for reporting purchases of cattle and swine are consistent with the provisions of the Act. The 2:00 p.m. reporting time requirement for reporting purchases of lambs is set by regulation in accordance with § 241 of the Act which authorizes the Secretary to establish a program of mandatory price reporting program for lamb and lamb products. The 2:00 p.m. reporting time was chosen to be consistent with the reporting times for cattle and swine and is consistent with current industry practice under the existing market news program.

The requirement to report all covered purchases up to one half hour of the set reporting time (§ 59.10(b)) allows time for preparing and transmitting the required information prior to the set deadline and provides for purchases made in the interim 30 minutes to be reported at the next reporting time.

Reporting Times for Boxed Beef

Summary of Comments: AMS received one comment objecting to the reporting times of 10 a.m. and 2 p.m. Central Time for boxed beef. The commenter argued that the Act only required that box beef sales be reported prior to 12 noon and once after 12 noon.

Agency Response: The Act provides that information on boxed beef will be reported twice daily, once before 12 noon and once after (§ 223(a)). In the proposed rule, AMS required that reporting be completed by 10 a.m. and 2 p.m. Central Time. These times reflect the boxed beef report publishing times that have been in effect for a number of years under voluntary reporting. These times are deemed to be appropriate because they reflect current industry practice and provide the needed time to prepare and transmit information to AMS.

Reporting Times for Lamb Purchases

Summary of Comments: AMS received 4 comments expressing concern over the twice-daily reporting requirement for live lamb (§ 57.301(a) of the proposal). The commenters suggested that this requirement for twice daily reporting of live lamb purchases be changed to reporting once per day reporting at 2 p.m. Two of these commenters also expressed concern over the proposed requirement to report prior slaughter week data at 9 a.m. on the first reporting day of the week (§ 57.302(a) of the proposal). They argued that this information is typically not available until Tuesday for formula and contract sales of livestock. They proposed that the requirement be changed from the first reporting day of the week to a later day.

Agency Response: The Act authorizes the Secretary to establish a program of mandatory lamb price information reporting. However, unlike the sections dealing with cattle and swine, § 241 of the Act does not mandate reporting timeframes. AMS has reviewed the comments specific to lamb reporting time frames in the proposed rule and has made the following changes in this final rule. Under § 59.301(a), AMS has changed the requirement for mandatory daily reporting of lamb from twice per day at 10 a.m. and at 2 p.m. Central Time, as proposed, to once per day at 2 p.m. Central Time. Under mandatory weekly reporting of lambs (§ 59.302(a)), AMS has changed the required reporting day for reporting prior slaughter week information from 9 a.m. Central Time on the first reporting day of the week to 9 a.m. Central Time on the second reporting day of the week. These changes will bring the proposed regulations more in line with current industry practices and will lessen the burden on those entities required to report while continuing to ensure complete, accurate, and timely access to market information. Section 59.301(a) and § 59.302(a), respectively, have been revised accordingly.

Reporting Times for Boxed Lamb Cuts and Lamb Carcasses

Summary of Comments: AMS received 2 comments stating that the daily requirement for reporting of lamb carcasses and boxed lamb cuts (§ 57.303(a) of the proposal) was not necessary because prices are set on a weekly basis and remained in effect for the entire week.

Agency Response: AMS has determined that, while prices for all trading during a given week may be set on a weekly basis, trading occurs on a daily basis. Furthermore, the day of the week on which the lamb carcass market is established is not always the same day. AMS believes that changing the required reporting to once weekly would not achieve the objectives of the Act. For these reasons this suggestion is not adopted.

Actual Time Stamping

Summary of Comments: AMS received 7 comments suggesting that packers be required to maintain the exact time that each transaction took place instead of by one of the 3 proposed time blocks (before 10 a.m. Central Time, between 10 a.m. and 2 p.m. Central Time, and after 2 p.m. Central Time).

Agency Response: Section 255(c) of the Act requires that each reported transaction evidence the time that the transaction took place by one of 3 time blocks (before 10 a.m. Central Time, between 10 a.m. and 2 p.m. Central Time, and after 2 p.m. Central Time). Accordingly, this suggestion is not adopted.

Comments Relating to Reporting Units

Lot Aggregation

Summary of Comments: AMS received 37 comments pertaining to reporting lot size. Eleven commenters suggested that packers should be allowed to aggregate lots of livestock sharing a common price or aggregate lots sharing the same price, specification, and purchase terms prior to reporting the required information to AMS. Two of these same commenters felt that aggregation should only be for lots sharing the same price. Six commenters suggested that small lots of livestock, particularly cows and bulls, be exempted from the reporting requirements. They pointed out that most cows and bulls were purchased one head at a time, largely through auctions, and believed the burden of reporting each transaction outweighed the marginal value of the information on individual animals.

Nine commenters supported reporting transactions by lot as proposed.

Eleven commenters recommended that AMS exempt sales of boxed beef and boxed lamb from the reporting

requirement under a minimum number of boxes or a minimum weight range (*e.g.* 100–200 boxes or 6,000–20,000 pounds).

Agency Response: AMS does not believe that its proposed rule should be modified based on these comments. Section 251(c) of the Act requires a packer to report all information obtained under this part on an individual lot basis. Further, § 212 defines a lot as: ''The term 'lot' means a group of one or more livestock that is identified for the purpose of a single transaction between a buyer and a seller.'' Similarly, with respect to the comments concerning boxed beef and lamb, information on such sales, regardless of the number of boxes or weight range, must be reported. However, as discussed elsewhere in this section, with respect to purchases made at auction markets, such purchases do not need to be reported. Accordingly, these suggestions are not adopted.

Distributive Sales

Summary of Comments: Five commenters recommended transactions of boxed beef, boxed lamb and lamb carcasses of less than carlot volume, commonly referred to in the industry as ''distributive sales'', be exempted from the reporting requirement. AMS understands distributive sales to be sales of boxed beef destined for more than two delivery stops, and sales of boxed lamb, and lamb carcasses destined for more than three delivery stops. These commenters expressed a concern that the reporting of such transactions would unfairly expose the business practices of small business entities to larger competitors thus placing the smaller entities at a disadvantage in the marketplace. Distributive sales are largely comprised of unique, value-added products where prices often reflect added customer services.

Agency Response: Because of the uniqueness of the distributive trade, relatively small percentage such trades represent of all boxed beef sales, and negative effect the inclusion of such unrelated information would have on the aggregated reports AMS would publish, it was never AMS's intention that the information concerning the distributive trade would be included in this program as AMS believes the reporting of such information is not contemplated by the Act.

To clarify that distributive sales are not to be reported, in this final rule, AMS has included definitions of a carlot of boxed beef, boxed lamb, and lamb carcasses. For purposes of boxed beef cuts reporting, a carlot is any transaction between a buyer and a seller involving 2 or less delivery stops consisting of one or more individual boxed beef items. For lamb carcasses and boxed lamb cuts reporting, a carlot is any transaction between a buyer and a seller involving 3 or less delivery stops consisting of one or more individual boxed lamb cuts or any combination of carcass weights. By adding these definitions, AMS has clarified the regulations concerning reporting of distributive trade of boxed beef and boxed lamb cuts and lamb carcasses. Sections 59.100 and 59.300 of these regulations have been revised accordingly.

Packer Thresholds

Summary of Comments: Twelve comments were received concerning the thresholds that were established by the Act and AMS to determine who is a packer or importer for the purposes of mandatory reporting.

Three commenters believed the proposed thresholds were accurate and opposed any changes and nine commenters supported changes to the proposed thresholds.

Of the nine who supported changes to the proposed thresholds, 5 commenters expressed the concern that the lamb import threshold of 5,000 metric tons and the domestic lamb packer threshold of an average 75,000 head per year for each of the preceding 5 years were not comparable. These commenters felt that the threshold for lamb importers was set too high in relation to the domestic packer threshold and should be lowered to insure adequate coverage of the imported lamb market. These commenters also suggested that all importers of lamb, regardless of size, be required to report.

The four remaining comments addressed separate issues. One commenter suggested raising the cattle threshold from an average of 125,000 to 199,999 head per year for each of the preceding 5 years. This would exempt most cow and bull plants from reporting. Another packer suggested that the cattle threshold should be raised to exempt packers slaughtering fewer than 500,000 head per year for each of the preceding 5 years. They suggested that this would reduce the burden on smaller packers while still maintaining adequate market coverage. Another commenter suggested raising the threshold for swine packers from an average of 100,000 to 500,000 head per year for each of the preceding 5 years. The commenter believed that this threshold would cover the majority of swine without subjecting smaller independent plants to the reporting burden. Finally, one commenter suggested that the lamb reporting thresholds be lowered from the average 75,000 head per year for each of the preceding 5 years in order to capture information from many of the ethnic lamb kills which the commenter contends have a major impact on lamb pricing.

Agency Response: The definitions of cattle and swine packers put forth in the proposed regulations are defined by the Act. However, unlike cattle and swine, the Act does not provide a definition of a lamb packer or importer.

AMS believes that lowering the lamb packer threshold from what was put forth in the proposed regulation will create a burden on additional lamb packers without a gain of significant market information. Additionally, the 75,000 head per year threshold was set to be compatible with those thresholds set by the Act for cattle and swine packers.

Similarly, AMS established the 5,000 metric ton lamb importer threshold because it will cover a comparable percentage of the lamb imports as slaughter and processing are being covered by the cattle, swine and lamb packer definitions, or approximately 80% of lamb imported into the U.S. (According to U.S. Customs Service published data, in 1999, 40,301 metric tons were imported by the U.S.)

The importer capacity threshold would have to be reduced to 2,500 metric tons to cover the remaining 20% of lamb meat imports. Additionally, the products imported by many of these operations are so unique that AMS believes it would be unable to report them without disclosing proprietary information.

For the reasons stated above, none of the suggested changes to the cattle packer, swine packer, lamb packer, or lamb importer definitions are adopted.

Comments Relating to Voluntary Reporting

Voluntary Reporting Role

Summary of Comments: AMS received 51 comments supporting a continued role for voluntary market reporting. A total of 44 comments expressed a desire to continue voluntary reporting in those markets not covered by mandatory reporting. These commenters encouraged AMS to continue to solicit voluntary participation from entities not covered under mandatory reporting including producers and smaller packers. The commenters maintained that the information gained through this voluntary process would provide a

check and balance to mandatory reporting and would fill gaps in mandatory reporting.

Several commenters recommended that adequate funding be found for both mandatory and voluntary reporting. These commenters believed that market news should be fully staffed with adequate resources to at least maintain the current level of market information.

Agency Response: AMS intends to continue many voluntary reporting programs. AMS has no plans to discontinue coverage of any voluntary-based market news reports not affected by mandatory reporting, including reports covering livestock auction sales, packer sales of pork cuts and by-products, feeder cattle sales, feeder pig sales, and grain trading. In some instances, mandatory reporting may provide some of the information that is already being provided under voluntary reporting. This would include some transactions of packer direct purchases of slaughter cattle, packer sales of boxed beef and lamb cuts including applicable branded boxed cuts, packer sales of lamb carcasses, and packer negotiated purchases of swine. The market reports reflecting this information will continue to be published but the basis of the market reports will be more comprehensive and will become mandatory information.

In some instances, mandatory reporting will provide new information that has never been reported under the existing voluntary reporting program. AMS anticipates that this information will provide the basis for publishing market news reports not previously provided for under voluntary reporting. This will include reports covering the prior day swine market, forward contract and formula marketing arrangement cattle purchases, packer-owned cattle and lamb information, sales of imported boxed lamb cuts, including applicable branded product; and live lamb premiums and discounts.

The Act requires the Secretary to encourage voluntary reporting by packers to which the mandatory reporting requirements do not apply. AMS will encourage voluntary reporting in markets not covered under mandatory reporting.

Transition Period

Summary of Comments: Ten comments were received promoting the need for a transitional period from voluntary to mandatory based reporting. The commenters contended that a transition would lessen market disruptions through the loss of market information.

Agency Response: Although AMS will not be able to implement a transition period of both mandatory and voluntary information being published at the same time, AMS will implement a program of education and outreach during the period between the publication of this final rule and its effective date to ensure market participants understand the changes that will be occurring. This should lessen disruptions in the marketplace in such areas as where AMS's market news reports are used by the industry as the basis for formulated sales.

Loss of Personal Contact

Summary of Comments: AMS received 7 comments expressing concern about the potential loss of personal contact between the livestock industry and AMS livestock and meat trade market news reporters where industry participants are able to routinely, conveniently and openly discuss market conditions with AMS livestock and meat trade market news reporters. These commenters believed these market news reporters would have to spend so much of their time managing the large volume of information anticipated to be collected under mandatory reporting that there would be little or no time available for the traditional personal contact and AMS would not maintain its current office locations resulting in further loss of personal contact.

Agency Response: As discussed previously, AMS intends on continuing its voluntary market news reporting program for those products not covered by mandatory reporting. Accordingly, no loss in personal contact with AMS market news reporters should be experienced by individuals accustomed to working with voluntary market news reporters in those markets. Additionally, at this time, AMS has no plans to close any of its current office locations as a result of mandatory reporting, so accessibility to market news offices by producers or other interested persons should not be impacted.

However, in accordance with the requirements of § 251(b) of the Act, which states that no officer, employee, or agent of the United States shall, without the consent of the packer or other person concerned, divulge or make known in any manner, any facts or information regarding the business of the packer or other person that was acquired through reporting required by the Act, AMS will ensure that unauthorized releases of information are guarded against. AMS is especially mindful of this given that the submission of such information by packers and importers under this program is mandatory and carries civil penalties for the failure or refusal to submit information. Accordingly, AMS recognizes and will institute policies that will ensure that market reporters engaged in the collection and dissemination of mandatory information will not be able to openly discuss market conditions concerning proprietary information. Further, AMS recognizes that market reporters engaged in the collection and dissemination of mandatory information cannot discuss any information before such information is made available publicly.

This is not to say that any of these requirements conflict in any way with procedures currently followed as a part of the voluntary reporting program, but establishment of this mandatory program requires AMS to clarify its policies and procedures regarding public contact with market reporters engaged in the collection of mandatory information.

Comments Relating to Regional Reporting

National, Regional, and State-wide Reporting

Summary of Comments: AMS received 42 comments addressing the issue of how mandatory information should be reflected—on a nationwide, regional, or state-wide basis. Five commenters wrote supporting AMS's intentions to initially release reports on a national basis in order to protect confidentiality.

Most commenters opposed the initial release of mandatory information on a national level. These commenters asserted that national level reports were of limited use to the industry and they would not accomplish the goal of providing producers with useful and accurate information. These commenters believed that AMS could release much of the mandatory information on a regional and statewide basis from the outset without disclosing proprietary information, especially in the case of some of the significant market news reports currently being released under voluntary reporting such as the Iowa-Southern Minnesota Direct Hog report. These commenters urged AMS to initially release as much mandatory information as possible on a statewide and regional basis while complying with the confidentiality provisions of the Act. A few commenters suggested that AMS release mandatory information from the outset on a regional and statewide basis regardless of confidentiality provisions.

Some commenters questioned AMS's statutory authority to begin publishing mandatory information only on a national level.

Agency Response: Sections 251(d) of the Act provides for the mandatory information to be published on a national and a regional or statewide basis as the Secretary determines to be appropriate while ensuring that the identity of a reporting person is not disclosed. Initially, AMS will develop reports on a national basis to ensure the confidentiality in the reports of the identity of persons, parties to contracts, and proprietary business information. Over time, as the system of mandatory market news reporting is refined, AMS will expand reports to a regional or statewide basis.

Comments Relating to Confidentiality

Transaction-Level Data Sharing

Summary of Comments: AMS received 23 comments addressing the issue of providing transaction-level data gathered through mandatory reporting to other Federal and State enforcement entities. These commenters wanted the rule clarified to accomplish transaction-level data sharing for enforcement and investigation purposes with the Packers and Stockyards Administration, the Justice Department, the Federal Trade Commission, any State enforcement agency or in response to any court sanctioned request or Freedom of Information request.

Agency Response: The conditions under which information is to be disclosed is stated in § 251 General Provisions of the Act. The information obtained by the Secretary under this program may be disclosed: (1) To agents or employees of USDA in the course of their official duties under the Act; (2) as directed by the Secretary or the Attorney General, for enforcement purposes; or (3) by a court of competent jurisdiction. It is not necessary to include a section on disclosure in the final rule.

Maintaining Confidentiality

Summary of Comments: AMS received 26 comments concerning maintaining confidentiality of proprietary information collected under mandatory reporting. Most commenters believed AMS should establish effective aggregation procedures to ensure safeguarding proprietary information. Some commenters urged AMS to develop guidelines for aggregation and publish them in the final rule. In addition, the majority of commenters wanted AMS to present the format of the aggregated reports that it intends to publish as a result of mandatory reporting. A few commenters stated that aggregation of market information would not provide the level of market transparency that was needed in the reports.

Agency Response: Pursuant to § 251(d)(3), the Secretary has established the following guidelines: Submitted information will only be published by USDA if: (a) It is obtained from no fewer than 3 packers or importers representing a minimum of three companies; (b) the information from any one packer or importer represents not more than 60 percent of the information to be published; and (c) AMS does not have any reason to believe the information cannot be reported in a manner that protects the confidentiality of the source packer.

In addition, AMS is developing formats for those reports it intends to publish as a result of mandatory price reporting. These sample reports will be used as part of the educational and outreach component being developed by AMS to facilitate the transition from voluntary market news reporting to mandatory market news reporting during the period between publication of this final rule and its effective date. With respect to concerns regarding the reports being able to provide the level of market transparency that is needed, as already discussed, AMS will initially release reports on a national basis to ensure the confidentiality in the reports of the identity of persons, parties to contracts, and proprietary business information. Over time, as the system of mandatory market news reporting is refined, AMS will expand reports to a regional or statewide basis to provide more market transparency.

Nation of Origin

Summary of Comments: AMS received 2 comments regarding the inclusion of nation of origin as a reporting requirement for reporting lamb products. The commenters argued that the inclusion of nation of origin served no useful purpose.

Agency Response: It is widely understood in the lamb industry that the majority of boxed lamb cuts and lamb carcasses imported into the U.S. come from Australia and New Zealand. Because industry participants are already aware of the origin of lamb imports, the value of requiring this information to be reported is outweighed by the burden the request of such information places on lamb importers required to report. Accordingly, the nation of origin requirement in § 57.303 of the proposal has been removed from this final rule for reporting of domestic and imported sales of boxed lamb cuts, and sales of lamb carcasses.

Comments Relating to Imports and Exports

Lamb Imports

Summary of Comments: AMS received 17 comments addressing lamb import reporting requirements. Six commenters expressed support for import lamb reporting. They believed that information on lamb imports would be very beneficial to domestic lamb producers and that it would help to restore competition in the marketplace for lamb products. Eleven commenters opposed AMS mandating reporting of all purchases and sales of boxed imported lamb cuts and imported lamb carcasses because they felt it would disclose their operating margins. Further, they argued that they were being treated differently than beef and pork importers and that import lamb information was of little benefit to domestic producers and what little information was to be gained was outweighed by the potential burden placed upon them. They recommended that the dual requirement of reporting purchases and sales of imported lamb carcasses be dropped from the final rule. One other commenter suggested that all lamb imports be exempted from the reporting requirements in this final rule.

Agency Response: AMS does not agree that all imported lamb be exempted. In 1999, lamb imports comprised 32% of the total U.S. consumption based on U.S. Customs Service data (50,377 metric tons in 1999) and domestic production data published by the National Agricultural Statistics Service (235.8 million pounds in 1999). Imported lamb accounts for nearly a third of the total domestic U.S. market and directly impacts the pricing structure of the domestic marketplace. Market information on lamb imports is clearly significant and important to domestic lamb producers.

AMS agrees with the suggestion to not report both the purchases and sales of imported boxed lamb cuts and carcass lamb as required in the proposed rule. Accordingly, AMS has made the following changes to the imported lamb reporting requirements in this final rule.

First, as already discussed, the requirement for reporting purchases of imported lamb carcasses has been removed from § 59.303. Because there is only one entity engaged in the business of purchasing imported lamb carcasses, AMS cannot report this information without disclosing the identity of the entity reporting.

Second, AMS has revised the requirements for the reporting of imported boxed lamb cuts in § 59.303 to clarify that lamb importers will not be required to report lamb cuts that are prepared in a portion cut form (*e.g.* chops, steaks, etc.). AMS recognizes that the reporting of portion cuts is not required for domestic boxed lamb cuts or boxed beef cuts and therefore should not be required for imports. Furthermore, such portion cuts are unique to certain respondents based upon characteristics such as cutting style or packaging and would not be eligible for inclusion in published reports without disclosing proprietary business information.

And third, as already discussed, this final rule will not require lamb importers to report their purchases of imported boxed lamb cuts. Although the proposed regulations required lamb importers to report both their purchases and sales of imported boxed lamb cuts, the agency has determined that because the reporting of lamb cuts sold in portion cut form (*e.g.,* chops, steaks, etc.) are not to be reported for either domestic or imported lamb, the reporting of both the purchases and sales of imported boxed lamb cuts would not provide a significant amount of additional market information over what will be obtained by only requiring importers to report information on their sales of imported boxed lamb cuts not sold in portion cut form.

AMS had originally intended to obtain market information concerning the purchases and sales of imported boxed lamb cuts in an effort to disseminate more complete market information concerning the prices being paid and received for imported lamb meat products entering the U.S. market. However, because packers and importers are exempt from reporting information concerning any boxed lamb cuts sold in portion cut form, the only product lamb importers produce from the processing of imported boxed lamb cuts not in portion cut form, AMS determined that requiring the reporting of this information was not necessary as these products could be processed into portion cut form before export to the United States, thereby being exempt from these reporting provisions. Further, information concerning the volume and value of imported boxed lamb cuts that are not sold in portion cut form from importers who buy and sell imported boxed lamb cuts not in portion cut form, this information is already being obtained by the requirement that importers report the prices they receive for their sales of those products.

Reporting Imported Lamb on CIF Basis

Summary of Comments: One commenter suggested that because the majority of imported lamb is sold on a delivered basis (CIF or cost-including-freight) that AMS should require information on imported lamb prices to be reported on a CIF basis. To report this information on an Ex-Dock basis (cost of the product at the dock not including freight charges) as proposed, the commenter argued, freight would have to be deducted. And, since freight is different for each sale, it would impose a tremendous burden. The commenter further cited the Ocean Shipping and Reform Act, effective May 1, 1999, to assert that specific freight costs may not be available to importers.

Agency Response: This issue has been resolved, as AMS will not require the reporting of information on the purchases of imported lamb carcasses or imported boxed lamb cuts.

Reporting Exported Boxed Beef

Summary of Comments: AMS received 9 comments regarding boxed beef cuts exports. Three commenters supported the reporting of exported boxed beef cuts but expressed concern about maintaining confidentiality while publishing export boxed beef information.

Six commenters opposed the reporting of export boxed beef cuts. They argued that export boxed beef products were proprietary in nature and were often produced for specific foreign markets and reporting sales of boxed beef for export would do irreparable harm to the export trade. They further argued that no other major beef-exporting nation is required to report such information. One commenter expressed the opinion that AMS was simply confusing § 201 of the Act which calls for beef export sales to be reported under the Foreign Agricultural Service's Export Sales Reporting Program with a legislative mandate to report export boxed beef prices. Others cited a lack of clear legislative mandate for export boxed beef reporting.

Agency Response: Section 223 of the Act requires each packer processing boxed beef to report information on *total* boxed beef sales and does not distinguish between domestic and export sales (emphasis added). AMS believes that export sales of boxed beef is a significant and growing segment of the U.S. beef industry and its reporting is required to provide transparency to the market. However, with regard to concerns raised by commenters regarding the release of information that would harm U.S. entities interests in export markets, AMS will not report information on those proprietary cuts that would compromise the identity or confidentiality of those persons or entities reporting.

Reporting Imported Boxed Beef

Summary of Comments: Two commenters suggested that imported boxed beef cuts should be covered under mandatory price reporting and cited the inclusion of imported lamb as justification.

Agency Response: The Act does not authorize the collection of information on imported boxed beef. As stated in § 223 of the Act, packers are only required to report information on boxed beef sales. Although § 923 of the Act does provide for the collection of certain information by the Secretary on the imports of beef, beef variety meats, and cattle, the Secretary has assigned the responsibility for the collection of this information and administration of this section of the Act to the USDA's Animal and Plant Health Inspection Service and Food Safety and Inspection Service. They are implementing this section of the Act by separate actions, apart from this final regulation.

Comments Relating to Branded Products

Reporting Branded Products

Summary of Comments: AMS received 15 comments on reporting information on branded products. Only one comment was supportive of AMS's proposal. However, the commenter felt that branded products should only be included when they became more standardized and less proprietary. The remaining 14 commenters opposed the reporting of branded beef products. Most of these commenters referred to the ''intent'' of Congress as justification for exemption of branded products. They cited the Senate Agriculture Committee report language that accompanied the authorizing legislation that stated, ''The Committee * * * does not intend that individual branded products will be reported.''

Also, the majority of the commenters expressed the opinion that branded products were not comparable to other cuts because of the addition of value due to the method of preparation and other services rather than the value associated with inherent product characteristics. Several commenters stated that those value added services are proprietary and reporting such proprietary information would disadvantage large and small packers alike, forcing the industry back to a commodity business at the expense of the producer and consumer.

Agency Response: Upon further review of the requirements proposed in § 57.103 and § 57.303 of the proposed rule for reporting sales of branded boxed beef and lamb, the language in § 59.103 and § 59.303 of this final rule has been amended to require the reporting of only those branded products produced and marketed on their quality, yield, or breed characteristics or boxed beef cuts produced and marketed under one of USDA's Meat Grading and Certification Branch, Certified Beef programs. These products are not unique to any one packer and can be produced by anyone in the industry. These sections no longer require the mandatory reporting of branded products where the brand is exclusive to a packer.

AMS is developing formats for those reports it intends to publish as a result of mandatory price reporting. These reports will be made available as a part of the educational and outreach component being developed by AMS to facilitate the transition from voluntary market news reporting to mandatory market news reporting during the period between publication of this final rule and its effective date. In creating these reports, AMS is taking the necessary steps to ensure confidentiality of the source data as required by the Act. Brand names reported to AMS will not be disclosed but will only be used to identify branded boxed beef and lamb cuts for aggregation into branded categories in the published reports.

Comments Relating to Specific Provisions of the Act

Mandatory Reporting Implementation Time Schedule

Summary of Comments: AMS received 22 comments concerning the mandatory price reporting implementation time schedule. Fourteen of these commenters favored implementation without delay, arguing that mandatory price reporting was a necessary reform that should be adopted as expeditiously as possible. They opposed extending the comment period beyond the timeframe established by the Act. Some commenters requested a 90-day extension to the comment period. They contended that the problems in the proposed rule could only be addressed by a re-proposal of the entire regulation. One commenter argued that, since AMS had not provided enough meaningful details of how it intended to utilize collected information while protecting confidentiality, it had not abided by the Administrative Procedure Act which calls for public notice and comment regarding the terms of regulation. Two commenters specifically requested that the boxed beef portion of the rule be stayed until problems they perceived could be addressed.

Agency Response: Section 941 of the Act provided a 30-day comment period for the proposed rule. Nevertheless, with specific regard to requests for an extension of the comment period and for AMS to issue a re-proposal, AMS does not agree. AMS believes that the information obtained through the 703 comments received during the 30-day comment period demonstrate adequate public notice and provide sufficient information for AMS to base any changes upon. Further, none of the comments lead AMS to believe the concerns raised by commenters merit a re-proposal of the regulations.

With regard to the concern raised by the commenter concerning compliance with the Administrative Procedure Act, this program and all of its provisions are issued consistent with the provisions of that Act.

Further, with regard to concerns raised by commenters that the boxed beef portion be stayed until certain problems could be addressed, AMS does not agree that the concerns raised by commenters merit a reproposal and has incorporated necessary changes into this final regulation.

Reporting by Company

Summary of Comments: Two commenters recommended that AMS change the required reporting by individual plant to reporting by a company as a whole. The commenters maintained that, while slaughter data for individual plants will be available, reporting of animals priced might not be. The plant to which the purchased animals will be shipped is not known at the time of purchase. For this reason, reported information will not always be accurate because changes to the shipping location could occur after the required reporting time has passed. The commenters were concerned about possible violations to § 252 ''Unlawful Acts'', of the Act as a result.

Agency Response: AMS does not agree. In the case of cattle and swine, the Act defines who is required to report. And, in the case of lamb packers and lamb importers, AMS has provided definitions that would capture information in a similar manner.

In the case of cattle, the entity required to report is each cattle processing plant that meets the definition in § 221(5) of the Act. For swine, it is a swine processing plant that meets the definition in § 231(12). For lamb, these regulations state that those entities required to report are a lamb processing plant and a lamb importer that meet the definitions in § 59.300 of this final rule. Further, information reported on a per plant basis provides for the refinement of reports to represent regional and Statewide markets, something that the reporting by a company, which may have individual plants in many States, would not allow for.

Publishing Adjustments

Summary of Comments: One commenter suggested that AMS publish all adjustments made to reported information due to price aberrations that would distort published information to the detriment of producers, packers, or other market participants. The commenter also suggested that AMS provide categories for such adjustments in its published reports.

Agency Response: Section 251(e) of the Act, authorizes the Secretary to make reasonable adjustments to information reported by packers to reflect price aberrations that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants. AMS finds useful purpose would be served in publishing categories for such adjustments when the information contained in the reports reflects such adjustments, similar to what is currently done under the voluntary reporting program.

Annual Reporting of Number of Covered Plants

Summary of Comments: AMS received one comment suggesting AMS publish an annual report on the number of plants required to report under mandatory price reporting.

Agency Response: In the proposed rule and in this final rule, AMS included such information in the supplemental sections addressing the Agency's Regulatory Impact Analysis, Regulatory Flexibility Analysis and Paperwork Reduction Analysis. However, AMS does not intend to publish such information annually as the Agency believes that this would serve no useful purpose. However, interested individuals could always receive such information upon request.

Publishing of Auditing Procedures

Summary of Comments: AMS received 9 comments requesting specific audit procedures for compliance be outlined and published for comment. The commenters argued that the Act includes specific provisions for what constitutes a reporting violation but the proposed rule offers no enforcement procedures. At least 3 of the

commenters were concerned that inadvertent and unintentional mistakes should not constitute a violation but rather only a clear pattern of abuse should constitute a violation. They believed that language to this effect should be stated in the proposed rule.

Agency Response: AMS is in the process of hiring auditors and developing documented procedures that will be used by AMS auditors to ensure compliance with these regulations. Common to many regulatory programs, these procedures are internal agency procedures for conducting enforcement activities and therefore are not required to be published for public comment. With specific regard to concerns raised by commenters expressing confusion about what would or would not constitute a violation of the Act, § 252 of the Act clearly sets forth what actions are violations, and § 253 clearly sets forth the enforcement provisions for such violations. Nevertheless, AMS will be available to discuss specific enforcement questions and activities with those entities required to report to clarify any areas of concern they may have.

Penalty Provisions

Summary of Comments: AMS received 3 comments expressing the view that the provision in the Act setting the penalty for violations at $10,000 per violation was inadequate and needed to be increased.

Agency Response: Section 253 of the Act establishes a civil penalty of not more than $10,000. However, that section of the Act further provides that each day during which a violation continues is to be considered a separate violation.

State Preemption

Summary of Comments: AMS received 3 comments requesting that language be placed in the regulations regarding the preemption of State mandatory price reporting laws. The commenters believed that the omission of such language in the final rule would allow States to impose their own mandatory reporting laws.

Agency Response: Section 259 of the Act provides that no State may impose a requirement that is in addition to, or inconsistent with, any requirement of the Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products.

Contained within the supplemental information sections of the proposed rule and these final rules are discussions concerning that provision of the Act. Even though such language does not appear in the regulatory text of this final rule, this does not have an effect on the application and enforcement of this provision of the Act.

Expanding the Scope of the Act

Summary of Comments: AMS received one comment contending that AMS had no authority to expand the scope of the Act to include information not specified in the Act. The commenter pointed out that under the definition of 'terms of trade' in § 57.100 of the proposal, AMS had added the concept of 'priced' to the definition.

Agency Response: In § 57.100 of the proposed rule, the word 'priced' was inadvertently included in the definition of 'terms of trade'. Section 59.100 of this final rule is revised accordingly.

Prices for Cattle

Summary of Comments: One commenter opposed the inclusion of the definition of 'prices for cattle' (§ 57.101(1) of the proposal) in the daily reporting for live cattle section.

Agency Response: The phrase 'prices for cattle' is included in the Act. In the proposed rule, AMS provided a definition of the phrase to provide further explanation of what information was required to be reported. The items included in the definition of 'prices for cattle' are all essential to the publishing of useful, accurate, and easy to understand market reports.

Average Estimated Live Cattle Weight

Summary of Comments: One commenter opposed the inclusion of the term 'average' of estimated live weight in the reporting requirements for daily cattle in the proposed rule (§ 57.101(a)(1)(iv)). The commenter contended that this expanded the requirements of the Act and added to the already exhaustive reporting requirements.

Agency Response: The estimated average live weight is required to accurately convey the characteristics of a given lot of cattle. The Act contemplates the reporting of information required to accurately describe the characteristics of a lot of cattle so that the users of the information in the published reports could determine the factors affecting the price of live cattle. Accordingly, this term is consistent with the intent of the Act.

Packer Sold Swine

Summary of Comments: Under § 57.200 of the proposed rule, one commenter objected to the inclusion of the definition of 'packer sold swine' in the regulatory text. The commenter argued that the inclusion of 'packer sold swine' was not authorized by the Act.

Agency Response: A definition of the term 'packer-owned swine' appears in the § 231(14) of the Act.

State of Origin

Summary of Comments: One commenter objected to the addition of 'state of origin' to the regulation arguing that it constitutes an ''impermissible'' extension of the statutory authorization.

Agency Response: The Act directs the Secretary to publish collected information on a national, and a regional or statewide basis (§ 251(d)). The 'state of origin' is required for AMS to be able to report information on a regional or statewide basis and is consistent with the intent of the Act.

Reporting Delayed Pricing Purchases

Summary of Comments: With respect to pricing that is determined on a delayed basis, one commenter objected to the inclusion of the sentence ''The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined'' in § 57.202(b)(4) of the proposal as it did not appear in the Act.

Agency Response: Inclusion of this sentence was necessary to specify when purchases with delayed pricing are to be reported and is consistent with the intent of the Act.

Comments Relating to Reporting Procedures

Reporting Input Forms

Summary of Comments: AMS received 109 comments referencing the proposed mandatory reporting forms to be used by packers when submitting required information. However, none of the comments AMS received specifically addressed issues relating to the format or design of the forms but rather used the forms as a venue to argue for or against the inclusion of reporting requirements. A few of the commenters expressed concern over some of the information requested in the forms (including state of origin, boxed beef box count, and buyer destination) suggesting that such information was either not authorized by the Act or was not pertinent. Several commenters requested clarification of what was being asked for on the forms. Other commenters suggested that AMS provide procedural guidelines explaining how and when information was to be reported on the forms. Many of the commenters used the forms to express concerns including lot

aggregation, inclusion of cows under mandatory reporting, and reporting exports of boxed beef and imports of boxed lamb.

AMS received 19 comments that raised issues with reporting requirements presented on various forms. Specific comments were received that took issue with reporting requirements found on the following forms: LS–113 Live Cattle Daily Report (current established prices), 15 comments; LS–114 Live Cattle Daily Report (committed and delivered cattle), 8 comments; LS–115 Live Cattle Weekly Report (forward contract and packer-owned), 6 comments; LS–116 Live Cattle Weekly Report (formula purchases), 4 comments; LS–117 Cattle Premiums and Discounts Weekly Report, 2 comments; LS–126 Boxed Beef Daily Report, 19 comments; LS–118 Swine Prior Day Report, 16 comments; LS–119 Swine Daily Report, 17 comments; and LS–121 Live Lamb Daily Report (current established prices), 3 comments.

Agency Response: AMS has previously responded to these comments on matters of procedural clarification, simplification, and further definition of terms elsewhere in this discussion. AMS has redesigned the reporting forms in this final rule to make them more representative of the electronic format required for submission of all information under mandatory reporting. AMS has also included written guidelines at the end of the regulatory text in the final rule on how to those required to report information should complete the information for the mandatory reporting forms (Appendix D).

Published Report Formats

Summary of Comments: AMS received 23 comments addressing the issue of the format that reports published by AMS would take as a result of mandatory price reporting. Specifically, commenters wanted assurances that the information would be presented in a form readily understandable to users. Seven of these commenters wanted AMS to include the new report formats in the final rule. They stressed that the reports should be understandable with information overload avoided whenever possible. Two of the commenters wanted AMS to provide some sort of connection between the current voluntary-based reports and their mandatory-based counterparts for analysis of historical relationships. The remaining 9 commenters wanted the new reports to be available on the Internet in an archived form for up to 2 years. These same commenters also recommended that the reports be accessible by telephone, facsimile, Internet, printed media, electronic broadcast media (radio and television), and through private information providers.

Four of the comments AMS received on this issue were opposed to publishing the information in any form. They argued that mandatory price reporting would generate a vast array of useless data that could not be published in any usable format. Further, they argued that mandatory price reporting would promote confusion in the marketplace.

Agency Response: AMS is developing the formats for those reports it intends to publish as a result of mandatory price reporting. Demonstrating the format for these reports will be a part of the educational and outreach component being developed by AMS to facilitate the transition from voluntary market news reporting to mandatory market news reporting during the period between publication of this final rule and its effective date.

In response to the availability of different types of reports, the Act prohibits AMS from charging fees for information published as a result of mandatory price reporting (§ 254). It is AMS's intention to continue to provide information in a wide array of formats, especially electronic formats that are as easily accessible to users as funding will permit.

In response to comments opposed to the publishing of information in any form, development of this program is mandated by the Act. Further, AMS believes that the Agency will be able to publish information in a useable format and in a manner which will be useful to market participants, thereby actually decreasing confusion in the marketplace.

Pre-Testing of Computer System

Summary of Comments: AMS received one comment expressing concern that the computer systems needed to process the information collected under mandatory price reporting should be pre-tested during a pre-implementation phase.

Agency Response: AMS has planned a pre-implementation testing phase of the computer systems necessary to process the information collected under mandatory price reporting to ensure that delays and inaccuracies do not occur. Several packers have agreed to participate in the tests.

Reporting Changes, Adjustments and Cancellations

Summary of Comments: AMS received 2 comments requesting that procedures be provided in the final rule for how or if packers would report changes or cancellations to sales already reported to AMS. AMS received one comment requesting that AMS provide clarification on whether packers are required to report adjustments in the reported amount of payment made in the time between the filing of reports and when the producer receiving payment is actually paid.

Agency Response: AMS understands that it is normal practice in the beef industry for adjustments to be made to the original boxed beef sales agreement prior to the product being shipped. Often, quantities of product are added to the original order, products are substituted, or the order is cancelled altogether. Under the current voluntary reporting program, AMS does not change a published report to reflect price adjustments beyond the next report because of the confusion such a change creates. This policy will continue under mandatory price reporting.

Accordingly, packers and importers are not expected to report price and quantity adjustments made to sales already reported to AMS after the required reporting time has passed. However, it is important to note that this mandatory program of information contains two separate and distinct functions. Section 255(a)(2) of the Act requires packers to maintain such records or other information as is necessary to verify the accuracy of the information reported. Further, § 252(4) of the Act defines the reporting of information in a manner that demonstrates a pattern of significant variance in accuracy when compared with the actual information as a violation. Therefore, packers and importers should consider these provisions of the Act in maintaining and reporting information.

Reporting Formula and Forward Contract Purchases

Summary of Comments: AMS received one comment requesting clarification on when a formula or forward contract based transaction is to be reported if the price is not known until the date shipped.

Agency Response: As proposed in § 57.101 of the proposed rule and published in this final rule in § 59.101 under ''type of purchase'', formula marketing arrangements and forward contract transactions are to be reported

on the date when the price is agreed upon by the buyer and seller. If the price is not determined until the date of shipment, then that is when the information should be reported. AMS finds that further clarification is not needed in these regulations.

Reporting by Class and Weight

Summary of Comments: AMS received 2 comments suggesting that AMS publish livestock information by class and weight in order to let producers know what weight and class of livestock were in most demand.

Agency Response: AMS agrees. AMS will report livestock separately by class and weight and by other factors that are also a price determining factor.

Comments Relating to Other Issues

Institutional Meat Purchasing Specifications

Summary of Comments: AMS received 13 comments concerning the inclusion of boxed beef and lamb cuts that are not cut in conformance with the Institutional Meat Purchasing Specifications (IMPS). Three commenters opposed reporting only those beef and lamb cuts that conform to IMPS. They expressed the view that, unless IMPS is kept current with industry cutting practices, new value-added cuts styles would go unreported and producers would have no way to monitor changes in the industry. Ten commenters supported only the reporting of beef and lamb cuts that conformed to IMPS. These commenters contended that the majority of the beef and lamb cuts they produce do not conform to IMPS and questioned whether AMS could include this information in a published report in a meaningful manner. Further, they argued that the uniqueness of many of these items would prevent AMS from being able to maintain the confidentiality of the reporting packer. If AMS could not publish this information while maintaining confidentiality, they reason that packers should be exempt from reporting such beef and lamb cuts.

Agency Response: Section 223 of the Act requires that representatives of packer processing plants report information on total boxed beef sales. Exempting or limiting reporting to IMPS cuts would not be consistent with the intent of the Act. Non-IMPS cuts that are traded by a sufficient number of packers or importers can be incorporated into published reports while maintaining the confidentiality of the reporting entities and providing market participants with timely and pertinent information.

Educational Component

Summary of Comments: Seven commenters suggested AMS develop an educational component in conjunction with mandatory price reporting in order that users could better understand and utilize the new information collected.

Agency Response: Education is key to the successful implementation of mandatory price reporting. Accordingly, AMS is already planning to institute a program of education and outreach after publication of this final rule and before its implementation to ensure all market participants understand the different aspects of the new program. Further, AMS plans to develop a guide that will be available to the public that will explain the mandatory market news reports to help all users to understand and utilize the information published.

AMS will work with industry groups, educators, news media, and individuals in carrying out our objective to educate market participants about this program and will encourage other interested groups to assist us in furthering our commitment to this educational and outreach process.

Comments Relating to Auctions

Reporting of Auction Purchases

Summary of Comments: AMS received 44 comments that concerned the burden created by the required reporting of livestock purchased through auctions markets, specifically for purchases of cows and bulls. Two of these comments consisted of a total of 40 identical form letters. The commenters contended that most purchases of livestock in auctions markets occurred on a one-head per lot basis and requiring the reporting of each lot would greatly increase the reporting burden being placed on them by mandatory reporting. They argued further that purchases from auction and terminal markets were already in the public domain and should therefore be exempt from mandatory price reporting. Several other commenters said that they had no system in place to distinguish between purchases from auctions and purchases from direct sources.

Agency Response: As already discussed earlier in this section, AMS has clarified that purchases of livestock through auction markets are not required by this final rule. As auction purchases are made in an open, public setting between one seller and many buyers, auction purchases do not meet any of the types of purchases defined by the Act as a ''type of purchase'' (§ 221(8)). Accordingly, packers required to submit information under mandatory price reporting will not be required to report information on transactions of livestock purchased at auction markets by either salaried employees of a packer or a person that buys on commission for a packer. However, livestock purchased by a packer from a livestock dealer, a purchase between one buyer and one seller not in an public setting, must be reported because this constitutes a negotiated trade which is defined by the Act as a ''type of purchase'' reportable under mandatory reporting. Accordingly, packers must institute systems to distinguish between purchases from auctions and purchases from direct sources for the purposes of mandatory reporting.

Comments Relating to Definitions of Terms

Clarification of ''Committed''

Summary of Comments: Six commenters recommended clarification of the term ''committed'' found in § 57.20 of the proposed rule. The commenters pointed out that this definition conflicted with the definition found in § 57.100 of the proposed rule for ''cattle committed'' which is defined in the Act.

Agency Response: AMS agrees with the concern of the commenters. In the final rule, AMS has removed the definition for ''committed'' under § 59.30 and has replaced it with a separate definition for ''swine committed'' under § 59.200 and is defined as meaning swine scheduled to be delivered to a packer within the 14-day period beginning on the date of an agreement to sell the swine. The 14-day requirement corresponds to § 232(c)(1)(C)(iii) of the Act which calls for the reporting of packer purchase commitments for each of the next 14 days.

Clarification of Negotiated Purchase Definition

Summary of Comments: Five commenters requested clarification of the definitions for ''negotiated purchase'' and ''negotiated sale'' under § 57.20 of the proposed rule. Specifically, they expressed concern that both terms seem to include the requirement that there be an agreement on a delivery date at the time of buyer-seller interaction. They pointed out that it is not common industry practice to agree on a delivery date on the date the base price is negotiated.

Agency Response: These terms are defined by the Act in § 212.

Accordingly, for the purposes of this program, a negotiated purchase or sale is a combination of pricing and scheduling.

Definition of Lot

Summary of Comments: Two commenters suggested that the term 'lot' be defined.

Agency Response: The term ''lot'' is defined in the Act and the definition included in the proposed rule under § 57.20. ''The term ''lot'' means a group of one or more livestock that is identified for the purpose of a single transaction between a buyer and a seller.''

Definitions of Premium and Discount

Summary of Comments: Two comments were received requesting clarification of the terms ''premium'' and 'discount'. One commenter expressed concern that ''premium'' was defined as being expressed in terms of dollars per one hundred pounds. They questioned how a premium not defined in terms of dollars per one hundred pounds would be reported. The other commenter questioned the definitions of ''premium'' and ''discount'' in reference to swine. The commenter pointed out that terms quality grade and yield grade in the definitions pertain to cattle and lambs only, not swine. The commenter suggested that the definition be corrected to reflect this.

Agency Response: The definition of ''premium'' states that the premium is expressed in dollars per one hundred pounds. As this is the only meaningful way for AMS to standardize the information received and report meaningful information, premiums and discounts established on other basis must be converted to a dollar per hundred pounds basis prior to reporting to AMS.

AMS agrees with the second commenter. As a result, the definition of the term ''discount'' applicable to swine in § 59.30 is corrected in this final rule to read, ''The term ''discount'' means the adjustment, expressed in dollars per one hundred pounds, subtracted from the base price due to weight, quality characteristics, yield characteristics, livestock class, dark cutting, breed, or dressing percentage.'' The definition of the term 'premium' under § 59.30 is changed in this final rule to read, ''The term ''premium'' means the adjustment, expressed in dollars per one hundred pounds, added to the base price due to weight, quality characteristics, yield characteristics, livestock class, and breed.''

Definition of Imported

Summary of Comments: Four commenters requested that a definition of 'imported' be added to clarify reporting requirements for livestock and livestock products.

Agency Response: AMS agrees. In § 59.101 in this final rule, AMS included a definition for imported: ''The term ''imported'' means livestock that are fed to slaughter weight outside of the 50 States or livestock products produced outside of the 50 States.''

Definition of Priced

Summary of Comments: One commenter requested further explanation of the term ''priced'' under § 57.20 of the proposed rule. The commenter wanted the definition to define the moment at which a transaction is considered to be ''priced''.

Agency Response: The definition of ''priced'' in § 57.20 of the proposed rule is revised in this final rule to clarify when a transaction is deemed ''priced''. The definition of ''priced'' in § 59.30 of this final rule is revised to read ''the time when the final price is determined either through buyer-seller interaction and agreement or as the result of some other price determining method.''

Definition of Purchased

Summary of Comments: Two commenters wanted further definition of the term ''purchased'' to define the moment when livestock or livestock products are considered to be ''purchased''.

Agency Response: AMS believes the definition contained within the proposed rule for the term ''purchased'', ''The term ''purchased'' means the agreement on a price, or the method for calculating a price, determined through seller-buyer interaction and agreement'', does convey that livestock or meat is considered ''purchased'' when either the price or the mechanism for determining the price is agreed upon by the buyer and seller. Accordingly, the definition has remained unchanged in this final rule.

Definition of Origin

Summary of Comments: Two commenters recommended that AMS include a definition of the term ''origin'' in the final rule. The commenters expressed concern that if AMS was asking for country of origin, this requirement extended beyond the authority provided in the Act.

Agency Response: In the final rule, AMS has included a definition for the term 'origin' under § 59.30 to read, ''The term ''origin'' means the State where the livestock were fed to slaughter weight''. This requirement was included to allow for aggregation of submitted information in a regional or statewide-published report.

Definition of Established

Summary of Comments: One comment recommended that the term 'established' be defined. This term is used twice in the proposed rule, once under § 57.101(a)(1) and once under § 57.301(a)(1) where the requirement for reporting prices, ''* * * established on that day * * *'' is listed. The commenters wanted to know when a price was to be considered ''established''.

Agency Response: The language in § 57.101(a)(1) of the proposed rule mirrors the Act and identical language was used in § 57.301(a)(1) of the proposed rule for uniformity. AMS has added a definition for the term 'established' under § 59.100 and § 59.300 in this final rule to read; ''The term 'established' when used in connection with prices means that point in time when the final price is determined.''

Cattle Committed and Committed Definition Discrepancy

Summary of Comments: Four commenters pointed out what they believed to be inconsistencies between the terms 'cattle committed' (§ 57.100) and 'committed' (§ 57.20) contained within the proposed rule.

Agency Response: AMS agrees with the concerns raised by commenters. AMS has removed the definition of the term 'committed' from § 59.30 in the final rule.

Clarification of Formula Arrangement and Forward Contract

Summary of Comments: AMS received 3 comments requesting further clarification of the definition for the terms 'formula marketing arrangement' and 'forward contract' under § 57.100 of the proposed rule. They argued that the definitions for 'formula marketing arrangement' and for 'forward contract' are not mutually exclusive.

Agency Response: AMS does not agree. The definitions of 'formula marketing arrangement' and 'forward contract' in § 59.100 of this final rule reflect the definitions of these terms contained in the Act. A 'formula marketing arrangement' refers to an advance commitment for livestock or livestock products under which the price is determined at a future date following slaughter or manufacture. A 'forward contract' refers to an agreement to purchase livestock or livestock products under which the price is

determined in advance of slaughter or manufacture.

Definition of Branded

Summary of Comments: Three comments were received requesting clarification of the term 'branded' as defined for cattle in § 57.100 and for lambs in § 57.300 of the proposed rule. One commenter noted that the definition was very broad and would include virtually all boxed beef and lamb cuts.

Agency Response: AMS agrees that the definition of 'branded' in the proposed rule requires further clarification to accurately reflect what AMS requires to be reported. Accordingly, in this final rule, the definitions for the term 'branded' in § 59.100 and § 59.300 have been revised. In § 59.100, the definition has been revised to read: ''The term 'branded' means boxed beef cuts produced and marketed under a corporate trademark (for example, products that are marketed on their quality, yield, or breed characteristics), or boxed beef cuts produced and marketed under one of USDA's Meat Grading and Certification Branch, Certified Beef programs.'' In § 59.300, the definition has been revised to read: ''The term 'branded' means boxed lamb cuts produced and marketed under a corporate trademark (for example, products that are marketed on their quality, yield, or breed characteristics), or boxed lamb cuts produced and marketed under one of USDA's Meat Grading and Certification Branch, Certified programs.''

AMS believes this clarification should satisfy the concerns of the commenters.

Definition of Boxed Beef

Summary of Comments: AMS received 4 comments requesting that AMS provide a definition of the term 'boxed beef' to clarify its use in the regulations.

Agency Response: This comment has merit. In the final rule, under § 59.100, AMS has included a definition for 'boxed beef' as follows: ''The term 'boxed beef' means those carlot-based portions of a beef carcass including fresh primals, subprimals, cuts fabricated from subprimals (excluding portion-control cuts such as chops and steaks similar to those described in the portion cut products contained within the IMPS for Fresh Beef Products Series 100), and thin meats (*e.g.* inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground beef, beef trimmings, and boneless processing beef not older than 7 days from date of manufacture; and frozen beef trimmings and boneless processing beef not older than 60 days from date of manufacture.''

AMS believes this definition is consistent with the industry's use of the term and provides the clarification and specificity requested by the commenters.

Definition of Packer Owned Cattle

Summary of Comments: AMS received one comment questioning the definition for ''packer owned cattle''. The commenter took issue with the inclusion in the definition of the 14-day period prior to slaughter that cattle must be owned by a packer to qualify the cattle as being packer owned. The commenter believed that the 14-day timeframe was arbitrary and requested an explanation of why the timeframe was set at 14 days.

Agency Response: The definition of ''packer owned cattle'' including the 14-day requirement in § 59.100 of this final rule reflects the definition of ''packer owned cattle'' in § 221(6) of the Act.

Definition of Prices for Cattle

Summary of Comments: One commenter objected to the definition of 'prices for cattle'. The commenter pointed out that in the definition of 'prices for cattle', the requirement for expected date of slaughter is not known on the date an agreement to purchase livestock is made.

Agency Response: AMS agrees with the concern raised by the commenter. The definition of 'prices for cattle' in § 59.100 has been revised in this final rule to remove the words 'expected date of slaughter'.

Definition of Terms of Trade

Summary of Comments: One commenter expressed concern about the definition of 'terms of trade'. The commenter argued that the ambiguity of the terms 'negotiated purchase', 'committed', 'purchased', and 'priced' made it impossible to know what exactly is to be reported under 'terms of trade' and when it is to be reported.

Agency Response: As previously mentioned, AMS clarified the definitions of the terms 'purchased', 'priced', and 'negotiated purchase' in § 59.30 and has removed the definition of 'committed' under § 59.30.

Definition of Packer

Summary of Comments: One commenter expressed concern over the definition of the term 'packer'. Specifically, the commenter was concerned about the portion of the definition that dealt with the issue of cattle processing plants that did not slaughter during the immediately preceding 5 calendar years being considered as packers by the Secretary's discretion after consideration of the plant's capacity. The commenter was opposed to the Secretary having the discretion to decide at a later date that a processor could be included under mandatory price reporting by this definition.

Agency Response: Section 221(5) of the Act defines the term 'packer' and that definition is reflected in § 57.100 of the proposed rule and also in this final rule. Section 221(5)(C) in the Act states: ''* * * in the case of a cattle processing plant that did not slaughter cattle during the immediately preceding 5 calendar years, the Secretary shall consider the plant capacity of the processing plant in determining whether the processing plant should be considered a packer under this chapter.''

Definition of Cattle Type

Summary of Comments: One commenter suggested changing the definition of the term 'cattle type' to include heiferettes, Brahmans, and Corrientes as inferior classes.

Agency Response: The term ''cattle type'' is defined in § 221 of the Act and the definition in these regulations simply mirrors that definition. AMS believes the stated types of cattle provided in the definition adequately differentiate the major types of cattle traded in the market which are of price determining importance. Accordingly, AMS believes no further clarification is necessary in the regulatory text.

Reporting by Purchase Type

Summary of Comments: One commenter questioned how a packer would be able to identify the type of sale given the ambiguities with the definitions of 'negotiated sale', 'formula marketing arrangement', and 'forward contract' under § 57.20 of the proposed rule.

Agency Response: As previously discussed in this section, AMS has clarified the definitions of these terms in § 59.30 and AMS believes this clarification should resolve the concerns raised by the commenter.

Definition of Average Carcass Weight

Summary of Comments: AMS received 6 comments requesting that the terms 'weighted average carcass price' and 'aggregate weighted average carcass price' used in § 57.102(c)(2) & (6) and § 57.302(c)(2) & (7) of the proposed rule be defined in the final rule.

Agency Response: These terms are used in the Act as part of the information required to be reported for

formula purchase cattle. These terms were included in the required information for lambs in the proposed rule for uniformity.

The term 'weighted average carcass price' refers to the weighted average carcass price of a reportable lot of cattle including applicable premiums and discounts. AMS does not believe this term needs to be defined in these regulations.

The term 'aggregate weighted average carcass price' was intended to provide an overall weighted average carcass price by purchase type for all cattle purchased on that reporting day. Upon further review, AMS has determined that an overall aggregated weighted average carcass price for each type of purchase can be calculated from the information required to be reported. For this reason, in this final rule, AMS has removed the requirement for 'aggregate weighted average carcass price' for cattle and lambs under § 59.102(a)(6) and § 59.302(a)(6) respectively.

Definition of Swine Forward Contract

Summary of Comments: Pertaining to § 57.200 of the proposed rule, swine definitions, AMS received one comment requesting the inclusion of a definition of the term, 'forward contract' for swine reporting.

Agency Response: AMS does not agree. Subpart C, Swine Reporting, of the proposed rule does not include the term 'forward contract' but does provide a definition of the term 'other purchase arrangement' which embodies the concept of a 'forward contract'. Providing a definition for a swine reporting term that does not exist in Subpart C of the rule serves no purpose as the definition of the term 'other purchase arrangement' covers 'forward contract' purchases.

Definition of Net Price and Average Net Price

Summary of Comments: AMS received 14 comments concerning inconsistencies and confusion over the definition of the term 'net price' in the proposed rule as it compares to the use of the term by the Act as well as confusion over why both 'net price' and 'average net price' were requested to be reported by the proposed regulations.

Agency Response: In the proposed rule, AMS incorrectly defined the term 'net price' to mean 'the total amount paid by a packer to producers' instead of the definition provided in the Act as 'the total amount paid by a packer to a producer'. This definition has been corrected to conform to the definition of 'net price' in the Act.

The Act defines 'net price' in dollars per hundred pounds of carcass weight of swine. This definition is used as the basis for reporting average net price, highest net price and lowest net price. This average net price is calculated from the total net price and the total carcass weight and expressed in dollars per hundredweight. Section 57.202 Mandatory Daily Reporting for Swine of the proposed rule required that packers would report both net price and average net price as well as the highest net price and the lowest net price. Upon further review of these requirements and the Act, AMS finds that the same information for swine can be obtained by requiring that packers report only average net price, highest net price and lowest net price. Accordingly, the requirement to report 'net price' is removed from § 59.202 in this final rule. Likewise, the reporting of 'net price' has been removed from Form LS–118 Swine Prior Day Report.

Redefining Swine Packer to Not Include the Term Cattle

Summary of Comments: Two commenters suggested changes to the definition of 'packer' under § 57.200 of the proposed rule as it applies to swine. The commenters pointed out that the word 'cattle' was used instead of the word 'swine' as provided in the Act.

Agency Response: The commenters are correct. In this final rule, AMS has corrected § 59.200 by removing the word 'cattle' and replacing it with the word 'swine'.

Redefining Swine Packer to Include Other Entities

Summary of Comments: Two commenters suggested additional changes to the definition of 'packer' under § 57.200 of the proposed rule as it applies to swine. One commenter believed that the words ''* * * a federally inspected * * *'' should be replaced with ''* * * any plant authorized for interstate shipment * * *'' to bring the definition in line with proposed federal regulations on interstate shipment of meat. The other commenter expressed concern over the phrase ''* * * buying swine in commerce * * *'' as at least one U.S. swine slaughtering facility is vertically integrated to the point that it technically buys no swine and would therefore be exempted and suggested that this passage be changed to ''* * * slaughters swine in commerce * * *'' in order to include such vertically integrated operations.

Agency Response: Section 221(5) of the Act defines the term 'packer' and this definition is reflected in § 59.200 this final rule. AMS does not believe that any State inspected facility, affected by changes to Federal regulations governing the interstate shipment of meat, slaughter at a volume sufficient that they would be covered by these regulations. Therefore, the proposed change would not have any effect on the information AMS will obtain under this program. To respond to concerns regarding vertically integrated operations, AMS believes that the entities the commenter is concerned about are already covered by the existing definition. Therefore, neither suggestion is adopted.

Definition of Swine Packer Purchase Commitments

Summary of Comments: Three commenters objected to defining 'packer purchase commitments' under § 57.202(a)(3) of the proposed rule as swine scheduled for delivery because committing and scheduling are two separate steps in the swine procurement process and are not the same as the Act provides.

Agency Response: The use of the term 'packer purchase commitment' provided for by the Act, § 232(c)(1) Prior Day Report, sets forth the requirement that a packer report packer purchase commitments that ''* * * shall be equal to the number of swine scheduled for delivery to a packer for slaughter for each of the next 14 calendar days.'' Accordingly, the use of the term remains unchanged in this final rule from the proposal.

Definition of Purchase Data

Summary of Comments: One commenter expressed concern over perceived ambiguity in the definition of 'purchase data'. The commenter contends that this clause limits packers to only reporting weight.

Agency Response: As stated in § 231(17) of the Act, 'purchase data' means *all* of the applicable data, including weight (if purchased live), for swine purchased during the applicable reporting period regardless of the expected delivery date, reported by hog class, type of purchase, and packer owned swine. Accordingly, applicable data includes base price. Similarly, the definition of 'slaughter data' as stated in § 231(18) of the Act means *all* of the applicable data, including weight (if purchased live), for swine slaughtered by a packer during the applicable reporting period regardless of when the price of the swine was negotiated or otherwise determined, reported by hog class, type of purchase, and packer owned swine. After further consideration by the Agency, AMS has

revised the text in the proposal to include in this final rule that applicable data in this instance includes average loin depth because it is a major determiner of price in the swine industry.

Definition of Type of Purchase

Summary of Comments: One commenter expressed concern regarding the definition of the term 'type of purchase'. The commenter included as an example a packer who serves only as a ''custom'' processor of a producer's swine and does not take ownership of the swine. The commenter wondered how such arrangements would be reported and how other new and innovative methods would be reported.

Agency Response: As defined, 'type of purchase' refers only to those purchases of swine by a packer from a producer. In the commenter's example, the packer never ''purchases'' the swine from the producer and therefore would not be required to report that as a transaction. AMS does not believe this suggestion merits a change in the definition of the term 'type of purchase' nor does AMS believe that the reporting custom slaughter costs was contemplated by the Act.

Definition of Basis Level

Summary of Comments: AMS received one comment regarding the term 'basis level'. The commenter questioned the use of the phrase ''* * * adjustment to a future price * * *'' in the definition. The commenter argued that the term ''basis'' in the Act seems to refer to the difference between the cash price and the futures market price for a product. The commenter suggested that ''* * * a future price * * *'' be replaced with the term ''* * * a futures market price.''

Agency Response: AMS does not agree. AMS does not believe the Act intended on limiting the definition to a futures market. Accordingly, the definition of the term 'basis level', defined in § 212(2) of the Act, remains unchanged in these final regulations.

Definition of Average Lean Percentage

Summary of Comments: AMS received one comment pointing out an error in the definition of the term 'average lean percentage'. The commenter pointed out that the last 5 lines of the definition should not have been included.

Agency Response: The commenter is correct. This was in error. The definition of 'average lean percentage' has been corrected to remove the last 5 lines and conform to the use of the term in the Act.

Clarification of Other Market Formula Purchase

Summary of Comments: One commenter expressed the opinion that the definitions for the terms 'other market formula purchase' and 'other purchase arrangement' should be clarified in the final rule.

Agency Response: These two terms, 'other market formula purchase' and 'other purchase arrangement' are defined in § 221 of the Act and the definitions of these two terms in this final rule reflect the definitions found in the Act.

Definition of Lamb Packer

Summary of Comments: AMS received one comment questioning the inclusion of lamb processors in the definition of lamb 'packer' in § 57.300 of the proposed rule. The commenter argued that the reporting mandate provided by Congress was never intended to apply to prices paid or received by processors of beef and pork. Thus, the commenter reasoned that the definition of a lamb packer should not apply to lamb processors.

Agency Response: Section 241 of the Act authorizes the Secretary to establish a program of mandatory lamb price information reporting that will ''(1) provide timely, accurate, and reliable market information; (2) facilitate more informed marketing decisions; and (3) promote competition in the lamb slaughtering industry.'' In the beef and pork industries, there are no major packer slaughterers that do not also process meat and meat products. However, in the lamb industry, this is not the case. Not only do major lamb slaughterers not always process but also major lamb processors do not always slaughter. It is because of this uniqueness of the lamb industry that defining packers to include lamb processors as well as slaughterers is critical to AMS's ability to provide accurate, reliable and complete market information for this sector.

Comments Relating Specifically to Cattle

Reporting of Hot Carcass Yields

Summary of Comments: Two commenters expressed interest in seeing a weekly reporting of average hot carcass yields.

Agency Response: Estimated carcass dressing percents will be collected under mandatory cattle reporting and will be included in a weekly-published report.

Reporting Cattle by Price Penalty

Summary of Comments: Two commenters recommended AMS require packers to report the weekly percentages of cattle that are price-penalized by penalty characteristic. This would include the percentage of cattle that are condemned, the percentage of dark cutters, and the percentage of any other characteristics that result in a price penalty.

Agency Response: This information is not mandated by the Act for the purposes of mandatory price reporting and therefore is not listed in the information that is required to be reported in this final rule. Furthermore, AMS does not publish this information under its current voluntary reporting program.

Reporting Details of Cattle Formula Contracts

Summary of Comments: AMS received 2 comments recommending that AMS report all details of cattle formula contracts including all premiums and discounts to the base price and any special arrangements. They contended that this would provide accurate pricing information to the producer.

Agency Response: This information is required by § 222(d) of the Act and § 59.102 of these final regulations. Packers are required to report the following information for cattle purchased through a formula marketing arrangement: (1) The quantity of cattle; (2) the weighted average price paid for a carcass, including all applicable premiums and discounts; (3) the range of premiums and discounts paid; (4) the weighted average of premiums and discounts paid; (5) the range of prices paid; (6) the aggregate weighted average price paid for a carcass; and (7) the terms of trade regarding the cattle, as applicable.

Reporting of Cattle By-Products

Summary of Comments: AMS received one comment regarding cattle by-products. The commenter believed that the omission of cattle by-products in the proposed rule was an oversight on the part of AMS. The commenter argued that the industry relied on cattle by-products information and not including them under mandatory price reporting would create data quality problems.

Agency Response: Section 223 of the Act limits reporting of beef and products from beef to total boxed beef cuts as defined in this final rule (§ 59.100). AMS will continue to report cattle by-products through its voluntary reporting program.

Boxed Beef Cutout

Summary of Comments: AMS received one comment expressing the desire to see the boxed beef cutout report continue in its current format under mandatory price reporting.

Agency Response: AMS will publish the boxed beef cutout report in a format similar to that provided under the current voluntary program and that will provide users of the report with the market information in an easy to read and understandable format. Interested persons will have a chance to comment on the format for this report when AMS makes it available during its program of education and outreach between the time of publication of this final rule and its implementation date.

Reporting Distressed and Frozen Boxed Beef

Summary of Comments: AMS received 3 comments requesting that AMS drop the requirement to report transactions of distressed and frozen boxed beef cuts. In accordance with current industry practice, these commenters state that fresh boxed beef cuts are considered to be distressed 15 days after the date of manufacture for whole cuts; 8 days after the date of manufacture for fresh ground beef, beef trimmings, and boneless processing beef; and 60 days after the date of manufacture for frozen beef trimmings and boneless processing beef.

Agency Response: The market for such products varies considerably in price and availability of supply. Market reports based on such inconsistent markets would be of limited value and, therefore, AMS will not collect market information or publish market reports on distressed products. Accordingly, the definition of ''boxed beef'' does not include distressed product.

Daily Reporting of Formula Purchases

Summary of Comments: AMS received one comment requesting that the required daily reporting of formula purchases be suspended. The commenter argued that the proposed rule's requirement for both daily and weekly reporting of formula purchases is redundant. Further, the commenter felt that it would be impossible to represent a clear picture of the transactions on a daily basis, as packers do not use uniform formula arrangements.

Agency Response: AMS does not agree. The daily and weekly reporting of this information provides valuable information to the industry. And, in accordance with § 222 of the Act, this final rule requires daily and weekly reporting of formula purchases of cattle.

Comments Relating Specifically to Swine

Reporting Transactions Made Between Required Times

Summary of Comments: AMS received 2 comments requesting that the procedure for reporting transactions occurring between 2 p.m. and 12 midnight Central Time be clarified so that they knew what would be reported and when it would be reported.

Agency Response: Transactions occurring between 2 p.m. and 12 midnight Central Time are not to be reported on the daily morning or afternoon reports for swine (§ 59.202(b) & (c)). They are to be included as part of the prior day swine report as described in § 59.202(a) of this final rule.

Reporting Swine to a Standard

Summary of Comments: AMS received 14 comments regarding the issue of publishing live swine price information to a uniform standard. Twelve of these commenters agreed that publishing live swine price data to a uniform standard would lessen confusion and mistrust in the marketplace. However, they expressed concern over the methodology that would be employed to accomplish the conversion of each reporting packer's information to the standard. Specifically, they questioned using the Standardized Fat Free Lean Index prior to its being held to adequate review (In a separate action, through AMS press release, AMS published for comment on March 13, 2000, the Standardized Fat Free Lean Index). The remaining 2 comments expressed complete opposition to any attempt to publish to a standard. One commenter argued that such a move would hinder innovation by the packing industry by prohibiting the incorporation of technological advances in lean measurement devices. The other commenter believed that accuracy would be compromised and that producers would not be able to accurately make a conversion from published prices to the commenter's system.

Agency Response: Section 232 of the Act directs the Secretary to correlate information provided by packers to convert the carcass measurements or lean percentage of the swine of each individual packer to a common percent lean measurement. AMS is not aware of any other uniform standard besides the Standardized Fat Free Lean Index for reporting live swine information that better achieves this objective of the Act.

AMS received comments on the Standardized Fat Free Lean Index and is in the process of evaluating them. AMS will use the index for reporting live swine information and will adopt any change to the index that might arise for the request for comments. Further AMS has added an additional measure of muscling, ''average loin depth'', to those factors to be reported by packers required to report. AMS believes the addition of this measure should aid producers in understanding the information reported by packers and published by AMS.

Reporting of Pork Cuts

Summary of Comments: AMS received 11 comments supporting the inclusion of mandatory reporting of domestic and export wholesale sales of boxed pork cuts consistent with the reporting requirements for beef and lamb.

Agency Response: The Act does not authorize a mandatory program of reporting for pork cuts. Therefore, they are not included in this final rule.

Reporting of Producer Identification Numbers

Summary of Comments: Seven comments were received expressing an interest in requiring packers to report producer identification numbers as part of the information collected under mandatory price reporting. Commenters agreed that this would provide for more efficient investigation and monitoring of preferential pricing treatment for AMS and other USDA departments.

Agency Response: This information is not necessary for the purpose of mandatory price reporting as provided by the Act. The Act calls for information for all transactions covered by mandatory reporting to be provided by individual lot. Lot identification numbers, required under the rule, are sufficient to ensure compliance with this provision.

Reporting of Net Price

Summary of Comments: AMS received one comment expressing the belief that the requirement for packers to report net price information for the prior day swine report was inappropriate and meaningless. The commenter argued that net price is only material to individual producers.

Agency Response: Publishing net price information allows producers to accurately compare the actual price they received for their livestock with the aggregated price for other producers. Using base prices for such a comparison would not provide the same level of accuracy unless all details of the transactions are known.

Reporting by Packers to Producers

Summary of Comments: Three comments were received expressing the desire to see AMS require the reporting to producers by packers of the raw data utilized by the packers when calculating the percent lean of hogs. The commenters believed that this would allow producers to compare their transaction results with AMS's publicly reported information.

Agency Response: The Act does not provide for the reporting of such information and it is therefore not required by this final rule.

Reporting Prices for Packer-Owned Swine

Summary of Comments: Two comments were received requesting that AMS require the reporting of prices for packer-owned swine to be included in published reports.

Agency Response: Section 232(b)(2) of the Act prohibits the collection of price information on packer-owned swine and it is therefore not required by this final rule.

Reporting of Merit Premiums

Summary of Comments: AMS received 7 comments expressing a desire to see daily reporting of carcass and non-carcass merit premiums. The commenters believed that this information was important to producers.

Agency Response: Section 232(d) of the Act requires only the weekly reporting of non-carcass merit premiums in effect during the prior slaughter week. Further, the Act does not provide for the reporting of carcass merit premiums.

Publishing of Formula Contract Information

Summary of Comments: Five commenters suggested that the formula contract information should be categorized and published by AMS.

Agency Response: These comments have merit. To ensure producers, packers and other market participants can readily understand the information published by AMS, AMS will categorize formula contract information in published reports. AMS will make these categories available as a part of its program of education and outreach after publication of this final rule and before its implementation date.

Reporting Committed Swine

Summary of Comments: AMS received 4 comments expressing concern over the requirement to report swine committed to the packer for the next 14 days (§ 57.202(a)(3) of the proposed rule). The commenters could not see the value of such information and believed that reporting it could have a detrimental effect on the market.

Agency Response: Required by § 232 of the Act, the reporting the volume of swine committed to packers over each of the next 14 days will provide the industry with important demand side information for the market as a whole without disclosing proprietary information on any individual packer.

Comments Relating Specifically to Lambs

Reporting of Lamb and Lamb Products

Summary of Comments: AMS received 11 comments on this issue. Two of the comments were opposed to the inclusion of lamb and lamb products under mandatory price reporting. These commenters believed that AMS had exceeded the intent of Congress by making the lamb reporting requirements more comprehensive than the reporting for beef or pork. They stressed that Congress did not include lamb and lamb products reporting in the Act because it would prove too burdensome to the lamb industry. However, 9 commenters strongly supported the inclusion of lamb and lamb products reporting authorized but not mandated by the Act. They argued that such a program of mandatory lamb price reporting was vital to the economic stability of the domestic lamb industry and that the requirements in the proposed rule for lamb reporting were reasonable and in compliance with the intent of the Act.

Agency Response: Section 241 of the Act authorizes the Secretary to establish a program of mandatory lamb price information reporting that will ''(1) provide timely, accurate, and reliable market information; (2) facilitate more informed marketing decisions; and (3) promote competition in the lamb slaughtering industry.'' If the Secretary takes such action, an opportunity for comment on the proposed regulations must be provided. Under this authority, a program of mandatory lamb price reporting was included in the proposed rule and the opportunity for comment was provided. Additionally, AMS does not believe that it has made these requirements more comprehensive than the reporting for cattle or swine, but does believe it has met the intent of Congress and is operating under the authority of the Act.

Reporting of Wool and Pelt Information

Summary of Comments: Five commenters supported the continued reporting of prices for wool and pelts.

Agency Response: AMS will continue the reporting of the wool and pelts markets under the current system of voluntary reporting.

Reporting of Boxed Lamb Cuts

Summary of Comments: AMS received 4 comments in opposition to the required reporting of boxed lamb cuts. One of the commenters took the position that boxed cut information is irrelevant to producers. Another expressed concern over the reporting of distressed sales. Two remaining commenters were concerned that, with all trades being reported, the published price ranges would be inflated to the point of making the information useless.

Agency Response: AMS does not agree that the reporting of boxed lamb cut information is irrelevant to producers. The value of a lamb carcass is based on the prices received for boxed lamb cuts. AMS believes the collection and reporting of this information is consistent with the stated purpose of the Act to provide information which would improve the price reporting services of the Department of Agriculture.

With respect to concerns over the reporting of distressed product sales, as previously mentioned, in § 59.300 of this final rule, AMS has provided a definition of the term 'boxed lamb' as follows: ''The term 'boxed lamb' means those carlot-based portions of a lamb carcass including fresh primals, subprimals, cuts fabricated from subprimals (excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for Fresh Lamb and Mutton Series 200, United States Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program), and thin meats (*e.g.* inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground lamb, lamb trimmings, and boneless processing lamb not older than 7 days from date of manufacture; frozen primals, subprimals, cuts fabricated from subprimals, and thin meats not older than 180 days from date of manufacture; and frozen ground lamb, lamb trimmings, and boneless processing lamb not older than 90 days from date of manufacture.'' Thus, the reporting of information on sales of distressed product is not required by this final rule. Additionally, to ensure the relevance of the information obtained and reported by AMS, AMS has added product 'state of refrigeration' to the list of factors to be reported, for boxed domestic and imported lamb products that are required to be reported.

III. Impact Analysis

Executive Order 12866

Although not economically significant, this rule has been determined to be significant for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget (OMB). Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the action, an examination of alternative approaches, and an analysis of the benefits and costs. A complete analysis of the number of affected entities and the required volume of reporting is discussed under the Paperwork Reduction Act section following this section.

Need for Action. As stated in the background section, currently, packers are not required to report prices or the terms of sale for the animals they buy from producers. Rather, AMS collects information on daily sales and price information from packers and others on a voluntary basis. However, in recent years more animals are now being transacted under marketing arrangements where neither the arrangements nor the final purchase prices are publicly disclosed. While some of these marketing arrangements are using publicly reported prices as a base, many use the base price plus a premium and a premium/discount schedule depending upon the quality of the carcass. Current market price reports do not capture these pricing mechanisms.

Likewise, importers of lamb carcasses and cuts are not required to report sales of such imported products.

In recent years, the livestock industry has undergone fundamental changes due to economies of size at both the producer and packer level. These changes are reflected in the structure and marketing practices used today. Today, four firms slaughter about 80 percent of all fed cattle, about 55 percent of all hogs, and about 80 percent of all lambs. On the producer side, about 105 feedlots account for about 39 percent of feedlot cattle marketings, the remaining 104,000 feedlots account for 61 percent of the marketings. About 2,005 hog operations control about 47 percent of the hog inventory and the remaining 90,000 farms hold 53 percent. To assure the packers consistent quantities and quality of animals, many of the larger producers, often at a premium price, will enter into private marketing agreements with the packers. The packer is assured of larger lots, scheduled delivery, and consistent quality animals yielding meat with characteristics desired by consumers. The producer gets a higher price than in the traditional open markets and reduced transaction costs.

Rather than buy and sell on the open market, many large slaughtering firms increasingly feed their own animals or utilize private marketing arrangements, such as forward contracts, formula pricing, and exclusive purchase agreements—for which prices and terms of sale are not publicly disclosed. The procurement methods make it difficult for producers, particularly smaller ones, who utilize open cash markets or wish to consider alternative marketing arrangements, to determine the actual purchase prices of livestock.

Most major packers provide information daily to Market News on cash prices and total numbers of livestock involved in transactions. This does not provide full coverage of animals purchased. Market News estimates that 60–65 percent of all slaughter steer and heifer transactions, 25 percent of slaughter hog transactions, and 60 percent of all slaughter lamb transactions are reported daily through the voluntary process. The remaining 35–40 percent of cattle transactions, 75 percent of the hog transactions, and 40 percent of the lamb transactions, which are not reported voluntarily, represent private marketing arrangements. As private marketing agreements become more prevalent, the number of reported transactions will further shrink and the accuracy and completeness of the information for U.S. marketings will erode.

Various groups have asked for mandatory price reporting of livestock products, arguing that fewer publicly reported marketing arrangements make it difficult for producers to determine the actual prevailing purchase prices of livestock. The pressure for mandatory reporting has steadily increased in recent years, though prior attempts to pass mandatory reporting legislation have been unsuccessful, largely due to a lack of broad, unified support from the industry. Over the past couple of years, reported price levels for cattle, hogs, and lambs have run below the 5-year average leading some to argue that it was due to market forces of supply and demand or lower quality animals in the cash market. In the fall of 1998, slaughter plants operated at full capacity and reported cash hog prices reached a 30-year low. During this period, producers and policy officials were looking for accurate and timely market information to guide their decisions. A true hog price picture eluded them as a large amount of unreported transactions kept market news from being able to report the actual purchase price of hogs.

Private marketing arrangements or otherwise coordinated agreements between hog producers and slaughter plants are increasingly the norm. As a result, spot-market demand for slaughter hogs is greatly influenced by slaughter capacity utilization. When the available supply of slaughter hogs exceeds the designed plant capacity, slaughter costs rise as packers turn to overtime labor. To compensate for sharply higher labor costs, slaughter plants lower their bids for slaughter hogs on the public cash markets. This reduces demand for the uncontracted supply of slaughter hogs and is reflected in sharply lower spot market cash prices. This was the situation in late 1998.

Many market participants were no longer able to obtain the actual purchase prices of hogs on which to base their marketing decisions. Even the large farm producers were unable to evaluate contracts because of the unknown premium/discount schedules, which may be different in each marketing agreement. These circumstances helped to galvanize industry support for mandatory reporting and industry groups worked throughout the latter half of 1999 to fashion a mandatory reporting proposal.

During the same time period, the General Accounting Office (GAO) was requested by members of Congress to conduct a study on USDA's pork price reporting system. The study found that USDA's current methods for reporting farm and retail prices did not accurately reflect actual prices for all methods of purchase. During periods of plentiful hog supplies, packers frequently pay a lower price for hogs procured through the spot market than those procured by contract. However, the study did point out spot market hogs are of generally lower quality and more variable in weight and availability which may explain why packers are willing to pay a premium for a stable flow of hogs with consistent quality and weights.

Ultimately, Congress passed the Livestock Mandatory Reporting Act of 1999 (Act) which seeks to provide more transparency in the price discovery process and, thereby, to encourage competition in the marketplace for livestock and livestock products. By mandating reporting, the Act seeks to provide more market information to all market participants. These regulations will implement the Act. It requires packers to provide to Market News the

terms of all their livestock purchases, including those obtained through private marketing arrangements. Moreover, it requires processors of boxed beef and lamb cuts, breakers of lamb carcasses, and importers of boxed lamb cuts to report many of their transactions.

In some instances, mandatory reporting will provide new information which has never been reported under the existing voluntary reporting program. AMS anticipates that this information will provide the basis for newly published market news reports not previously provided for under voluntary reporting, including reports covering the prior day swine market, forward contract and formula marketing arrangement cattle purchases, packer-owned cattle and sheep information, sales of imported boxed lamb cuts, including applicable branded product; and live lamb premiums and discounts. In other instances, mandatory reporting will provide information that is already being provided under voluntary reporting. This includes packer direct purchases of slaughter cattle, packer sales of boxed beef and lamb cuts including applicable branded boxed cuts, packer sales of lamb carcasses, and packer negotiated purchases of swine. AMS anticipates that, in such cases, the market reports reflecting this information will continue to be published but the basis of the market reports will become mandatory information. Lastly, many voluntary-based market news reports will not be affected by mandatory reporting, including reports covering livestock auction sales, packer sales of pork cuts and by-products, and grain trading. Collectively, the new mandatory information and the current voluntary information will provide more transparency in the price discovery process and, thereby, encourage competition in the marketplace for livestock and livestock products.

Alternatives. As required by E.O. 12866, various methods were considered by which the objectives of the rule could be accomplished. Most private marketing reporting services rely on basic AMS livestock prices and organize the data in a particular way for a client. Further, the Act directs the Secretary to, the maximum extent practicable, provide for the reporting and publishing of information by electronic means. However, in developing these regulations AMS did consider other means by which the objectives of this rule could be accomplished, including reporting the required information by telephone, facsimile, and regular mail. AMS believes these alternatives are not capable of meeting the program objectives, especially timely reporting. The Act prescribes specific times that reporting entities must report to AMS. Similarly, the Act prescribes specific times for publication of a report by AMS. AMS believes electronic submission to be the only method capable of allowing for AMS to collect, aggregate and publish reports while complying with the specific time-frames set forth in the Act. AMS believes it is not possible for the Agency to receive information over the telephone, facsimile or regular mail and then transcribe the information into electronic format before aggregating and publishing the information while still complying with the publication time-frames set forth in the Act. However, AMS may provide for an exception to electronic reporting in emergencies or in cases when an alternative is agreeable to AMS and the reporting entity. The major cost of complying with this rule involves the information collection and reporting process. The information collection and reporting process is explained in the Summary of Costs Section and is referenced in § 59.10(f) Reporting Methods. A complete discussion of the cost analysis can be found in the summary of costs section.

Summary of Benefits. Many producers contend that they cannot obtain the market information needed to easily and quickly compare marketing possibilities available from different packers. This information is needed for producers to devise a marketing strategy that obtains the best possible prices for their livestock. Private advisory services will be able to provide a more in depth analysis to clients about alternative marketing strategies. In addition, producers selling under a private marketing agreement need benchmark prices and terms to evaluate their particular agreement to assure an equitable price for their livestock. Furthermore, the growth of private marketing arrangements in the red meat industry and declining participation in the public markets make it difficult for producers to determine prevailing market prices. Mandatory reporting will require packers to provide USDA all terms of their marketing contracts.

The implementation of this rule will improve the price and supply reporting services of the USDA. In addition, participants in the marketplace for livestock and livestock products will be able to easily monitor price and market conditions. The price discovery process will become more transparent ensuring equal market information access for all participants. The increased transparency will more clearly transmit market signals about qualities first buyers demand thereby rewarding producers who produce animals that yield the meat consumers desire with a higher price. The increase in the quantity and quality of available market information will encourage competition in the marketplace while providing participants with the ability to make more informed marketing decisions.

Although quantities and prices of production inputs are obtained by surveys and production costs are derived, the question remains as to how to value the output in a complex marketing environment. Producers will benefit from the increase in information brought about by mandatory reporting by being able to consider more detailed market reports and previously unavailable data on non-cash market livestock procurements. These reports will better reflect the overall supply and demand situation of the marketplace and will allow producers to better determine prevailing market prices, conditions, and arrangements pertinent to the marketing process.

Summary of Costs. On March 17, 2000, AMS published proposed rules for these regulations in the **Federal Register**. Based on comments submitted and upon further review by AMS, the following changes and clarifications have been made in the final rule from the proposal.

Codification in the Code of Federal Regulations

This rule will establish and add a new Part 59 to Title 7 of the Code of Federal Regulations (CFR). Although the proposed rule referenced the establishment and addition of a new Part 57, upon further inspection by the Agency, it was determined that Part 59 of 7 CFR would be the appropriate codification of the final regulations.

Boxed Beef and Lamb and Lamb Carcasses

When reporting sales of boxed beef and lamb cuts and lamb carcasses, packers will not be required to report sales of product not sold at a carlot-based price (distributive trade), frozen boxed beef cuts (excluding beef trimmings, boneless processing beef, and cow product), distressed product, cuts in portion cut form (e.g. chops, steaks, etc.), and branded boxed beef and lamb cuts where the brand is based upon unique characteristics such as cutting style or packaging.

For sales of boxed beef cuts, the reporting requirements for ''cut date'', ''buyer'', and ''destination'' have been eliminated.

For sales of lamb carcasses and lamb cuts, the requirements for ''cut date'', ''buyer'', and ''destination'' have been eliminated. For sales of boxed lamb cuts, packers will now be required to report product ''state of refrigeration''.

Imported Lamb Carcasses and Cuts

Importers are not required to report market information on purchases of imported boxed lamb cuts or imported lamb carcasses, or of purchases and sales of imported lamb cuts in portion cut form (e.g. chops, steaks, etc.). For the weekly boxed lamb sales reports, importers will not be required to report product ''nation of origin'', but will now be required to report product ''state of refrigeration''.

Live Cattle and Lambs

Packers will not be required to report purchases from auction markets made either by a salaried employee of the packer or a person that buys on commission for a packer.

For cattle purchases, the requirement for reporting ''slaughter date'' has been deleted.

The twice-daily requirement for the reporting of all purchases of live lambs in the proposed rule has been reduced to once daily reporting at 2 p.m. Central Time. The regulations were clarified to require that packers are required to report ''class of lamb'' and ''pelt type'' for live lamb purchases. Additionally, the weekly reporting of lambs that were slaughtered will no longer require packers to report ''shrink factor'' and the reporting time for this report has been moved from the first reporting day to the second reporting day of the week.

Live Swine

For the daily reporting of swine that were slaughtered, packers will now be required to report ''average loin depth'' on the ''prior day report''.

Other Changes

Other miscellaneous changes were made to the regulatory text in response to the comments received and further review by AMS, including the addition of several new definitions to clarify the meaning of terms used in the regulations.

AMS's cost estimates along with the supporting assumptions and methodology used were stated in the proposed rule. These supporting assumptions and methodology used appeared in the Regulatory Impact Analysis, Regulatory Flexibility Analysis, and Paperwork Reduction Act Analysis sections of the proposed rule. Comments received in response to the proposed rule did not provide any detailed supporting data and information on the methodology used in formulating their cost estimates or any information that would enable AMS to determine how they derived their cost estimates. However, we do note that the wide range of estimates received does raise concerns as to what assumptions and methodology were used by the commenters.

AMS believes that one explanation for the reason why some estimates submitted by commenters exceeded the estimates made by AMS is that commenters were estimating the costs of developing systems that exceeded the minimum requirements of a system that would fulfill these regulations. Additionally, AMS believes that some commenters may have included other costs associated with normal recordkeeping and accounting practices that are already required by existing regulations for those engaged in the livestock and meat packing and importing industries and therefore are not new costs being required by the implementation of these regulations.

Nonetheless, AMS has carefully reviewed its analysis of the cost burden estimates for mandatory reporting using the same assumptions and methodology used in the proposed rule. In this regard, we have added tables to this analysis which even more clearly itemize the supporting assumptions and methodology used by AMS in formulating our cost estimates. Further, we have adjusted our cost estimates where appropriate.

Therefore, AMS believes we have done as comprehensive of an analysis as possible of the cost burden imposed by these regulations on those required to report.

The regulations have been designed to achieve the regulatory objectives in as cost-effective manner as possible. To the extent practicable, they draw upon current industry practices in order to minimize the burden to the industry. The regulatory objective is to increase the amount of information available to participants in the marketplace for livestock and livestock products by mandating reporting of market information by certain members of the industry. Methods of accomplishing the required information collection in the timeliest manner while minimizing the opportunity for errors and maximizing existing systems and processes were contemplated. Electronic transfer of data from the reporting entity to the Agency was chosen as the least cost reporting method to accomplish all of the objectives of mandatory information collection.

AMS considered other alternatives for firms lacking electronic data transfer capabilities, such as faxing the required information to a Market News office for hand data entry. This was rejected because of the costs to both the respondent and to AMS; the amount of time required with this alternative is unworkable given the short time-frames required for public dissemination. However, there is an exception in emergencies or in cases when an alternative method is agreeable to AMS and the reporting entity.

Electronic data transmission of information is accomplished using an interface with an existing electronic record keeping system. In most cases, the information packers and importers are required to report already exists in internal computerized record keeping systems. Packers and importers will provide for the translation of the information from their existing electronic recordkeeping system into the required AMS standardized format. Once accomplished, the information will be electronically transmitted to AMS where it will be automatically loaded into an AMS database. We estimate that the cost in terms of time and money for this alternative is in the initial creation of the interface. We estimate that the creation of this interface by in-house computer personnel will require an industry average of 15 hours per respondent. Further, we estimate the cost per hour to average $50.00 for a total cost, on average, of $750.00. Those companies not having in-house computer personnel will incur such costs as are necessary to bring in outside computer programmers to accomplish the task. The Agency estimates this cost to be from $750.00 to $1,000.00.

INITIAL ELECTRONIC SUBMISSION STARTUP COST PER RESPONDENT

Hours to develop interface [1]	15
Labor cost per hour	× $50.00
Total cost per respondent	$750.00

Startup Cost Prorated over 5 Year Life of Program: $750.00/5 = $150.00 annual cost per respondent

[1] Hours required to develop electronic interface between existing company electronic recordkeeping system and AMS required electronic submission format.

Additionally, AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be $1,830.00 (see Paperwork Reduction Act section for a full

discussion). This estimate includes the cost of electronic data storage media, backup electronic data storage media, and backup software required to maintain an estimated annual electronic recordkeeping and backup burden of 42 megabytes, on average, per respondent. In addition, this estimate includes the cost per employee to maintain such records which is estimated to average 70 hours per year at $20.00 per hour for a total salary component cost of $1,400.00 per year.

ANNUAL RECORDKEEPING COST PER RESPONDENT

Labor hours per year	70
Labor cost per hour	× $20.00
Sub-total labor cost per year	$1,400.00
Electronic storage cost [1]	+ $430.00
Total recordkeeping cost	$1,830,00

[1] Includes cost of hard electronic storage (estimated to average 42 Megabytes/year), backup tape media, backup tape drive, and backup software.

In this rule, information collection requirements include the submission of the required information on a daily and weekly basis in the standard format provided in the following forms: (1) Live Cattle Daily Report (Current Established Prices), (2) Live Cattle Daily Report (Committed and Delivered Cattle), (3) Live Cattle Weekly Report (Forward Contract and Packer-Owned), (4) Live Cattle Weekly Report (Formula Purchases), (5) Cattle Premiums and Discounts Weekly Report, (6) Boxed Beef Daily Report, (7) Swine Prior Day Report, (8) Swine Daily Report, (9) Swine Noncarcass Merit Premium Weekly Report, (10) Live Lamb Daily Report (Current Established Prices), (11) Live Lamb Daily Report (Committed and Delivered Lambs), (12) Live Lamb Weekly Report (Forward Contract and Packer-Owned), (13) Live Lamb Weekly Report (Formula Purchases), (14) Lamb Premiums and Discounts Weekly Report, (15) Boxed Lamb Report, and (16) Lamb Carcass Report. Copies of these 16 forms are included in Appendices at the end of this rule. Cattle packers will utilize six of these forms (Appendix A) when reporting information to AMS including two for daily cattle reporting, three for weekly cattle reporting, and one for daily boxed beef cuts reporting. AMS estimates the total data submission cost burden to cattle packers to be $266,560.

Swine packers will utilize three forms (Appendix B), two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. AMS estimates the total data submission cost burden to swine packers to be $166,400.

Lamb packers will utilize seven of these forms (Appendix C) when reporting information to AMS including two for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting and one for daily and weekly lamb carcass reporting. Lamb importers will utilize one of these forms when reporting information to AMS for reporting weekly imported boxed lamb cut sales. AMS estimates the total data submission cost burden to lamb packers and lamb importers to be $48,900.

These cost estimates are discussed in detail in the Paperwork Reduction Act Section.

Breakdown of Estimated Data Submission Cost Burden

I.—NUMBER OF RESPONSES PER RESPONDENT PER YEAR

Form	Reporting days		Responses		Total responses
Cattle:					
LS–113	260	×	2 daily	=	520
LS–114	260	×	2 daily	=	520
LS–115	52	×	1 weekly	=	52
LS–116	52	×	1 weekly	=	52
LS–117	52	×	1 weekly	=	52
LS–126	260	×	2 daily	=	520
Swine:					
LS–118	260	×	1 daily	=	260
LS–119	260	×	2 daily	=	520
LS–120	52	×	1 weekly	=	52
Lamb:					
Domestic:.					
LS–121	260	×	1 daily	=	260
LS–122	260	×	1 daily	=	260
LS–123	52	×	1 weekly	=	52
LS–124	52	×	1 weekly	=	52
LS–125	52	×	1 weekly	=	52
LS–128	260	×	1 daily	=	260
LS–129	260	×	1 daily	=	260
Importer:.					
LS–128	52	×	1 weekly	=	52

II.—NUMBER OF SUBMISSION HOURS PER RESPONDENT PER YEAR

Form	Submissions/ year		Hours/ submission		Total hours/ year
Cattle:					
LS–113	520	×	.17	=	88.40
LS–114	520	×	.17	=	88.40
LS–115	52	×	.25	=	13.00
LS–116	52	×	.25	=	13.00
LS–117	52	×	.08	=	4.16

II.—NUMBER OF SUBMISSION HOURS PER RESPONDENT PER YEAR—Continued

Form	Submissions/ year		Hours/ submission		Total hours/ year
LS–126	260	×	.125	=	65.00
Swine:					
LS–118	260	×	.25	=	65.00
LS–119	260	×	.17	=	88.40
LS–120	52	×	.25	=	13.00
Lamb:					
Domestic:					
LS–121	260	×	.34	=	88.40
LS–122	260	×	.34	=	88.40
LS–123	52	×	.25	=	13.00
LS–124	52	×	.25	=	13.00
LS–125	52	×	.08	=	4.16
LS–128	260	×	.167	=	43.40
LS–129	260	×	.167	=	43.40
Importer:					
LS–128	52	×	.084	=	4.37

III.—TOTAL SUBMISSION COST PER RESPONDENT PER YEAR

Form	Total hours/ year		Cost/hour		Total $'s/year
Cattle:					
LS–113	88.40	×	$20.00	=	$1,768.00
LS–114	88.40	×	20.00	=	1,768.00
LS–115	13.00	×	20.00	=	260.00
LS–116	13.00	×	20.00	=	260.00
LS–117	4.16	×	20.00	=	83.20
LS–126	65.00	×	20.00	=	1,300.00
Totals	271.96	×	20.00	=	5,440.00
Swine:					
LS–118	65.00	×	20.00	=	1,300.00
LS–119	88.40	×	20.00	=	1,768.00
LS–120	13.00	×	20.00	=	260.00
Totals	166.40	×	20.00	=	3,328.00
Lamb:					
Domestic:					
LS–121	88.40	×	20.00	=	1,768.00
LS–122	88.40	×	20.00	=	1,768.00
LS–123	13.00	×	20.00	=	260.00
LS–124	13.00	×	20.00	=	260.00
LS–125	4.16	×	20.00	=	83.20
LS–128	43.40	×	20.00	=	868.00
LS–129	43.40	×	20.00	=	868.00
					5,875.00
Importer:.					
LS–128	4.37	×	20.00	=	+87.00
Totals	298.13	×	20.00	=	5,962.00

IV.—TOTAL YEARLY SUBMISSION COST FOR ALL RESPONDENTS

Form	Total $'s/year		No. of respondents		Total cost*
Cattle:					
LS–113	$1,768.00	×	49	=	$86,640.00
LS–114	1,768.00	×	49	=	86,640.00
LS–115	260.00	×	49	=	12,740.00
LS–116	260.00	×	49	=	12,740.00
LS–117	83.20	×	49	=	4,080.00
LS–126	1,300.000	×	49	=	63,700.00
Totals	5,440.00	×	49	=	266,560.00

IV.—TOTAL YEARLY SUBMISSION COST FOR ALL RESPONDENTS—Continued

Form	Total $'s/year		No. of respondents		Total cost*
Swine:					
LS–118	1,300.00	×	50	=	65,000.00
LS–119	1,768.00	×	50	=	88,400.00
LS–120	260.00	×	50	=	13,000.00
Totals	3,328.00	×	50	=	166,400.00
Lamb:					
Domestic:					
LS–121	1,768.00	×	8	=	14,140.00
LS–122	1,768.00	×	8	=	14,140.00
LS–123	260.00	×	8	=	2,080.00
LS–124	260.00	×	8	=	2,080.00
LS–125	83.20	×	8	=	670.00
LS–129	868.00	×	8	=	6,950.00
	5,007.00	×	8	=	40,060.00
LS–128	868.00	×	9	=	+7,810.00
Total					47,870.00
Importer:.					
LS–128	87.00	×	6	=	520.00
Total					48,390.00

*Dollars values rounded to nearest $10.00.

The total cost burden to packers and importers required to submit information under this rule includes initial startup costs for electronic submission of data, annual recordkeeping costs, and annual data submission costs. Total reporting costs to cattle packers are estimated to be $7,420 per plant, $5,308 for hog packers, $7,860 for sheep slaughtering plants, and $2,070 for lamb importers.

TOTAL ANNUAL COST BURDEN TO RESPONDENTS

		Cost per respondent		No. of respondents		Total cost*
Cattle:						
Initial Startup	=	$150.00	×	49	=	$7,350.00
Recordkeeping	=	1,830.00	×	49	=	89,670.00
Data Submission	=	5,440.00	×	49	=	266,560.00
						363,580.00
Total Cost Per Respondent: 363,580.00/49					=	7,420.00
Swine:						
Initial Startup	=	150.00	×	50	=	7,500.00
Recordkeeping	=	1,830.00	×	50	=	91,500.00
Data Submission	=	3,328.00	×	50	=	166,400.00
						265,400.00
Total Cost Per Respondent: 265,400.00/50					=	5,308.00
Lamb:						
Domestic:						
Initial Startup	=	150.00	×	9	=	1,350.00
Recordkeeping	=	1,830.00	×	9	=	16,470.00
Data Submission	=	5,875.00	×	9	=	52,880.00
						70,700.00
Importer:.						
Initial Startup	=	150.00	×	6	=	900.00
Recordkeeping	=	1,830.00	×	6	=	10,980.00
Data Submission	=	87.00	×	6	=	522.00
						12,400.00
Total Cost Per Respondent:.						
Domestic: 70,700.00/9					=	7,860.00
Importer: 12,400.00/6					=	2,070.00

*Dollars values rounded to nearest $10.00.

The respondent reporting costs vary widely by species and the size of lots purchased. Section 251 (c) General Provisions Reporting by Packers requires packers to report all information required under this subtitle on an individual lot basis. Therefore, larger lots bought by the larger packers will result in a lower reporting cost per head slaughtered. Using 1999 federally inspected slaughter data the cost per animal slaughtered will decline as slaughter volume increased. The smaller cattle packers will have the highest reporting cost per head slaughtered, while the largest hog slaughtering firms will have the lowest. Based on a preliminary analysis by specie, cost for cattle is estimated to be 0.011 dollars per head, swine 0.003 dollars per head, sheep 0.021 dollars per head, and lamb importers 0.428 dollars per metric ton. See Table 1. Respondent Cost.

TABLE 1.—RESPONDENT COST

Size group	Plants	Head 1,000	Respondent cost dollars	Cost per head dollars
Respondent cost for cattle slaughter, 1999:				
1–124,999 (Exempted)	710	2994.3	0	0
125,000–199,999	10	1,878.1	74,200	0.039508
200,000–299,999	7	1,773.7	51,940	0.029283
300,000–499,999	10	4,296.2	74,200	0.017271
500,000–999,999	7	4,604.4	51,940	0.011281
1,000,000–1,499,999	11	13,464.8	81,620	0.006062
1,500,000+	4	6,403.3	29,680	0.004635
Total (Subject to regulation)	49	32,420.5	363,580	0.011215
Respondent cost for hog slaughter, 1999:				
1–99,999 (Exempted)	674	3,500.1	0	0
100,000–249,999	13	2,177.8	69,004	0.031685
250,000–499,999	4	1,270.6	21,232	0.016710
500,000–999,999	5	3,181.5	26,540	0.008342
1,000,000–1,499,999	2	2,465.3	10,616	0.004306
1,500,000–1,999,999	9	16,160.9	47,772	0.002956
2,000,000–2,999,999	9	19,547.7	47,772	0.002444
3,000,000–3,999,999	6	21,618.4	31,848	0.001473
4,000,000+	6	29,632.6	31,848	0.001075
Total (Subject to regulation)	54	96,054.8	*286,632	0.002879
Respondent cost per head slaughtered, Sheep, 1999:				
1–74,999 (Exempted)	553	541.2	0	0
75,000–499,999	6	1,634.9	47,160	0.028846
500,000+	2	1,378.2	15,720	0.011406
Total (Subject to regulation)	8	3,013.1	**62,880	0.020869
Size Group	Importers	Metric tons imported	Respondent cost dollars	Cost per ton dollars
Respondent cost per metric ton imported, Lamb and mutton, 1999:				
Under 5,000 metric tons (Exempted	371	7,534	0	0
5,000 and over	6	30,138	12,900	0.428031057
Total (Subject to regulation)	6	30,138	12,900	0.428031057

*Total respondents does not reflect latest estimate of 50 used by AMS throughout this rule. AMS calculates total respondent cost as 50 x $5,308.00 = $265,400.00.

**Total respondents does not reflect estimate of 9 used by AMS to reflect one packer that also imports. AMS calculates total respondent cost as 9 × $7,860.00 = $70,700.00.

In addition to these costs to packers for submitting information, the mandatory price reporting program will cost approximately $4.7 million in FY 2000 and $5.9 million in FY 2001. In order to implement the program in FY 2000, AMS is hiring additional staff, issuing regulations, and setting up an electronic database to capture data and develop reports that began in July. The 56 staff years required to administer and produce high quality mandatory price reports include reporters, auditors, clerical personnel, and computer specialists. These employees will be located in three AMS offices located across the country. Salary-related costs in FY 2001 are estimated at $3.5 million. Other costs include approximately $600 thousand for travel and transportation; $600 thousand for miscellaneous costs such as office space, utilities, communications costs, printing, reimbursements to cooperating States, training, and office supplies; $200 thousand for equipment, including computers, software, and licenses; and $1 million for a computer systems contract to develop the database required to manage the data.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. States and political divisions of States are

specifically preempted by § 259 of the Act from imposing requirements in addition to, or inconsistent with, any requirements of the Act with respect to the submission or publication of information on the prices and quantities of livestock or livestock products. Further, the Act does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act, 1921 (7 U.S.C. 181 *et seq.*); administer, enforce, or collect voluntary reports under the Act or any other laws; or access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities and prepared a Civil Rights Impact Analysis to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or family status. This included those persons who are employees of those entities required to participate and those individuals who wish to use information collected by this mandatory program of information regarding the marketing of cattle, swine, lambs, and products of such livestock.

Upon a review of our regulation and the Civil Rights Impact Analysis on the proposed rule, prepared by AMS, the USDA Office of Civil Rights determined that this rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups or will this program have a disproportionate effect on women, minorities or people with disabilities. Further, this program will not exclude from participation any persons or groups, deny any persons or groups the benefits of the program, subject any persons or groups to discrimination.

The final rule, which incorporates comments received during the comment period, has no disproportionate impact on women, minorities or people with disabilities.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an expressed preemption provision. This rule is required by the Act. Section 259 of the Act, Federal Preemption, states, ''In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products.''

For a number of years, States have operated programs of voluntary market reporting of livestock and livestock products. Many of these programs have been operated in conjunction with the USDA through Federal-State agreements. Under these agreements, the USDA and the States work cooperatively to gather and disseminate information on the livestock markets within the State. Until now, all of these programs have been based on voluntary reporting of market information. The Act and these regulations are not intended to have an effect on any voluntary market reporting programs currently being operated by the States.

However, recently, several States have enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular State. Currently, this includes the States of Iowa, Minnesota, Missouri, Nebraska, and South Dakota. Of these, only Minnesota and South Dakota are collecting mandated market information.

Section 259 of the Act, preempts States from imposing mandatory reporting requirements that are in addition to or inconsistent with any requirement of this rule with respect to the collection and publication of information on the prices and quantities of livestock and livestock products. This preemption clause will affect all mandatory reporting programs currently in effect by the States and the implementation of any mandatory reporting programs currently developed, in the process of being developed, or that may be developed at a later date.

With regard to consultation with States, AMS has made sure that the States are aware of the Act and AMS has engaged in formal and informal discussions regarding the implications of Federal livestock mandatory reporting with those States which either currently have mandatory reporting programs or are in the process of developing mandatory reporting programs.

Additionally, interested persons were invited to comment on the proposal as it related to the operation of State livestock and livestock products reporting programs. The summaries of comments follow.

Summary of Comments: AMS received 3 comments requesting that language be placed in the regulations regarding the preemption of State mandatory price reporting laws. The commenters believed that the omission of such language in the final rule would allow States to impose their own mandatory reporting laws.

Agency Response: Section 259 of the Act provides that no State may impose a requirement that is in addition to, or inconsistent with, any requirement of the Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products. Contained within the supplemental information sections of the proposed rule and these final rules are discussions clarifying the Agency's interpretation of the Act as it relates to the preemption of State mandatory reporting programs. Accordingly, although such language does not appear in the regulatory text of this final rule, this has no effect on the enforcement of the Act.

Regulatory Flexibility Act

In General. This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The purpose of the RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The Livestock Mandatory Reporting Act of 1999 (Act) requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under the Act and by these regulations and exists nowhere else. Therefore, this rule does not duplicate market information reasonably accessible to the Agency.

In formulating this rule, particular consideration was given to reducing the

burden on entities while still achieving the objectives of the regulation. Accordingly, thresholds were set which defined those entities which are required to report information on purchases of live cattle, swine and lambs, as well as information on domestic and export sales of boxed beef cuts including applicable branded product, and sales of lamb carcasses, boxed lamb cuts including applicable branded product, and imported boxed lamb cuts including applicable branded product.

In any calendar year, only federally inspected cattle plants which slaughtered an average of 125,000 head of cattle a year for the immediately preceding 5 calendar years are required to report. Additionally, any cattle plant that did not slaughter cattle during the immediately preceding 5 calendar years are required to report if the Secretary determines that the plant should be considered a packer based on its capacity. For entities that did not slaughter cattle during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations. This accounts for approximately 49 out of 759 cattle plants or 6.5% of all federally inspected cattle plants.

For any calendar year, any federally inspected swine plant which slaughtered an average of 100,000 head of swine a year for the immediately preceding 5 calendar years are required to report information. Additionally, any swine plant that did not slaughter swine during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant are required to report. This accounts for approximately 50 out of 728 swine plants or 6.9% of all federally inspected swine plants.

In any calendar year, federally inspected lamb plants which slaughtered the equivalent of an average of 75,000 head of lambs a year for the immediately preceding 5 calendar years are considered a packer and required to report. A packer includes a processing plant that purchases and processes an average of 75,000 lamb carcasses annually rather than slaughter live lambs. Additionally, any processing plant that did not slaughter an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant are required to report.

For any calendar year, lamb importers that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years are required to report. Additionally, lamb importers that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on the volume of lamb imports are required to report. Some lamb plants may also be importers. This accounts for approximately 17 out of 561 lamb plants and importers or 3.0% of all federally inspected lamb plants and importers.

Fully 93.5% of all cattle, 93.1% of all swine, and 97.0% of all lamb plants in the U.S. are exempted by this rule from reporting information.

Accordingly, we also have prepared a regulatory flexibility analysis. The RFA compares the size of meat packing plants to the Standard Industrial Code (SIC) to determine the percentage of small businesses within the meat packing industry. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.

Objectives and Legal Basis. The objective of this rule is to improve the price and supply reporting services of the Department of Agriculture in order to encourage competition in the marketplace for livestock and livestock products by increasing the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of cattle, swine, lambs, and products of such livestock as specifically directed by the Act and these regulations, as described in detail in the background section.

Estimated Number of Small Businesses. This rule provides for the mandatory reporting of market information by livestock packers who for any calendar year have slaughtered a certain number of livestock during the immediately preceding 5 calendar years. This number is 125,000 head per year for cattle and 100,000 head per year for swine. Lamb plants required to report include those that for any calendar year slaughter or process the equivalent of 75,000 head per year during the immediately preceding 5 calendar years. Additionally, for any calendar year lamb importers that imported an average of 5,000 metric tons of lamb meat products per calendar year during the immediately preceding 5 calendar years are also required to report details of their purchases. For cattle and swine processing plants that have not slaughtered livestock during the immediately preceding 5 calendar years are also required to report if the Secretary determines that the plants should be considered packers based on their capacity. Additionally, lamb packers and lamb meat processors and importers that did not slaughter or process the equivalent of 75,000 head per year or import 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years are required to report if the Secretary determines that they should be considered an importer based on their volume of lamb imports.

These packers and importers are required to report the details of all transactions involving purchases of livestock and the details of all transactions involving domestic and export sales of boxed beef cuts including applicable branded product, and sales of domestic boxed lamb cuts including applicable branded product, imported boxed lamb cuts including applicable branded product and lamb carcasses to AMS. Cattle and swine information will be reported to AMS according to the schedule directed by the Act and these regulations with purchases of swine reported three times each day, purchases of cattle twice each day, and sales of domestic and exported boxed beef cuts, including applicable branded product, reported twice each day. Lamb information will be reported to AMS according to the schedule mandated by these regulations with purchases of lambs reported once each day and sales of lamb carcasses reported once each day. Previous week sales of imported boxed lamb cuts including applicable branded boxed lamb cuts will be reported once weekly on the first reporting day of the week.

The SIC size standard classifies a small business in the meat packing industry as a company with less than 500 employees. Although it is common in the red meat industry for larger companies to own several plants, some of which may employ less than 500 people, those companies and lamb importers with a total slaughter plant employment at all locations of less than 500 are considered to be small businesses for the purposes of this rule even though individual plants are mandated to report as provided by the Act and these regulations.

For any calendar year, federally inspected beef plants required to report include those that slaughtered an average of 125,000 head per year during

the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter cattle during the immediately preceding 5 calendar years but are determined to be a packer by the Secretary based on the capacity of the processing plant. By this definition, approximately 30 individual beef packing companies representing 49 individual plants are required to report information to AMS. Based on the SBA size standard, 10 of these 30 beef packing companies are considered small businesses, representing 10 plants that are required to report. The figure of 49 plants required to report represents 6.5% of the cattle plants in the U.S. The remaining 93.5% of cattle plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

For any calendar year, federally inspected pork plants required to report include those that slaughtered an average of 100,000 head per year during the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter swine during the immediately preceding 5 calendar years but are determined to be a packer by the Secretary based on the capacity of the processing plant. By this definition, approximately 29 individual pork packing companies representing a total of 50 individual plants are required to report information to AMS. Based on the SBA size standard, 15 of these 29 pork packing companies are considered small businesses, representing 15 individual plants that are required to report. The figure of 50 plants required to report represents 6.9% of the swine plants in the U.S. The remaining 93.1% of swine plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

For any calendar year, lamb packers required to report include those that slaughtered or processed the equivalent of 75,000 head per year during each of the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years but are determined to be a packer by the Secretary based on the capacity of the processing plant. For any calendar year, an importer that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years are required to report. Additionally, a lamb importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on the volume of lamb imports, will also be required to report. By this definition, 17 individual companies including importers representing a total of 12 plants, are required to report information. Based on the SBA size standard, all 12 of these lamb plants are considered small businesses with none employing more than 500 people. The figure of 12 plants required to report represents 3.0% of the lamb plants in the U.S. Nearly all of the remaining 97.0% of lamb plants are estimated to qualify as small businesses and are exempt from mandatory reporting.

Projected Reporting. This rule requires the reporting of specific market information regarding the buying and selling of livestock and livestock products. The information will be reported to AMS by electronic means. Electronic reporting involves the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS (Appendices A–C).

Once the required information has been entered into the AMS database, it will be aggregated and processed into various market reports which will be released according to the daily and weekly time schedule set forth in these regulations.

As an alternative, in response to comments concerning AMS developing and making available a web-based input forms for submitting data online, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. Accordingly, AMS is developing such a system that will be ready in time for program implementation.

Under both systems, information regarding the specific characteristics of each reported sale must be supplied by lot without aggregation. In order to adequately describe and categorize each transaction, as many as fifteen separate pieces of information are required to be reported. This information includes price, head count, weight, quality grade, and yield grade. The frequency respondents are required to report is one to three times each reporting day depending on the species and type of information required.

In 1999, an average of 700,000 cattle were slaughtered each week. Beef plants identified as small businesses contributed an estimated 7,000 head per day, on average, to this weekly slaughter with each business contributing an estimated 700 head per day on average based upon publicly available information. At a maximum, if each of these 700 cattle were purchased in lots of one head each and 15 pieces of information were required for each purchase, as many as 10,500 individual pieces of information will have to be reported by each small beef packing plant each reporting day. In addition, each of the small beef packing plants is required to report all domestic and export sales of boxed beef cuts including applicable branded product. On average, each of these small entities slaughters an estimated 700 head per day. Since most beef carcasses are usually fabricated at the point of slaughter, each of these small beef packers process about 700 beef cattle into boxed beef cuts each day. Normally, boxed beef cut sales average about 200 boxes per transaction and each head of cattle equals 7 boxes. This represents 25 separate transactions which, if 15 pieces of information were required per transaction, translates into 375 pieces of information reported by each small beef packing business producing boxed beef each business day. AMS estimates the total annual burden on each small cattle packer and boxed beef processing entity to be $7,420, including $5,440 for annual costs associated with electronically submitting data, $150.00 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS.

This figure was calculated by estimating the time required to complete the necessary data submission and factoring by the number of times reporting is required per day for an estimated total of 260 reporting days in a year (see Paperwork Reduction Act section for a complete, detailed discussion).

On average each week in 1999, 1.9 million swine were slaughtered. Pork plants identified as small businesses contributed an estimated 17,000 head per day to this weekly slaughter with each business contributing on average an estimated 1,125 head per day, based on publicly available figures. If each of these head were purchased in lots of one head each and 15 pieces of information were required for each purchase, 16,875 pieces of information will have to be reported by each small pork packing plant per day.

Using the same methodology as described above for cattle, AMS estimates the total annual burden on each small swine packing entities to be $5,308, including $3,328 for annual costs associated with electronically submitting data, $150.00 for annual

share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS. This estimate does not include costs associated with reporting sales of pork products which is not required to be reported.

Sheep slaughter in 1999 averaged 70,000 head per week. All lamb plants contributing to this weekly slaughter are identified as small businesses. On average, these lamb plants each slaughtered an estimated 2,200 head per day, based on publicly available information. If each of these lambs were purchased one at a time and 15 pieces of information were required for each transaction, 33,000 pieces of information will have to be reported by each small lamb packing plant. In addition, all lamb plants processing the equivalent of 75,000 lambs per year during each of the immediately preceding 5 calendar years, which are required to report, qualify as small businesses. These plants are required by regulation to report information on their sales of boxed lamb cuts. It is estimated that negotiated sales comprise the majority of all boxed lamb cut sales. Based on publicly available information, lamb plants processing lamb into boxed lamb cuts, on average, process the equivalent of an estimated 1,200 head per day. It is normal business practice that these lamb cuts are sold in units averaging between 25–150 boxes per transaction, representing about 8–50 head of lambs (about 3 boxes per head). At 1,200 head per day, there could be as many as 150 transactions per day per reporting packer. Assuming that each of these 150 transactions required 15 pieces of information per transaction, 2,250 pieces of information will have to be reported by each small lamb packing plant.

In any calendar year, importers of lamb meat products that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years are required to report the details of their sales of boxed lamb cuts including applicable branded product to AMS on a weekly basis. Additionally, in any calendar year, lamb importers that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on the volume of lamb imports are required to report the above information. AMS estimates that each of the 5 importers required to report import, on average, 180 metric tons of lamb products per week. AMS estimates that the majority of these imports are contracted over a period of time, usually from 3–6 months, possibly as much as 12 months. Prices are normally negotiated at the time the contract is entered into along with the particular cut of lamb and the volume. During the time the contract is in effect, prices are not expected to change from week to week but quantities might. Assuming that an average importer purchases an average of 10 different cut styles, each at a single price, from an average of 2 suppliers, AMS estimates that the weekly reporting burden for each importer includes information for up to 20 different transactions. Each transaction requires 7 pieces of information including, price, quantity, cut, trim, weight, delivery date, and nation of origin, for a total of 140 separate pieces of information.

AMS estimates the total annual burden on each small lamb packer to be $7,860 including $5,875 for annual costs associated with electronically submitting data, $150.00 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS.

AMS estimates the total annual burden on each small importer of lamb to be $2,070 including $87 for annual costs associated with electronically submitting data, $150.00 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS.

Normally, few packers buy livestock or livestock products in one head or one head equivalent lots. Similarly, few importers buy imported lamb cuts in less than carlot volumes. Therefore, the estimated reporting burden described here reflects the maximum reporting burden on small businesses.

Projected Recordkeeping. Each packer and importer required to report information to the Secretary must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required by these regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Reporting packers and importers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers and importers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain. The paperwork burden that is imposed on the packers and importers is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule. AMS will continue to report market information collected through its voluntary market reporting program provided the collection of such information does not duplicate the information collection requirements of this rule.

Professional skills required for recordkeeping under this rule are not different than those already employed by the reporting entities. Reporting will be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this rule.

Alternatives. This rule as directed by the Act requires cattle and swine packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. Further, lamb slaughter and processing plants and lamb importers of a certain size are required by these regulations to report information to the Secretary at prescribed times throughout the day and week. These regulations already exempt many small businesses by the establishment of daily slaughter, processing, and import capacity thresholds. Based on figures published by the National Agricultural Statistics Service (NASS), there were 759 cattle, 728 swine, and 561 lamb federally inspected slaughter plants operating in the U.S. at the end of 1999. AMS estimates that approximately 49 cattle plants are required to report information (6.5% of all federally inspected cattle plants), 50 swine plants are required to report information (6.9% of all federally inspected swine plants), and 17 lamb packers and importers are required to report information (2.1% of all federally inspected lamb plants and 1.3% of all lamb importers). Therefore, fully 93.5% of all cattle plants, 93.1% of all swine plants, and 97.9% of all lamb packers and 98.7% of lamb importers are not required to report.

AMS recognizes that a major economic impact of this rule on those small entities required to report involves the manner in which information must be reported to the Secretary. However, in developing these regulations AMS did consider other means by which the objectives of this rule could be accomplished, including reporting the required information by telephone, facsimile and regular mail. AMS believes these alternatives are not capable of meeting the program objectives, especially timely reporting. The Act prescribes specific times that reporting entities must report to AMS. Similarly, the Act prescribes specific times for publication of a report by AMS. AMS believes electronic submission to be the only method capable of allowing for AMS to collect, aggregate and publish reports while complying with the specific time-frames set forth in the Act. AMS believes it is not possible for the Agency to receive information over the telephone, facsimile or regular mail and then transcribe the information into electronic format before aggregating and publishing the information while still complying with the publication time-frames set forth in the Act.

Nevertheless, in response to the comments received in response to the proposed rule concerning AMS developing and making available web-based input forms for submitting data online, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. Accordingly, AMS is developing such a system that will be ready in time for program implementation.

Additionally, to further assist small businesses, AMS may provide for an exception to electronic reporting in emergencies, such as power failures or loss of Internet accessibility, or in cases when an alternative is agreeable to AMS and the reporting entity.

Other than these alternatives, AMS cannot envision any other alternatives to the methods of data transmission that are less burdensome to small businesses. AMS will work actively with those small businesses required to report to minimize the burden on them to the maximum extent practicable.

AMS understands that unforeseen technical difficulties may occur during the implementation of this rule that may, in some cases, prevent full compliance. To assist the industry in achieving compliance, during the period between publication of this final rule and its effective date, AMS will provide assistance and training to each covered entity to ensure that they have been given the technical information necessary to comply with both methods of electronic data transmission requirements. Furthermore, covered entities acting in good faith in attempting to comply with electronic reporting requirements during the implementation phase will not be penalized under the enforcement provisions.

Comments and Responses. In the proposed rule published March 17, 2000, comments were invited on the reporting format, including alternatives from small businesses that would be less burdensome. Although these comments and the Agency's responses to them were contained in the background section of this action where the Agency responded to all of the comments received in response to the proposal, the Agency has identified those comments that specifically pertained to issues raised in this section and responded to them again here. Summaries of AMS' responses to those issues concerning this section follow.

Validity of Cost Burden Estimates

To specifically respond to issues of concern to small businesses, the Agency's responses to the comments concerning the validity of AMS' cost burden estimates in the proposed rule remain unchanged. AMS's cost estimates along with the supporting assumptions and methodology used were stated in the proposed rule. These supporting assumptions and methodology used appeared in the Regulatory Impact Analysis, Regulatory Flexibility Analysis, and Paperwork Reduction Act Analysis sections of the proposed rule. The commenters, including small businesses, did not provide any detailed supporting data and information on the methodology used in formulating their cost estimates or any information that would enable AMS to determine how they derived their cost estimates. However, we do note that the wide range of estimates does raise concerns as to what assumptions and methodology were used by the commenters.

AMS believes that one explanation for the reason why some estimates submitted by commenters exceeded the estimates made by AMS is that commenters were estimating the costs of developing systems that far exceeded the minimum requirements of a system that would fulfill these regulations. Additionally, AMS believes that some commenters may have included other costs associated with normal recordkeeping and accounting practices that are already required by existing regulations for those engaged in the livestock and meat packing and importing industries and therefore are not new costs being required by the implementation of these regulations.

Nonetheless, AMS has carefully reviewed its analysis of the cost burden estimates for mandatory reporting. In this regard, we have added tables in the Regulatory Impact Analysis, Regulatory Flexibility Analysis, and Paperwork Reduction Act Analysis sections of this final rule which even more clearly itemize the supporting assumptions and methodology used by AMS in formulating our cost estimates. Further, we have adjusted our cost estimates where appropriate. Therefore, AMS believes we have done as comprehensive of an analysis as possible of the cost burden imposed by these regulations on those required to report.

Additionally, AMS does not agree that allowing lot aggregation, exempting branded boxed beef and lamb cuts, or exempting lots of livestock consisting of fewer than 50 head as reporting requirements would reduce the cost burden on the industry. Eliminating these requirements will not have any effect on reducing the number of forms that are included in AMS's estimated reporting cost burden because the suggested changes are not unique to any one form. The amount of time required to submit the forms will not be result in any significant time savings as AMS expects all data submission to be accomplished through electronic means. These changes will not reduce the number of respondents required to report as none of the respondents are limited to selling only branded boxed beef and lamb cuts and buying livestock in lots of 50 head or less. Lastly, allowing respondents to aggregate information on lots of livestock prior to submission will require them to spend additional time to sort and aggregate the information, resulting in an increased time burden.

AMS does agree, however, that exempting entire product categories would reduce the annual cost burden on the industry. Specifically, eliminating entire product categories will reduce the number of responses specified in the Paperwork Reduction Act section of the proposed rule.

According to § 251(d)(3) of the Act, the Secretary shall make information obtained under this program available to the public only if it conforms to aggregation guidelines established by the Secretary. Pursuant to § 251(d)(3), the Secretary has established the following guidelines: Submitted information will only be published by

USDA if (a) it is obtained from no fewer than 3 packers or importers representing a minimum of three companies, (b) the information from any one packer or importer represents not more than 60 percent of the information to be published, and (c) AMS does not have any reason to believe the information cannot be reported in a manner that protects the confidentiality of the source packer.

Because there is only one entity engaged in the business of purchasing imported lamb carcasses, AMS cannot report this information without disclosing the identity of the entity reporting. By requiring this entity to report its purchases of imported lamb carcasses that AMS knows that it would be unable to publish, the Agency believes this requirement would be an unnecessary burden placed upon the entity.

Accordingly, in this final rule, importers are not required to report market information on purchases of imported lamb carcasses. Consequently, the estimated annual reporting burden for Form LS–129–Lamb Carcass Report has been reduced by 43 hours or $860 per year. The total cost burden for lamb carcass reporting in this final rule has been adjusted accordingly.

Nevertheless, if a sufficient number of entities enter the business of importing lamb carcasses that AMS believes it would be able to publish the information obtained, AMS intends on initiating rulemaking to amend these regulations to require the reporting of information by importers on purchases of imported lamb carcasses.

Additionally, in contrast to the proposed rule, this final rule will not require lamb importers to report their purchases of imported boxed lamb cuts. Although the proposed regulations required lamb importers to report both their purchases and sales of imported boxed lamb cuts, the Agency has determined that because the reporting of lamb cuts sold in portion cut form (*e.g.*, chops, steaks, etc.) are not to be reported for either domestic or imported lamb, the reporting of both the purchases and sales of imported boxed lamb cuts would not provide a significant amount of additional market information over what will be obtained by only requiring importers to report information on their sales of imported boxed lamb cuts not sold in portion cut form.

AMS had originally intended to obtain market information concerning the purchases and sales of imported boxed lamb cuts in an effort to disseminate more complete market information concerning the prices being paid and received for imported lamb meat products entering the U.S. market. However, because packers and importers are exempt from reporting information concerning any boxed lamb cuts sold in portion cut form, the only product lamb importers produce from the processing of imported boxed lamb cuts not in portion cut form, AMS determined that requiring the reporting of this information was not necessary as these products could be processed into portion cut form before export to the United States, thereby being exempt from these reporting provisions. Further, information concerning the volume and value of imported boxed lamb cuts that are not sold in portion cut form from importers who buy and sell imported boxed lamb cuts not in portion cut form, this information is already being obtained by the requirement that importers report the prices they receive for their sales of those products.

As a result of the removal of the requirement for lamb importers to report their purchases of imported boxed lamb cuts, the estimated annual reporting burden for Form LS–128–Boxed Lamb Cuts Report has been reduced by 26 hours or $520 per year. The total cost burden for boxed lamb cut reporting in this final rule has been adjusted accordingly.

Given that all of those lamb importers required to report are classified as small businesses, these changes specifically benefits small businesses.

Electronic Reporting of Information

AMS agrees with the points raised by the commenters regarding electronic data submission discussed earlier. AMS's own estimates of cost burdens indicated that the cost of submitting information by any method other than electronic would be cost-prohibitive, error prone, and unsecured. For the same reasons, AMS will grant exceptions to electronic reporting only in emergency cases such as power failures or loss of Internet accessibility. AMS will also provide web-based input screens as an alternative option for entities to use when submitting information. AMS computer specialists have conducted on-site visits over the past year to many packers who will be required to report to discuss and evaluate electronic recordkeeping systems employed by the industry.

AMS understands commenter's concerns about their ability to comply with these reporting requirements in a timely, accurate manner, in order to avoid any enforcement penalties. This is particularly important in the context of an untested, electronic reporting process and disparate computing resources among reporting entities. AMS further understands that unforeseen technical difficulties may occur during the implementation of this rule which may, in some cases, prevent full compliance. Recognizing these concerns and acknowledging our responsibility to provide flexibility in dealing with small business as directed by the President in the 1995 Regulatory Reform—Waiver of Penalties and Reduction memorandum, entities acting in good faith in attempting to establish a data transfer technology and reporting process that will comply with the electronic reporting requirements will not be penalized under the enforcement provisions.

To further assist the industry in achieving compliance, educational and outreach sessions will be held around the country immediately upon publication of this final rule. In these sessions, AMS will actively assist each reporting entity in understanding how their information technology infrastructures and related resources should be configured in order to ensure interoperability with the electronic transaction system developed by AMS. AMS will document and provide the reporting entities with standards and protocols associated with the transaction. Among other topics, these sessions will also provide information on implementing and using digital certificates, acceptable submission formats, the newly designed web-based input method, output report designs, data aggregation guidelines, and AMS' electronic transaction system. In addition, AMS plans to beta test the technology to implement the rule during the time between publication of this final rule and its effective date and all entities required to report will be encouraged to participate in the beta testing program. Any feedback received during this outreach and testing period will be used to revise the reporting requirements, input and output formats, and process accordingly.

In response to the comment concerning AMS developing and making available a web-based input forms for submitting data online, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. Accordingly, AMS is developing such a system that will be ready in time for program implementation.

Although AMS does not believe that this change will result in any time or cost savings for those required to report, or that this alternative will prove a feasible alternative for larger companies who are required to submit large

volumes of information, AMS will provide this alternative to those small businesses seeking an alternate method of submitting information who do not wish to develop their own electronic versions of the AMS reporting forms (a complete analysis is provided in the Paperwork Reduction Act section).

Prior Day Swine Reporting

The time requirements for the reporting of prior day swine information are in accordance with the Act (§ 232(c)(1)(B)) and this final rule reflects that provision of the Act. Nonetheless, information not available in time for the prior day swine reporting should be reported, and will be published, as a part of the next report.

Several small businesses expressed concern over these time requirements and the result this requirement would have on them being required to hire additional staff. AMS has attempted to manage the impact of this program on small businesses wherever possible. Nonetheless, there are certain requirements that are provided by statute and basic to program provisions.

Distributive Sales

Recognizing that requiring the reporting of distributive sales would specifically target small businesses, that the distributive trade is unique when compared to traditional boxed beef trade, the relatively small percentage such trades represent of all boxed beef sales, and the negative effect the inclusion of such unrelated information would have on the aggregated reports AMS would publish, it was never AMS's intention that the information concerning the distributive trade would be included in this program as AMS believes the reporting of such information is not contemplated by the Act.

To clarify that distributive sales are not to be reported, in this final rule, AMS has included definitions of a carlot of boxed beef, boxed lamb, and lamb carcasses. For purposes of boxed beef cuts reporting, a carlot is any transaction between a buyer and a seller involving 2 or less delivery stops consisting of one or more individual boxed beef items. For lamb carcasses and boxed lamb cuts reporting, a carlot is any transaction between a buyer and a seller involving 3 or less delivery stops consisting of one or more individual boxed lamb cuts or any combination of carcass weights. By adding these definitions, AMS has clarified the regulations concerning reporting of distributive trade of boxed beef and boxed lamb cuts and lamb carcasses. Sections 59.100 and 59.300 of these regulations have been revised accordingly.

This clarification should lessen the impact this regulation will have on small businesses.

Maintenance of Records

The Agency has tried to make the records required to be submitted and maintained under this final rule the minimum needed to achieve the objectives of the Act and has specifically considered the impact the submission and retention of such records will have on small businesses. Further, based upon AMS's knowledge of common industry practices and in being consistent with the requirements of the Act, these regulations do not require the reporting of any new or additional information that is either not generally available or maintained by packers or the provision of which would be unduly burdensome.

Reporting of Auction Purchases

As already discussed earlier in this section, AMS has clarified that purchases of livestock through auction markets are not required by this final rule. As auction purchases are made in an open, public setting between one seller and many buyers, auction purchases do not meet any of the types of purchases defined by the Act as a ''type of purchase'' (§ 221(8)). Accordingly, packers required to submit information under mandatory price reporting will not be required to report information on transactions of livestock purchased at auction markets by either salaried employees of a packer or a person that buys on commission for a packer. However, livestock purchased by a packer from a livestock dealer, a purchase between one buyer and one seller not in an public setting, must be reported because this constitutes a negotiated trade which is defined by the Act as a ''type of purchase'' reportable under mandatory reporting. Accordingly, packers must institute systems to distinguish between purchases from auctions and purchases from direct sources for the purposes of mandatory reporting.

Reporting of Lamb and Lamb Products

AMS recognizes that fully all of the lamb packers required to report are considered small businesses. However, § 241 of the Act authorizes the Secretary to establish a program of mandatory lamb price information reporting that will ''(1) provide timely, accurate, and reliable market information; (2) facilitate more informed marketing decisions; and (3) promote competition in the lamb slaughtering industry.'' If the Secretary takes such action, an opportunity for comment on the proposed regulations must be provided. Under this authority, a program of mandatory lamb price reporting was included in the proposed rule and the opportunity for comment was provided.

Additionally, AMS does not believe that it has made these requirements more comprehensive than the reporting for cattle or swine, but does believe it has met the intent of Congress and is operating under the authority of the Act.

Packer Thresholds

The establishment of cattle and swine packer thresholds by the Act and the establishment of lamb packer and importer thresholds by these regulations is an important component of the Agency's efforts to ensure this regulation does not unfairly impact small businesses. By exempting the vast majority of small businesses from being required to comply with these regulations greatly reduces the overall impact of these regulations on small businesses as a whole.

Nevertheless, to specifically respond to the concerns raised by commenters, the definitions of cattle and swine packers put forth in the proposed regulations are defined by the Act. However, unlike cattle and swine, the Act does not provide a definition of a lamb packer or importer.

AMS believes that lowering the lamb packer threshold from what was put forth in the proposed regulation will create a burden on additional lamb packers without a gain of significant market information. Additionally, the 75,000 head per year threshold was set to be compatible with those thresholds set by the Act for cattle and swine packers.

Similarly, AMS established the 5,000 metric ton lamb importer threshold because it will cover a comparable percentage of the lamb imports as slaughter and processing are being covered by the cattle, swine and lamb packer definitions, or approximately 80% of lamb imported into the U.S. (According to U.S. Customs Service published data, in 1999, 40,301 metric tons were imported by the U.S.).

The importer capacity threshold would have to be reduced to 2,500 metric tons to cover the remaining 20% of lamb meat imports. Additionally, the products imported by many of these operations are so unique that AMS believes it would be unable to report them without disclosing proprietary information.

For the reasons stated above, none of the suggested changes to the cattle

packer, swine packer, lamb packer, or lamb importer definitions are adopted.

Voluntary Reporting Role

As already discussed, AMS intends to continue many voluntary reporting programs. AMS has no plans to discontinue coverage of any voluntary-based market news reports not affected by mandatory reporting, including reports covering livestock auction sales, packer sales of pork cuts and by-products, feeder cattle sales, feeder pig sales, and grain trading. Many of those entities that will participate in these voluntary market news programs are small businesses.

In some instances, mandatory reporting may provide some of the information that is already being provided under voluntary reporting. This would include some transactions of packer direct purchases of slaughter cattle, packer sales of boxed beef and lamb cuts including applicable branded boxed cuts, packer sales of lamb carcasses, and packer negotiated purchases of swine. The market reports reflecting this information will continue to be published but the basis of the market reports will be more comprehensive and will become mandatory information.

In some instances, mandatory reporting will provide new information that has never been reported under the existing voluntary reporting program. AMS anticipates that this information will provide the basis for publishing market news reports not previously provided for under voluntary reporting. This will include reports covering the prior day swine market, forward contract and formula marketing arrangement cattle purchases, packer-owned cattle and lamb information, sales of imported boxed lamb cuts, including applicable branded product; and live lamb premiums and discounts.

The Act requires the Secretary to encourage voluntary reporting by packers to which the mandatory reporting requirements do not apply. However, for those small businesses not affected by these regulations, since participation in such programs is voluntary, the Agency does not look to this as a burden being placed upon them. AMS will also encourage voluntary reporting in markets not covered under mandatory reporting.

Reporting Branded Products

As already discussed in the section responding to all of the comments received in response to these regulations, upon further review of the requirements proposed in § 57.103 and § 57.303 of the proposed rule for reporting sales of branded boxed beef and lamb, the language in § 59.103 and § 59.303 of this final rule has been clarified to require the reporting of only those branded products produced and marketed on their quality, yield, or breed characteristics or boxed beef cuts produced and marketed under one of USDA's Meat Grading and Certification Branch, Certified Beef programs. These products are not unique to any one packer and can be produced by anyone in the industry. These sections no longer require the mandatory reporting of branded products where the brand is exclusive to a packer.

AMS is developing formats for those reports it intends to publish as a result of mandatory price reporting. These reports will be made available as a part of the educational and outreach component being developed by AMS to facilitate the transition from voluntary market news reporting to mandatory market news reporting during the period between publication of this final rule and its effective date. In creating these reports, AMS is taking the necessary steps to ensure confidentiality of the source data as required by the Act. Brand names reported to AMS will not be disclosed but will only be used to identify branded boxed beef and lamb cuts for aggregation into branded categories in the published reports.

This clarification should aid those small businesses that were concerned this regulation would compromise the competitiveness of their company-specific branded beef and lamb programs.

Paperwork Reduction Act

This rule contains recordkeeping and submission requirements that were subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). Comments were solicited in the proposal for these regulations that was published in the March 17, 2000, **Federal Register**. A summary of the comments AMS received and the Agency's responses to those comments are at the end of this section.

In accordance with 5 CFR Part 1320, we include the description of the reporting and recordkeeping requirements and an estimate of the annual burden on packers required to report information under this rule. Modifications to these regulations made in response to the comments that affected the recordkeeping and submission requirements of this final rule have been incorporated into this section. Because there was insufficient time for a normal clearance procedure, AMS requested emergency processing and received temporary approval from OMB for the use of the information collection and recordkeeping requirements that we will use to implement the mandatory livestock reporting program on an expedited basis.

Title: Livestock Mandatory Reporting Act of 1999.

OMB Number: 0581–0186.

Expiration Date of Assessment: November 2003.

Type of Request: Extension.

Abstract: The information collection and recordkeeping requirements in this regulation are essential to establishing and implementing a mandatory program of livestock and livestock products reporting. Based on the information available, AMS estimates that there are 49 beef packer plants, 50 pork packer plants, 12 lamb packer plants and 6 lamb importers that are required to report market information under this rule (1 lamb entity is both a packer and an importer). These companies have similar recordkeeping systems and business operation practices and conduct their operations in a similar manner. AMS believes that all of the information required under this rule can be collected from existing materials and systems and that these materials and systems can be adapted to satisfy the forms. The PRA also requires AMS to measure the recordkeeping burden. Under this rule, each packer and importer required to report must maintain and make available upon request for 2 years, such records as are necessary to verify the accuracy of the information required to be reported. These records include original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Under this rule, the electronic data files which the packers are required to utilize when submitting information to AMS will have to be maintained as these files provide the best record of compliance. The recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since records of original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock are stored and maintained as a matter of normal business practice by these companies for a period in excess of 2 years, additional annual costs will nominal. AMS estimates the

annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be $1,830.00. This estimate includes the cost of electronic data storage media, backup electronic data storage media, and backup software required to maintain an estimated annual electronic recordkeeping and backup burden of 42 megabytes, on average, per respondent. In addition, this estimate includes the cost per employee to maintain such records which is estimated to average 70 hours per year at $20.00 per hour for a total salary component cost of $1,400.00 per year.

ANNUAL RECORDKEEPING COST PER RESPONDENT

Labor hours per year	70
Labor cost per hour	x $20.00
Sub-total labor cost per year	$1,400.00
Electronic storage cost[1]	+ $430.00
Total recordkeeping cost	$1,830,00

[1] Includes cost of hard electronic storage (estimated to average 42 Mb/year), backup tape media, backup tape drive, and backup software.

In this rule, information collection requirements include the submission of the required information on a daily and weekly basis in the standard format provided in the following forms: (1) Live Cattle Daily Report (Current Established Prices), (2) Live Cattle Daily Report (Committed and Delivered Cattle), (3) Live Cattle Weekly Report (Forward Contract and Packer-Owned), (4) Live Cattle Weekly Report (Formula Purchases), (5) Cattle Premiums and Discounts Weekly Report, (6) Boxed Beef Daily Report, (7) Swine Prior Day Report, (8) Swine Daily Report, (9) Swine Noncarcass Merit Premium Weekly Report, (10) Live Lamb Daily Report (Current Established Prices), (11) Live Lamb Daily Report (Committed and Delivered Lambs), (12) Live Lamb Weekly Report (Forward Contract and Packer-Owned), (13) Live Lamb Weekly Report (Formula Purchases), (14) Lamb Premiums and Discounts Weekly Report, (15) Boxed Lamb Report, and (16) Lamb Carcass Report. Copies of these 16 forms are included in Appendices at the end of this rule. Cattle packers will utilize six of these forms (Appendix A) when reporting information to AMS including two for daily cattle reporting, three for weekly cattle reporting, and one for daily boxed beef cuts reporting. Swine packers will utilize three forms (Appendix B), two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. Lamb packers will utilize seven of these forms (Appendix C) when reporting information to AMS including two for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting and one for daily and weekly lamb carcass reporting. Lamb importers will utilize one of these forms when reporting information to AMS for reporting weekly imported boxed lamb cut sales.

These information collection requirements have been designed to minimize disruption to the normal business practices of the affected entities. Each of these forms requires the minimal amount of information necessary to properly describe each reportable transaction, as required under this rule. The number of forms is a result of an attempt to reduce the complexity of each form.

(1) Live Cattle Daily Report (Current Established Prices): Form LS–113.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,332 hours.

Total Cost: $86,640.

(2) Live Cattle Daily Report (Committed and Delivered Cattle): Form LS–114.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,332 hours.

Total Cost: $86,640.

(3) Live Cattle Weekly Report (Forward Contract and Packer-Owned): Form LS–115.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 637 hours.

Total Cost: $12,740.

(4) Live Cattle Weekly Report (Formula Purchases): Form LS–116.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 637 hours.

Total Cost: $12,740.

(5) Cattle Premiums and Discounts Weekly Report: Form LS–117.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 204 hours.

Total Cost: $4,080.

(6) Boxed Beef Daily Report: Form LS–126.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .125 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on domestic and export boxed beef cut sales to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,185 hours.

Total Cost: $63,700.

(7) Swine Prior Day Report: Form LS–118.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,250 hours.

Total Cost: $65,000.

(8) Swine Daily Report: Form LS–119.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,420 hours.

Total Cost: $88,400.

(9) Swine Noncarcass Merit Premium Weekly Report: Form LS–120.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 650 hours.

Total Cost: $13,000.

(10) Live Lamb Daily Report (Current Established Prices): Form LS–121.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 707 hours.

Total Cost: $14,140.

(11) Live Lamb Daily Report (Committed and Delivered Lambs): Form LS–122.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 707 hours.

Total Cost: $14,140.

(12) Live Lamb Weekly Report (Forward Contract and Packer-Owned): Form LS–123.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 104 hours.

Total Cost: $2,080.

(13) Live Lamb Weekly Report (Formula Purchases): Form LS–124.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 104 hours.

Total Cost: $2,080.

(14) Lamb Premiums and Discounts Weekly Report: Form LS–125.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 33 hours.

Total Cost: $660.

(15) Boxed Lamb Report: Form LS–128.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response for domestic packing plants and .084 hours per electronically submitted response for importers.

Respondents: Packer processing plants and importers required to report information on boxed lamb cut sales to the Secretary.

Estimated Number of Respondents: 14 entities (including 1 entity that both processes and imports).

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days) for domestic packing plants; 52 (1 per week for 52 weeks) for importers.

Estimated Total Annual Burden on Respondents: 391 hours for domestic packing plants and 26 hours for importers.

Total Cost: $7,810 for domestic packing plants and $520 for importers for a total of $8,330.00.

(16) Lamb Carcass Report: Form LS–129.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on lamb carcass sales to the Secretary.

Estimated Number of Respondents: 8 entities.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 347 hours.

Total Cost: $6,940.

Breakdown of Estimated Data Submission Cost Burden

I.—NUMBER OF RESPONSES PER RESPONDENT PER YEAR

Form	Reporting days		Responses		Total responses
Cattle:					
LS–113	260	×	2 daily	=	520
LS–114	260	×	2 daily	=	520
LS–115	52	×	1 weekly	=	52
LS–116	52	×	1 weekly	=	52
LS–117	52	×	1 weekly	=	52
LS–126	260	×	2 daily	=	520
Swine:					
LS–118	260	×	1 daily	=	260
LS–119	260	×	2 daily	=	520
LS–120	52	×	1 weekly	=	52
Lamb:					
Domestic:.					
LS–121	260	×	1 daily	=	260
LS–122	260	×	1 daily	=	260
LS–123	52	×	1 weekly	=	52
LS–124	52	×	1 weekly	=	52
LS–125	52	×	1 weekly	=	52
LS–128	260	×	1 daily	=	260
LS–129	260	×	1 daily	=	260
Importer:					
LS–128	52	×	1 weekly	=	52

II.—NUMBER OF SUBMISSION HOURS PER RESPONDENT PER YEAR

Form	Submissions/ year		Hours/ submission		Total hours/ year
Cattle:					
LS–113	520	×	.17	=	88.40
LS–114	520	×	.17	=	88.40
LS–115	52	×	.25	=	13.00
LS–116	52	×	.25	=	13.00
LS–117	52	×	.08	=	4.16
LS–126	260	×	.125	=	65.00
Swine:					
LS–118	260	×	.25	=	65.00
LS–119	260	×	.17	=	88.40
LS–120	52	×	.25	=	13.00
Lamb:					
Domestic:					
LS–121	260	×	.34	=	88.40
LS–122	260	×	.34	=	88.40
LS–123	52	×	.25	=	13.00
LS–124	52	×	.25	=	13.00
LS–125	52	×	.08	=	4.16
LS–128	260	×	.167	=	43.40
LS–129	260	×	.167	=	43.40
Importer:					
LS–128	52	×	.084	=	4.37

III.—TOTAL SUBMISSION COST PER RESPONDENT PER YEAR

Form	Total hours/ year		Cost/hour		Total dollars/ year
Cattle:					
LS–113	88.40	×	$20.00	=	$1,768.00
LS–114	88.40	×	20.00	=	1,768.00
LS–115	13.00	×	20.00	=	260.00
LS–116	13.00	×	20.00	=	260.00
LS–117	4.16	×	20.00	=	83.20
LS–126	65.00	×	20.00	=	1,300.00
Totals	271.96	×	20.00	=	5,440.00
Swine:					
LS–118	65.00	×	20.00	=	1,300.00

III.—TOTAL SUBMISSION COST PER RESPONDENT PER YEAR—Continued

Form	Total hours/ year		Cost/hour		Total dollars/ year
LS–119	88.40	×	20.00	=	1,768.00
LS–120	13.00	×	20.00	=	260.00
Totals	166.40	×	20.00	=	3,328.00
Lamb:					
Domestic:					
LS–121	88.40	×	20.00	=	1,768.00
LS–122	88.40	×	20.00	=	1,768.00
LS–123	13.00	×	20.00	=	260.00
LS–124	13.00	×	20.00	=	260.00
LS–125	4.16	×	20.00	=	83.20
LS–128	43.40	×	20.00	=	868.00
LS–129	43.40	×	20.00	=	868.00
Total					5,875.00
Importer:					
LS–128	4.37	×	20.00	=	+87.00
Totals	298.13	×	20.00	=	5,962.00

IV.—TOTAL YEARLY SUBMISSION COST FOR ALL RESPONDENTS

Form	Total dollars/ year		Number of respondents		Total cost*
Cattle:					
LS–113	$1,768.00	×	49	=	$86,640.00
LS–114	1,768.00	×	49	=	86,640.00
LS–115	260.00	×	49	=	12,740.00
LS–116	260.00	×	49	=	12,740.00
LS–117	83.20	×	49	=	4,080.00
LS–126	1,300.00	×	49	=	63,700.00
Totals	5,440.00	×	49	=	266,560.00
Swine:					
LS–118	1,300.00	×	50	=	65,000.00
LS–119	1,768.00	×	50	=	88,400.00
LS–120	260.00	×	50	=	13,000.00
Totals	3,328.00	×	50	=	166,400.00
Lamb:					
Domestic:					
LS–121	1,768.00	×	8	=	14,140.00
LS–122	1,768.00	×	8	=	14,140.00
LS–123	260.00	×	8	=	2,080.00
LS–124	260.00	×	8	=	2,080.00
LS–125	83.20	×	8	=	670.00
LS–129	868.00	×	8	=	6,950.00
Total	5,007.00	×	8	=	40,060.00
LS–128	868.00	×	9	=	+7,810.00
Total					47,870.00
Importer:					
LS–128	87.00	×	6	=	520.00
Total					48,390.00

*dollars values rounded to nearest $10.00.

Estimated Total Annual Burden on Respondents by Species:

Live Cattle and Boxed Beef: $363,580 including $266,560 for annual costs associated with electronically submitted responses (13,328 annual hours (271.96 annual hours per 49 respondents) @ $20.00 per hour), initial electronic data transfer setup costs of $7,350 ($750.00 prorated over 5 years = $150.00 per 49 respondents), and $89,670 ($1,830 per 49 respondents) for the storage and

maintenance of electronic files that were submitted to AMS.

Live Swine: $265,400 including $166,400 for annual costs associated with electronically submitted responses (8,320 annual hours (166.40 annual hours per 50 respondents) @ $20.00 per hour), initial electronic data transfer setup costs of $7,500 ($750.00 prorated over 5 years = $150.00 per 50 respondents), and $91,500 ($1,830 per 50 respondents) for the storage and maintenance of electronic files that were submitted to AMS.

Live Lambs, Boxed Lamb, and Lamb Carcasses: $83,620 including $70,700 for packers ($52,875 for annual costs associated with electronically submitted responses (2,643.75 annual hours (293.75 annual hours per 9 respondents) @ $20.00 per hour), initial electronic data transfer setup costs of $1,350 ($750.00 prorated over 5 years = $150.00 per 9 respondents), and $16,470 ($1,830 per 9 respondents) for the storage and maintenance of electronic files that were submitted to AMS) and $12,400 for importers ($520 for annual costs associated with electronically submitted responses (26.2 annual hours (4.37 annual hours per 6 respondents) @ $20.00 per hour), initial electronic data transfer setup costs of $900 ($750.00 prorated over 5 years = $150.00 per 6 respondents), and $10,980 ($1,830 per 6 respondents) for the storage and maintenance of electronic files that were submitted to AMS).

In the proposed rule published March 17, 2000, comments were invited on: (1) The accuracy of the Agency's burden estimate of the proposed collection of information including the validity of the methodology and the assumptions used; (2) ways to minimize the burden of the collection of information on those who would be required to respond, including through the use of appropriate electronic collection methods; (3) whether the proposed collection of information was sufficient or necessary for the proper performance of the functions of the agency as mandated by the Act; and (4) ways to enhance the quality, utility, and clarity of the information to be collected.

Although these comments and the Agency's responses to them were contained in the background section of this action where the Agency responded to all of the comments received in response to the proposal, the Agency has identified those comments that specifically pertained to issues raised in this section and responded to them again here. Summaries of the comments AMS received and the responses by the Agency to those comments follow.

Validity of Cost Burden Estimates

AMS received 468 comments concerning the validity of the cost burden estimates for implementing mandatory reporting in the propose rule. Four commenters agreed with AMS's estimate of the cost burden of mandatory reporting in the proposed rule. However, most commenters questioned AMS's cost burden estimates suggesting that the estimates were understated. Numerous commenters argued that the cost burden associated with mandatory reporting on small entities amounted to an economic hardship that would either force them to close their operations, sell out to a larger firm, or require they pass these additional costs on to producers and consumers which could negatively impact domestic markets for livestock and livestock products.

Many commenters offered a wide range of cost burden estimates for mandatory price reporting. These estimates ranged from $5,000 to $6,560,000, and included initial start-up costs and annual costs of compliance. The estimated initial setup costs ranged from $15,000 to $700,000 with most of the setup cost estimates ranging from $30,000 to $75,000. Estimates for annual operating costs ranged from $5,000 to $400,000 with most of the estimates ranging from $40,000 to $105,000. A few commenters submitted industry cost estimates on a cost per head basis, as a cost multiple of the AMS cost estimates, and on an hourly basis.

A few commenters suggested that AMS could reduce the reporting cost burden by changing some of the reporting requirements of the proposed rule. They recommended allowing lot aggregation, exempting branded boxed beef and lamb cuts, exempting lots of livestock consisting of fewer than 50 head, and exempting information which AMS would not be able to publish in reports due to confidentiality concerns as examples of reporting requirements that could be eliminated.

As already discussed earlier in this section and in the section responding to all of the comments received in response to the proposed rule, AMS's cost estimates along with the supporting assumptions and methodology used were stated in the proposed rule. These supporting assumptions and methodology used appeared in the Regulatory Impact Analysis, Regulatory Flexibility Analysis, and Paperwork Reduction Act Analysis sections of the proposed rule.

However, with specific regard to this section, the commenters did not provide any detailed supporting data and information on the methodology used in formulating their cost estimates or any information that would enable AMS to determine how they derived their cost estimates. We do note that the wide range of estimates does raise concerns as to what assumptions and methodology were used by the commenters.

AMS believes that one explanation for the reason why some estimates submitted by commenters exceeded the estimates made by AMS is that commenters were estimating the costs of developing systems that far exceeded the minimum requirements of a system that would fulfill these regulations. Additionally, AMS believes that some commenters may have included other costs associated with normal recordkeeping and accounting practices that are already required by existing regulations for those engaged in the livestock and meat packing and importing industries and therefore are not new costs being required by the implementation of these regulations.

Nonetheless, AMS has carefully reviewed its analysis of the cost burden estimates for mandatory reporting. In this regard, we have added tables in this analysis which even more clearly itemize the supporting assumptions and methodology used by AMS in formulating our Paperwork Reduction Act analysis cost estimates. Further, we have adjusted our cost estimates where appropriate. Therefore, AMS believes we have done as comprehensive of an analysis as possible of the cost burden imposed by these regulations on those required to report.

Additionally, AMS does not agree that allowing lot aggregation, exempting branded boxed beef and lamb cuts, or exempting lots of livestock consisting of fewer than 50 head as reporting requirements would reduce the cost burden on the industry. Eliminating these requirements will not have any effect on reducing the number of forms that are included in AMS's estimated reporting cost burden because the suggested changes are not unique to any one form. The amount of time required to submit the forms will not result in any significant time savings as AMS expects all data submission to be accomplished through electronic means. These changes will not reduce the number of respondents required to report as none of the respondents are limited to selling only branded boxed beef and lamb cuts and buying livestock in lots of 50 head or less. Lastly, allowing respondents to aggregate information on lots of livestock prior to submission will require them to spend additional time to sort and aggregate the

information, resulting in an increased time burden.

AMS does agree, however, that exempting entire product categories would reduce the annual cost burden on the industry. Specifically, eliminating entire product categories will reduce the number of responses specified in this section when compared with the proposed rule.

According to § 251(d)(3) of the Act, the Secretary shall make information obtained under this program available to the public only if it conforms to aggregation guidelines established by the Secretary. Pursuant to § 251(d)(3), the Secretary has established the following guidelines: Submitted information will only be published by USDA if (a) it is obtained from no fewer than 3 packers or importers representing a minimum of three companies, (b) the information from any one packer or importer represents not more than 60 percent of the information to be published, and (c) AMS does not have any reason to believe the information cannot be reported in a manner that protects the confidentiality of the source packer.

Because there is only one entity engaged in the business of purchasing imported lamb carcasses, AMS cannot report this information without disclosing the identity of the entity reporting. By requiring this entity to report its purchases of imported lamb carcasses that AMS would be unable to publish, the Agency believes this requirement would be an unnecessary burden placed upon the entity.

Accordingly, in this final rule, importers are not required to report market information on purchases of imported lamb carcasses. Consequently, the estimated annual reporting burden for Form LS–129–Lamb Carcass Report has been reduced by 43 hours or $860 per year. The total cost burden for lamb carcass reporting in this final rule has been adjusted accordingly.

Nevertheless, if a sufficient number of entities enter the business of importing lamb carcasses that AMS believes it would be able to publish the information obtained, AMS intends on initiating rulemaking to amend these regulations to require the reporting of information by importers on purchases of imported lamb carcasses.

Additionally, in contrast to the proposed rule, this final rule will not require lamb importers to report their purchases of imported boxed lamb cuts. Although the proposed regulations required lamb importers to report both their purchases and sales of imported boxed lamb cuts, the Agency has determined that because the reporting of lamb cuts sold in portion cut form (*e.g.,* chops, steaks, etc.) are not to be reported for either domestic or imported lamb, the reporting of both the purchases and sales of imported boxed lamb cuts would not provide a significant amount of additional market information over what will be obtained by only requiring importers to report information on their sales of imported boxed lamb cuts not sold in portion cut form.

AMS had originally intended to obtain market information concerning the purchases and sales of imported boxed lamb cuts in an effort to disseminate more complete market information concerning the prices being paid and received for imported lamb meat products entering the U.S. market. However, because packers and importers are exempt from reporting information concerning any boxed lamb cuts sold in portion cut form, the only product lamb importers produce from the processing of imported boxed lamb cuts not in portion cut form, AMS determined that requiring the reporting of this information was not necessary as these products could be processed into portion cut form before export to the United States, thereby being exempt from these reporting provisions. Further, information concerning the volume and value of imported boxed lamb cuts that are not sold in portion cut form from importers who buy and sell imported boxed lamb cuts not in portion cut form, this information is already being obtained by the requirement that importers report the prices they receive for their sales of those products.

As a result of the removal of the requirement for lamb importers to report their purchases of imported boxed lamb cuts, the estimated annual reporting burden for Form LS–128–Boxed Lamb Cuts Report has been reduced by 26 hours or $520 per year. The total cost burden for boxed lamb cut reporting in this final rule has been adjusted accordingly.

Electronic Reporting of Information

Twenty-one commenters supported electronic reporting of market news information. They believed that electronic reporting would facilitate aggregation and dissemination and would reduce the cost burden associated with paperwork. A few commenters recommended that rarely should AMS grant packers and importers exemptions from electronic reporting. A few commenters also wanted to see the system designed to eventually handle real-time reporting. One commenter suggested AMS develop and make available web-based input forms for submitting data online.

AMS agrees with the points raised by the commenters regarding electronic data submission. AMS's own estimates of cost burdens indicated that the cost of submitting information by any method other than electronic would be cost-prohibitive, error prone, and unsecured. For the same reasons, AMS will grant exceptions to electronic reporting only in emergency cases such as power failures or loss of Internet accessibility. AMS will also provide web-based input screens as an alternative option for entities to use when submitting information. AMS computer specialists have conducted on-site visits over the past year to many packers who will be required to report to discuss and evaluate electronic recordkeeping systems employed by the industry.

AMS understands commenter's concerns about their ability to comply with these reporting requirements in a timely, accurate manner, in order to avoid any enforcement penalties. This is particularly important in the context of an untested, electronic reporting process and disparate computing resources among reporting entities. AMS further understands that unforeseen technical difficulties may occur during the implementation of this rule which may, in some cases, prevent full compliance. Recognizing these concerns and acknowledging our responsibility to provide flexibility in dealing with small business as directed by the President in the 1995 Regulatory Reform—Waiver of Penalties and Reduction memorandum, entities acting in good faith in attempting to establish a data transfer technology and reporting process that will comply with the electronic reporting requirements will not be penalized under the enforcement provisions.

To further assist the industry in achieving compliance, educational and outreach sessions will be held around the country immediately upon publication of this final rule. In these sessions, AMS will actively assist each reporting entity in understanding how their information technology infrastructures and related resources should be configured in order to ensure interoperability with the electronic transaction system developed by AMS. AMS will document and provide the reporting entities with standards and protocols associated with the transaction. Among other topics, these sessions will also provide information on implementing and using digital certificates, acceptable submission formats, the newly designed web-based

input method, output report designs, data aggregation guidelines, and AMS' electronic transaction system. In addition, AMS plans to beta test the technology to implement the rule during the time between publication of this final rule and its effective date and all entities required to report will be encouraged to participate in the beta testing program. Any feedback received during this outreach and testing period will be used to revise the reporting requirements, input and output formats, and process accordingly.

In response to the comment concerning AMS developing and making available a web-based input forms for submitting data online, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. Accordingly, AMS is developing such a system that will be ready in time for program implementation.

However, AMS does not believe that this alternative changes the Agency's estimate of the time or cost burden imposed by this regulation. The justification for this is two fold. First, larger packers will not use this system as it will prove unworkable for packers required to submit large volumes of information. Second, AMS believes that the time to transcribe data from original records to an on-line form far exceeds the time it would take to develop a system that automatically downloads the information into a file that is later electronically submitted to AMS as an attachment (a complete analysis is provided in the Paperwork Reduction Act section).

AMS estimates that, if all entities submitting information under this rule did so through the use of the web-based input form method, the cost burden would be as follows:

Breakdown of Estimated Data Submission Cost Burden

I.—NUMBER OF RESPONSES PER RESPONDENT PER YEAR

Form	Reporting days		Responses		Total responses
Cattle:					
LS–113	260	×	2 daily	=	520
LS–114	260	×	2 daily	=	520
LS–115	52	×	1 weekly	=	52
LS–116	52	×	1 weekly	=	52
LS–117	52	×	1 weekly	=	52
LS–126	260	×	2 daily	=	520
Swine:					
LS–118	260	×	1 daily	=	260
LS–119	260	×	2 daily	=	520
LS–120	52	×	1 weekly	=	52
Lamb:					
Domestic:					
LS–121	260	×	1 daily	=	260
LS–122	260	×	1 daily	=	260
LS–123	52	×	1 weekly	=	52
LS–124	52	×	1 weekly	=	52
LS–125	52	×	1 weekly	=	52
LS–128	260	×	1 daily	=	260
LS–129	260	×	1 daily	=	260
Importer:					
LS–128	52	×	1 weekly	=	52

II.—NUMBER OF SUBMISSION HOURS PER RESPONDENT PER YEAR

Form	Submissions/ year		Hours/ submission		Total hours/ year
Cattle:					
LS–113	520	×	.34	=	176.80
LS–114	520	×	.34	=	176.80
LS–115	52	×	.50	=	26.00
LS–116	52	×	.50	=	26.00
LS–117	52	×	.16	=	8.30
LS–126	260	×	.25	=	130.00
Swine:					
LS–118	260	×	.50	=	130.00
LS–119	260	×	.34	=	176.80
LS–120	52	×	.50	=	26.00
Lamb:					
Domestic:					
LS–121	260	×	.68	=	176.80
LS–122	260	×	.68	=	176.80
LS–123	52	×	.50	=	26.00
LS–124	52	×	.50	=	26.00
LS–125	52	×	.16	=	8.30
LS–128	260	×	.34	=	88.40
LS–129	260	×	.34	=	88.40

II.—NUMBER OF SUBMISSION HOURS PER RESPONDENT PER YEAR—Continued

Form	Submissions/ year		Hours/ submission		Total hours/ year
Importer:					
LS–128	52	×	.16	=	8.30

III.—TOTAL SUBMISSION COST PER RESPONDENT PER YEAR

Form	Total hours/ year		Cost/hour		Total dollars/ year
Cattle:					
LS–113	176.80	×	$20.00	=	$3,536.00
LS–114	176.80	×	20.00	=	3,536.00
LS–115	26.00	×	20.00	=	520.00
LS–116	26.00	×	20.00	=	520.00
LS–117	8.30	×	20.00	=	166.00
LS–126	130.00	×	20.00	=	2,600.00
Totals	543.90	×	20.00	=	10,878.00
Swine:					
LS–118	130.00	×	20.00	=	2,600.00
LS–119	176.80	×	20.00	=	3,536.00
LS–120	26.00	×	20.00	=	520.00
Totals	332.80	×	20.00	=	6,656.00
Lamb:					
Domestic:					
LS–121	176.80	×	20.00	=	3,536.00
LS–122	176.80	×	20.00	=	3,536.00
LS–123	26.00	×	20.00	=	520.00
LS–124	26.00	×	20.00	=	520.00
LS–125	8.30	×	20.00	=	166.00
LS–128	88.40	×	20.00	=	1,768.00
LS–129	88.40	×	20.00	=	11,810.00
Importer:					
LS–128	8.30	×	20.00	=	+166.00
Totals	595.80	×	20.00	=	11,916.00

IV.—TOTAL YEARLY SUBMISSION COST FOR ALL RESPONDENTS

Form	Total dollars/ year		Number of respondents		Total cost [1]
Cattle:					
LS–113	$3,536.00	×	49	=	$173,260.00
LS–114	3,536.00	×	49	=	173,260.00
LS–115	520.00	×	49	=	25,480.00
LS–116	520.00	×	49	=	25,480.00
LS–117	166.00	×	49	=	8,130.00
LS–126	2,600.00	×	49	=	127,400.00
Totals	10,880.00	×	49	=	533,120.00
Swine:					
LS–118	2,600.00	×	50	=	130,000.00
LS–119	3,536.00	×	50	=	176,800.00
LS–120	520.00	×	50	=	26,000.00
Totals	6,656.00	×	50	=	332,800.00
Lamb:					
Domestic:					
LS–121	3,536.00	×	8	=	28,290.00
LS–122	3,536.00	×	8	=	28,290.00
LS–123	520.00	×	8	=	4,160.00
LS–124	520.00	×	8	=	4,160.00
LS–125	166.00	×	8	=	1,330.00

IV.—TOTAL YEARLY SUBMISSION COST FOR ALL RESPONDENTS—Continued

Form	Total dollars/ year		Number of respondents		Total cost [1]
LS–129	1,768.00	×	8	=	14,140.00
	10,050.00	×	8	=	80,370.00
LS–128	1,768.00	×	9	=	+5,910.00
Total					96,280.00
Importer:					
LS–128	166.00	×	6	=	1,000.00
Total					97,280.00

[1] Dollars values rounded to nearest $10.00.

(1) Live Cattle Daily Report (Current Established Prices): Form L-113.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 8,663 hours.

Total Cost: $173,260.

(2) Live Cattle Daily Report (Committed and Delivered Cattle): Form LS–114.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 8,663 hours.

Total Cost: $173,260.

(3) Live Cattle Weekly Report (Forward Contract and Packer-Owned): Form LS–115.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .50 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 1,274 hours.

Total Cost: $25,480.

(4) Live Cattle Weekly Report (Formula Purchases): Form LS–116.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .50 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 1,274 hours.

Total Cost: $25,480.

(5) Cattle Premiums and Discounts Weekly Report: Form LS–117.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .16 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 408 hours.

Total Cost: $8,130.

(6) Boxed Beef Daily Report: Form LS–126.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on domestic and export boxed beef cut sales to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 6,370 hours.

Total Cost: $127,400.

(7) Swine Prior Day Report: Form LS–118.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .50 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 6,500 hours.

Total Cost: $130,000.

(8) Swine Daily Report: Form LS–119.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 8,840 hours.

Total Cost: $176,800.

(9) Swine Noncarcass Merit Premium Weekly Report: Form LS–120.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .50 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 1,300 hours.
Total Cost: $26,000.

(10) Live Lamb Daily Report (Current Established Prices): Form LS–121.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .68 hours per electronically submitted response.
Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.
Estimated Number of Respondents: 8 plants.
Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).
Estimated Total Annual Burden on Respondents: 1,410 hours.
Total Cost: $28,290.

(11) Live Lamb Daily Report (Committed and Delivered Lambs): Form LS–122.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .68 hours per electronically submitted response.
Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.
Estimated Number of Respondents: 8 plants.
Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).
Estimated Total Annual Burden on Respondents: 1,140 hours.
Total Cost: $28,290.

(12) Live Lamb Weekly Report (Forward Contract and Packer-Owned): Form LS–123.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .50 hours per electronically submitted response.
Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.
Estimated Number of Respondents: 8 plants.
Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).
Estimated Total Annual Burden on Respondents: 208 hours.
Total Cost: $4,160.

(13) Live Lamb Weekly Report (Formula Purchases): Form LS–124.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .50 hours per electronically submitted response.
Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.
Estimated Number of Respondents: 8 plants.
Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).
Estimated Total Annual Burden on Respondents: 208 hours.
Total Cost: $4,160.

(14) Lamb Premiums and Discounts Weekly Report: Form LS–125.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .16 hours per electronically submitted response.
Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.
Estimated Number of Respondents: 8 plants.
Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).
Estimated Total Annual Burden on Respondents: 66 hours.
Total Cost: $1,330.

(15) Boxed Lamb Report: Form LS–128.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response for domestic packing plants and .16 hours per electronically submitted response for importers.
Respondents: Packer processing plants and importers required to report information on boxed lamb cut sales to the Secretary.
Estimated Number of Respondents: 14 entities (including 1 entity that both processes and imports).
Estimated Number of Responses per Respondent: 260 (1 per day for 260 days) for domestic packing plants; 52 (1 per week for 52 weeks) for importers.
Estimated Total Annual Burden on Respondents: 782 hours for domestic packing plants and 52 hours for importers.
Total Cost: $15,910 for domestic packing plants and $1,000 for importers for a total of $16,910.00.

(16) Lamb Carcass Report: Form LS–129.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.
Respondents: Packer processing plants required to report information on lamb carcass sales to the Secretary.
Estimated Number of Respondents: 8 entities.
Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).
Estimated Total Annual Burden on Respondents: 707 hours.
Total Cost: $14,140.

Reporting Input Forms

AMS received 109 comments referencing the proposed mandatory reporting forms to be used by packers when submitting required information. However, none of the comments AMS received specifically addressed issues relating to the format or design of the forms but rather used the forms as a venue to argue for or against the inclusion of reporting requirements. A few of the commenters expressed concern over some of the information requested in the forms (including state of origin, boxed beef box count, and buyer destination) suggesting that such information was either not authorized by the Act or was not pertinent. Several commenters requested clarification of what was being asked for on the forms. Other commenters suggested that AMS provide procedural guidelines explaining how and when information was to be reported on the forms. Many of the commenters used the forms to express concerns including lot aggregation, inclusion of cows under mandatory reporting, and reporting exports of boxed beef and imports of boxed lamb.

AMS received 19 comments that raised issues with reporting requirements presented on various forms. Specific comments were received that took issue with reporting requirements found on the following forms: LS–113 Live Cattle Daily Report (current established prices), 15 comments; LS–114 Live Cattle Daily Report (committed and delivered cattle), 8 comments; LS–115 Live Cattle Weekly Report (forward contract and packer-owned), 6 comments; LS–116 Live Cattle Weekly Report (formula purchases), 4 comments; LS–117 Cattle Premiums and Discounts Weekly Report, 2 comments; LS–126 Boxed Beef Daily Report, 19 comments; LS–118 Swine Prior Day Report, 16 comments; LS–119 Swine Daily Report, 17 comments; and LS–121 Live Lamb Daily Report (current established prices), 3 comments.

AMS has previously responded to these comments on matters of procedural clarification, simplification, and further definition of terms in the section responding to all of the comments received in response to the proposed rule.

Nevertheless, with specific regard to this section, AMS has redesigned the reporting forms in this final rule to make them more representative of the electronic format required for submission of all information under mandatory reporting. AMS has also included written guidelines at the end

of the regulatory text in the final rule on how to those required to report information should complete the information for the mandatory reporting forms (Appendix D).

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Lamb, Livestock, Reporting and recordkeeping, Sheep.

For the reasons set forth in the preamble, Chapter I of Title 7 is amended by adding a new Part 59 to read as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

Subpart A—General Provisions

59.10 General administrative provisions.
59.20 Recordkeeping.
59.30 Definitions.

Subpart B—Cattle Reporting

59.100 Definitions.
59.101 Mandatory daily reporting for live cattle.
59.102 Mandatory weekly reporting for live cattle.
59.103 Mandatory reporting of boxed beef sales.

Subpart C—Swine Reporting

59.200 Definitions.
59.201 General reporting provisions.
59.202 Mandatory daily reporting for swine.
59.203 Mandatory weekly reporting for swine.

Subpart D—Lamb Reporting

59.300 Definitions.
59.301 Mandatory daily reporting for lambs.
59.302 Mandatory weekly reporting for lambs.
59.303 Mandatory reporting of lamb carcasses and boxed lamb.

Subpart E—OMB Control Number

59.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 1621 *et seq.*

Subpart A—General Provisions

§ 59.10 General administrative provisions.

(a) *Reporting by packers and importers.* A packer or importer shall report all information required under this Part on an individual lot basis.

(b) *Reporting schedule.* Whenever a packer or importer is required to report information on transactions of livestock and livestock products under this Part by a set time, all covered transactions up to within one half hour of the reporting deadline shall be reported. Transactions completed during the one half hour prior to the previous reporting time, but not reported in the previous report, shall be reported at the next scheduled reporting time.

(c) *Regional reporting and aggregation.* The Secretary shall make information obtained under this Part available to the public only in a manner that:

(1) Ensures that the information is published on a national and a regional or statewide basis as the Secretary determines to be appropriate;

(2) Ensures that the identity of a reporting person or the entity which they represent is not disclosed; and

(3) Market information reported to the Secretary by packers and importers shall be aggregated in such a manner that the market reports issued will not disclose the identity of persons, packers and importers, including parties to a contract and packer's and importer's proprietary information.

(d) *Adjustments.* Prior to the publication of any information required under this Part, the Secretary may make reasonable adjustments in information reported by packers and importers to reflect price aberrations or other unusual or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants.

(e) *Reporting of activities on weekends and holidays.* Livestock and livestock products committed to a packer, or importer, or purchased, sold, or slaughtered by a packer or importer on a weekend day or holiday shall be reported to the Secretary in accordance with the provisions of this Part and reported by the Secretary on the immediately following reporting day. A packer shall not be required to report such actions more than once on the immediately following reporting day.

(f) *Reporting methods.* Whenever information is required to be reported under this Part, it shall be reported by electronic means and shall adhere to a standardized format established by the Secretary to achieve the objectives of this Part, except in emergencies or in cases when an alternative method is agreeable to the entity required to report and AMS.

§ 59.20 Recordkeeping.

(a) *In General.* Each packer or importer required to report information to the Secretary under the Act and this Part shall maintain for 2 years and make available to the Secretary the following information on request:

(1) The original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock or livestock products; and

(2) Such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under the Act and this Part.

(b) *Purchases of cattle and swine and sales of boxed beef cuts.* A record of a purchase of a lot of cattle or swine, or a sale of a unit of boxed beef cuts, by a packer shall evidence whether the purchase or sale occurred:

(1) Before 10 a.m. Central Time;

(2) Between 10 a.m. and 2 p.m. Central Time; or (3) After 2 p.m. Central Time.

(c) *Purchases of lambs.* A record of a purchase of a lot of lambs by a packer shall evidence whether the purchase occurred:

(1) Before 2 p.m. Central Time; or

(2) After 2 p.m. Central Time.

(d) *Sales of lamb carcasses and sales of boxed lamb cuts.* A record of a sale by a packer of lamb carcasses and cuts, or of a sale by an importer of lamb cuts shall evidence time and date the sale occurred:

(1) Before 2 p.m. Central Time; or

(2) After 2 p.m. Central Time.

(e) *Reporting sales of boxed beef cuts and sales of boxed lamb cuts.*

(1) Beef packers must report all sales of boxed beef items by the applicable Institutional Meat Purchase Specifications (IMPS) item number or the boxed beef items' cutting and trimming specifications.

(2) Lamb packers and importers must report all sales of boxed lamb items by the applicable Institutional Meat Purchase Specifications (IMPS) item number or the boxed lamb items' cutting and trimming specifications.

§ 59.30 Definitions.

The following definitions apply to this part.

Base price. The term ''base price'' means the price paid for livestock, delivered at the packing plant, before application of any premiums or discounts, expressed in dollars per hundred pounds of hot carcass weight.

Basis level. The term ''basis level'' means the agreed on adjustment to a future price to establish the final price paid for livestock.

Current slaughter week. The term ''current slaughter week'' means the period beginning Monday, and ending Sunday, of the week in which a reporting day occurs.

Discount. The term ''discount'' means the adjustment, expressed in dollars per one hundred pounds, subtracted from the base price due to weight, quality characteristics, yield characteristics, livestock class, dark cutting, breed, or dressing percentage.

Exported. The term ''exported'' means livestock or livestock products that are

physically shipped to locations outside of the 50 States.

F.O.B. The term ''F.O.B.'' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer (*e.g.,* F.O.B. Plant, F.O.B. Feedlot).

Imported. The term ''imported'' means livestock that are raised to slaughter weight outside of the 50 States or livestock products produced outside of the 50 States.

Institutional meat purchase specifications. Specifications describing various meat cuts, meat products, and meat food products derived from all livestock species, commonly abbreviated ''IMPS'', and intended for use by any meat procuring activity. Copies of the IMPS may be obtained from the U.S. Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program located at Room 2603 South Building, 1400 Independence Ave, SW., PO Box 96456, Washington, DC 20090–6456. Phone (202) 720–4486 or Fax (202) 720–1112. Copies may also be obtained over the Internet at: *www.ams.usda.gov/lsg/stand/st-pubs.htm.*

Livestock. The term ''livestock'' means cattle, swine, and lambs.

Lot. (1) When used in reference to livestock, the term ''lot'' means a group of one or more livestock that is identified for the purpose of a single transaction between a buyer and a seller;

(2) When used in reference to lamb carcasses, the term ''lot'' means a group of one or more lamb carcasses sharing a similar weight range category and comprising a single transaction between a buyer and seller; or

(3) When used in reference to boxed beef and lamb, the term ''lot'' means a group of one or more boxes of beef or lamb items sharing cutting and trimming specifications and comprising a single transaction between a buyer and seller.

Marketing. The term ''marketing'' means the sale or other disposition of livestock, livestock products, or meat or meat food products in commerce.

Negotiated purchase. The term ''negotiated purchase'' means a cash or spot market purchase by a packer of livestock from a producer under which the base price for the livestock is determined by seller-buyer interaction and agreement on a delivery day. The livestock are scheduled for delivery to the packer not more than 14 days after the date on which the livestock are committed to the packer.

Negotiated sale. The term ''negotiated sale'' means a cash or spot market sale by a producer of livestock to a packer under which the base price for the livestock is determined by seller-buyer interaction and agreement on a delivery day. The livestock are scheduled for delivery to the packer not later than 14 days after the date on which the livestock are committed to the packer. When used in reference to sales of boxed beef or lamb cuts or lamb carcasses the term ''negotiated sale'' means a sale by a packer selling boxed beef or lamb cuts or lamb carcasses to a buyer of boxed beef or lamb cuts or lamb carcasses under which the price for the boxed beef or lamb cuts or lamb carcasses is determined by seller-buyer interaction and agreement on a day.

Origin. The term ''origin'' means the State where the livestock were fed to slaughter weight.

Premium. The term ''premium'' means the adjustment, expressed in dollars per one hundred pounds, added to the base price due to weight, quality characteristics, yield characteristics, livestock class, and breed.

Priced. The term ''priced'' means the time when the final price is determined either through buyer-seller interaction and agreement or as a result of some other price determining method.

Prior slaughter week. The term ''prior slaughter week'' means the Monday through Sunday prior to a reporting day.

Producer. The term ''producer'' means any person engaged in the business of selling livestock to a packer for slaughter (including the sale of livestock from a packer to another packer).

Purchased. The term ''purchased'' means the agreement on a price, or the method for calculating a price, determined through buyer-seller interaction and agreement.

Reporting day. The term ''reporting day'' means a day on which a packer conducts business regarding livestock committed to the packer, or livestock purchased, sold, or slaughtered by the packer; the Secretary is required to make such information available to the public; and the Department of Agriculture is open to conduct business.

Secretary. The term ''Secretary'' means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

State. The term ''State'' means each of the 50 States.

Subpart B—Cattle Reporting

§ 59.100 Definitions.

The following definitions apply to this subpart.

Boxed beef. The term ''boxed beef'' means those carlot-based portions of a beef carcass including fresh primals, subprimals, cuts fabricated from subprimals (excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for Fresh Beef Products Series 100, and thin meats (*e.g.* inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground beef, beef trimmings, and boneless processing beef not older than 7 days from date of manufacture; and frozen beef trimmings and boneless processing beef not older than 60 days from date of manufacture.

Branded. The term ''branded'' means boxed beef cuts produced and marketed under a corporate trademark (for example, products that are marketed on their quality, yield, or breed characteristics), or boxed beef cuts produced and marketed under one of USDA's Meat Grading and Certification Branch, Certified Beef programs.

Carcass characteristics. The term ''carcass characteristics'' means the range and average carcass weight in pounds, the quality grade and yield grade (if applicable), and the average cattle dressing percentage.

Carlot-based. The term ''carlot-based'' means any transaction between a buyer and a seller destined for two or less delivery stops consisting of one or more individual boxed beef items.

Cattle committed. The term ''cattle committed'' means cattle that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the cattle.

Cattle type. The term ''cattle type'' means the following types of cattle purchased for slaughter:

(1) Fed steers;

(2) Fed heifers;

(3) Fed Holsteins and other fed dairy steers and heifers;

(4) Cows; and

(5) Bulls.

Established. The term ''established'', when used in connection with prices, means that point in time when the buyer and seller agree upon a net price.

Formula marketing arrangement.

(1) When used in reference to live cattle, the term ''formula marketing arrangement'' means the advance commitment of cattle for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

(2) When used in reference to boxed beef, the term ''formula marketing arrangement'' means the advance

commitment of boxed beef by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

Forward contract.

(1) When used in reference to live cattle, the term ''forward contact'' means an agreement for the purchase of cattle, executed in advance of slaughter, under which the base price is established by reference to prices quoted on the Chicago Mercantile Exchange, or other comparable publicly available prices.

(2) When used in reference to boxed beef, the term ''forward contract'' means an agreement for the sale of boxed beef, executed in advance of manufacture, under which the base price is established by reference to publicly available quoted prices.

Packer. The term ''packer'' means any person engaged in the business of buying cattle in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from cattle for sale or shipment in commerce, or of marketing meats or meat food products from cattle in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term ''packer'' includes only a federally inspected cattle processing plant that slaughtered an average of 125,000 head of cattle per year during the immediately preceding 5 calendar years. Additionally, in the case of a cattle processing plant that did not slaughter cattle during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant should be considered a packer under this subpart after considering its capacity.

Packer-owned cattle. The term ''packer-owned cattle'' means cattle that a packer owns for at least 14 days immediately before slaughter.

Prices for cattle. The term ''prices for cattle'' includes the price per hundredweight; the purchase type; the quantity on a live and a dressed weight basis; the estimated live weight range; the average live weight; the estimated percentage of cattle of a USDA quality grade Choice or better; beef carcass classification; any premiums or discounts associated with weight, quality grade, yield grade, or type of purchase; cattle State of origin; estimated cattle dressing percentage; and price basis as F.O.B. feedlot or delivered at the plant.

Terms of trade. The term ''terms of trade'' means, with respect to the purchase of cattle for slaughter:

(1) Whether a packer provided any financing agreement or arrangement with regard to the cattle;

(2) Whether the delivery terms specified the location of the producer or the location of the packer's plant;

(3) Whether the producer is able to unilaterally specify the date and time during the business day of the packer that the cattle are to be delivered for slaughter; and

(4) The percentage of cattle purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but fewer than 14 days, after the earlier of either the date on which the cattle were committed to the packer, the date on which the cattle were purchased by the packer, or the date on which the cattle were priced by the packer.

Type of purchase. The term ''type of purchase'' with respect to cattle, means a negotiated purchase, a formula market arrangement, and a forward contract.

Type of sale. The term ''type of sale'' with respect to boxed beef, means a negotiated sale, a formula market arrangement, and a forward contract.

§ 59.101 Mandatory daily reporting for live cattle.

(a) *In General.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least two times each reporting day not later than 10:00 a.m. Central Time and not later than 2:00 p.m. Central Time the following information for each cattle type, inclusive since the last reporting, categorized to clearly delineate domestic from imported market purchases as described in § 59.10(b).

(1) The prices for cattle (per hundredweight) established on that day, categorized by:

(i) The type of purchase;

(ii) The quantity of cattle purchased on a live weight basis;

(iii) The quantity of cattle purchased on a dressed weight basis;

(iv) A range and average of estimated live weights of cattle purchased;

(v) An estimate of the percentage of the cattle purchased that were of a quality grade of Choice or better; and

(vi) Any premiums or discounts associated with weight, quality grade, or yield grade expressed in dollars per hundredweight on a dressed basis.

(2) The quantity of cattle delivered to the packer (quoted in numbers of head) on that day, categorized by:

(i) The type of purchase;

(ii) The quantity of cattle delivered on a live weight basis; and

(iii) The quantity of cattle delivered on a dressed weight basis.

(3) The quantity of cattle committed to the packer (quoted in numbers of head) as of that day, categorized by:

(i) The type of purchase;

(ii) The quantity of cattle committed on a live weight basis; and

(iii) The quantity of cattle committed on a dressed weight basis.

(4) The terms of trade regarding the cattle, as applicable.

(b) *Publication.* The Secretary shall make the information available to the public not less frequently than three times each reporting day.

§ 59.102 Mandatory weekly reporting for live cattle.

(a) *In General.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary on the first reporting day of each week, not later than 9:00 a.m. Central Time, the following information applicable to the prior slaughter week, categorized to clearly delineate domestic from imported market purchases:

(1) The quantity of cattle purchased through forward contracts that were slaughtered;

(2) The quantity of cattle delivered under a formula marketing arrangement that were slaughtered;

(3) The quantity and carcass characteristics of packer-owned cattle that were slaughtered;

(4) The quantity, basis level, and delivery month for all cattle purchased through forward contracts;

(5) The range and average of intended premiums and discounts (including those associated with weight, quality grade, yield grade, or type of cattle) that are expected to be in effect for the current slaughter week; and

(6) The following information for cattle purchased through a formula marketing arrangement and slaughtered during the prior slaughter week:

(i) The quantity (quoted in both numbers of head and pounds) of cattle;

(ii) The weighted average price paid for a carcass, including applicable premiums and discounts;

(iii) The range of premiums and discounts paid;

(iv) The weighted average of premiums and discounts paid;

(v) The range of prices paid; and

(vi) The terms of trade regarding the cattle, as applicable.

(b) *Publication.* The Secretary shall make available to the public the information obtained under paragraph (a) of this section on the first reporting day of the current slaughter week by 10:00 a.m. Central Time.

§ 59.103 Mandatory reporting of boxed beef sales.

(a) *Daily reporting.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day (once by 10 a.m. Central Time, and once by 2 p.m. Central Time) the following information on total boxed beef domestic and export sales established on that day inclusive since the last reporting as described in § 59.10(b):

(1) The price for each lot of each boxed beef sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of each sale, quoted by number of pounds sold; and

(3) The information regarding the characteristics of each sale is as follows:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The grade for steer and heifer beef (*e.g.,* USDA Prime, USDA Choice or better, USDA Choice, USDA Select, ungraded no-roll product);

(iv) The grade for cow beef or packer yield and/or quality sort for cow beef (e.g., Breakers, Boners, White Cow);

(v) The cut of beef, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;

(vi) The trim specification;

(vii) The weight range of the cut;

(viii) The product delivery period; and

(ix) The beef type (steer/heifer, dairy steer/heifer, or cow).

(b) *Publication.* The Secretary shall make available to the public the information obtained under paragraph (a) of this section not less frequently than twice each reporting day.

Subpart C—Swine Reporting

§ 59.200 Definitions.

The following definitions apply to this subpart.

Affiliate. The term ''affiliate'', with respect to a packer, means:

(1) A person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the packer;

(2) A person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the packer; and

(3) A person that directly or indirectly controls, or is controlled by or under common control with, the packer.

Applicable reporting period. The term ''applicable reporting period'' means the period of time prescribed by the prior day report, the morning report, and the afternoon report, as provided in § 59.202.

Average carcass weight. The term ''average carcass weight'' means the weight obtained by dividing the total carcass weight of the swine slaughtered at the packing plant during the applicable reporting period by the number of these same swine.

Average lean percentage. The term ''average lean percentage'' means the value equal to the average percentage of the carcass weight comprised of lean meat for the swine slaughtered during the applicable reporting period. Whenever the packer changes the manner in which the average lean percentage is calculated, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary may convert either to the carcass measurements or lean percentage of the swine of the individual packer to correlate to a common percent lean measurement.

Average net price. The term ''average net price'' means the quotient (stated per hundred pounds of carcass weight of swine) obtained by dividing the total amount paid for the swine slaughtered at a packing plant during the applicable reporting period (including all premiums and less all discounts) by the total carcass weight of the swine (in hundred pound increments).

Average sort loss. The term ''average sort loss'' means the average discount (in dollars per hundred pounds carcass weight) for swine slaughtered during the applicable reporting period, resulting from the fact that the swine did not fall within the individual packer's established carcass weight range or lot variation range.

Backfat. The term ''backfat'' means the fat thickness (in inches) measured between the third and fourth rib from the last rib, 7 centimeters from the carcass split (or adjusted from the individual packer's measurement to that reference point using an adjustment made by the Secretary) of the swine slaughtered during the applicable reporting period.

Barrow. The term ''barrow'' means a neutered male swine, with the neutering performed before the swine reached sexual maturity.

Base market hog. The term ''base market hog'' means a hog for which no discounts are subtracted from and no premiums are added to the base price.

Base price. The term ''base price'' means the price from which no discounts are subtracted and no premiums are added.

Boars. The term ''boar'' means a sexually-intact male swine.

Bred female swine. The term ''bred female swine'' means any female swine, whether a sow or gilt, that has been mated or inseminated, or has been confirmed, to be pregnant.

Formula price. The term ''formula price'' means a price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Gilt. The term ''gilt'' means a young female swine that has not produced a litter.

Highest net price. The term ''highest net price'' means the highest net price paid for a single lot or group of swine slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of swine.

Hog Class. The term ''hog class'' means, as applicable, barrows or gilts; sows; or boars or stags.

Loin depth. The term ''loin depth'' means the muscle depth (in inches) measured between the third and fourth ribs from the last rib, 7 centimeters from the carcass split (or adjusted from the individual packer's measurement to that reference point using an adjustment made by the Secretary) of the swine slaughtered during the applicable reporting period.

Lowest net price. The term ''lowest net price'' means the lowest net price paid for a single lot or group of swine slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of swine.

Net price. The term ''net price'' means the total amount paid by a packer to a producer (including all premiums, less all discounts) per hundred pounds of carcass weight of swine delivered at the plant. The total amount paid shall include any sum deducted from the price (per hundredweight) paid to a producer that reflects the repayment of a balance owed by the producer to the packer or the accumulation of a balance to later be repaid by the packer to the producer. The total amount paid shall exclude any sum earlier paid to a producer that must be repaid to the packer.

Noncarcass merit premium. The term ''noncarcass merit premium'' means an increase in the base price of the swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium is known before the sale and delivery of the swine.

Other market formula purchase. The term ''other market formula purchase'' means a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or a pork product. The term ''other market formula purchase'' includes a formula purchase in a case which the price formula is based on 1 or more futures or options contracts.

Other purchase arrangement. The term ''other purchase arrangement'' means a purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase; and does not involve packer-owned swine.

Packer. The term ''packer'' means any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term ''packer'' includes only a federally inspected swine processing plant that slaughtered an average of 100,000 head of swine per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant should be considered a packer under this subpart after considering its capacity.

Packer-owned swine. The term ''packer-owned swine'' means swine that a packer (including a subsidiary or affiliate of the packer) owns for at least 14 days immediately before slaughter.

Packer-sold swine. The term ''packer-sold swine'' means the swine that are owned by a packer (including a subsidiary or affiliate of the packer) for more than 14 days immediately before sale for slaughter; and sold for slaughter to another packer.

Pork. The term ''pork'' means the meat of a porcine animal.

Pork product. The term ''pork product'' means a product or byproduct produced or processed in whole or in part from pork.

Purchase data. The term ''purchase data'' means all of the applicable data, including base price and weight (if purchased live), for all swine purchased during the applicable reporting period, regardless of the expected delivery date of the swine, reported by:

(1) Hog class;

(2) Type of purchase; and

(3) Packer-owned swine.

Slaughter data. The term ''slaughter data'' means all of the applicable data for all swine slaughtered by a packer during the applicable reporting period, regardless of whether the price of the swine was negotiated or otherwise determined, reported by:

(1) Hog class;

(2) Type of purchase; and

(3) Packer-owned swine.

Sow. The term ''sow'' means an adult female swine that has produced 1 or more litters.

Stag. The term ''stag'' means a male swine that was neutered after reaching sexual maturity.

Swine. The term ''swine'' means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

Swine committed. The term ''swine committed'' means swine scheduled and delivered to a packer within the 14-day period beginning on the date of an agreement to sell the swine.

Swine or pork market formula purchase. The term ''swine or pork market formula purchase'' means a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or a pork product, other than a future or option for swine, pork, or a pork product.

Type of purchase. The term ''type of purchase'', with respect to swine, means:

(1) A negotiated purchase;

(2) Other market formula purchase;

(3) A swine or pork market formula purchase; and

(4) Other purchase arrangement.

§ 59.201 General reporting provisions.

(a) Packer-owned swine. Information required under this section for packer-owned swine shall include quantity and carcass characteristics, but not price.

(b) Type of Purchase. If information regarding the type of purchase is required under this section, the information shall be reported according to the numbers and percentages of each type of purchase comprising:

(1) Packer-sold swine; and

(2) All other swine.

§ 59.202 Mandatory daily reporting for swine.

(a) Prior day report. The corporate officers or officially designated representatives of each packer shall report to the Secretary for each business day of the packer not later than 7:00 a.m. Central Time on each reporting day information regarding all swine purchased, priced, or slaughtered during the prior business day of the packer as specified in § 59.10(b):

(1) All purchase data, reported by lot, including:

(i) The total number of swine purchased;

(ii) The total number of swine scheduled for delivery to a packer for slaughter;

(iii) The base price and weight for all swine purchased on a live weight basis; and

(iv) The base price and premiums and discounts paid for carcass characteristics for all swine purchased on a carcass basis for which a price has been established. For swine that were not priced, this information shall be reported on the next prior day report after the price is established.

(2) The following slaughter data for the total number of swine slaughtered:

(i) The average net price;

(ii) The lowest net price;

(iii) The highest net price;

(iv) The average carcass weight;

(v) The average sort loss;

(vi) The average backfat;

(vii) The average loin depth;

(viii) The average lean percentage; and

(ix) Total quantity slaughtered.

(3) Packer purchase commitments, which shall be equal to the number of swine scheduled for delivery to a packer for slaughter for each of the next 14 calendar days.

(4) Publication. The Secretary shall publish the information obtained under this paragraph in a prior day report not later than 8:00 a.m. Central Time on the reporting day on which the information is received from the packer.

(b) Morning report. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary not later than 10:00 a.m. Central Time each reporting day as described in § 59.10(b):

(1) The packer's best estimate of the total number of swine and packer-owned swine expected to be purchased throughout the reporting day through each type of purchase;

(2) The total number of swine and packer-owned swine purchased up to that time of the reporting day through each type of purchase;

(3) All purchase data for base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(4) All purchase data for base market hogs purchased through each type of purchase other than negotiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the

first reporting day or scheduled reporting time on a reporting day after the price has been determined.

(5) Publication. The Secretary shall publish the information obtained under this paragraph in the morning report as soon as practicable, but not later than 11 a.m. Central Time, on each reporting day.

(c) Afternoon report. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary not later than 2:00 p.m. Central Time each reporting day as described in § 59.10(b):

(1) The packer's best estimate of the total number of swine and packer-owned swine expected to be purchased throughout the reporting day through each type of purchase;

(2) The total number of swine and packer-owned swine purchased up to that time of the reporting day through each type of purchase;

(3) The base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(4) The base price paid for all base market hogs purchased through each type of purchase other than negotiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined.

(5) Publication. The Secretary shall publish the information obtained under this paragraph in the afternoon report as soon as practicable, but not later than 3:00 p.m. Central Time, on each reporting day.

§ 59.203 Mandatory weekly reporting for swine.

(a) *Weekly noncarcass merit premium report.* Not later than 4:00 p.m. Central Time in accordance with § 59.10(b) on the first reporting day of each week, the corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary a noncarcass merit premium report that lists:

(1) Each category of standard noncarcass merit premiums used by the packer in the prior slaughter week; and

(2) The dollar value (in dollars per hundred pounds of carcass weight) paid to producers by the packer, by category.

(b) *Premium list.* A packer shall maintain and make available to a producer, on request, a current listing of the dollar values (per hundred pounds of carcass weight) of each noncarcass merit premium used by the packer during the current or the prior slaughter week.

(c) *Publication.* The Secretary shall publish the information obtained under this subsection as soon as practicable, but not later than 5:00 p.m. Central Time, on the first reporting day of each week.

Subpart D—Lamb Reporting

§ 59.300 Definitions.

The following definitions apply to this subpart.

Boxed lamb. The term ''boxed lamb'' means those carlot-based portions of a lamb carcass including fresh primals, subprimals, cuts fabricated from subprimals (excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for Fresh Lamb and Mutton Series 200, and thin meats (*e.g.* inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground lamb, lamb trimmings, and boneless processing lamb not older than 7 days from date of manufacture; frozen primals, subprimals, cuts fabricated from subprimals, and thin meats not older than 180 days from date of manufacture; and frozen ground lamb, lamb trimmings, and boneless processing lamb not older than 90 days from date of manufacture.

Branded. The term ''branded'' means boxed lamb cuts produced and marketed under a corporate trademark (for example, products that are marketed on their quality, yield, or breed characteristics), or boxed lamb cuts produced and marketed under one of USDA's Meat Grading and Certification Branch, Certified programs.

Carcass characteristics. The term ''carcass characteristics'' means the range and average carcass weight in pounds, the quality grade and yield grade (if applicable), and the lamb average dressing percentage.

Carlot-based. The term ''carlot-based'' means any transaction between a buyer and a seller destined for three or less delivery stops consisting of one or more individual boxed lamb items or any combination of carcass weights.

Established. The term ''established'', when used in connection with prices, means that point in time when the buyer and seller agree upon a net price.

Formula marketing arrangement.

(1) When used in reference to live lambs, the term ''formula marketing arrangement'' means the advance commitment of lambs for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

(2) When used in reference to boxed lamb, the term ''formula marketing arrangement'' means the advance commitment of boxed lamb by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

Forward contract.

(1) When used in reference to live lambs, the term ''forward contact'' means an agreement for the purchase of lambs, executed in advance of slaughter, under which the base price is established by reference to publicly available prices.

(2) When used in reference to boxed lamb, the term ''forward contract'' means an agreement for the sale of boxed lamb, executed in advance of manufacture, under which the base price is established by reference to publicly available quoted prices.

Importer. The term ''importer'' means any person engaged in the business of importing lamb meat products who takes ownership of such lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years, if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

Lambs committed. The term ''lambs committed'' means lambs that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the lambs.

Packer. The term ''packer'' means any person engaged in the business of buying lambs in commerce for purposes of slaughter, of manufacturing or preparing meat products from lambs for sale or shipment in commerce, or of marketing meats or meat products from lambs in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term includes only a federally inspected lamb processing plant which slaughtered or processed the equivalent of an average of 75,000 head of lambs per year during the immediately preceding 5 calendar years. Additionally, the term includes a lamb

processing plant that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity.

Packer-owned lambs. The term ''packer-owned lambs'' means lambs that a packer owns for at least 14 days immediately before slaughter.

Terms of trade. The term ''terms of trade'' includes, with respect to the purchase of lambs for slaughter:

(1) Whether a packer provided any financing agreement or arrangement with regard to the lambs;

(2) Whether the delivery terms specified the location of the producer or the location of the packer's plant;

(3) Whether the producer is able to unilaterally specify the date that the lambs are to be delivered for slaughter; and

(4) The percentage of lambs purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but less than 14 days, after the earlier of either:

(i) The date on which the lambs were committed to the packer;

(ii) The date on which the lambs were purchased by the packer; or

(iii) The date on which the lambs were priced by the packer.

Type of purchase. The term ''type of purchase'' means a negotiated purchase, a formula market arrangement, and a forward contract.

Type of sale. The term ''type of sale'' with respect to boxed lamb, means a negotiated sale, a formula market arrangement, and a forward contract.

§ 59.301 Mandatory daily reporting for lambs.

(a) In General. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least once each reporting day not later than 2:00 p.m. Central Time the following information for lamb, categorized to clearly delineate domestic from imported market purchases as described in § 59.10(b):

(1) The prices for lambs (per hundredweight) established on that day as F.O.B. feedlot or delivered at the plant, categorized by:

(i) The type of purchase;

(ii) The class of lamb;

(iii) The quantity of lambs purchased on a live weight basis;

(vi) The quantity of lambs purchased on a dressed weight basis;

(v) A range and average of estimated live weights of lambs purchased;

(vi) An estimate of the percentage of the lambs purchased that were of a quality grade of Choice or better;

(vii) Any premiums or discounts associated with weight, quality grade, yield grade, or any type of purchase;

(viii) Lamb State of origin;

(ix) The pelt type; and

(x) The estimated lamb dressing percentage.

(2) The quantity of lambs delivered to the packer (quoted in numbers of head) on that day, categorized by:

(i) The type of purchase;

(ii) The quantity of lambs delivered on a live weight basis; and

(iii) The quantity of lambs delivered on a dressed weight basis.

(3) The quantity of lambs committed to the packer (quoted in numbers of head) as of that day, categorized by:

(i) The type of purchase;

(ii) The quantity of lambs committed on a live weight basis; and

(iii) The quantity of lambs committed on a dressed weight basis.

(4) The terms of trade regarding the lambs, as applicable.

(b) Publication. The Secretary shall make the information available to the public not less than once each reporting day.

§ 59.302 Mandatory weekly reporting for lambs.

(a) *In general.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary the following information applicable to the prior slaughter week contained in paragraphs (a)(1) through (a)(4) and (a)(6) of this section not later than 9 a.m. Central Time on the second reporting day of the current slaughter week, and the following information applicable to the prior slaughter week contained in paragraph (a)(5) of this section not later than 9:00 a.m. Central Time on the first reporting day of the current slaughter week categorized to clearly delineate domestic from imported market purchases:

(1) The quantity of lambs purchased through forward contracts that were slaughtered;

(2) The quantity of lambs delivered under a formula marketing arrangement that were slaughtered;

(3) The quantity and carcass characteristics of packer-owned lambs that were slaughtered;

(4) The quantity, basis level, and delivery month for all lambs purchased through forward contracts;

(5) The following information applicable to the current slaughter week. The range and average of intended premiums and discounts (including those associated with weight, quality grade, yield grade, or type of lamb) that are expected to be in effect for the current slaughter week; and

(6) The following information for lambs purchased through a formula marketing arrangement and slaughtered during the prior slaughter week, categorized to clearly delineate domestic from imported market purchases:

(i) The quantity (quoted in both numbers of head and pounds) of lambs;

(ii) The weighted average price paid for a carcass, including applicable premiums and discounts;

(iii) The range of premiums and discounts paid;

(iv) The weighted average of premiums and discounts paid;

(v) The range of prices paid; and

(vi) The terms of trade regarding the lambs, as applicable.

(b) *Publication.* The Secretary shall make available to the public the information obtained under paragraphs (a)(1) through (a)(4) and (a)(6) of this section on the second reporting day of the current slaughter week and information obtained in paragraph (a)(5) of this section on the first reporting day of the current slaughter week.

§ 59.303 Mandatory reporting of lamb carcasses and boxed lamb.

(a) *Daily reporting of lamb carcass transactions.* The corporate officers or officially designated representatives of each packer shall report to the Secretary each reporting day the following information on total carlot-based lamb carcass transactions not later than 3:00 p.m. Central Time in accordance with § 59.10(b):

(1) The price for each lot of each lamb carcass transaction, quoted in dollars per hundredweight on an F.O.B. plant basis;

(2) The quantity for each lot of each transaction, quoted by number of carcasses sold; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of sale;

(ii) The USDA quality grade of lamb;

(iii) The USDA yield grade;

(iv) The estimated weight range of the carcasses; and

(v) The product delivery period.

(b) *Daily reporting of domestic boxed lamb sales.* The corporate officers or officially designated representatives of each packer shall report to the Secretary each reporting day the following information on total domestic boxed lamb cut sales not later than 2:30 p.m. Central Time as described in § 59.10(b):

(1) The price for each lot of each boxed lamb cut sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of each sale, quoted by product weight sold; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The U.S.D.A. quality grade of lamb;

(iv) The cut of lamb, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;

(v) U.S.D.A. yield grade, if applicable;

(vi) The product state of refrigeration;

(vii) The weight range of the cut; and

(viii) The product delivery period.

(c) *Weekly reporting of imported boxed lamb sales.* The corporate officers or officially designated representatives of each lamb importer shall report to the Secretary on the first reporting day of each week the following information applicable to the prior week for imported boxed lamb cut sales not later than 10 a.m. Central Time:

(1) The price for each lot of a boxed lamb cut sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of a transaction, quoted by product weight sold; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The cut of lamb, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;

(iv) The product state of refrigeration;

(v) The weight range of the cut; and

(vi) The product delivery period.

(d) *Publication.* The Secretary shall make available to the public the information required to be reported in paragraphs (a) and (b) of this section not less frequently than once each reporting day and the information required to be reported in paragraph (c) of this section on the first reporting day of the current slaughter week.

Subpart E—OMB Control Number

§ 59.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements of this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0186.

Dated: November 20, 2000.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A—Cattle Mandatory Reporting Forms

The following 6 forms visually represent the mandatory market information that is required to be reported electronically on domestic and import sales and purchases of live cattle and boxed beef to the Agricultural Marketing Service.

Cattle

LS–113 Live Cattle Daily Report (Current Established Prices)
LS–114 Live Cattle Daily Report (Committed and Delivered Cattle)
LS–115 Live Cattle Weekly Report (Forward Contract and Packer-Owned)
LS–116 Live Cattle Weekly Report (Formula Purchases)
LS–117 Cattle Premiums and Discounts Weekly Report
LS–126 Boxed Beef Daily Report

Appendix B—Swine Mandatory Reporting Forms

The following 3 forms visually represent the mandatory market information that is required to be reported electronically on domestic and import sales and purchases of live swine to the Agricultural Marketing Service.

Swine

LS–118 Swine Prior Day Report
LS–119 Swine Daily Report
LS–120 Swine Noncarcass Merit Premium Weekly Report

Appendix C—Lamb Mandatory Reporting Forms

The following 7 forms visually represent the mandatory market information that is required to be reported electronically on purchases of live lambs and imported boxed lamb cuts; and sales of lamb carcasses, and domestic and import boxed lamb cuts to the Agricultural Marketing Service.

Lamb

LS–121 Live Lamb Daily Report (Current Established Prices)
LS–122 Live Lamb Daily Report (Committed and Delivered Lambs)
LS–123 Live Lamb Weekly Report (Forward Contract and Packer-Owned)
LS–124 Live Lamb Weekly Report (Formula Purchases)
LS–125 Lamb Premiums and Discounts Report
LS–128 Boxed Lamb Report
LS–129 Lamb Carcass Report

Appendix D—Mandatory Reporting Forms Guideline

The following mandatory reporting form guidelines will be used by persons required to report electronically transmitted mandatory market information to the Agricultural Marketing Service.

The first 10 fields of each mandatory reporting form provide the following information: identification number (plant establishment number or importer ID number), company name (name of parent company), plant street address (street address for plant), plant city (city where plant is located), plant state (state where plant is located), plant zip code (zip code where plant is located), contact name (the name of the corporate representative contact at the plant), phone number (full phone number for the plant including area code), reporting date (date the information was submitted (mm/dd/yyyy),and reporting time (the submission time corresponding to the 10:00 a.m. and the 2:00 p.m. reporting requirements). The reporting time requirement is only applicable to forms LS–113 Live Cattle Daily Report (current established prices), LS–114 Live Cattle Daily Report (Committed and Delivered Cattle), LS–126 Boxed Beef Daily Report, and LS–119 Swine Daily Report.

(a) Cattle Mandatory Reporting Forms. (See Appendix E for samples)

(1) LS–113—Live Cattle Daily Report (current established prices).

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Source (12). Enter '1', domestic, if cattle were purchased inside of the 50 States, or '2', imported, if cattle were purchased outside of the 50 States.

(iii) Purchase type code (13). Enter the code that describes the type of purchase.

(iv) Class code (14). Enter the code that best describes the type of cattle.

(v) Selling basis (15a–b). For 15a, enter ''1'' if cattle were purchased on a live basis or ''2'' if cattle were purchased on a dressed basis. For 15b, enter ''1'' if cattle are shipped on an FOB feedlot basis or ''2'' if cattle are delivered at the plant.

(vi) Head count (16). Enter the quantity of cattle in the lot in number of head.

(vii) Weight range (17a & 17b). Enter the lowest (17a) and highest (17b) weights for cattle in the lot in pounds.

(viii) Estimated average weight (18). Enter the estimated average weight of the lot in pounds.

(ix) Average price (19). Enter the price established on that day for the lot in dollars per hundredweight.

(I) For negotiated purchases, enter the final (net) price paid.

(II) For formula purchases, enter the base price.

(III) For forward contract purchases, enter either the final (net) price paid or the base price depending on the contract.

(x) Percent Choice or better (20). Enter the percentage of the number of cattle in the lot of a quality grade of Choice or better.

(xi) Classification code (21). Enter the code which best describes the quality of the majority of the cattle in the lot.

(xii) Dressing percentage (22). Enter an average dressing percentage for the cattle in the lot. For negotiated purchases, enter an estimate. For all other purchase types, enter the actual average dressing percentage.

(xiii) Origin (23). Enter the 2-letter postal abbreviation for the State in which the cattle were fed to slaughter weight. Leave blank if cattle are imported.

(xiv) Premiums and discounts paid (24a–f). Enter the total net value of the adjustment for the lot (in dollars per hundredweight) for any premiums associated with weight, quality, or yield expressed as a positive value and for any discounts associated with weight, quality, or yield expressed as a negative value in parenthesis.

(xv) Terms of Trade (25a–d). Enter when applicable, otherwise leave blank.

(I) Packer financing (25a). Enter ''1'' (yes) or ''2'' (no) in response to: ''Did packer provided financing agreement or arrangement with regards to the cattle?''

(II) Delivery location (25b). Enter ''1'' if delivery terms specify producer location, ''2'' if they specify packer's plant location.

(III) Delivery Date (25c). Enter ''1'' if producer sets date of delivery for slaughter unilaterally; otherwise enter ''2'' for packer.

(IV) Delivered (25d). Enter ''1'' if negotiated purchased cattle are to be delivered for slaughter 7 or less days from the committed, purchased, or priced date. Enter ''2'' if they are to be delivered for slaughter between 8 and 14 days from the date the cattle were committed, purchased, or priced.

(2) LS–114—Live Cattle Daily Report (committed and delivered cattle)

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Purchasing basis (12). Enter ''1'' if cattle are delivered or ''2'' if cattle are committed.

(iii) Source (13). Enter ''1'', domestic, if cattle are purchased within the 50 States or ''2'', imported, if cattle are purchased outside of the 50 States.

(iv) Purchase type code (14). Enter the code that best describes the type of purchase.

(v) Class Code (15). Enter the code that best describes the type of cattle in the lot.

(vi) Selling basis (16). Enter ''1'' if cattle were purchased on a live basis or a ''2'' if cattle were purchased on a dressed basis.

(vii) Head count (17). Enter the quantity of cattle in the lot in number of head.

(viii) Origin (18). Enter the 2-letter postal abbreviation for the State in which the cattle were fed to slaughter weight. Leave blank if cattle were imported.

(ix) Terms of Trade (19a–d). Enter when applicable, otherwise leave blank.

(I) Packer financing (19a). Enter ''1'' (yes) or ''2'' (no) in response to: ''Did packer provide financing agreement or arrangement with regards to the cattle?''

(II) Delivery location (19b). Enter ''1'' if delivery terms specify producer location, ''2'' if they specify packer's plant location.

(III) Delivery Date (19c). Enter ''1'' if producer sets date of delivery for slaughter unilaterally; otherwise enter ''2'' for packer.

(IV) Delivered (19d). Enter ''1'' if negotiated purchased cattle are to be delivered for slaughter 7 or less days from the committed, purchased, or priced date. Enter ''2'' if they are to be delivered for slaughter between 8 and 14 days from the date the cattle were committed, purchased, or priced.

(3) LS–115—Live Cattle Weekly Report (forward contract and packer-owned).

(i) Packer-Owned lot identification (11). Enter code used to identify the lot of packer-owned cattle to the packer.

(ii) Packer-Owned source (12). Enter ''1'', domestic, if packer-owned cattle are from within the 50 States or ''2'', imported, if cattle are from outside of the 50 States.

(iii) Packer-Owned head count (13). Enter the quantity of packer-owned cattle in the lot in number of head.

(iv) Packer-Owned actual carcass weight range (14a & 14b). Enter the lowest (14a) and highest (14b) actual carcass weights for cattle in the lot in pounds.

(v) Packer-Owned actual average carcass weight (15). Enter the actual average carcass weight of the lot of packer-owned cattle in pounds.

(vi) Packer-Owned average dressing percentage (16). Enter the average dressing percentage of the lot of packer-owned cattle.

(vii) Percentage yield grade 3 or better (17). Enter the percentage of packer-owned cattle in the lot of a yield grade of 3 or better.

(viii) Quality grade percentage (18–19). Enter the percentage of packer-owned cattle in the lot of a quality grade of Choice or better (18) and the percentage of packer-owned cattle in the lot of a quality grade of Select (19).

(ix) Prior week slaughtered cattle head counts (20–23). Enter the total number of head of cattle slaughtered for the prior week that were purchased through forward contracts and the total number of head for cattle purchased through formula arrangements, categorized by domestic or imported sources. Enter this information once per each week's submission.

(x) Forward contract purchases lot identification (24). Enter code used to identify forward contracted cattle to the packer.

(xi) Forward contract purchases head count (25). Enter quantity of forward contracted cattle in the lot in number of head.

(xii) Forward contract purchases basis level (26). Enter the agreed upon adjustment to a future price to establish the final price of the forward contracted cattle in dollars per one hundred pounds.

(xiii) Forward contract purchases delivery month (27). Enter the delivery month of the cattle purchased through forward contracts as a 3-letter abbreviation.

(4) LS–116—Live Cattle Weekly Report (formula purchases).

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Source (12). Enter ''1'', domestic, if cattle are purchased within the 50 States or ''2'', imported, if cattle are purchased outside of the 50 States.

(iii) Head count (13). Enter the quantity of cattle in the lot in number of head.

(iv) Total pounds (14). Enter the total quantity of cattle in the lot in pounds.

(v) Weighted average carcass price (15). Enter the average weighted average carcass price for the cattle in the lot in dollars per hundredweight.

(vi) Range of prices paid (16a–b). Enter the lowest (16a) and the highest (16b) prices paid for the cattle in the lot in dollars per hundredweight.

(vii) Range of premiums and discounts paid (17a–b). Enter the lowest (17a) and the highest (17b) premium and discount paid for the lot of cattle in dollars per hundredweight. Enter negative values in parenthesis.

(viii) Weighted average of premiums and discounts paid (18). Enter the weighted average of the premiums and discounts paid for the lot of cattle in dollars per hundredweight. Enter negative values in parenthesis.

(ix) Terms of Trade (19a–c). Enter when applicable else leave blank.

(I) Packer financing (19a). Enter ''1'' (yes) or ''2'' (no) in response to: ''Did packer provided financing agreement or arrangement with regards to the cattle?''

(II) Delivery location (19b). Enter ''1'' if delivery terms specify producer location, ''2'' if they specify packer's plant location.

(III) Delivery Date (19c). Enter ''1'' if producer sets date of delivery for slaughter unilaterally; otherwise enter ''2'' for packer.

(5) LS–117—Cattle Premiums and Discounts Weekly Report.

(i) Enter the premiums and discounts (in dollars per hundredweight) expected to be in effect for the current slaughter week for each applicable category of premium and discount (11–34). For ''other'' categories (35–38), provide a brief description of the basis for the premium/discount along with the value of the premium/discount. Enter negative values in parenthesis.

(6) LS–126—Boxed Beef Daily Report. For lots comprising multiple items, provide information for each item in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Destination (12). Enter ''1'', domestic, for product shipped within the 50 States or ''2'', exported, for product shipped outside of the 50 States.

(iii) Purchase type code (13). Enter the code corresponding to the sale type of the lot of boxed beef.

(iv) Delivery period code (14). Enter the code corresponding to the delivery time period of the lot of boxed beef.

(v) Refrigeration (15). Enter ''1'' if the product is sold in a fresh condition or ''2'' if the product is sold in a frozen condition.

(vi) Class code (16). Enter the code that best describes the class of cattle from which the boxed beef was produced.

(vii) Classification code (17). Enter the code corresponding to the grade of the boxed beef.

(viii) Beef cut (18a–b). Enter the numerical code corresponding to the Institutional Meat Purchase Specifications (IMPS) (3 to 4 characters)(18a) or the internal corporate descriptor used to identify the product (18b). Descriptors must be entered consistently for all submissions.

(ix) Trim spec code (19). Enter the code corresponding to the trim level of the boxed beef.

(x) Weight (20). Enter the code corresponding to the relative weight of the product. Where weight is a factor, enter ''1'' to signify the lighter weight range, ''2'' to signify the middle weight range, or ''3'' to signify the heavier weight range. Where weight is not a factor, enter ''4'' to signify all weights or mixed.

(xi) Total product weight (21). Enter the total weight of the boxed beef cut in the lot in pounds.

(xii) Price (22). Enter the price received for each boxed beef cut in the lot in dollars per one hundred pounds, FOB Plant basis.

(xiii) USDA Certified schedule code (23). Enter the code for the USDA Certified Program schedule, if applicable (*e.g.* G1, G2, etc.); otherwise leave blank.

(xiv) Branded product code (24a–b). Enter the quality grade code (24a) and the yield grade code (24b) that best describes the brand. Leave blank if not applicable.

(b) Swine Mandatory Reporting Forms. (see Appendix E for samples)

(1) LS–118—Swine Prior Day Report.

(i) Slaughtered swine lot identification (11). Enter code used to identify the lot of slaughtered swine to the packer.

(ii) Slaughtered swine class code (12). Enter the code that best describes the type of slaughtered swine in the lot.

(iii) Slaughtered swine purchase type code (13). Enter the code that describes the type of purchase for the slaughtered swine in the lot.

(iv) Slaughtered swine head count (14). Enter the quantity of slaughtered swine in the lot in number of head.

(v) Slaughtered swine base price (15). Enter the base price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(vi) Slaughtered swine average net price (16). Enter the average net price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(vii) Slaughtered swine lowest net price (17). Enter the lowest net price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(viii) Slaughtered swine highest net price (18). Enter the highest net price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(ix) Slaughtered swine average live weight (19). Enter the average live weight of the lot of swine in pounds if slaughtered swine were purchased on a live basis, otherwise leave blank.

(x) Slaughtered swine average carcass weight (20). Enter the average carcass weight of the lot of slaughtered swine in pounds.

(xi) Slaughtered swine average sort loss (21). Enter the average sort loss for the lot of slaughtered swine in dollars per one hundred pounds.

(xii) Slaughtered swine average backfat (22). Enter the average backfat measurement for the lot of slaughtered swine in inches rounded to the nearest tenth of an inch.

(xiii) Slaughtered swine average loin depth (23). Enter the average loin depth measurement for the lot of slaughtered swine in inches rounded to the nearest tenth of an inch.

(xiv) Slaughtered swine average lean percentage (24). Enter the average lean percentage for the lot of slaughtered swine.

(xv) Purchased swine lot identification (25). Enter code used to identify the lot of purchased swine to the packer.

(xvi) Purchased swine ownership code (26). Enter code which best describes the source of the purchased swine whether packer-owned, purchased from another packer, or all other swine.

(xvii) Purchased swine class code (27). Enter the code that best describes the type of purchased swine.

(xviii) Purchased swine purchase type code (28). Enter the code that describes the type of purchase for the purchased swine.

(xix) Purchased swine head count (29). Enter the quantity of purchased swine in the lot.

(xx) Purchased swine average live weight (30). Enter the average live weight of the lot of swine in pounds if swine were purchased on a live basis, otherwise leave blank.

(xxi) Purchased swine base price (31). Enter the base price established on that day for the lot of purchased swine in dollars per one hundred pounds.

(xxii) Scheduled swine (32–45). Enter the number of head of purchase commitment swine that were scheduled for delivery for each of the next 14 days. Enter the total quantity currently scheduled for each day at the time of reporting for each submission.

(2) LS–119—Swine Daily Report.

(i) Purchased swine lot identification (11). Enter code used to identify the lot of purchased swine to the packer.

(ii) Purchased swine purchase type code (12). Enter the code that describes the type of purchase for the swine in the lot.

(iii) Purchased swine live weight (13). Enter live weight of swine in pounds if purchased live, otherwise leave blank.

(iv) Purchased swine class code (14). Enter the code that best describes the type of swine in the lot.

(v) Purchased swine head count (15). Enter the quantity of swine in the lot in number of head.

(vi) Purchased swine base price (16). Enter the base price established on that day for the lot of swine in dollars per one hundred pounds.

(vii) Purchased swine origin (17). Enter the 2-letter postal abbreviation for the State in which the swine were fed to slaughter weight.

(viii) Packer-sold swine purchases (18–25). Enter the best estimate of the total number of packer-sold swine expected to be purchased throughout the reporting day for each purchase type and the total number of packer-sold swine purchased up to that time of the reporting day for each purchase type.

(ix) Packer-sold swine purchases (26–33). Enter the best estimate of the total number of all other swine expected to be purchased throughout the reporting day for each purchase type and the total number of all other swine purchased up to that time of the reporting day for each purchase type.

(3) LS–120—Swine Noncarcass Merit Premium Weekly Report.

(i) Enter the standard noncarcass merit premiums used during the prior slaughter week (11–15) in dollars per hundredweight. If a range of standard noncarcass merit premiums was used, enter the low side of the range (a) and the high side of the range (b). If only one value was used, enter the same number in (a) and (b). If no value for the specified merit was used, leave blank. For 'other' categories (16–20), provide a brief description of the basis for the premium along with the value of the premium.

(c) Lamb Mandatory Reporting Forms. (See Appendix E for samples)

(1) LS–121—Live Lamb Daily Report (current established prices).

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Source (12). Enter ''1'', domestic, if lambs were purchased inside of the 50 States, or ''2'', imported, if lambs were purchased outside of the 50 States.

(iii) Purchase type code (13). Enter the code that describes the type of purchase.

(iv) Class code (14). Enter the code that best describes the type of lambs.

(v) Selling basis (15a–b). For 15a, enter ''1'' if lambs were purchased on a live basis or ''2'' if lambs were purchased on a dressed basis. For 15b, enter ''1'' if lambs are shipped on an FOB feedlot basis or ''2'' if lambs are delivered at the plant.

(vi) Head count (16). Enter the quantity of lambs in the lot in number of head.

(vii) Weight range (17a & 17b). Enter the lowest (17a) and highest (17b) weights for lambs in the lot in pounds.

(viii) Estimated average weight (18). Enter the estimated average weight of the lot in pounds.

(ix) Average price (19). Enter the price established on that day for the lot in dollars per hundredweight.

(I) For negotiated purchases, enter the final (net) price paid.

(II) For formula purchases, enter the base price.

(III) For forward contract purchases, enter either the final (net) price paid or the base price depending on the contract.

(x) Percent Choice or better (20). Enter the percentage of the number of lambs in the lot of a quality grade of Choice or better.

(xi) Classification code (21). Enter the code which best describes the quality of the majority of the lambs in the lot.

(xii) Dressing percentage (22). Enter an average dressing percentage for the lambs in the lot. For negotiated purchases, enter an estimate. For all other purchase types, enter the actual average dressing percentage.

(xiii) Origin (23). Enter the 2-letter postal abbreviation for the State in which the lambs were fed to slaughter weight. Leave blank if lambs are imported.

(xiv) Pelt Code (24). Enter the code that best describes the type of pelt for the majority of lambs in the lot.

(xv) Premiums and discounts paid (25a–f). Enter the total net value of the adjustment for the lot (in dollars per hundredweight) for any premiums associated with weight, quality, or yield expressed as a positive value and for any discounts associated with weight, quality, or yield expressed as a negative value in parenthesis.

(xvi) Terms of Trade (26a–d). Enter when applicable, otherwise leave blank.

(I) Packer financing (26a). Enter ''1'' (yes) or ''2'' (no) in response to: ''Did packer provided financing agreement or arrangement with regards to the lambs?'

(II) Delivery location (26b). Enter ''1'' if delivery terms specify producer location, ''2'' if they specify packer's plant location.

(III) Delivery Date (26c). Enter ''1'' if producer sets date of delivery for slaughter unilaterally; otherwise enter ''2'' for packer.

(IV) Delivered (26d). Enter ''1'' if negotiated purchased lambs are to be delivered for slaughter 7 or less days from the committed, purchased, or priced date. Enter ''2'' if they are to be delivered for slaughter between 8 and 14 days from the date the lambs were committed, purchased, or priced.

(2) LS–122—Live Lamb Daily Report (committed and delivered lambs)

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Purchasing basis (12). Enter ''1'' if lambs are delivered or ''2'' if lambs are committed.

(iii) Source (13). Enter ''1'', domestic, if lambs are purchased within the 50 States or ''2'', imported, if lambs are purchased outside of the 50 States.

(iv) Purchase type code (14). Enter the code that best describes the type of purchase.

(v) Selling basis (15). Enter ''1'' if lambs were purchased on a live basis or a ''2'' if lambs were purchased on a dressed basis.

(vi) Head count (16). Enter the quantity of lambs in the lot in number of head.

(vii) Origin (17). Enter the 2-letter postal abbreviation for the State in which the lambs were fed to slaughter weight. Leave blank if lambs were imported. (viii) Terms of Trade (18a–d). Enter when applicable, otherwise leave blank.

(I) Packer financing (18a). Enter ''1'' (yes) or ''2'' (no) in response to: ''Did packer provided financing agreement or arrangement with regards to the lambs?'

(II) Delivery location (18b). Enter ''1'' if delivery terms specify producer location, ''2'' if they specify packer's plant location.

(III) Delivery Date (18c). Enter ''1'' if producer sets date of delivery for slaughter unilaterally; otherwise enter ''2'' for packer.

(IV) Delivered (18d). Enter ''1'' if negotiated purchased lambs are to be delivered for slaughter 7 or less days from the committed, purchased, or priced date. Enter ''2'' if they are to be delivered for slaughter between 8 and 14 days from the date the lambs were committed, purchased, or priced.

(3) LS–123—Live Lamb Weekly Report (forward contract and packer-owned).

(i)Packer-Owned lot identification (11). Enter code used to identify the lot of packer-owned lambs to the packer.

(ii) Packer-Owned source (12). Enter ''1'', domestic, if packer-owned lambs are from within the 50 States or ''2'', imported, if lambs are from outside of the 50 States.

(iii) Packer-Owned head count (13). Enter the quantity of packer-owned lambs in the lot in number of head.

(iv) Packer-Owned actual carcass weight range (14a & 14b). Enter the lowest (14a) and highest (14b) actual carcass weights for lambs in the lot in pounds.

(v) Packer-Owned actual average carcass weight (15). Enter the actual average carcass weight of the lot of packer-owned lambs in pounds.

(vi) Packer-Owned average dressing percentage (16). Enter the average dressing percentage of the lot of packer-owned lambs.

(vii) Percentage yield grade 3 or better (17). Enter the percentage of packer-owned lambs in the lot of a yield grade of 3 or better.

(viii) Quality grade percentage (18–19). Enter the percentage of packer-owned lambs in the lot of a quality grade of Choice or better (18) and the percentage of packer-owned lambs in the lot of a quality grade of Good (19).

(ix) Prior week slaughtered lambs head counts (20–23). Enter the total number of head of lambs slaughtered for the prior week that were purchased through forward contracts and the total number of head for lambs purchased through formula arrangements, categorized by domestic or imported sources. Enter this information once per each week's submission.

(x) Forward contract purchases lot identification (24). Enter code used to identify forward contracted lambs to the packer.

(xi) Forward contract purchases head count (25). Enter quantity of forward contracted lambs in the lot in number of head.

(xii) Forward contract purchases basis level (26). Enter the agreed upon adjustment to a future price to establish the final price of the forward contracted lambs in dollars per one hundred pounds.

(xiii) Forward contract purchases delivery month (27). Enter the delivery month of the lambs purchased through forward contracts as a 3-letter abbreviation.

(4) LS–124—Live Lamb Weekly Report (formula purchases).

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Source (12). Enter ''1'', domestic, if lambs are purchased within the 50 States or ''2'', imported, if lambs are purchased outside of the 50 States.

(iii) Head count (13). Enter the quantity of lambs in the lot in number of head.

(iv) Total pounds (14). Enter the total quantity of lambs in the lot in pounds.

(v) Weighted average carcass price (15). Enter the average weighted average carcass price for the lambs in the lot in dollars per hundredweight.

(vi) Range of prices paid (16a–b). Enter the lowest (16a) and the highest (16b) prices paid for the lambs in the lot in dollars per hundredweight.

(vii) Range of premiums and discounts paid (17a–b). Enter the lowest (17a) and the highest (17b) premium and discount paid for the lot of lambs in dollars per hundredweight. Enter negative values in parenthesis.

(viii) Weighted average of premiums and discounts paid (18). Enter the weighted average of the premiums and discounts paid for the lot of lambs in dollars per hundredweight. Enter negative values in parenthesis.

(ix) Terms of Trade (19a–c). Enter when applicable else leave blank.

(I) Packer financing (19a). Enter ''1'' (yes) or ''2'' (no) in response to: ''Did packer provided financing agreement or arrangement with regards to the lambs?'

(II) Delivery location (19b). Enter ''1'' if delivery terms specify producer location, ''2'' if they specify packer's plant location.

(III) Delivery Date (19c). Enter ''1'' if producer sets date of delivery for slaughter unilaterally; otherwise enter ''2'' for packer.

(5) LS–125—Lamb Premiums and Discounts Weekly Report.

(i) Enter the premiums and discounts (in dollars per hundredweight) expected to be in effect for the current slaughter week for each applicable category of premium and discount (11–32). For ''other'' categories (33–37), provide a brief description of the basis for the premium/ discount along with the value of the premium/discount. Enter negative values in parenthesis.

(6) LS–128—Boxed Lamb Daily Report. For lots comprising multiple items, provide information for each item in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Destination/Source (12). Enter ''1'', domestic, for product originating within the 50 States or ''2'', imported, for product originating from outside of the 50 States.

(iii) Transaction basis (13). Enter ''1'' for purchased product or ''2'' for sold product.

(iv) Purchase/sale type code (14). Enter the code corresponding to the sale type of the lot of boxed lamb.

(v) Delivery period code (15). Enter the code corresponding to the delivery time period of the lot of boxed lamb.

(vi) Refrigeration (16). Enter ''1'' if the product is sold in a fresh condition or ''2'' if the product is sold in a frozen condition.

(vii) Classification code (17). Enter the code corresponding to the grade of the boxed lamb, if applicable.

(viii) Lamb cut (18a–b). Enter the numerical code corresponding to the Institutional Meat Purchase Specifications (IMPS) (3 to 4 characters) (18a) or the internal corporate descriptor used to identify the product (18b). Descriptors must be entered consistently for all submissions.

(ix) Weight (19). Enter the code corresponding to the relative weight of the product. Where weight is a factor, enter ''1'' to signify the lighter weight range, ''2'' to signify the middle weight range, or ''3'' to signify the heavier weight range. Where weight is not a factor, enter ''4'' to signify all weights or mixed.

(x) Total product weight (20). Enter the total weight of the boxed lamb cut in the lot in pounds.

(xi) Price (21). Enter the price received for each boxed lamb cut in the lot in dollars per one hundred pounds, FOB Plant basis.

(xii) USDA Certified schedule code (22). Enter the code for the USDA Certified Program schedule, if applicable (*e.g.* CL, etc.); otherwise leave blank.

(xiii) Branded product code (23a–b). Enter the quality grade code (23a) and the yield grade code (23b) that best describes the brand. Leave blank if not applicable.

(7) LS–129—Lamb Carcass Report. For lots comprised of distinct carcass weight range categories with different prices, provide information for each weight range in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Sale type code (12). Enter the code corresponding to the sale type of the lot of carcass lamb.

(iii) FOB Plant Price (13). Enter the price received for the lamb carcasses in dollars per one hundred pounds, FOB Plant basis.

(iv) Number of carcasses (14). Enter the total number of lamb carcasses in the lot.

(v) Classification code (15) Enter the corresponding USDA quality grade code.

(vi) Yield grade code (16). Enter the corresponding USDA yield grade code.

(vii) Estimated carcass weight range (17a–b). Enter the lowest (17a) and highest (17b) weights (in pounds) which best describes the majority of the lamb carcasses in the lot.

(viii) Delivery period code (18). Enter the code corresponding to the time period the lamb carcasses will deliver.

Appendix E—Mandatory Reporting Forms

The cattle, swine, and lamb mandatory reporting forms follow:

BILLING CODE 3410–02–P

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE DAILY REPORT
(Current Established Prices)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	
11. LOT IDENTIFICATION	
12. SOURCE (1 = Domestic; 2 = Imported)	
13. PURCHASE TYPE CODE	
14. CLASS CODE	
15a. SELLING BASIS (1 = Live; 2 = Dressed)	
15b. SELLING BASIS - Shipment (1 = FOB; 2 = Delivered)	
16. HEAD COUNT	
17a. WEIGHT RANGE - LOW (pounds)	
17b. WEIGHT RANGE - HIGH (pounds)	
18. ESTIMATED AVERAGE WEIGHT (pounds)	
19. AVERAGE PRICE ($/cwt.)	
20. % CHOICE OR BETTER	
21. CLASSIFICATION CODE	

PURCHASE TYPE CODE	CLASS CODE	CLASSIFICATION CODE
1 = NEGOTIATED	1 = MIXED STEER/HEIFER	1 = PRIME
2 = FORMULA MARKETING ARRANGEMENT	2 = STEER	2 = CHOICE
3 = FORWARD CONTRACT	3 = HEIFER	3 = SELECT
	4 = DAIRYBRED STR/HFR	4 = STANDARD
	5 = MIXED STR/HFR/COW	5 = PREMIUM WHITE
	6 = DAIRY COW	6 = CUTTER/CANNER 90%
	7 = BEEF COW	7 = BONER 85%
	8 = MIXED COW	8 = BREAKER 75%
	9 = BULL	9 = BULL 92%

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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22. DRESSING PERCENTAGE	
23. ORIGIN (2-Letter State postal abbr.)	
24a. PREMIUM PAID - WEIGHT ($/cwt.)	
24b. PREMIUM PAID - QUALITY ($/cwt.)	
24c. PREMIUM PAID - YIELD ($/cwt.)	
24d. DISCOUNT PAID - WEIGHT ($/cwt.)	
24e. DISCOUNT PAID - QUALITY ($/cwt.)	
24f. DISCOUNT PAID - YIELD ($/cwt.)	
25a. PACKER FINANCING (1 = yes; 2 = no)	
25b. DELIVERY LOCATION (1 = producer; 2 = packer)	
25c. DELIVERY DATE (1 = producer, 2 = packer)	
25d. DELIVERED (1 = 7 or less; 2 = 8 to 14)	

LS-113 (08-00) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE DAILY REPORT
(Committed and Delivered Cattle)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	
11. LOT IDENTIFICATION	
12. PURCHASING BASIS (1 = Delivered; 2 = Committed)	
13. SOURCE (1 = Domestic; 2 = Imported)	
14. PURCHASE TYPE CODE	
15. CLASS CODE	
16. SELLING BASIS (1 = Live; 2 = Dressed)	

PURCHASE TYPE CODE	CLASS CODE
1 = NEGOTIATED 2 = FORMULA MARKETING ARRANGEMENT 3 = FORWARD CONTRACT	1 = MIXED STEER/HEIFER 2 = STEER 3 = HEIFER 4 = DAIRYBRED STEER/HEIFER 5 = MIXED STR/HFR/COW 6 = DAIRY COW 7 = BEEF COW 8 = MIXED COW 9 = BULL

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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17. HEAD COUNT	
18. ORIGIN (2-Letter State postal abbr.)	
19a. PACKER FINANCING (1 = yes; 2 = no)	
19b. DELIVERY LOCATION (1 = producer; 2 = packer)	
19c. DELIVERY DATE (1 = producer; 2 = packer)	
19d. DELIVERED (1 = Less than 7; 2 = greater than 7 less than 14)	

LS-114 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE WEEKLY REPORT
(Forward Contract and Packer-Owned)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	*(NOT APPLICABLE)*

PRIOR WEEK SLAUGHTERED CATTLE HEAD COUNTS
(Data in this block to be entered once per weekly submission.)

20. DOMESTIC, FORWARD CONTRACT	Head Count	
21. DOMESTIC, FORMULA ARRANGEMENT	Head Count	
22. IMPORTED, FORWARD CONTRACT	Head Count	
23. IMPORTED, FORMULA ARRANGEMENT	Head Count	

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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SLAUGHTERED PACKER-OWNED CATTLE	
11. LOT IDENTIFICATION	
12. SOURCE (1 = Domestic; 2 = Imported)	
13. HEAD COUNT	
14a. ACTUAL CARCASS WEIGHT RANGE - LOW	
14b. ACTUAL CARCASS WEIGHT RANGE - HIGH	
15. ACTUAL AVERAGE CARCASS WEIGHT	
16. AVERAGE DRESSING PERCENTAGE	
17. % YIELD GRADE 3 OR BETTER	
18. % QUALITY GRADE CHOICE OR BETTER	
19. % QUALITY GRADE SELECT	

FORWARD CONTRACT PURCHASED CATTLE	
24. LOT IDENTIFICATION	
25. HEAD COUNT	
26. BASIS LEVEL ($/cwt.)	
27. DELIVERY MONTH (3-letter abbreviation)	

LS-115 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE WEEKLY REPORT
(Formula Purchases)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	*(NOT APPLICABLE)*

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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11. LOT IDENTIFICATION		17a. PREMIUM/DISCOUNT RANGE - LOW ($/cwt.)	
12. SOURCE (1 = Domestic; 2 = Imported)		17b. PREMIUM/DISCOUNT RANGE - HIGH ($/cwt.)	
13. HEAD COUNT		18. PREMIUM/DISCOUNT WEIGHTED AVERAGE ($/cwt.)	
14. TOTAL POUNDS		19a. PACKER FINANCING (1 = yes; 2 = no)	
15. WEIGHTED AVERAGE CARCASS PRICE ($/cwt.)		19b. DELIVERY LOCATION (1 = producer; 2 = packer)	
16a. PRICE RANGE - LOW ($/cwt.)		19c. DELIVERY DATE (1 = producer; 2 = packer)	
16b. PRICE RANGE - HIGH ($/cwt.)			

LS-116 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

CATTLE PREMIUMS AND DISCOUNTS WEEKLY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	*(NOT APPLICABLE)*

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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11. PREMIUM/DISCOUNT - Prime		27. PREMIUM/DISCOUNT - 400-500 lbs. Carcass	
12. PREMIUM/DISCOUNT - Choice		28. PREMIUM/DISCOUNT - 500-550 lbs. Carcass	
13. PREMIUM/DISCOUNT - Select		29. PREMIUM/DISCOUNT - 550-600 lbs. Carcass	
14. PREMIUM/DISCOUNT - Standard		30. PREMIUM/DISCOUNT - 600-900 lbs. Carcass	
15. PREMIUM/DISCOUNT - Avg. Choice or Better		31. PREMIUM/DISCOUNT - 900-950 lbs. Carcass	
16. PREMIUM/DISCOUNT - Dairy-Type		32. PREMIUM/DISCOUNT - 950-1000 lbs. Carcass	
17. PREMIUM/DISCOUNT - Bullock/Stag		33. PREMIUM/DISCOUNT - over 1000 lbs. Carcass	
18. PREMIUM DISCOUNT - Hardbone		34. PREMIUM/DISCOUNT - Hide (Brand Location)	
19. PREMIUM/DISCOUNT - Dark Cutter		35a. PREMIUM/DISCOUNT - Other Description	
20. PREMIUM/DISCOUNT - YG 1.0-2.0 (< = .1" Fat)		35b. PREMIUM/DISCOUNT - Other Value	
21. PREMIUM/DISCOUNT - YG 2.0-2.5 (< = .2" Fat)		36a. PREMIUM/DISCOUNT - Other Description	
22. PREMIUM/DISCOUNT - YG 2.5-3.0 (< = .4" Fat)		36b. PREMIUM/DISCOUNT - Other Value	
23. PREMIUM/DISCOUNT - YG 3.0-3.5 (< = .6" Fat)		37a. PREMIUM/DISCOUNT - Other Description	
24. PREMIUM/DISCOUNT - YG 3.5-4.0 (< = .8" Fat)		37b. PREMIUM/DISCOUNT - Other Value	
25. PREMIUM/DISCOUNT - YG 4.0-5.0 (< = 1.2" Fat)		38a. PREMIUM/DISCOUNT - Other Description	
26. PREMIUM/DISCOUNT - YG 5.0/up (> = 1.2" Fat)		38b. PREMIUM/DISCOUNT - Other Value	

LS-117 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

BOXED BEEF DAILY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	

DELIVERY PERIOD CODE	CLASS CODE	CLASSIFICATION CODE	TRIM SPEC CODE
1 = 0-21 DAYS 2 = 22-60 DAYS 3 = 61-90 DAYS 4 = 91/UP DAYS	1 = MIXED STEER/HEIFER 2 = STEER 3 = HEIFER 4 = DAIRYBRED STR/HFR 5 = MIXED STR/HFR/COW 6 = DAIRY COW 7 = BEEF COW 8 = MIXED COW 9 = BULL	1 = PRIME 2 = CHOICE 3 = SELECT 4 = PREMIUM WHITE 5 = CUTTER/CANNER 90% 6 = BONER 85% 7 = BREAKER 75% 8 = BULL 92% 9 = UNGRADED	1 = 3/4" AVG; 1" MAX 2 = 1/4" AVG; 1/2" MAX 3 = 1/8" AVG; 1/4" MAX 4 = PRACTICALLY FREE; 1/8" MAX 5 = PEELED/DENUDED; 1/8" MAX 6 = PEELED/DENUDED SURFACE MEMBRANE REMOVED; 1/8" MAX

PURCHASE TYPE CODE	BRANDED PRODUCT CODE	
	QUALITY	YIELD
1 = NEGOTIATED 2 = FORMULA MARKETING ARRANGEMENT 3 = FORWARD CONTRACT	1 = PRIME 2 = UPPER 2/3 CHOICE 3 = LOWER 1/3 CHOICE 4 = SELECT	1 = YIELD GRADE 1-3 2 = YIELD GRADE 4

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 8 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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11. LOT IDENTIFICATION OR PURCHASE ORDER NUMBER		18b. BEEF CUT - Description (if IMPS not applicable)	
12. DESTINATION (1 = Domestic; 2 = Exported)		19. TRIM SPECIFICATION CODE	
13. PURCHASE TYPE CODE		20. WEIGHT (1 = Light; 2 = Medium; 3 = Heavy; 4 = Mixed)	
14. DELIVERY PERIOD CODE		21. TOTAL PRODUCT WEIGHT (pounds)	
15. REFRIGERATION (1 = Fresh; 2 = Frozen)		22. FOB PLANT PRICE ($/cwt.)	
16. CLASS CODE		23. USDA CERTIFIED SCHEDULE CODE (if applicable)	
17. CLASSIFICATION CODE		24a. BRANDED PRODUCT CODE - Quality	
18a. BEEF CUT - IMPS Code		24b. BRANDED PRODUCT CODE - Yield	

LS-126 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

SWINE PRIOR DAY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**
11. SLAUGHTERED SWINE - Lot Identification	
12. SLAUGHTERED SWINE - Class Code	
13. SLAUGHTERED SWINE - Purchase Type Code	
14. SLAUGHTERED SWINE - Head Count	
15. SLAUGHTERED SWINE - Base Price ($/cwt.)	
16. SLAUGHTERED SWINE - Average Net Price ($/cwt.)	
17. SLAUGHTERED SWINE - Lowest Net Price ($/cwt.)	
18. SLAUGHTERED SWINE - Highest Net Price ($/cwt.)	
19. SLAUGHTERED SWINE - Average Live Weight (pounds)	
20. SLAUGHTERED SWINE - Avg. Carcass Weight (pounds)	
21. SLAUGHTERED SWINE - Average Sort Loss ($/cwt.)	
22. SLAUGHTERED SWINE - Average Backfat (inches)	
23. SLAUGHTERED SWINE - Average Loin Depth (inches)	
24. SLAUGHTERED SWINE - Average Lean Percentage	

CLASS CODE	PURCHASE TYPE CODE	OWNERSHIP CODE
1 = BARROWS/GILTS	1 = NEGOTIATED	1 = PACKER-OWNED
2 = SOW	2 = OTHER MARKET FORMULA	2 = PACKER-SOLD
3 = BOARS/STAGS	3 = SWINE OR PORK MARKET FORMULA	3 = ALL OTHER
	4 = OTHER PURCHASE ARRANGEMENT	
	5 = PACKER-SOLD NEGOTIATED	
	6 = PACKER-SOLD OTHER MARKET FORMULA	
	7 = PACKER-SOLD SWINE OR PORK MARKET FORMULA	
	8 = PACKER-SOLD OTHER PURCHASE ARRANGEMENT	

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25. PURCHASED SWINE - Lot Identification	
26. PURCHASED SWINE - Ownership Code	
27. PURCHASED SWINE - Class Code	
28. PURCHASED SWINE - Purchase Type Code	
29. PURCHASED SWINE - Head Count	
30. PURCHASED SWINE - Avg. Live Weight (pounds)	
31. PURCHASED SWINE - Base Price ($/cwt.)	

LS-118 (08-00) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

SWINE PRIOR DAY REPORT

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32. SCHEDULED SWINE - Head Count for Day 1		39. SCHEDULED SWINE - Head Count for Day 8	
33. SCHEDULED SWINE - Head Count for Day 2		40. SCHEDULED SWINE - Head Count for Day 9	
34. SCHEDULED SWINE - Head Count for Day 3		41. SCHEDULED SWINE - Head Count for Day 10	
35. SCHEDULED SWINE - Head Count for Day 4		42. SCHEDULED SWINE - Head Count for Day 11	
36. SCHEDULED SWINE - Head Count for Day 5		43. SCHEDULED SWINE - Head Count for Day 12	
37. SCHEDULED SWINE - Head Count for Day 6		44. SCHEDULED SWINE - Head Count for Day 13	
38. SCHEDULED SWINE - Head Count for Day 7		45. SCHEDULED SWINE - Head Count for Day 14	

LS-118 Reverse (08-00) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

SWINE DAILY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	

CLASS CODE	PURCHASE TYPE CODE
1 = BARROWS/GILTS	1 = NEGOTIATED
2 = SOW	2 = OTHER MARKET FORMULA
3 = BOARS/STAGS	3 = SWINE OR PORK MARKET FORMULA
	4 = OTHER PURCHASE ARRANGEMENT
	5 = PACKER-SOLD NEGOTIATED
	6 = PACKER-SOLD OTHER MARKET FORMULA
	7 = PACKER-SOLD SWINE OR PORK MARKET FORMULA
	8 = PACKER-SOLD OTHER PURCHASE ARRANGEMENT

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11. PURCHASED SWINE - Lot Identification		15. PURCHASED SWINE - Head Count	
12. PURCHASED SWINE - Purchase Type Code		16. PURCHASED SWINE - Base Price ($/cwt.)	
13. PURCHASED SWINE - Live Weight		17. PURCHASED SWINE - Origin (2-letter State postal abbr.)	
14. PURCHASED SWINE - Class Code			

PACKER-SOLD SWINE PURCHASES		ALL OTHER SWINE PURCHASES	
18. EST. NEGOTIATED PURCHASES Head Count		26. EST. NEGOTIATED PURCHASES Head Count	
19. EST. OTHER MARKET FORMULA PURCHASES Head Count		27. EST. OTHER MARKET FORMULA PURCHASES Head Count	
20. EST. SWINE/PORK MARKET FORMULA PURCHASES Head Count		28. EST. SWINE/PORK MARKET FORMULA PURCHASES Head Count	
21. EST. OTHER ARRANGEMENT PURCHASES Head Count		29. EST. OTHER ARRANGEMENT PURCHASES Head Count	
22. ACT. NEGOTIATED PURCHASES Head Count		30. ACT. NEGOTIATED PURCHASES Head Count	
23. ACT. OTHER MARKET FORMULA PURCHASES Head Count		31. ACT. OTHER MARKET FORMULA PURCHASES Head Count	
24. ACT. SWINE/PORK MARKET FORMULA PURCHASES Head Count		32. ACT. SWINE/PORK MARKET FORMULA PURCHASES Head Count	
25. ACT OTHER ARRANGEMENT PURCHASES Head Count		33. ACT OTHER ARRANGEMENT PURCHASES Head Count	

LS-119 (08-00) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

WEEKLY NONCARCASS MERIT PREMIUM SWINE REPORTING

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

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11a. NONCARCASS MERIT - Volume - Low Range		17a. NONCARCASS MERIT - Other Description	
11b. NONCARCASS MERIT - Volume - High Range		17b. NONCARCASS MERIT - Other Value - Low Range	
12a. NONCARCASS MERIT - Transportation - Low Range		17c. NONCARCASS MERIT - Other Value - High Range	
12b. NONCARCASS MERIT - Transportation - High Range		18a. NONCARCASS MERIT - Other Description	
13a. NONCARCASS MERIT - Delivery Timing - Low Range		18b. NONCARCASS MERIT - Other Value - Low Range	
13b. NONCARCASS MERIT - Delivery Timing - High Range		18c. NONCARCASS MERIT - Other Value - High Range	
14a. NONCARCASS MERIT - Breed - Low Range		19a. NONCARCASS MERIT - Other Description	
14b. NONCARCASS MERIT - Breed - High Range		19b. NONCARCASS MERIT - Other Value - Low Range	
15a. NONCARCASS MERIT - NPPC Quality Assurance Low Range		19c. NONCARCASS MERIT - Other Value - High Range	
15b. NONCARCASS MERIT - NPPC Quality Assurance High Range		20a. NONCARCASS MERIT - Other Description	
16a. NONCARCASS MERIT - Other Description		20b. NONCARCASS MERIT - Other Value - Low Range	
16b. NONCARCASS MERIT - Other Value - Low Range		20c. NONCARCASS MERIT - Other Value - High Range	
16c. NONCARCASS MERIT - Other Value - High Range			

LS-120 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB DAILY REPORT
(Current Established Prices)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

PURCHASE TYPE CODE	CLASS CODE	CLASSIFICATION CODE	PELT CODE
1 = NEGOTIATED	1 = SLAUGHTER LAMBS	1 = PRIME	1 = WOOLED
2 = FORMULA MARKETING ARRANGEMENT	2 = EWES	2 = CHOICE	2 = #1 FALL SHORN
3 = FORWARD CONTRACT	3 = RAMS/STAGS	3 = GOOD	3 = #2
		4 = UTILITY	4 = #3-4
		5 = CULL	

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11. LOT IDENTIFICATION		22. DRESSING PERCENTAGE	
12. SOURCE (1 = Domestic; 2 = Imported)		23. ORIGIN (2-letter State postal abbr.)	
13. PURCHASE TYPE CODE		24. PELT CODE	
14. CLASS CODE		25a. PREMIUM PAID - WEIGHT ($/cwt.)	
15a. SELLING BASIS (1 = Live; 2 = Dressed)		25b. PREMIUM PAID - QUALITY ($/cwt.)	
15b. SELLING BASIS SHIPMENT (1 = FOB; 2 = Delivered)		25c. PREMIUM PAID - YIELD ($/cwt.)	
16. HEAD COUNT		25d. DISCOUNT PAID - WEIGHT ($/cwt.)	
17a. WEIGHT RANGE - LOW (pounds)		25e. DISCOUNT PAID - QUALITY ($/cwt.)	
17b. WEIGHT RANGE - HIGH (pounds)		25f. DISCOUNT PAID - YIELD ($/cwt.)	
18. ESTIMATED AVERAGE WEIGHT (pounds)		26a. PACKER FINANCING (1 = yes; 2 = no)	
19. AVERAGE PRICE ($/cwt.)		26b. DELIVERY LOCATION (1 = producer; 2 = packer)	
20. % CHOICE OR BETTER		26c. DELIVERY DATE (1 = producer; 2 = packer)	
21. CLASSIFICATION CODE		26d. DELIVERED (1 = 7 or less; 2 = 8 to 14)	

LS-121 (08-00) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB DAILY REPORT
(Committed and Delivered Lambs)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

PURCHASE TYPE CODE

1 = NEGOTIATED

2 = FORMULA MARKETING ARRANGEMENT

3 = FORWARD CONTRACT

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11. LOT IDENTIFICATION		17. ORIGIN (2-Letter State postal abbr.)	
12. PURCHASE BASIS (1 = Delivered; 2 = Committed)		18a. PACKER FINANCING (1 = yes; 2 = no)	
13. SOURCE (1 = Domestic; 2 = Imported)		18b. DELIVERY LOCATION (1 = producer; 2 = packer)	
14. PURCHASE TYPE CODE		18c. DELIVERY DATE (1 = producer; 2 = packer)	
15. SELLING BASIS (1 = Live; 2 = Dressed)		18d. DELIVERED (1 = 7 or less; 2 = 8 to 14)	
16. HEAD COUNT			

LS-122 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB WEEKLY REPORT
(Forward Contract and Packer-Owned)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	(NOT APPLICABLE)

PRIOR WEEK SLAUGHTERED LAMB HEAD COUNTS
(Data in this block to be entered once per weekly submission.)

20. DOMESTIC, FORWARD CONTRACT	Head Count	
21. DOMESTIC, FORMULA ARRANGEMENT	Head Count	
22. IMPORTED, FORWARD CONTRACT	Head Count	
23. IMPORTED, FORMULA ARRANGEMENT	Head Count	

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SLAUGHTERED PACKER-OWNED LAMBS

11. LOT IDENTIFICATION	
12. SOURCE (1 = Domestic; 2 = Imported)	
13. HEAD COUNT	
14a. ACTUAL CARCASS WEIGHT RANGE - LOW	
14b. ACTUAL CARCASS WEIGHT RANGE - HIGH	
15. ACTUAL AVERAGE CARCASS WEIGHT	
16. AVERAGE DRESSING PERCENTAGE	
17. % YIELD GRADE 3 OR BETTER	
18. % QUALITY GRADE CHOICE OR BETTER	
19. % QUALITY GRADE GOOD	

FORWARD CONTRACT PURCHASED LAMBS

24. LOT IDENTIFICATION	
25. HEAD COUNT	
26. BASIS LEVEL ($/cwt.)	
27. DELIVERY MONTH (3-letter abbreviation)	

LS-123 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB WEEKLY REPORT
(Formula Purchases)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

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11. LOT IDENTIFICATION		17a. PREMIUM/DISCOUNT RANGE - LOW ($/cwt.)	
12. SOURCE (1 = Domestic; 2 = Imported)		17b. PREMIUM/DISCOUNT RANGE - HIGH ($/cwt.)	
13. HEAD COUNT		18. PREMIUM/DISCOUNT WEIGHTED AVERAGE ($/cwt.)	
14. TOTAL POUNDS		19a. PACKER FINANCING (1 = yes; 2 = no)	
15. WEIGHTED AVERAGE CARCASS PRICE ($/cwt.)		19b. DELIVERY LOCATION (1 = producer; 2 = packer)	
16a. PRICE RANGE - LOW ($/cwt.)		19c. DELIVERY DATE (1 = producer; 2 = packer)	
16b. PRICE RANGE - HIGH ($/cwt.)			

LS-124 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LAMB PREMIUMS AND DISCOUNTS WEEKLY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

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The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

11. PREMIUM/DISCOUNT - Prime		27. PREMIUM/DISCOUNT - 75-85 lbs. Carcass	
12. PREMIUM/DISCOUNT - Choice		28. PREMIUM/DISCOUNT - Over 85 lbs. Carcass	
13. PREMIUM/DISCOUNT - Good		29. PREMIUM/DISCOUNT - Wooled Pelt	
14. PREMIUM/DISCOUNT - Standard		30. PREMIUM/DISCOUNT - #1 Fall Shorn Pelt	
15. PREMIUM/DISCOUNT - Choice YG 2 or Better		31. PREMIUM/DISCOUNT - #2 Fall Shorn Pelt	
16. PREMIUM/DISCOUNT - Bucky		32. PREMIUM/DISCOUNT - #3-4 Fall Shorn Pelt	
17. PREMIUM/DISCOUNT - Yearling or Older		33a. PREMIUM/DISCOUNT - Other Description	
18. PREMIUM DISCOUNT - YG 1.0-2.0 (< = .16" Fat)		33b. PREMIUM/DISCOUNT - Other Value	
19. PREMIUM/DISCOUNT - YG 2.0-3.0 (< = .26" Fat)		34a. PREMIUM/DISCOUNT - Other Description	
20. PREMIUM/DISCOUNT - YG 3.0-4.0 (< = .36" Fat)		34b. PREMIUM/DISCOUNT - Other Value	
21. PREMIUM/DISCOUNT - YG 4.0-5.0 (< = .46" Fat)		35a. PREMIUM/DISCOUNT - Other Description	
22. PREMIUM/DISCOUNT - YG 5.0/up (> = .46" Fat)		35b. PREMIUM/DISCOUNT - Other Value	
23. PREMIUM/DISCOUNT - Under 45 lbs. Carcass		36a. PREMIUM/DISCOUNT - Other Description	
24. PREMIUM/DISCOUNT - 45-55 lbs. Carcass		36b. PREMIUM/DISCOUNT - Other Value	
25. PREMIUM/DISCOUNT - 55-65 lbs Carcass		37a. PREMIUM/DISCOUNT - Other Description	
26. PREMIUM/DISCOUNT - 65-75 lbs. Carcass		37b. PREMIUM/DISCOUNT - Other Value	

LS-125 (07-00) *Destroy previous edition dated 02-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

BOXED LAMB DAILY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

PURCHASE/SALE TYPE CODE	DELIVERY PERIOD CODE	CLASSIFICATION CODE
1 = NEGOTIATED 2 = FORMULA MARKETING ARRANGEMENT 3 = FORWARD CONTRACT	1 = 0-21 DAYS 2 = 22-60 DAYS 3 = 61-90 DAYS 4 = 91/UP DAYS	1 = PRIME 2 = CHOICE 3 = PRIME/CHOICE 4 = GOOD 5 = UNGRADED

BRANDED PRODUCT CODE	
QUALITY	YIELD
1 = PRIME 2 = CHOICE	1 = YIELD GRADE 2 or BETTER 2 = YIELD GRADE 1-3 3 = YIELD GRADE 4

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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11. LOT IDENTIFICATION OR PURCHASE ORDER NUMBER		18b. LAMB CUT - Description (if IMPS not applicable)	
12. DESTINATION/SOURCE (1 = Domestic; 2 = Imported)		19. WEIGHT (1 = Light; 2 = Medium; 3 = Heavy; 4 = Mixed)	
13. TRANSACTION BASIS (1 = Purchase; 2 = Sale)		20. TOTAL PRODUCT WEIGHT (pounds)	
14. PURCHASE/SALE TYPE CODE		21. FOB PLANT PRICE ($/cwt.)	
15. DELIVERY PERIOD CODE		22. USDA CERTIFIED SCHEDULE CODE (if applicable)	
16. REFRIGERATION (1 = Fresh; 2 = Frozen)		23a. BRANDED PRODUCT CODE - Quality	
17. CLASSIFICATION CODE		23b. BRANDED PRODUCT CODE - Yield	
18a. LAMB CUT - IMPS Code			

LS-128 (11-00) *Destroy previous edition dated 08-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LAMB CARCASS REPORT

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

		SALE TYPE CODE	DELIVERY PERIOD CODE	CLASSIFICATION CODE	YIELD GRADE CODE
1. IDENTIFICATION NUMBER		1 = NEGOTIATED 2 = FORMULA MARKETING ARRANGEMENT 3 = FORWARD CONTRACT	1 = 0-14 DAYS 2 = 15/up DAYS	1 = PRIME 2 = CHOICE 3 = PRIME/CHOICE 4 = GOOD 5 = UNGRADED	1 = YG 1 2 = YG 2 3 = YG 3 4 = YG 4 5 = YG 1-4 6 = YG 1-3 7 = YG 1-2 8 = YG 4-5 9 = YG 3-5
2. COMPANY NAME					
3. PLANT STREET ADDRESS					
4. PLANT CITY					
5. PLANT STATE					
6. PLANT ZIP CODE					
7. CONTACT NAME					
8. PHONE NUMBER (include area code)					
9. REPORTING DATE (mm/dd/yyyy)					
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	(NOT APPLICABLE)				

11. LOT IDENTIFICATION OR PURCHASE ORDER NUMBER		16. YIELD GRADE CODE	
12. SALE TYPE CODE		17a. EST. CARCASS WEIGHT RANGE - Low	
13. FOB PLANT PRICE ($/cwt.)		17b. EST. CARCASS WEIGHT RANGE - High	
14. NUMBER OF CARCASSES		18. DELIVERY PERIOD CODE	
15. CLASSIFICATION CODE			

LS-129 (07-00) *Destroy previous edition dated 02-00.*

[FR Doc. 00–29987 Filed 11–28–00; 1:00 pm]
BILLING CODE 3410–02–C

Federal Register

Friday,
December 1, 2000

Part VI

Environmental Protection Agency

Forty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41053; FRL–6399–5]

Forty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Forty-Fifth Report to the Administrator of the EPA on November 30, 1999. In the 45th Report, which is included with this notice, the ITC: Describes an EPA effort to organize mostly discrete organic chemicals from the TSCA Inventory into non-Confidential Business Information (CBI) production/importation volume categories; announces the public availability of information on chemicals that are being screened for persistence and bioconcentration potential; requests information from the manufacturers, importers, and processors of these chemicals; and removes 119 chemicals from the *Priority Testing List*.

EPA invites interested persons to submit written comments on the Report.

DATES: Comments, identified by docket control number OPPTS–41053, must be received on or before January 2, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41053 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John D. Walker, ITC Executive Director (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1825; fax: (202) 260–7895; e-mail address: walker.johnd@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or 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/.

You may also access additional information about the ITC and the TSCA testing program through the web site for Office of Pollution Prevention and Toxics (OPPT) at http://www.epa.gov/opptintr/, or go directly to the ITC Home Page at http://www.epa.gov/opptintr/itc/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–41053. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as 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 TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41053 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–41053. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the ITC 45th Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Make sure to submit your comments by the deadline in this notice.
6. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

1. *The ITC's* 45th *Report.* The 45th Report was received by the EPA Administrator on November 30, 1999, and is included in this notice. In the 45th Report, the ITC:

i. Describes an EPA effort to organize mostly discrete organic chemicals from the TSCA Inventory into non-CBI production/importation volume categories.

ii. Announces the public availability of information on chemicals that are being screened for persistence and bioconcentration potential.

iii. Requests information from the manufacturers, importers, and processors of these chemicals.

2. *Status of the Priority Testing List.* The current TSCA section 4(e) *Priority Testing List* as of November 1999 can be found in Table 1 of the 45th ITC Report which is included in this notice. In the 45th ITC Report, the ITC removed 119 chemicals from the TSCA section 4(e) *Priority Testing List.* These chemicals are discussed in the 45th Report.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: November 20, 2000.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Forty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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Summary

This is the 45th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA). In this Report the ITC is:

1. Describing an EPA effort to organize mostly discrete organic chemicals from the TSCA Inventory into non-Confidential Business Information (CBI) production/importation volume categories.
2. Announcing the public availability of information on chemicals that are being screened for persistence and bioconcentration potential.
3. Requesting information from the manufacturers, importers, and processors of these chemicals by February 29, 2000.
4. Removing 119 chemicals from the *Priority Testing List.*

The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (NOVEMBER 1999)[1]

Report	Date	Chemical/group	Action
28	May 1991	Chemicals with Low Confidence Reference Dose (RfD) Acetone Thiophenol	Designated
30	May 1992	5 Siloxanes	Recommended
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	16 Alkylphenols and 3 alkylphenol polyethoxylates[2]	Recommended
39	November 1996	15 Nonylphenol ethoxylates and 8 alkylphenol polyethoxylates[2]	Recommended
41	November 1997	18 Alkylphenols, 5 polyalkyphenols and 6 alkylphenol polyethoxylates[2]	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole[2]	Recommended
42	May 1998	Glycoluril[2]	Recommended
42	May 1998	Methylal[2]	Recommended
42	May 1998	Ethyl silicate[2]	Recommended

1 The *Priority Testing List* is available from the ITC's web site (http://www.epa.gov/opptintr/itc).

2 Data requested through the ITC's Voluntary Information Submissions Innovative Online Network (VISION) (see http://www.epa.gov/opptintr/itc/vision.htm).

I. Background

The ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq*. (15 U.S.C. 2601 *et seq*.)). Since its creation in 1976, the ITC has submitted 44 semi-annual (May and November) Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. In 1989, the ITC began recommending chemical substances for information reporting, screening, and testing to meet the data needs of its member U.S. Government organizations. ITC Reports are available from the ITC's web site (http://www.epa.gov/opptintr/itc) within a few days of submission to the Administrator and from http://www.epa.gov/fedrgstr after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff and contract support provided by EPA. ITC members and staff are listed at the end of this Report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Rules

Following receipt of the ITC's Report by the EPA Administrator and addition of chemicals to the *Priority Testing List*, the EPA's Office of Pollution Prevention and Toxics (OPPT) promulgates TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) and TSCA section 8(d) Health and Safety Data (HaSD) rules for chemicals added to the *Priority Testing List*. These rules require producers and importers of chemicals recommended by the ITC to submit production and exposure reports under TSCA section 8(a) and producers, importers, and processors of chemicals recommended by the ITC to submit unpublished health and safety studies under TSCA section 8(d). These rules are automatically promulgated by OPPT unless requested not to do so by the ITC.

B. ITC's Use of TSCA Section 8 and ''Other Information''

The ITC reviews the TSCA section 8(a) PAIR reports, TSCA section 8(d) HaSD studies and ''other information'' that becomes available after the ITC adds chemicals to the *Priority Testing List*. ''Other information'' includes TSCA section 4(a) and 4(d) studies, TSCA section 8(c) submissions, TSCA section 8(e) ''substantial risk'' notices, ''For Your Information'' (FYI) submissions, ITC voluntary submissions, unpublished data submitted to U.S. Government organizations represented on the ITC, published papers, as well as use, exposure, effects, and persistence data that are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The ITC reviews this information and determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List*, or if recommendations should be changed to designations.

C. Promoting More Efficient Use of Information Submission Resources

VISION is accessible through the world wide web (http://www.epa.gov/opptintr/itc/vision.htm). VISION includes the Voluntary Information Submissions Policy (VISP) and links to the TSCA Electronic HaSD Reporting Form (http://www.epa.gov/opptintr/newchms/hasd.htm). The VISP provides examples of data needed by ITC member U.S. Government organizations, examples of studies that should not be submitted, the 60–, 90–, and 120–day milestones for submitting information, guidelines for using the TSCA Electronic HaSD Reporting Form and instructions for electronically submitting full studies. The TSCA Electronic HaSD Reporting Form is used to provide electronic information on ITC voluntary submissions, TSCA section 8(d) studies (to meet data needs of the ITC member U.S. Government organizations), FYI, and TSCA section 8(e) studies.

In conjunction with this Report, the ITC will be announcing the public availability of information on chemicals that are being screened for persistence and bioconcentration potential and requesting specific use and exposure data for these chemicals from the manufacturers, importers, and processors. In addition, the ITC is requesting measured bioconcentration data for chemicals with estimated bioconcentration factors (BCFs) >1,000 from the manufacturers, importers, and processors of these chemicals. The ITC is requesting that the use, exposure, and bioconcentration data be submitted before February 29, 2000, consistent with the 90–day milestone of the VISP (http://www.epa.gov/opptintr/itc/visp.htm) for submitting data through the TSCA Electronic HaSD Reporting Form.

D. Request to Promulgate a TSCA Section 8(d) Rule

The ITC encourages producers, importers, processors, and users of its recommended chemicals to use VISION to voluntarily provide electronic information and establish a dialogue with the ITC to discuss needed data. If the ITC does not receive voluntary electronic information submissions to meet its data needs, then it will ask the EPA to promulgate a TSCA section 8(d) HaSD rule to determine if there are unpublished data to meet those needs. The ITC strongly encourages those companies that must respond to a TSCA section 8(d) rule to provide data by using the TSCA Electronic HaSD Reporting Form. At this time, the ITC is not adding any chemicals to the *Priority Testing List* and therefore not requesting the EPA to promulgate a TSCA section 8(d) rule.

III. ITC's Activities During This Reporting Period (May to November 1999)

A. Organizing TSCA Inventory Chemicals into Production/Importation Volume Categories

The EPA will be organizing discrete organic chemicals from the TSCA Inventory into non-Confidential Business Information (CBI) production/importation volume categories based on information submitted to EPA under the Inventory Update Rules (IURs). These categories could include:

Very Low Production Volume (VLPV)—no production/importation volume data reported to EPA.

Low Production Volume (LPV)—production/importation volumes ≥10,000 pounds (lbs) and <100,000 lbs.

Moderate Production Volume (MPV)—production/importation volumes ≥100,000 lbs and <1 million lbs.

High Production Volume (HPV)—production/importation volumes ≥1 million lbs and <1 billion lbs.

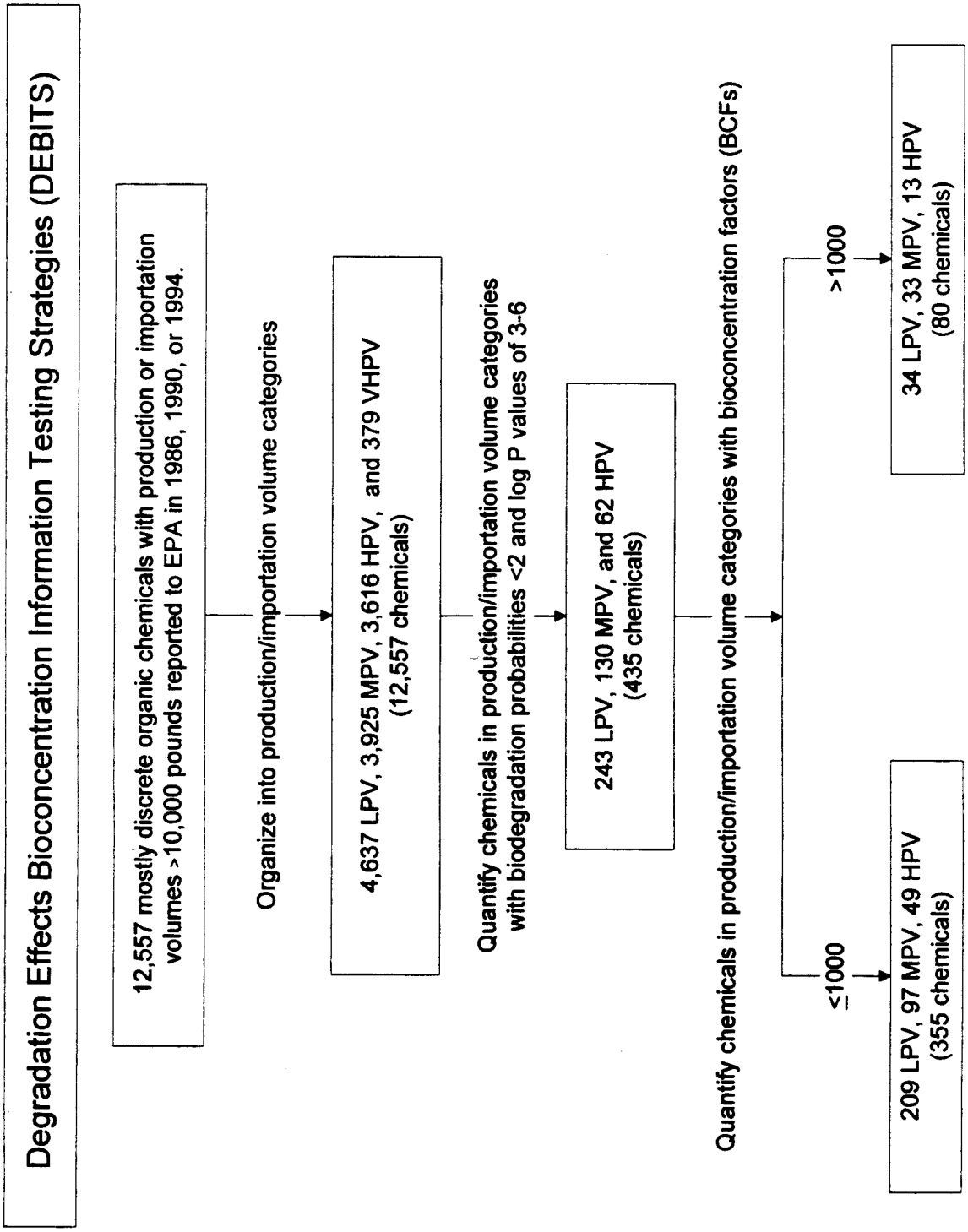
Very High Production Volume (VHPV)—production/importation volumes ≥1 billion lbs.

These categories are currently based on data reported to EPA in response to the 1986, 1990, 1994, or 1998 IURs (EPA, 1986, 1990, 1994, or 1998). It should be noted that the VLPV and LPV categories were created to accommodate a flexible lowest-reporting threshold. Based on the 1986, 1990, 1994, and 1998 IURs the lowest-reporting threshold is 10,000 lbs. However, based on a proposed IUR, this threshold could increase to 25,000 lbs in 2002 (EPA, 1999a).

B. Screening Chemicals for Persistence and Bioconcentration Potential

During this reporting period, the ITC implemented strategies to screen chemicals for persistence and bioconcentration potential. These strategies are referred to as Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) because they facilitate testing for the availability of degradation, ecological, or human health effects and bioconcentration information. DEBITS can be applied to any group of discrete organic chemicals. This Report describes the use of DEBITS to screen discrete organic TSCA Inventory chemicals with U.S. production or importation volumes >10,000 lbs/year for persistence and bioconcentration potential (Figure 1).

Figure 1


Degradation Effects Bioconcentration Information Testing Strategies (DEBITS)
12,557 mostly discrete organic chemicals with production or importation volumes >10,000 pounds reported to EPA in 1986, 1990, or 1994.
Organize into production/importation volume categories
4,637 LPV, 3,925 MPV, 3,616 HPV, and 379 VHPV (12,557 chemicals)
Quantify chemicals in production/importation volume categories with biodegradation probabilities <2 and log P values of 3-6
243 LPV, 130 MPV, and 62 HPV (435 chemicals)
Quantify chemicals in production/importation volume categories with bioconcentration factors (BCFs)
≤1000
209 LPV, 97 MPV, 49 HPV (355 chemicals)
>1000
34 LPV, 33 MPV, 13 HPV (80 chemicals)

The ITC will continue to develop DEBITS as part of an effort to screen chemicals for potential to persist, bioconcentrate, and cause ecological or human health effects. As part of this effort, Structure-Activity Relationships (SARs) are likely to be created to predict toxicity and promote more efficient use of chemical testing resources. SARs are used to screen for chemicals that are structurally related to chemicals which are known to be toxic or for which the mode of toxic action is known, but for which there are few, if any, toxicity data, especially data that are of interest to the U.S. Government organizations represented on the ITC.

1. *Incorporating non-CBI production/importation volume categories into DEBITS*. Non-CBI production/importation volume categories were incorporated into DEBITS to facilitate creation of SARs that can predict toxicity across production/importation volume categories, e.g., predicting toxicity of LPV or MPV chemicals from structurally related HPV or VHPV chemicals. The non-CBI production/importation volume categories that were incorporated into DEBITS were developed from 1986, 1990, and 1994 IUR data, because only these data were available when the ITC implemented DEBITS. These data were reported for 12,557 mostly discrete organic chemicals with production/importation volumes >10,000 lbs that were associated with 4 non-CBI production/importation volume categories (Figure 1).

The ITC recognizes the historical significance of obtaining basic ecological effects, environmental fate or health effects data on chemicals with international production or importation volumes >1 million lbs/year that was established by the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) program (http://www.oecd.org). The ITC also recognizes the relevance of EPA's HPV Chemical Challenge program (http://www.epa.gov/opptintr/chemrtk/volchall.htm) to continue that tradition for chemicals with U.S. production or importation volumes >1 million lbs/year. Nonetheless, the ITC realizes the importance of considering chemicals in VLPV, LPV, and MPV categories, because they are likely to have: Even fewer basic ecological effects, environmental fate or health effects data, speciality chemical uses in consumer or other end-use products, and a need for SARs that can be used to predict persistence, bioconcentration, or toxicity from chemicals in HPV and VHPV categories that are related by structure or mode of toxic action and for which data are available or being developed through the OECD SIDS, HPV Chemical Challenge, and related programs.

2. *Predicting persistence*. The ITC used estimates of ultimate aerobic biodegradation potential (degradation of a chemical by microorganisms (mostly bacteria) under aerobic conditions to carbon dioxide and cellular material) as a preliminary screen to predict a chemical's persistence in the environment. Syracuse Research Corporation's BIOWIN program was used to provide aerobic biodegradation probability predictions (http://esc-plaza.syrres.com/interkow/biodeg.htm). These predictions were based on expert opinions that different structural groups could be used to estimate a chemical's biodegradation potential (Boethling et al., 1994). As a criterion for persistence, the ITC selected chemicals with biodegradation probabilities <2 because it has been predicted that these chemicals would persist for at least 2–3 months in sediment, soil, and water. This screening criterion is more conservative than the 2–month persistence half-life criterion used by EPA (EPA, 1999b). Quantitative Structure Activity Relationships (QSARs) described by Howard et al. (2000) were used to estimate persistence in air.

3. *Screening chemicals for bioconcentration potential*. The ITC used log octanol-water partition coefficients (log P) values between 3–6 to select a group of non-ionic, discrete organic chemicals that could be screened for bioconcentration potential. Log P values 3–6 were based on data of Bintein and Devillers (1993). Syracuse Research Corporation's KOWWIN program was used to provide measured and estimated log P values (http://esc-plaza.syrres.com/interkow/logkow.htm). The KOWWIN program is based on data indicating that different structural groups quantitatively contribute to a chemical's ability to partition to water or octanol (Meylan and Howard, 1995).

A BCF is the ratio of the concentration of a chemical in tissues of organisms (almost always aquatic organisms and mostly fish) to the concentration of a chemical in water at steady state. Syracuse Research Corporation's BCFWIN program was used to provide measured and estimated BCF values (http://esc-plaza.syrres.com/interkow/bcfwin.htm). The program is based on the methods of Meylan et al. (1999). The ITC used a BCF >1,000 to screen chemicals for bioconcentration potential. A BCF >1,000 is used by the EPA, International Joint Commission (IJC) and others (EPA, 1999b; IJC, 1993) .

Of the 12,557 chemicals with production/importation volumes >10,000 lbs, 435 have biodegradation probabilities <2 and log P values of 3–6, 355 have BCFs ≤1,000 and 80 have BCFs >1,000 (Figure 1).

C. Soliciting Measured Bioconcentration Data for Chemicals With BCFs >1,000

Of the 80 chemicals with BCFs >1,000, the ITC will list chemicals with estimated BCFs on its web site and provide opportunities for manufacturers, importers, and processors of these chemicals to voluntarily submit measured bioconcentration data through VISION using the TSCA Electronic HaSD Reporting Form (see Unit II. C. of this Report for more details). The ITC would appreciate receiving any measured bioconcentration data and information on methods for making those measurements before February 29, 2000, after which time, the ITC will consider asking EPA to promulgate a TSCA section 8(d) rule to require submission of these data.

D. Soliciting Use and Exposure Information

Several sources were searched in an attempt to obtain use information for the 435 chemicals (Ashford, 1994; Budavari, 1996; Clayton and Clayton, 1993–1994; Kirk-Othmer, 1991–1998; Lewis, 1993; Ullmann, 1985–1994). In addition, sites on the world wide web and EPA's Use Cluster Scoring System were searched. Uses were identified for only about one third of the 435 chemicals; they were general and may not be current. The ITC needs more specific information on uses and exposures for many of these chemicals to evaluate potential for environmental releases and human exposures, e.g., are any of the chemicals used as on-site intermediates in closed production processes. Without this information, the ITC can only use production/importation volume categories as indicators of potential environmental releases and human exposures.

The ITC will list chemicals for which it needs current use and exposure information on its web site to provide an opportunity for manufacturers, importers, and processors of these chemicals to voluntarily provide more specific use and exposure information. This information should be submitted through VISION using section 3.2 of the TSCA Electronic HaSD Reporting Form (see Unit II. C. of this Report). The ITC will consider any use and exposure information that is submitted before February 29, 2000, after which time, the ITC will consider asking EPA to promulgate a TSCA section 8(a) rule to require submission of data.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Removed From the Priority Testing List

1. *Isocyanates*. In its 26th Report, the ITC added 43 isocyanates to the *Priority Testing List* and recommended them for physical and chemical property testing based on U.S. Government data needs (55 FR 23050, June 5, 1990). In its 35th and 37th Reports, the ITC removed 28 and 5 isocyanates from the *Priority Testing List*, respectively (59 FR 67596, December 29, 1994 (FRL–4923–2); 61 FR 4188, February 2, 1996 (FRL–4991–6)). In its 37th Report, the ITC also solicited consumer use information for 9 of 10 isocyanates (9 diisocyanates) remaining on the *Priority Testing List* and announced that the review of isocyanates was being expanded from information on physical and chemical properties to exposures, health effects and SARs. In November 1996, the ITC established a Dialogue Group with the Diisocyanates Panel of the Chemical Manufacturers Association (CMA). The Panel provided the ITC with unpublished physical and chemical property data and as a result 2 more isocyanates were removed from the *Priority Testing List* in the ITC's 40th Report (62 FR 30580, June 4, 1997 (FRL–5718–3)). In addition, the Panel provided the ITC with extensive product use information on the diisocyanates. At this time, the ITC is removing the remaining eight isocyanates from the *Priority Testing List*, because:

i. Two of the eight isocyanates are being tested under the OECD SIDS program.

ii. The requested consumer use information has been provided to the ITC.

iii. All eight isocyanates remaining on the *Priority Testing List* are in the EPA's HPV Chemical Challenge program. The SIDS and HPV programs are likely to provide basic

ecological effects, environmental fate, and health effects data for these eight isocyanates.

2. *Aldehydes*. In its 27th Report, the ITC added 89 aldehydes to the *Priority Testing List* and recommended them for ecological effects testing based on U.S. Government data needs. In addition, the ITC deferred testing for 429 aldehydes because they had production/importation volumes <10,000 lbs in 1986 (56 FR 9534, March 6, 1991). In its 35th Report, the ITC removed 27 of the 89 aldehydes from the *Priority Testing List*. In this 45th Report, the ITC is removing the remaining 62 aldehydes from the *Priority Testing List* because 10 of 62 aldehydes are being tested under the OECD SIDS program, 30 are in the EPA's HPV Chemical Challenge program or because SARs have been created (since the chemicals were recommended) to predict some ecological effects (Karabunarliev et al., 1996; Schultz et al., 1994; Walker and Printup, 2000; Walker et al., 2000). The SIDS and HPV programs and SARs are likely to provide basic data for some of these 62 aldehydes.

3. *Chemicals with insufficient dermal absorption rate data*. In its 31st, 32nd, and 35th Reports, the ITC added 24, 34, and 25 chemicals, respectively, to the *Priority Testing List* and designated them for testing to develop dermal absorption rate data based on U.S. Government data needs (58 FR 26898, May 5, 1993; 58 FR 38490, July 16, 1993; 59 FR 67596, December 29, 1994). In previous Reports, the ITC removed 3 of the designated chemicals from the *Priority Testing List* (59 FR 35720, July 13, 1994 (FRL–4870–4); 60 FR 42982, August 17, 1995 (FRL–4965–6)). In this 45th Report, the ITC is removing 11, 16 and 20 chemicals (a total of 47 chemicals) from the *Priority Testing List*, that were designated in the ITC's 31st, 32nd, and 35th Reports, respectively. The ITC is removing 47 of the 80 chemicals on the *Priority Testing List* with insufficient dermal absorption rate data, because EPA published a June 9, 1999, **Federal Register** notice (64 FR 31074) (FRL–5760–3) proposing dermal absorption rate testing for these chemicals.

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VI. TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Brad Campbell, Member
Department of Commerce
National Institute of Standards and Technology
Barbara C. Levin, Alternate
National Oceanographic and Atmospheric Administration
Nancy Foster, Member
Teri Rowles, Alternate
Richard S. Artz, Alternate
Environmental Protection Agency
Paul Campanella, Member
David R. Williams, Alternate
National Cancer Institute
Harry Seifried, Member
Victor Fung, Alternate
National Institute of Environmental Health Sciences
William Eastin, Member, Chair
H.B. Matthews, Alternate
National Institute for Occupational Safety and Health
Albert E. Munson, Member
Mark Toraason, Alternate
National Science Foundation
A. Frederick Thompson, Member
Marge Cavanaugh, Alternate
Occupational Safety and Health Administration
Val H. Schaeffer, Member
Lyn Penniman, Alternate

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry
William Cibulas, Member
Consumer Product Safety Commission
Jacqueline Ferrante, Member, Vice Chair
Department of Agriculture
Clifford P. Rice, Member
Department of Defense
Barbara Larcom, Member
Janet Whaley, Alternate
Jose Centeno, Alternate

Department of the Interior
Barnett A. Rattner, Member
Food and Drug Administration
Raju Kammula, Member
Ronald Lorentzen, Alternate
David Hatten, Alternate
National Library of Medicine
Vera W. Hudson, Member
National Toxicology Program
NIEHS, FDA, and NIOSH Members
Counsel
Scott Sherlock, OPPT, EPA
Technical Support Contractor
Syracuse Research Corporation
ITC Staff
John D. Walker, Executive Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 260–1825; fax: (202) 260–7895; e-mail address: williams.norma@epa.gov; url: http://www.epa.gov/opptintr/itc.

[FR Doc. 00–30545 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–S

Federal Register

Friday
December 1, 2000

Part VII

Environmental Protection Agency

Forty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator, Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41054; FRL–6594–7]

Forty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Forty-Sixth Report to the Administrator of the EPA on May 25, 2000. In the 46th Report, which is included with this notice, the ITC: Solicits information on uses, exposures, ecological effects, environmental fate, and health effects on 3 classes of structurally related chemicals (4 polychlorophenols and polychlorobenzenethiols, 8 chlorotrifluoromethylphenoxy benzenes, and 50 perfluorinated chemicals) that have potential to persist and bioconcentrate; requests more detailed exposure and use information be included in the TSCA Electronic Hazard and Safety Data Reporting Form; adds 8 nonylphenol polyethoxylate degradation products to the *Priority Testing List*; and removes 4 alkylphenols and 15 alkylphenol ethoxylates from the *Priority Testing List*.

EPA invites interested persons to submit written comments on the Report.

DATES: Comments, identified by docket control number OPPTS–41054, must be received on or before January 2, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41054 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John D. Walker, ITC Executive Director (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:(202) 260–1825; fax: (202) 260–7895; e-mail address: walker.johnd@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested , the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or 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/.

You may also access additional information about the ITC and the TSCA testing program through the web site for the Office of Pollution Prevention and Toxics (OPPT) at http://www.epa.gov/opptintr/, or go directly to the ITC Home Page at http://www.epa.gov/opptintr/itc/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–41054. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, 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 TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41054 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–41054. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of

the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the ITC 46th Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Make sure to submit your comments by the deadline in this notice.
6. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

1. *The ITC's* 46th *Report*. The 46th Report was received by the EPA Administrator on May 25, 2000, and is included in this notice. In the 46th Report, the ITC:

i. Solicits information on uses, exposures, ecological effects, environmental fate, and health effects on 3 classes of structurally related chemicals (4 polychlorophenols and polychlorobenzenethiols, 8 chlorotrifluoromethylphenoxy benzenes, and 50 perfluorinated chemicals) that have potential to persist and bioconcentrate.

ii. Requests more detailed exposure and use information be included in the TSCA Electronic Hazard and Safety Data Reporting Form.

2. *Status of the Priority Testing List*. The current TSCA section 4(e) *Priority Testing List* as of May 2000 can be found in Table 1 of the 46th ITC Report which is included in this notice. In the 46th ITC Report, the ITC added 8 nonylphenol polyethoxylate degradation products and removed 4 alkylphenols and 15 alkylphenol ethoxylates from the *Priority Testing List*.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: November 20, 2000.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Forty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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Summary

This is the 46th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (USEPA). The ITC described Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) in its 45th Report as strategies to test for the availability of degradation, ecological or human health effects, and bioconcentration information for chemicals with potential to persist, bioconcentrate, and cause ecological or health effects. The ITC implemented DEBITS to identify three classes of structurally related chemicals that have potential to persist and bioconcentrate. These three classes (and number of chemicals associated with each class in parentheses) include polychlorophenols and polychlorobenzenethiols (4), chlorotrifluoromethylphenoxy benzenes (8), and perfluorinated chemicals (50). In this Report the ITC is:

1. Soliciting uses, exposures, ecological effects, environmental fate, and health effects information on these three classes.
2. Requesting more detailed exposure and use information be included in the TSCA Electronic Hazard and Safety Data Reporting Form.
3. Adding 8 nonylphenol polyethoxylate degradation products to the *Priority Testing List*.
4. Removing 4 alkylphenols and 15 alkylphenol ethoxylates from the *Priority Testing List*.

The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2000)

Report	Date	Chemical/group	Action
28	May 1991	Chemicals with low confidence reference dose (RfD) Acetone Thiophenol	Designated
30	May 1992	5 Siloxanes	Recommended
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	10 Alkylphenols and 2 alkylphenol polyethoxylates	Recommended
39	November 1996	8 Nonylphenol ethoxylates	Recommended

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2000)—Continued

Report	Date	Chemical/group	Action
41	November 1997	18 Alkylphenols, 5 polyalkylphenols and 6 alkylphenol polyethoxylates*	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4- triazole*	Recommended
42	May 1998	Glycoluril*	Recommended
42	May 1998	Methylal*	Recommended
42	May 1998	Ethyl silicate*	Recommended
46	May 2000	8 Nonylphenol polyethoxylate degradation products*	Recommended

* Data requested through the ITC's Voluntary Information Submissions Innovative Online Network (VISION—see http://www.epa.gov/opptintr/itc/vision.htm).

I. Background

The ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a)....At least every six months..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). Since its creation in 1976, the ITC has submitted 45 semi-annual (May and November) Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. ITC Reports are available from the ITC's web site (http://www.epa.gov/opptintr/itc) within a few days of submission to the Administrator and from http://www.epa.gov/fedrgstr after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members, and their U.S. Government organizations and contract support provided by EPA. ITC members and staff are listed at the end of this Report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Rules

Following receipt of the ITC's Report by the EPA Administrator and addition of chemicals to the *Priority Testing List*, the EPA's Office of Pollution Prevention and Toxics (OPPT) promulgates TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) and TSCA section 8(d) Health and Safety Data (HaSD) rules for chemicals added to the *Priority Testing List*. These rules require producers and importers of chemicals recommended by the ITC to submit production and exposure reports under TSCA section 8(a) and producers, importers, and processors of chemicals recommended by the ITC to submit unpublished health and safety studies under TSCA section 8(d). These rules are automatically promulgated by OPPT unless requested not to do so by the ITC.

B. ITC's Use of TSCA Section 8 and ''Other Information''

The ITC reviews the TSCA section 8(a) PAIR reports, TSCA section 8(d) HaSD studies and ''other information'' that becomes available after the ITC adds chemicals to the *Priority Testing List*. ''Other information'' includes TSCA section 4(a) and 4(d) studies, TSCA section 8(c) submissions, TSCA section 8(e) ''substantial risk'' notices, ''For Your Information'' (FYI) submissions, ITC voluntary submissions, unpublished data submitted to and from U.S. Government organizations represented on the ITC, published papers, as well as use, exposure, effects, and persistence data that are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The ITC reviews this information and determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List* or if recommendations should be changed to designations.

C. Promoting More Efficient Use of Information Submission Resources

The Voluntary Information Submissions Innovative Online Network (VISION) is accessible through the world wide web (http://www.epa.gov/opptintr/itc/vision.htm). VISION includes the Voluntary Information Submissions Policy (VISP) and links to the TSCA Electronic HaSD Reporting Form (http://www.epa.gov/opptintr/.er/hasd.htm). The VISP provides examples of data needed by ITC member U.S. Government organizations, examples of studies that should not be submitted, the milestones for submitting information, guidelines for using the TSCA Electronic HaSD Reporting Form and instructions for electronically submitting full studies. The TSCA Electronic HaSD Reporting Form is used to provide electronic information on ITC voluntary submissions, TSCA section 8(d) studies (to meet data needs of the ITC member U.S. Government organizations), FYI submissions, and TSCA section 8(e) studies.

In its 45th Report, the ITC stated that use and exposure information should be submitted through VISION using section 3.2 of the TSCA Electronic HaSD Reporting Form (Confidential Business Information (CBI) should NOT be submitted on the TSCA Electronic HaSD Reporting Form). Since then the ITC Director has received numerous requests to provide more details on the type of use and exposure information needed by the ITC. In response to these requests, the ITC asked EPA to include the following use and exposure information in section 3.2 of the TSCA Electronic HaSD Reporting Form:

- Manufacturing or processing procedures (batch, continuous, closed, open, etc.).
- Product (raw-material, site-limited intermediate, end-use, etc.).
- Type of end use (consumer product, industrial product, consumer and industrial product).
- Percent of chemical in end-use product.
- Average concentrations in air, water and soil within the borders of manufacturing and processing facilities.
- Number of people likely to be exposed during chemical manufacturing and average exposure concentrations.
- Number of people likely to be exposed during chemical processing and average exposure concentrations.
- Number of people likely to be exposed during chemical use and average exposure concentrations.

D. Request to Promulgate a TSCA Section 8(d) Rule

The ITC encourages producers, importers, processors, and users of its recommended chemicals to use VISION to voluntarily provide electronic information and establish a dialogue with the ITC to discuss needed data. If the ITC does not receive voluntary electronic information submissions to meet its data needs, then it will ask the EPA to promulgate a TSCA section 8(d) HaSD rule to determine if there are unpublished data to meet those needs. The ITC strongly encourages those companies that must respond to a TSCA section 8(d) rule to provide data by using the TSCA Electronic HaSD Reporting Form.

III. ITC's Activities During This Reporting Period (November 1999 to April 2000): Information Solicitations

In its 45th Report, the ITC discussed its strategies to screen chemicals for persistence and bioconcentration potential (http://www.epa.gov/opptintr/itc). These strategies are referred to as Degradation Effects Bioconcentration Information Testing Strategies (DEBITS). DEBITS provides a means to prioritize chemicals based on degradation, ecological or human health effects, and bioconcentration information. Briefly the ITC screened 12,557 chemicals and used criteria to identify 435 chemicals with potential to persist and bioconcentrate (see Figure 1 in 45th Report).

Since the 45th Report was delivered to the EPA Administrator on November 30, 1999, the ITC used DEBITS to further prioritize these 435 chemicals. The ITC used DEBITS to identify a subset of 112 chemicals with bioconcentration factors (BCFs) >250. These and structurally related chemicals with BCF <250 were placed in chemical classes and screened for the existence of ecological effects, health effects, and environmental fate

data. A BCF of 250 has been used by the EPA as a lower ''threshold'' to identify substances with potential to bioconcentrate. From these 112 chemicals, the ITC reviewed 42 chemicals which had BCF >250 and production/importation volumes between 100,000 and 1,000,000 pounds reported in response to the 1986, 1990, 1994, or 1998 EPA Inventory Update Rules. The ITC is interested in identifying structurally related classes of chemicals for testing which have a suspicion of toxicity but lack adequate screening data. The ITC is also interested in utilizing Structure Activity Relationships (SARs) to predict the toxicity of untested chemicals in these structural classes. Although High Production Volume (HPV) chemicals with production/importation volumes >1,000,000 pounds are expected to have screening data developed as part of the EPA's HPV Chemical Challenge (http://www.epa.gov/opptintr/chemrtk/volchall.htm) and OECD SIDS (http://www.oecd.org/) programs, they were included in groups of structurally related chemicals in order to provide additional opportunities to develop SARs. In a few instances, stucturally related chemicals not previously identified by DEBITS were also included in a chemical class, if there were data useful for establishing SARs.

In this reporting period, three classes of chemicals:

1. Polychlorophenols and polychlorobenzenethiols.
2. Chlorotrifluoromethylphenoxy benzenes.
3. Perfluorinated chemicals have emerged from DEBITS as classes of specific interest.

The ITC is seeking information on uses, exposures, health effects, and ecological effects from the manufacturers, importers, and processors of those chemicals in order to determine whether any of them should be added to the *Priority Testing List*. It is requested that solicited information be electronically submitted before August 29, 2000, consistent with the 90-day milestone of the VISP (http://www.epa.gov/opptintr/itc/visp.htm) for submitting data through the TSCA Electronic HaSD Reporting Form. DEBITS will continue to be implemented in the future to prioritize chemicals with potential to persist and bioconcentrate.

A. Polychlorophenols and Polychlorobenzenethiols

1. *Background*. Polychlorophenols and polychlorobenzenethiols includes pentachlorothiophenol (Chemical Abstract Service (CAS) number (No.) 133–49–3) and tetrachloropyrocatechol (CAS No. 1198–55–6). Pentachlorothiophenol is one of the 42 chemicals with BCF >250 and production/importation volume between 100,000 and 1,000,000 pounds. Tetrachloropyrocatechol is one of the 435 chemicals that satisfy the DEBITS production/importation, persistence, and bioconcentration potential criteria described by the ITC in its 45th Report. The ITC used available data for 2 structurally related chemicals, pentachlorophenol (CAS No. 87–86–5) and hexachlorobenzene (CAS No. 118–74–1), to evaluate suspicion of potential ecological and health effects of pentachlorothiophenol and tetrachloropyrocatechol.

Pentachlorothiophenol meets the DEBITS criteria; it has an ultimate predicted aerobic biodegradation rate of >2–3 months and an estimated log octanol-water partition coefficient of 5.91, and an estimated BCF of 7,066.There are limited health effects data on pentachlorothiophenol except mild eye irritation in the standard Draize test and an intraperitoneal LD_{50} of 100 milligram/kilogram (mg/kg) in mice. The ITC has no ecological effects data on pentachlorothiophenol. However, pentachlorothiophenol is a metabolite of hexachlorobenzene and pentachlorophenol. It is formed as a result of glutathione conjugation (Hahn et al, 1988, 1989; Linko et al, 1986; Mehendale et al, 1975; Rozman et al, 1977). It has been detected in the urine of human populations exposed to hexachlorobenzene (To-Figueras et al., 1992, 1997). The carcinogenicity, reproductive effects, and development toxicities of pentachlorophenol and hexachlorobenzene are well known (ATSDR, 1996; Chhabra et al., 1999). The ITC believes pentachlorothiophenol may present a suspicion of toxicity given the metabolic relationship and structural similarity to hexachlorobenzene and pentachlorophenol.

Tetrachloropyrocatechol also meets the DEBITS criteria; it has an ultimate predicted aerobic biodegradation rate of >2–3 months and an estimated log octanol-water partition coefficient of 4.29, and a measured BCF of 316–5,011.There is very little known about the health effects of tetrachloropyrocatechol, except for severe eye irritation in the Draize tests and an oral LD_{50} in mice of 318 mg/kg. However, tetrachloropyrocatechol is a metabolite of pentachlorophenol. A fathead minnow LC_{50} value of 1 mg/Liter (L) (highly toxic) from 96-hour flow-through tests has been reported (Russom et al., 1997) and six TSCA section 8(d) studies were submitted where tetrachloropyrocatechol was a component of the test substance, biologically treated bleached kraft mill effluent. It is predicted to inhibit cellular respiration as an uncoupler of oxidative phosphorylation. The ITC believes tetrachloropyrocatechol may present a suspicion of toxicity given the metabolic relationship and structural similarity to pentachlorophenol.

Information Profiles for pentachlorothiophenol and tetrachloropyrocatechol are posted on the ITC's web site (http://www.epa.gov/opptintr/itc).

2. *Information needs*. The ITC needs more information on uses and data on exposures, environmental releases, pharmacokinetics, subchronic toxicity, reproductive and developmental effects, carcinogenicity, and ecological effects for pentachlorothiophenol and tetrachloropyrocatechol. The ITC also needs mutagenicity data for pentachlorothiophenol. If the information is not voluntarily obtained, the ITC will consider adding these chemicals to the *Priority Testing List* in its next Report to the EPA Administrator so that final TSCA section 8(a) and 8(d) rules are promulgated by EPA.

B. Chlorotrifluoromethylphenoxy Benzenes

1. *Background*. The chlorotrifluoromethylphenoxy benzenes is a structural class of eight chemicals that satisfy the DEBITS persistence and bioconcentration potential and production/importation criteria described by the ITC in its 45th Report (Table 2). Four of the chlorotrifluoromethylphenoxy benzenes are among the 42 chemicals with BCF >250 and production/importation volume between 100,000 and 1,000,000 pounds; *p*-toluidine, 5-chloro-.alpha.,.alpha.,.alpha.-trifluoro-2-nitro-*N*-phenyl (CAS No. 1806–24–2) has a production/importation volume <100,000 pounds.

TABLE 2.—CHLOROTRIFLUOROMETHYLPHENOXY BENZENES

CAS No.	Chemical name	HPV[2]	Estimated BCF	Fish[3] LC_{50} mg/L	NO_2 on benzene ring
1806–24–2	*p*-Toluidine, 5-chloro-.alpha.,.alpha.,.alpha.-trifluoro-2-nitro-*N*-phenyl	No	2380	2.22	Yes
42874–63–5	Phenol, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitro-	No	879		Yes
42874–96–4	Benzene, 2-chloro-1-(3-methylphenoxy)-4-(trifluoromethyl)-	No	2696	1.96	No
77501–63–4	5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1-methyl-2-oxoethyl ester (lactofen)[1]	No	1009		Yes
88185–22–2	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, 2-ethoxy-1-methyl-2-oxo	No	1692	0.668	No
50594–44–0	Phenol, 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitro-, acetate[1]	Yes	362	0.39	Yes
50594–77–9	Phenol, 3-(2-chloro-4-(trifluoromethyl)phenoxy-), acetate[1]	Yes	500	0.17	No
63734–62–3	Benzoic acid,3-(2-chloro-4-(trifluoromethyl)phenoxy)-[1]	Yes	3	2.20	No

1 The ITC is not soliciting information on lactofen (077501–63–4) or HPV chemicals; ITC is relying on information from EPA's HPV chemical challenge program to provide data on HPV category chemicals.

2 HPV = High Production Volume; chemicals with U.S. production/importation volumes >1 million pounds, e.g., those chemicals in EPA's HPV chemical challenge program (http://www.epa.gov/opptintr/chemrtk/volchall.htm).

3 Fish LC_{50} data are all from 96-hour flow though tests with fathead minnows using measured chemical concentrations.

One member of the class, lactofen (CAS No. 77501–63–4) is a well-studied herbicide, considered to be a probable human carcinogen by the USEPA. Lactofen or 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1-methyl-2-oxo ethyl ester was found to increase the incidence of liver tumors in CD-1 mice and hepatic neoplastic nodules and preneoplastic focii in Sprague-Dawley rats (PPG Industries, 1985a,b). On the basis of these findings, the USEPA concluded that lactofen met the critieria of a category B2 probable human carcinogen (http://ace.orst.edu/cgi-bin/mfs/01/pips/lactofen.htm). A number of other hepatic, renal, and hematologic effects have been reported in CD-1 mice, Sprague-Dawley rats, and beagle dogs after repeated dosing. Lactofen caused developmental effects in a 2-generation reproductive study using CD rats (PPG Industries, 1983) and when fed to pregnant Sprague-Dawley rats (PPG Industries, 1982). Lactofen was administered in the diet for all these studies. Mixed results have been obtained in genotoxicity testing. As a result of the oncogenicity and other adverse health effects associated with lactofen, there is a heightened concern for potential toxicity of the other seven chlorotrifluoromethylphenoxy benzenes which have not been as extensively investigated.

Six chlorotrifluoromethylphenoxy benzenes had fish LC_{50} values; all were less than or equivalent to about 1 mg/L; chemicals with LC_{50} values <1 mg/L are considered ''highly toxic'' to aquatic organisms. Four chlorotrifluoromethylphenoxy benzenes had a nitro group on the benzene ring (Table 2). Estimates from the EPA's Cancer Expert System (Lai et al.,1996; Woo et al., 1995, 1998) suggested that chlorotrifluoromethylphenoxy benzenes with a nitro group on the benzene ring might have higher carcinogenicity potential than chlorotrifluoromethylphenoxy benzenes with no nitro group on the benzene ring. Data are needed to validate these suggestions. In addition, the ITC has determined that health effects data are indexed in TOXLINE or the Registry of Toxic Effects of Chemical Substances (RTECS) for three chlorotrifluoromethylphenoxy benzenes: Phenol, 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitro- (CAS No. 42874–63–5); phenol, 3-(2-chloro-4-(trifluoromethyl)phenoxy)-, acetate (CAS No. 50594–77–9); and benzoic acid, 3-(2-chloro-4-(trifluoromethyl)phenoxy)- (CAS No. 63734–62–3). For the latter 2 chlorotrifluoromethylphenoxy benzenes acute and genetoxicity studies were submitted to the EPA as a result of a TSCA section 8(d) rule that was promulgated for the chlorotrifluoromethylphenoxy benzenes (CAS No. 42874–96–4, 50594–77–9, and 63734–62–3) that were previously added to the *Priority Testing List* in the ITC's 29th Report published in the **Federal Register** of December 30, 1991 (56 FR 67424) (FRL–4007–6) as trifluoromethyl diaryl ethers and then removed from the *Priority Testing List* in the 41st Report published in the **Federal Register** of April 9, 1998 (63 FR 17658) (FRL–5773–5). TOXLINE, RTECS, and TSCA section 8(d) studies for phenol, 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitro- (CAS No. 42874–63–5); phenol, 3-(2-chloro-4-(trifluoromethyl)phenoxy)-, acetate (CAS No. 50594–77–9); and benzoic acid, 3-(2-chloro-4-(trifluoromethyl)phenoxy)- (CAS No. 63734–62–3) have been considered by the ITC. An Information Profile for 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitro- is posted on the ITC's web site (http://www.epa.gov/opptintr/itc).

2. *Information needs*. The ITC needs information on uses, exposures, environmental releases, ecological effects, pharmacokinetics, subchronic toxicity, reproductive and developmental effects, mutagenicity, and carcinogenicity for four chlorotrifluoromethylphenoxy benzenes, except lactofen and the three HPV chemicals (Table 2). If the information is not voluntarily obtained, the ITC will consider adding these chemicals to the *Priority Testing List* in its next Report to the EPA Administrator, so that final TSCA section 8(a) and 8(d) rules are promulgated by EPA.

C. Perfluorinated Chemicals

1. *Background*. The ITC is interested in 50 perfluorinated chemicals, because:

i. The carbon-fluorine bond is highly stable and likely to persist.

ii. There is potential for long-range atmospheric transport, persistence, bioconcentration, and bioaccumulation.

iii. There are few publicly available data on ecological effects, health effects, wildlife exposures, or human exposures.

Forty-eight perfluorinated chemicals were assigned to 10 structural classes while two did not fit any structural class. Thirty-eight perfluorinated chemicals satisfy the DEBITS persistence (ultimate biodegradation >2–3 months) and bioconcentration potential (log octanol-water partition coefficient 3–6) and production/importation criteria described by the ITC in its 45th Report. An additional 12 (identified by an asterisk in Tables 3, 4, 7, 10, and 11) were selected from TSCA section 8(e) submissions because they were structurally related to the 38 perfluorinated chemicals and may be useful in developing SARs. The 12 structurally related perfluorinated chemicals from TSCA section 8(e) submissions include chemicals that:

i. Are present in human and animal blood.

ii. Are pesticide active ingredients.

iii. Cause tumors and developmental toxicity in animal studies.

iv. Are metabolites of the 38 perfluorinated chemicals that satisfy the DEBITS criteria.

Estimated BCFs and Henry's Law Constants (HLCs) for perfluorinated chemicals were based on associated or non-hydrolyzed chemical structures. Estimated BCFs for the 50 perfluorinated chemicals range from 3 to 26,000. HLCs ranged from 10^3 to 10^{-10} atm m^3/mole. Approximately half of the perfluorinated chemicals had estimated HLCs $>^{10-2}$ atm m^3/mole, suggesting they could evaporate and be susceptible to long-range transport. The perfluoroalkyl iodides are likely to undergo rapid photolysis in the atmosphere, leading to possibly long-lived degradation products. Estimated BCFs and HLCs for perfluorinated chemicals are listed in Tables 3–13. Information Profiles for non-HPV perfluorinated chemicals for which there were publicly available toxicity data are posted on the ITC's web site (http://www.epa.gov/opptintr/itc). The ITC is continuing to evaluate information on uses, exposures, environmental fate, ecological effects, and health effects of perfluorinated chemicals.

TABLE 3.—PERFLUOROALKYL ACIDS AND SALTS[1]

CAS No.	Chemical name	BCF	HLC
000335–77–3	1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-	10	3.03E-01
001763–23–1	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-*	56	1.10E-02
002795–39–3	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt*	56	1.10E-02
003825–26–1	Ammonium perfluorooctanoate*	56	9.10E-02
003871–99–6	1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, potassium salt*	3	3.97E-04
021615–47–4	Hexanoic acid, undecafluoro-, ammonium salt*	3	3.29E-03
029457–72–5	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt	56	1.10E-02

* TSCA 8(e) submission

1 It should be noted that methods used to estimate BCF and HLC were based on associated chemical structures. The salts of carboxylic and sulfonic acids are expected to exist as dissociated structures in the environment; the dissociated structure will be more water-soluble and likely to have a lower BCF and HLC than the associated structure.

TABLE 4.—PERFLUOROALKYL SULFONAMIDES

CAS No.	Chemical name	BCF	HLC
000754–91–6	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-	10000	1.84E-03
001691–99–2	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-*N*-(2-hydroxyethyl)-*N*-ethyl-	5543	5.72E-07
004151–50–2	1-Octanesulfonamide, ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-*	500	5.37E+00
024448–09–7	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-*N*-(2-hydroxyethyl)-*N*-methyl-*	26000	4.30E-04
034449–89–3	1-Butanesulfanamide, ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-*N*-(2-hydroxyethyl)-	206	7.50E-07
034454–97–2	1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro-*N*-(2-hydroxyethyl)-*N*-methyl-	86	5.65E-07
034455–03–3	1-Hexanesulfonamide, ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-*N*-(2-hydroxyethyl)-	6331	2.07E-05
067584–55–8	2-Propanoic acid, 2-[methyl[(nonalfuorobutyl)sulfonyl]amino]ethyl ester	961	1.94E-05
067584–56–9	2-Propenoic acid, 2-methyl (undecafluoropentyl)sulfonyl amino ethyl ester	5330	1.02E-04
068555–72–6	1-Pentanesulfonamide, ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-*N*-(2-hydroxyethyl)-	1142	3.94E-06
068555–74–8	1,1,2,2,3,3,4,4,5,5,5-Undecafluoro-*N*-(2-hydroxyethyl)-*N*-methylpentane-1-sulphonamide	478	2.97E-06
068555–75–9	1-Hexanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-*N*-(2-hydroxyethyl)-*N*-methyl-	2651	1.56E-05
068555–77–1	1-Butanesulfonamide, 3-(dimethylamino)propyl-1,1,2,2,3,3,4,4,4-nonafluoro-	465	4.63E-06

* TSCA 8(e) submission.

TABLE 5.—PERFLUORINATED QUATERNARY AMMONIUM CHEMICALS

CAS No.	Chemical name	BCF	HLC
001652–63–7	1-Propanaminium,3-(((heptadecafluorooctyl)sulfonyl)amino)-N,N,N-trimethyl-, iodide	6	4.04E-10
038006–74–5	1-Propanaminium,3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride	6	4.04E-10

TABLE 6.—PERFLUOROALKANES

CAS No.	Chemical name	BCF	HLC
000076–19–7	Octafluoropropane	50	3.30E+01
000678–26–2	Dodecafluoropentane	488	3.50E+03
002994–71–0	Hexafluoro-1,2-bis(trifluoromethyl)cyclobutane	145	2.05E+03

TABLE 7.—FLUOROALKYL ETHERS

CAS No.	Chemical name	BCF	HLC
000755–73–7	2,2,3,3-Tetrafluoro-3-methoxy-propionic acid methyl ester*	3	4.30E-05
001623–05–8	Propane, 1,1,1,2,2,3,3-heptafluoro-3-[(trifluoroethyenyl)oxy]-	76	8.74E+00
003330–14–1	Propane, 1-(1-(difluoro(1,2,2,2-tetrafluoroethoxy)methyl)-1,2,2,2-tetrafluoroethoxy)-1,1,2,2,3,3,3-heptafluoro-	7355	4.99E+00
003330–15–2	Heptafluoropropyl 1,2,2,2-tetrafluoroethyl ether	151	3.90E+00
063863–43–4	Propanoic acid, 3-1-difluoro(trifluoroethenyl)oxy methyl-1,2,2,2-tetrafluoroethoxy-2,2,3,3-tetrafluoro-, methyl ester	327	2.55E-03
104147–32–2	3,5-Dichloro-4-(1,1,2,2-tetrafluoroethoxy)aniline	160	1.29E-06

* TSCA 8(e) submission.

TABLE 8.—FLUOROALKYL IODIDES

CAS No.	Chemical name	BCF	HLC
000423–39–2	1-Iodoperfluorobutane	1193	4.99E+01
002043–55–2	1,1,1,2,2,3,3,4,4-Nonafluoro-6-iodohexane	6809	1.11E+01
068188–12–5	Perfluoroalkyl(C2–C18)ethyl iodide	1228	2.11E+00

TABLE 9.—GAMMA, OMEGA-PERFLUOROALKYL ALCOHOLS

CAS No.	Chemical name	BCF	HLC
000647–42–7	3,3,4,4,5,5,6,6,7,7,8,8,8-Tridecafluoro-1-octanol	4064	1.50E-01
002043–47–2	3,3,4,4,5,5,6,6,6-Nonafluoro1-hexanol	132	5.42E-03
068391–08–2	2-Perfluoroalkyl (C6–C12) ethanol	3092	9.99E-02

TABLE 10.—PERFLUOROALKYL SULFONYL FLUORIDES

CAS No.	Chemical name	BCF	HLC
000375–72–4	Nonafluorobutanesulfonyl fluoride	5364	8.91E-02

TABLE 10.—PERFLUOROALKYL SULFONYL FLUORIDES—Continued

CAS No.	Chemical name	BCF	HLC
000421–20–5	Methyl fluorosulfonate*	2	5.00E-05
068156–06–9	Cyclohexanesulfonyl fluoride, decafluoro(pentafluoroethyl)-	7741	7.57E+00
068318–34–3	Cyclohexanesulfonyl fluoride, decafluoro(trifluoromethyl)-	1396	1.44E+00

* TSCA 8(e) submission.

TABLE 11.—PERFLUOROGLYCOL ACID FLUORIDES

CAS No.	Chemical name	BCF	HLC
004089–58–1	Propanoyl fluoride, 2,3,3,3-tetrafluoro-2-(1,1,2,3,3,3-hexafluoro-2-(1,1,2,2-tetrafluoro-2-(fluorosulfonyl)ethoxy)propoxy)-	4709	7.55E-05
001422–71–5	3-Pentanone, 1,1,2,2,4,4,5,5-octafluoro-1,5-dimethoxy-*	3	4.27E-05
069116–71–8	Methyl 2,2-difluromalonyl fluoride*	3	1.50E-05
069116–72–9	Propanoic acid, 2,2,3,3-tetrafluoro-3-1,2,2,2-tetrafluoro-1-(fluorocarbonyl)ethoxy-, methyl ester*	2	1.30E-04
069116–73–0	Propanoic acid, 3-(2-(1,2-difluoro-2-oxo-1-(trifluoromethyl)ethoxy)-1,2,2-trifluoro-1-(trifluoromethyl)ethoxy)-2,2,3,3-tetrafluoro-, methyl ester	121	1.70E-04

* TSCA 8(e) submission

1 It should be noted that methods used to estimate BCF and HLC were based on non-hydrolyzed chemical structures. Certain perfluoroglycol acid fluorides are expected to rapidly hydrolyze (within an hour, depending upon chemical concentration) in the environment; the hydrolysis products will be more water-soluble and likely to have a lower BCF and HLC than the non-hydrolyzed structure.

TABLE 12.—PERFLUOROALKYL CARBOXYLIC ACID FLUORIDES

CAS No.	Chemical name	BC F	HLC
000335–66–0	Pentadecylfluorooctanoyl fluoride	3011	2.58E+02
000375–84–8	Tridecafluoroheptanoyl fluoride	543	4.91E+01

TABLE 13.—PERFLUORINATED CHEMICALS NOT ASSIGNED TO A STRUCTURAL CLASS

CAS No.	Chemical name	BCF	HLC
019430–93–4	1-Hexene, 3,3,4,4,5,5,6,6,6-nonafluoro-	1393	1.11E+02
068140–20–5	Perfluoroalkyl (C4–C10) ethyl mercaptan	1606	5.26E+00

2. *Information needs*. The ITC needs measured BCFs, HLCs, and bioaccumulation data for most of the perfluorinated chemicals. Information on uses, exposures, health effects, and ecological effects is needed for perfluoroalkyl acids and salts, perfluoroalkyl sulfonamides, perfluorinated quaternary ammonium chemicals, perfluoroalkanes, fluoroalkyl ethers, fluoroalkyl iodides, gamma, omega-perfluoroalkyl alcohols, perfluoroalkyl sulfonyl fluorides, perfluoroglycol acid fluorides, perfluoroalkyl carboxylic acid fluorides, 1-hexene, 3,3,4,4,5,5,6,6,6-nonafluoro- (CAS No. 19430–93–4), and perfluoroalkyl (C4–C10) ethyl mercaptan (CAS No. 68140–20–5). For the perfluoroalkyl iodides, the ITC needs information on possible long-lived atmospheric degradation products. ITC is not soliciting information on two perfluoroalkyl sulfonamides that are in the EPA's HPV Challenge Program, 1-octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-*N*-(2-hydroxyethyl)-*N*-ethyl- (CAS No. 1691–99–2) and 1-octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-*N*-(2-hydroxyethyl)-*N*-methyl- (CAS No. 24448–09–7) and the pesticides, lithium perfluorooctane sulfonate (LPOS) or 1-octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt (CAS No. 29457–72–5) (see http://www.epa.gov/opprd001/factsheets/factsht2.htm) and Sulfuramid or 1-octanesulfonamide, -ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- (CAS No. 4151–50–2) (see http://www.epa.gov/opp).

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List: Nonylphenol Polyethoxylate Degradation Products

1. *Recommendation*. Add 8 nonylphenol polyethoxylate degradation products to the *Priority Testing List* to obtain information to meet U.S. Government data needs.

2. *Rationale for recommendation*. Alkylphenols, polyalkylphenols, alkylphenol ethoxylates, and alkylphenol polyethoxylates were recommended in the ITC's 37th (61 FR 4188, February 2, 1996) (FRL–4991–6), 39th (62 FR 8578, February 25, 1997) (FRL–5580–9), and 41st Reports. Nonylphenol polyethoxylates were recommended in the ITC's 39th Report. Recent studies have measured nonylphenol polyethoxylate degradation products in wastewater effluents and surrounding aquatic systems (Bennett and Metcalfe, 2000; Hale et al., 2000). Some of these products can cause neuroendocrine-mediated effects in fish at low parts per billion (ppb) concentrations. One nonylphenol polyethoxylate degradation product, branched 4-nonylphenol (mixed isomers) (CAS No. 84852–15–3) was previously recommended in the ITC's 37th Report. As a result of these findings and to meet U.S. Government data needs for these chemicals, the ITC is adding 8 nonylphenol polyethoxylate degradation products to the *Priority Testing List* (Table 14).

TABLE 14.—NONYLPHENOL POLYETHOXYLATE DEGRADATION PRODUCTS BEING ADDED TO THE PRIORITY TESTING LIST

CAS No.	Nonylphenol polyethoxylate degradation product
104–35–8	4-nonylphenol ethoxylate (NP1EO)
20427–84–3	4-nonylphenol diethoxylate (NP2EO)

TABLE 14.—NONYLPHENOL POLYETHOXYLATE DEGRADATION PRODUCTS BEING ADDED TO THE PRIORITY TESTING LIST—Continued

CAS No.	Nonylphenol polyethoxylate degradation product
	4-nonylphenol triethoxylate (NP3EO)
	4-nonylphenol tetraethoxylate (NP4EO)
3115–49–9	4-nonylphenoxy acetic acid (NP1EC)
106807–78–7	4-nonylphenoxy ethoxy acetic acid (NP2EC)
108241–00–5	4-nonylphenoxy diethoxy acetic acid (NP3EC)
	4-nonylphenoxy triethoxy acetic acid (NP4EC)

3. *Supporting information*. Recent studies have documented that nonylphenol polyethoxylate degradation products can act as *in vitro* and *in vivo* estrogen agonists in fish and amphibians (Jobling and Sumpter, 1993; Jobling et al., 1996; Kloas et al., 1999). While most of these studies were conducted with nonylphenol and octylphenol, there is evidence to suggest that nonylphenol polyethoxylate degradation products (short-chain ethoxylates and carboxylates) can also act to disrupt neuroendocrine function.

i. *Effects*. Exposure of male fathead minnows to nonylphenol at 1.1 ppb caused an increase in the number and size of sertoli cells and germ cell syncytia (Miles-Richardson et al., 1999). In the same study, exposure of fathead minnows to 5.5 ppb nonylphenol polyethoxylate consisting of primarily 7–11 carbon ethoxylate chains, no changes in number and size of sertoli cells and germ cell syncytia were detected, but shorter carbon ethoxylate chains (1–4 carbons) were not tested. In the same laboratory, exposure of fathead minnows to 0.05 ppb nonylphenol caused significant increases in plasma vitellogenin and estradiol (Giesy et al., 2000).

Exposure of male rainbow trout to 30 ppb octylphenol, nonylphenol, 4-nonylphenoxy acetic acid (NP1EC), and 4-nonylphenol diethoxylate (NP2EO) caused increases in serum vitellogenin and inhibition in testicular growth (Jobling et al., 1996). Octylphenol was the most potent followed by nonylphenol, NP2EO, and NP1EC. A lowest-observed-effect-concentration (LOEC) was not determined for NP2EO or NP1EC, but the 30 ppb exposure concentrations for NP1EC and NP2EO are well below total concentrations of carboxylates and ethoxylates reported for many of the effluents in the midwestern United States that are discussed below. Exposure of female rainbow trout to 1 ppb nonylphenol and NP2EO and 10 ppb NP1EC reduced growth (Ashfield et al., 1998).

ii. *Environmental concentrations*. Despite data suggesting that nonylphenolpolyethoxylate metabolites may biodegrade (Staples et al., 1999), recent studies demonstrated that nonylphenol polyethoxylate effluent and effluent dominated stream concentrations may exceed LOEC concentrations reported in the literature. Barber et al. (1999) estimated nonylphenol polyethoxylate degradation products in seven midwest sewage treatment plant effluents and in one effluent-dominated stream (Des Plaines River, IL) approximately 100 killometers (km) downstream of the major nonylphenol polyethoxylate sources. Generally effluents had nonylphenol polyethoxylate degradation product concentrations greater than 50 ppb with NPE2C the predominant form in most effluents and in the effluent dominated stream. Nonylphenol concentrations in the Des Plaines River slightly exceeded 1 ppb. Naylor et al. (1996) and Field and Reed (1996) estimated nonylphenol, total nonylphenol ethoxylate, and NP1EC-NP4EC (4-nonylphenoxy triethoxy acetic acid) concentrations in 15 pulp and paper mill and 6 sewage treatment plant effluents to the Fox River, WI. Total nonylphenol ethoxylate typically exceeded 50 ppb in all effluents, while nonylphenol concentrations were generally greater than 1 ppb. The nonylphenol carboxylates concentrations were always greater than 15 and 140 ppb in the pulp and paper mill and sewage treatment effluents, respectively. Nonylphenol and total nonylphenol ethoxylate Fox River concentrations near Green Bay were 0.582 and 2.78 ppb, respectively, while the total nonylphenol carboxylate concentration was 13.5 ppb. Nonylphenol carboxylates were shown to persist for considerable distances downstream. In addition to these existing data, EPA is sponsoring ongoing programs to sample sediment and fish in the midwestern United States.

4. *Information needs*. Data are needed to determine the LOECs (in comparison to estradiol) of branched 4-nonylphenol (mixed isomers), 4-nonylphenol ethoxylate (NP1EO), 4-nonylphenol diethoxylate (NP2EO), 4-nonylphenol triethoxylate (NP3EO), 4-nonylphenol tetraethoxylate (NP4EO), 4-nonylphenoxy acetic acid (NP1EC), 4-nonylphenoxy diethoxy acetic acid (NP2EC), 4-nonylphenoxy triethoxy acetic acid (NP3EC), and 4-nonylphenoxy tetraethoxy acetic acid (NP4EC) causing neuroendocrine effects in aquatic organisms. Data are also needed to determine whether nonylphenol polyethoxylate degradation products have the potential to interfere with growth and metamorphosis of amphibians (e.g., tadpoles).

B. Chemicals Removed From the Priority Testing List: Alkylphenols and Alkylphenol Ethoxylates

1. *Background*. In this Report, the ITC is removing 4 alkylphenols (APs) and 15 alkylphenol ethoxylates (APEs) from the *Priority Testing List*. The 4 APs were added to the *Priority Testing List* in the ITC's 37th Report; the 15 APEs were added to the *Priority Testing List* in the ITC's 39th Report. Submission of TSCA section 8(d) studies for APs added to the *Priority Testing List* in the ITC's 37th Report were required by a TSCA section 8(d) HaSD rule (61 FR 7421, February 28, 1996) (FRL–4991–6). TSCA section 8(d) and FYI studies for APEs added to the *Priority Testing List* in the ITC's 39th Report were voluntarily submitted in response to information solicitations discussed in the ITC's 39th Report.

2. *Removal rationale*. The APs and APEs being removed from the *Priority Testing List* are listed in Table 15. Three APs and 13 APEs are being removed because no domestic production or importation volumes were reported to the USEPA in response to any of the 1986, 1990, 1994, and 1998 Information Update Rules (IURs) or the 2000 PAIR rule. Production/importation volumes were reported for one AP and two APEs in the 1990 IUR but not in the subsequent 1994 and 1998 IURs or the 2000 PAIR rule. These three chemicals are also being removed because of insufficient production.

TABLE 15.—APS AND APES BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Chemical name	Category	Removal rationale
104–43–8	4-Dodecylphenol	AP	b
3884–95–5	2-(1,1,3,3-Tetramethylbutyl)phenol	AP	a, b
31195–95–6	Isobutylphenol (mixed isomers)	AP	a, b
54932–78–4	4-(2,2,3,3-Tetramethylbutyl)phenol	AP	a, b
7311–27–5	2-[2-[2-[2-(4-Nonylphenoxy)ethoxy]ethoxy]ethoxy]ethanol	APE	a, b
20636–48–0	14-(4-Nonylphenoxyl)-3,6,9,12-tetraoxatetradecan-1-ol	APE	a, b
26264–02–8	14-(Nonylphenoxyl)-3,6,9,12-tetraoxatetradecan-1-ol	APE	a, b

TABLE 15.—APs AND APEs BEING REMOVED FROM THE PRIORITY TESTING LIST—Continued

CAS No.	Chemical name	Category	Removal rationale
26571–11–9	26-(4-Nonylphenoxyl)-3,6,9,12,15,18,21,24-octaoxahexacosan-1-ol	APE	b
27176–93–8	2-[2-(4-Nonylphenoxyl)ethoxyl]ethanol	APE	a, b
27177–01–1	17-(Nonylphenoxyl)-3,6,9,12,15-pentaoxaheptadecan-1-ol	APE	a, b
27177–05–5	23-(Nonylphenoxy)-3,6,9,12,15,18,21-heptaoxatricosan-1-ol	APE	a, b
27177–08–8	29-(Nonylphenoxy)-3,6,9,12,15,18,21,24,27-nonaoxanonacosan-1-ol	APE	b
51938–25–1	Poly(oxy-1,2-ethanediyl), .alpha.-(2-nonylphenyl)-.omega.-hydroxy-	APE	a, b
65455–72–3	29-(Isononylphenoxy)-3,6,9,12,15,18,21,24,27-nonaoxanonacosan-1-ol	APE	a, b
152143–22–1	Poly(oxy-1,2-ethanediyl), .alpha.-(4-nonylphenyl)-.omega.-hydroxy-, branched, phosphates	APE	a, b
	Nonoxynol-2	APE	a, b
	Nonoxynol-3	APE	a, b
	Nonoxynol-7	APE	a, b
	.alpha.-(4-Nonylphenol)-.omega.-hydroxypoly(oxyethylene)	APE	a, b

a No domestic production or importation volumes were reported to the USEPA in response to 1986, 1990, 1994, and 1998 IURs (indicating that volumes were less than 10,000 pounds per site in 1985, 1989, 1993, and 1997).

b No domestic production or importation volumes were reported to the USEPA in response to the January 11, 2000, PAIR rule published in the FEDERAL REGISTER (65 FR 1548) (FRL–5777–2) (indicating that volumes were less than 1,000 pounds per site in 1999).

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VI. TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality

Department of Commerce
National Institute of Standards and Technology
Robert Huie, Member
Barbara C. Levin, Alternate
National Oceanographic and Atmospheric Administration
Nancy Foster, Member
Teri Rowles, Alternate
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[FR Doc. 00–30546 Filed 11–30–00; 8:45 am]

BILLING CODE 6560–50–S

Federal Register

Friday,
December 1, 2000

Part VIII

Securities and Exchange Commission

Options Price Reporting Authority; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43621; File No. 4–434]

RIN 3235–AH92

Options Price Reporting Authority

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to national market system plan.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting amendments to the Options Price Reporting Authority Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information. The amendments establish a formula, as a short-term solution to OPRA capacity shortages, to allocate the message capacity of the OPRA system among the participant exchanges during peak usage periods.

EFFECTIVE DATE: January 2, 2001.

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I. Executive Summary

In Section 11A of the Securities Exchange Act of 1934 (''Act''), Congress directed the Commission to assure, among other things, the availability to broker-dealers and investors of quotation and transaction information in securities.[1] It is this directive that makes transparency and, in particular, the real-time, public dissemination of trade and quotation information a central feature of the U.S. securities markets. Accordingly, participants in the options markets today have access to a consolidated stream of quotation and transaction information for any of the thousands of options classes that trade. This transparency, in turn, contributes to efficient price discovery, offsets the fragmentation of buying and selling interest on multiple exchanges, and facilitates the best execution of customers' orders by broker-dealers.

Market information, however, is only of use to market participants if it is disseminated in a timely fashion. Unfortunately, the amount of market data generated by the options markets is dangerously close to exceeding the capacity of the Options Price Reporting Authority (''OPRA'') system to do this.[2] In fact, prior to recent increases in OPRA capacity, there have been periods when the amount of options market data sent by the exchanges to OPRA exceeded OPRA capacity to publicly disseminate it on a real-time basis. When this occurs, the only market participants with up-to-date quote and trade information are those physically on the floor of a particular exchange. Those participants then have an informational advantage over participants—including investor—not physically on the particular exchange floor. This result reduces market transparency, impedes efficient price discovery, and is inconsistent with the goal of fair competition among brokers and dealers and exchange markets.

During the past year, the options exchanges have agreed, on an *ad hoc* basis, to allocate OPRA capacity among themselves when demand for the scarce capacity exceeds the supply available. Currently, however, the options exchanges do not have an agreement on how to limit the amount of market data each will send to OPRA. Because OPRA has recently expanded its capacity to 8,000 messages per second, there have been no strains on OPRA capacity.[3] Nevertheless, the full implementation of decimal pricing, the dissemination of quotations with size, and the complete roll-out of ISE's new listings, is expected to once again strain OPRA capacity limits.

For this reason, the Commission is adopting amendments to the OPRA Plan to allocate, among the options exchanges, OPRA's peak period message handling capacity.[4] The Commission believes that these amendments are necessary because of the OPRA participants' inability to agree on how to allocate capacity among themselves and the inability to increase ORPA's systems capacity within the short-term to a level sufficient to permit the exchanges to generate message traffic without restraint. The allocation of OPRA capacity among the exchanges effectively puts a cap on the number of messages that each exchange can send to OPRA when the exchanges' aggregate demand for OPRA capacity exceeds its supply. Only by limiting each exchange to a maximum number of messages per second that it can send to OPRA, during periods when the demand on OPRA systems capacity exceeds the supply, will all broker-dealers and investors have available to them accurate and timely information with respect to quotations for and transactions in options. Further, the Commission believes that the formula it is adopting today allocates capacity in a more objective and transparent manner, is consistent with the statutory objectives of fair competition among markets,[5] and assures the availability to brokers, dealers, and investors of information

[1] 15 U.S.C. 78k–1.

[2] The OPRA Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'') is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange (''Amex''); the Chicago Board Options Exchange (''CBOE''); the International Securities Exchange (''ISE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''Phlx''). The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[3] Currently, OPRA systems capacity is 8,000 messages per second, while the exchanges' peak demand to date has approached 3,700 messages per second.

[4] In May 2000, the Commission proposed amendments to the OPRA Plan to allocate OPRA systems capacity among the options exchanges during peak usage periods. *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (''Proposing Release'').

[5] *See* Section 11A(a)(1)(C)(ii) of the Act, 15 U.S.C. 78k–1(a)(1)(C)(ii).

with respect to quotations for and transactions in options.[6]

Although a capacity allocation formula inhibits exchanges' ability to generate and send to OPRA unlimited quotations, this is a direct consequence of insufficient OPRA capacity to handle peak message volumes. In this context, the Commission must balance this concern against investors' and other market participants' interest in having timely and reliable market information to use to make informed investment and trading decisions. The Commission is adopting these amendments as a short-term solution and only after the OPRA participants themselves have been unable to reach agreement on an objective capacity allocation formula. As a more permanent solution, the Amex, CBOE, PCX, and Phlx have consented, as part of their settlement of an enforcement action with the Commission, to, among other things, modify the organizational structure and operation of OPRA so that each exchange will independently determine the amount of capacity that it will obtain.[7]

II. Background

In 1981, the Commission approved the OPRA Plan as a national market system plan, pursuant to Sections 11A(a)(2) and 11A(a)(3)(B) of the Act.[8] The OPRA Plan governs the process by which options market data are collected from participant exchanges, consolidated, and disseminated.[9] Consolidated data, when it is disseminated in a timely manner, enable broker-dealers and investors to know the best price that is currently available for a particular product. It assists customers in setting the terms of their orders and in monitoring how well their brokers execute their orders. Consolidated data also assist investors' brokers to obtain, as well as exchange market makers and specialists to provide, the best execution possible for an order.

The OPRA policy committee composed of representatives from each participant exchange implements and, subject to Commission approval, amends the policies and procedures set forth in the OPRA Plan. The OPRA committee selected the Securities Industry Automation Corporation (''SIAC'') as the facility for gathering the last sale and quote information from each of the participant exchanges and consolidating and disseminating such data to approved vendors. All of the transactions executed on, and price quotations for options generated by, each options exchange are communicated to the public by OPRA through the facilities of its exclusive processor, SIAC. The messages are sent to OPRA and distributed to market data vendors on a consolidated basis for use by options market participants, including retail investors, broker-dealers, and the exchanges themselves.

Each trade that is executed on an options exchange, as well as each price change quoted on an options exchange, is reported to OPRA as a ''message.'' The options markets generate messages for a substantial number of products. Currently, there are approximately 3,900 equity securities and indexes underlying listed options products, and more than 178,000 individual options series.[10] Trade and quote data are generated continuously during the hours that markets are open for each options product listed on each options exchange.

Quote message traffic represents the vast majority of the options message traffic generated.[11] Generally, quotes are generated automatically for individual options series based on changes in the underlying stock price or index value. In other words, every time a price changes for a particular equity security, the quotes for all of the options on that security or an index in which that security is represented may be automatically updated on each exchange that trades those options. This enormous amount of quote message traffic burdens the OPRA system, and threatens to compromise the reliability of options market data disseminated to market participants, including retail investors.

The number of messages generated by the exchanges on a daily basis has been growing exponentially. In January 1999, OPRA reported an average of only about 17 million messages per day. By January 2000, OPRA reported an average of 40 million messages per day.[12] As options message traffic has increased over the last few years, OPRA has directed SIAC to implement systems enhancements to accommodate the additional message traffic. Over the last year, however, it has become increasingly apparent that the message traffic expected to be generated by the options exchanges cannot be accommodated by the planned enhancements to the OPRA system.[13]

The options exchanges have, individually, implemented a number of internal quote message mitigation strategies and the Commission expects the options exchanges to continue to consider and implement other quote message mitigation strategies as both long-term and short-term solutions. Nonetheless, quote message traffic continues to strain OPRA systems capacity. The options exchanges have responded to this capacity crisis by agreeing to allocate existing OPRA systems capacity among themselves during peak periods, while continuing to work on other short-term mitigation strategies, such as delisting classes with little or no open interest and developing a system that would only disseminate quotes upon request for inactive options classes. To date, the options markets have agreed, on six occasions, to allocate the then-existing OPRA systems capacity among themselves during peak periods through temporary amendments to the OPRA Plan.[14] The capacity allocations implemented by the options exchanges over the past nine months have been based loosely on the historical peaks experienced by each

[6] *See* Section 11A(a)(1)(C)(iii) of the Act, 15 U.S.C. 78k–1(a)(1)(C)(iii).

[7] *See* In the Matter of Certain Activities of Options Exchanges, Securities Exchange Act Release No. 43268, September 11, 2000; Administrative Proceeding File No. 3–10282 (''SEC Order'').

[8] 15 U.S.C. 78k–1(a)(2) and 15 U.S.C. 78k–1(a)(3)(B); *see also* Securities Exchange Act Release No. 17638 (March 18, 1981), as amended; *see, e.g.*, Securities Exchange Act Release No. 40767 (December 9, 1998), 63 FR 69354 (December 16, 1998).

[9] In 1976, the Commission approved OPRA's registration as a securities information processor. *See* Securities Exchange Act Release No. 12035 (January 22, 1976), 41 FR 4372.

[10] A series is a class of options, either all puts or all calls, on the same underlying security that have the same exercise price and maturity date.

[11] For example, in February 2000, the average number of quotes per day was 37.5 million, while the average number of trades per day was 183,000.

[12] As discussed below, this tremendous increase in message traffic may be attributed, in part, to the increased volume on the exchanges, increased volatility in the underlying equity securities, and increased multiple trading of previously exclusively-traded options products across the options exchanges. Dramatic growth in options quote message traffic is expected to continue in the near future as ISE continues its roll-out of the top 600 most actively-traded options classes, products begin to trade in decimals rather than fractions, and quotes are disseminated with size.

[13] OPRA systems capacity was expanded to 5,000 messages per second, and subsequently, 8,000 messages per second, on July 17, 2000 and October 2, 2000, respectively. Planned enhancements to the OPRA system are expected to increase total systems capacity to 12,000 messages per second by year-end.

[14] *See* Securities Exchange Act Release Nos. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (order approving File No. SR–OPRA–00–01); 42362 (January 28, 2000), 65 FR 5919 (February 7, 2000)(order approving file No. SR–OPRA–00–02); 42493 (March 3, 2000), 65 FR 12597 (March 9, 2000)(order approving File No. SR–OPRA–00–03).); 42779 (May 12, 2000), 65 FR 31950 (May 19, 2000)(order approving File No. SR–OPRA–00–04); 42849 (May 26, 2000), 65 FR 36180 (June 7, 2000)(order approving File No. SR–OPRA–00–05); and 43063 (June 21, 2000), 65 FR 46752 (July 31, 2000)(order approving File No. SR–OPRA–00–07)

options market, and determined through negotiations among the markets. The options exchanges have, however, been unable to agree to anything other than short-term, *ad hoc* allocations that failed to ensure the continued availability of quote and trade information to other market participants [15] by providing incentives for the exchanges to reduce excessive quoting of existing listings and to add new listings only when there was a sound business rationale. The options exchanges, however, failed to agree to an allocation of capacity following the expiration of the most recent temporary amendment to the OPRA Plan.[16] As noted above, pursuant to the SEC Order, the Amex, CBOE, PCX, and Phlx are required, to act jointly with the ISE, by September 11, 2001, to amend the OPRA Plan to modify the structure and operation of OPRA so that each exchange will independently determine the amount of capacity that it will obtain.[17] Because the Commission is concerned that the options exchanges will be unable, in the near future, to agree on how to allocate capacity for the period prior to development and implementation of a means for each exchange to contract for its own planned capacity requirements, the Commission is adopting these amendments to the OPRA Plan as a methodology by which the limited OPRA systems capacity available will be allocated.

III. Description of Proposal

In May 2000, the Commission proposed two alternative capacity allocation formulae, briefly described below, to be used in the short-term to allocate OPRA systems capacity among the options exchanges during peak usage periods.[18]

Proposed Alternative A was based on the concept that an exchange should receive a portion of the available systems capacity only for those options classes in which the exchange's trading reached a minimum threshold (''Included Classes''). The Commission proposed that an options class be considered an Included Class for an exchange, if during a three-month period, that exchange traded an average of: (1) 15 trades per day, if the class is multiply-listed, or (2) 30 trades per day, if the class is exclusively-listed. The Commission requested comment on the proposed definition of Included Class. Capacity would then be allocated during peak periods to each exchange for which an options class is an Included Class based on the average quotation volume across all markets for which the particular class was an Included Class during the first half-hour of the trading day. To permit new entrants a fair opportunity to compete with existing exchanges, the Commission's Proposed Alternative A provided that all options classes listed on an exchange that had been operating for fewer than nine months be Included Classes.

Proposed Alternative B was based on an equal allocation of OPRA systems capacity among the options exchanges, with adjustments based on the exchange's ratio of total quotes to its total contract volume. The fewer quotes per contract traded on an exchange, the greater the allocation that exchange would receive. To allow exchanges to list new options classes without being penalized in the determination of how capacity is allocated, any options classes listed by an exchange during the preceding calendar quarter would be excluded from the ratio calculation. The equal allocation would be adjusted by an exchange's deviation from the average ratio of total quotes to its total contract volume, multiplied by a dampening factor. The Commission proposed that the dampening factor be 10% for the first adjustment calculation. If, after the first calculation, any exchange's capacity allocation fell below a pre-determined minimum, which the Commission proposed to be 15% of all OPRA capacity, the dampening factor would be reduced by one percent and an adjustment recalculation performed. Recalculations would continue, reducing the dampening factor by 1% for each successive recalculation, until all exchanges have at least the pre-determined minimum capacity allocation.

IV. Description of Amendment Being Adopted

The capacity allocation formula adopted today, which will be calculated quarterly and applied only when the exchanges' demand for OPRA capacity exceeds its supply, combines a number of elements found in the two alternative formulae proposed by the Commission, and incorporates several modifications recommended by commenters. The Commission recognizes that there is no one ideal capacity allocation methodology and, therefore, as suggested by one commenter, has determined to divide OPRA systems capacity into separate portions and allocate those portions based on different criteria.

The formula adopted by the Commission allocates an equal portion of one-third of available OPRA systems capacity to each options exchange.[19] This means that if there are five options exchanges, each exchange would have available at least 533 messages per second with the current 8,000 message per second capacity of OPRA. When OPRA capacity is expanded to 12,000 messages per second, as it is expected to be by year-end, each exchange would have available at least 800 messages per second. While this amount of capacity may not be sufficient to fully satisfy any of the exchanges' capacity needs, the Commission believes it is a fair amount of capacity to be allocated solely on the basis of being a registered exchange operating an options market. The Commission believes that it is important to assure each options exchange at least a minimum amount of capacity to disseminate its market data, in order for the formula being adopted today to be consistent with the statutory objectives of fair competition and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[20]

The capacity remaining after the allocation described above and any allocation to new exchanges as described below, will be allocated among the exchanges based upon a variation of Proposed Alternative A, as set forth in the Proposing Release.[21] Specifically, this remaining OPRA systems capacity will be allocated to the exchanges based on the average quotation message traffic generated during the last full hour of the trading day, 3 p.m. to 4 p.m. eastern time. An exchange will receive an allocation only for those options classes for which at least a minimum number of customer contracts [22] are traded on that exchange.

[15] *See* Section 11A(a)(1)(C)(iii) of the Act, 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] Consequently, the options exchanges currently are not operating under a capacity allocation plan. *See* letter from Joseph Corrigan, Executive Director, OPRA, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation, Commission, dated September 25, 2000.

[17] *See supra* note .

[18] *See* Proposing Release, *supra* note 4.

[19] As described below, however, an options exchange that begins trading for the first time will receive an allocation of capacity equal to 40% of OPRA systems capacity divided by the total number of options exchanges. For each quarter thereafter, an exchange operating for fewer than 270 calendar days elects to receive this fixed allocation, or to receive an allocation based on the same formula as applied to other exchanges. *See* OPRA Plan, Section V (d) and (e). The equal portion of one-third of available OPRA systems capacity will be calculated using the total number of options exchanges, even though allocated only to those exchanges that do not receive a fixed new exchange allocation. *See* OPRA Plan, Section V (d)(ii).

[20] *See* Section 11A(a)(1)(C)(ii) and (iii) of the Act, 15 U.S.C. 78k-1(a)(1)(C)(ii) and (iii).

[21] *See* Proposing Release *supra* note .

[22] For purposes of the formula, the term ''customer contract'' is defined as an options

The formula does not allocate capacity to an exchange for a particular options class in which the exchange's average daily contract volume [23] does not exceed 15 customer contracts for multiply-listed options classes and 25 customer contracts for exclusively-listed options classes.[24] Exchanges will not be given additional capacity for new listings that do not trade the minimum number of customer contracts set forth above.

Because new exchanges may not have had time to develop their business to attract a sufficient number of customer contracts to meet the minimum customer contract volume set forth above, instead of receiving an allocation of capacity based on the formula described above, new exchanges will receive during their first quarter of operation, and may elect to receive thereafter, an allocation of OPRA systems capacity slightly greater than an equal portion of one-third of available capacity. Specifically, an options exchange that has been operating for fewer than 270 calendar days may choose to receive a capacity allocation (1) equal to 40% of available OPRA systems capacity divided by the total number of options exchanges (''New Exchange Share''); or (2) based on the same formula used to determine the capacity allocated to all other exchanges. A new options exchange will make an election five business days following the end of a calendar quarter regarding which method under which it wishes to receive a capacity allocation. During a new exchange's first quarter of operation, or any portion thereof, it will receive an allocation equal to 40% of available capacity divided by the total number of options exchanges.[25] New markets will be treated the same as existing exchanges after the end of their first year of operation.[26]

V. Discussion

A. Introduction

In Section 11A of the Act,[27] Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act.[28] In particular, Section 11A(a)(3)(B) of the Act authorizes the Commission ''by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities.'' [29] The procedures regarding filing amendments to a national market system plan are set forth under Rule 11Aa3–2.[30] Rule 11Aa3–2 permits the Commission, on its own initiative, to propose amendments to an effective national market system plan,[31] such as the OPRA Plan, and establishes the procedures for doing so.[32] The Commission may adopt such an amendment if it finds that the amendment ''is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [33]

The Commission proposed amendments to the OPRA Plan on its on initiative in accordance with Rule 11Aa2–3. After carefully considering the issues raised by the comment letters, the Commission is adopting an amendment to the OPRA Plan that establishes a formula for allocating OPRA systems capacity among the OPRA participants during peak usage periods.[34] The Commission notes that the capacity allocation formula described in this release should be necessary only for the short-term. The Amex, CBOE, PCX, and Phlx have committed, as part of their settlement with the Commission, to act jointly with the ISE, to modify by September 11, 2001, the structure and operation of OPRA so that each exchange will independently determine the amount of capacity that it will obtain. Until implementation of this new structure, however, the Commission believes that the certainty and objectivity of the capacity allocation formula being adopted today is needed to ensure that investors have available timely and accurate options market data. The possibility that options exchanges will exceed the capacity limits currently available jeopardizes the timeliness and accuracy of options market data and, consequently, the protection of investors and the maintenance of fair and orderly markets.

B. Comments on Commission's Proposal to Allocate Capacity

In response to the Proposing Release, the Commission received eight comment letters, representing the views of the five options exchanges and three other interested parties.[35] Although none of the commenters recommended the adoption of the Commission's proposed alternatives, four commenters generally supported the concept of an allocation formula.[36] Moreover, two commenters generally supported the concept of allocating OPRA systems capacity based on the number of listings on an exchange that satisfy a minimum level of trading volume, as set forth in

contract executed on an options exchange and cleared in a customer account at a registered clearing agency. *See* OPRA Plan, Section III (m).

[23] The exchange's average daily contract volume in an options class will be calculated based on the number of trading days such class is listed on such exchange during the calendar quarter.

[24] The term ''options class'' is defined in OPRA Plan, Section III (n), and includes options on groups or indexes of securities.

[25] If an options exchange begins to trade other than on the first of February, May, August, or November, each other options exchange's capacity will be recalculated pursuant to Section V (d)(ii)(B) of the OPRA Plan, using data from the most recent calendar quarter, except that any options exchange that was qualified for, and elected to receive, the New Exchange Share in the most recent quarterly allocation, will receive a New Exchange Share. *See* OPRA Plan, Section V(e).

[26] Because a new exchange that has been operating for fewer than 270 days will make, on the fifth business day following the end of a calendar quarter, its election for the next allocation period, a New Exchange Share may be allocated to an exchange for its first year of operation.

[27] 15 U.S.C. 78k–1.

[28] In Section 11A(a)(1)(C)(iii) of the Act, Congress found ''that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.'' 15 U.S.C. 78k–1(a)(1)(C)(iii).

[29] 15 U.S.C. 78k–(a)(3)(B).

[30] 17 CFR 240.11Aa3–2.

[31] 17 CFR 240.11Aa3–2(b)(2). Further, Paragraph (c)(2) of Rule 11Aa3–2 requires that promulgation of an amendment to an effective national market system plan initiated by the Commission be by rule. 17 CFR 240.11Aa3–2(c)(2).

[32] 17 CFR 240.11Aa3–2.

[33] 17 CFR 240.11Aa3–2(c)(2).

[34] Pursuant to paragraph (c)(2) of Rule 11Aa3–2 under the Act, the Commission designates up to 180 days from the date of publication of notice of the filing of an amendment to a national market system plan for its approval of the amendment to the OPRA Plan adopting a capacity allocation formula. The Commission finds that, due to the complexity of issues relating to adopting a formula to allocate OPRA systems capacity between the options exchanges during peak usage periods, it is necessary and appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets to designate this longer period. 17 CFR 240.11Aa3–2.

[35] *See* letters to Jonathan G. Katz, Secretary, Commission, from Joseph B. Stefanelli, Executive Vice President, Derivative Securities, AMEX, Commission, dated July 28, 2000 (''Amex Letter''); Edward J. Joyce, President and Chief Operating Officer, CBOE, dated June 9, 2000 (''CBOE Letter''); Michael J. Simon, Senior Vice President and General Counsel, ISE, dated June 9, 2000 (''ISE Letter''); James J. Bowe, Senior Executive Vice President Options, PCX, dated August 3, 2000 (''PCX Letter''); Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, dated June 12, 2000 (''Phlx Letter''); Joel L. Bohm, General Counsel and Corporate Secretary, SIAC, dated June 8, 2000 (''SIAC Letter''); Joel Greenberg, Susquehanna Partners, GP, dated June 9, 2000 (''Susquehanna Letter''); and Chris Delzio, dated June 7, 2000. A full summary of comments received on the proposed amendments to the OPRA Plan is available in the Commission's Public Reference Room (File No. 4–434).

[36] *See* Amex Letter; ISE Letter; Phlx Letter; and SIAC Letter.

Proposed Alternative A.[37] Two commenters, on the other hand, supported the concept of an equal allocation of available capacity.[38] As discussed below, commenters generally did not support Proposed Alternative B, because of their opposition to the proposed measure of quoting efficiency. Two commenters stated that, in the long term, OPRA capacity should not be allocated based on a formula.[39] Instead, these commenters believed that each options exchange should pay for the amount of capacity that it requires.[40]

1. Comments on Proposed Methods of Incorporating a Measure of Quoting Efficiency into the Allocation of Capacity

Both allocation formulae proposed by the Commission incorporated a measure of quoting efficiency. Proposed Alternative A would have allocated capacity during peak periods to an exchange for which an options class was considered an Included Class, based on the average quotation volume during the first half-hour of the trading day across all markets for which such class was an Included Class. Proposed Alternative B would have adjusted an equal allocation of capacity based on an exchange's ratio of quotes to its trading volume.

Several commenters opposed the Commission's proposed measures of quoting efficiency set forth in Proposed Alternative A and Proposed Alternative B. With respect to Proposed Alternative A, six of the commenters were opposed to determining the average quoting frequency of multiply-traded and exclusively-traded options classes based on the quoting activity that occurs during the first half-hour after the opening rotation, citing the difficulty in obtaining such information for the proposed time period.[41] Four commenters suggested the full trading day, rather than the first half-hour, be used for calculating average quoting frequency, due to the effort that would be required to process the required raw data, the lack of clarity as to when a particular market has completed its opening rotation, and the potential for manipulation.[42]

With respect to Proposed Alternative B, one commenter expressed significant opposition to the initial equal allocation, arguing that the proposed adjustments to this allocation based on quoting efficiency were not significant enough to adequately reward more efficient exchanges.[43] Another commenter also raised concerns about Proposed Alternative B, but for a different reason. Specifically, this commenter stated that the quote-to-contract volume aspect of Proposed Alternative B would reward established markets at the expense of new exchanges attempting to compete for market share by competitively quoting.[44]

One commenter objected to the way adjustments for quoting efficiency were proposed to be made to the initial equal allocation because it was based on an inappropriate measure of quoting efficiency.[45] This commenter also expressed concerns that using the quote-to-volume ratio as a measure of quoting efficiency would discourage new listings, have the effect of giving different allocations to exchanges that have the same quoting frequency, and would generally impede competition by providing high volume exchanges with an advantage over new exchanges and lower-volume exchanges.

Another commenter expressed concerns that Proposed Alternative B would result in market makers quoting larger spreads to compensate for a disincentive to adjust quotes based on volatility in the underlying security. In addition, this commenter argued that Proposed Alternative B would favor exchanges and options classes that have a greater percentage of institutional order flow, which could disadvantage retail investors, and could result in a disincentive to multiply-list options classes. In this regard, this commenter contended that aggressive quoting, which could negatively affect an exchange's quote-to-contract ratio, is necessary for a new market to attempt to acquire market share in a multiply-listed options class.[46]

The allocation formula adopted by the Commission today incorporates the measure of quoting efficiency contained in the Commission's Proposed Alternative A. That is, the exchanges will receive a capacity allocation based on the average quoting frequency of all exchanges for which an options class is an Included Class. Exchanges that quote more frequently than the average will not receive capacity equal to their past usage. Exchanges that quote less frequently will receive more capacity for that options class than their past usage, thus allowing them to use the extra capacity to support a business in other options classes, such as those which may not have sufficient trading volume to be an Included Class.

The Commission recognizes the merit in commenters' views that limiting the capacity allocated to a particular exchange based on relative quoting frequency as proposed in Alternative A may discourage market makers from aggressively quoting and may favor larger, more established exchanges that do not need to aggressively quote to advertise for order flow. The Commission also agrees that there may be circumstances in which exchanges quoting with the same frequency may receive different allocations of capacity under the formula because one exchange does not have enough trading volume for particular options classes to be Included Classes. Nonetheless, the Commission believes that the formula being adopted today strikes an appropriate balance between the capacity needs of higher volume exchanges and that of newer and smaller volume markets because it combines the allocation of capacity based on the number of Included Classes on an exchange with the allocation of an equal portion of one-third of available capacity, which should ensure that newer and smaller exchanges receive sufficient capacity to actively compete for order flow. The Commission also believes that it is important to provide an incentive to exchanges to avoid excessive quoting. The Commission believes that the allocation formula adopted today would

[37] *See* CBOE Letter and ISE Letter.

[38] *See* Phlx Letter and Amex Letter.

[39] *See* Phlx Letter and CBOE Letter.

[40] *Id.* Another commenter proposed to address the Commission's concerns about OPRA system capacity by allowing the dissemination of all transaction prices, but quotations only for options classes meeting minimum volume thresholds or that have one of the three strike prices nearest to the price of the underlying security. The PCX argued that OPRA capacity should be targeted to options series that are actively traded and that all exchanges should be able to competitively quote those series to provide investors with the most competitive prices available. *See* PCX Letter. The Commission believes that this approach would be viable if the exchanges developed a system that would disseminate a quote only upon request. In the absence, however, of such a system, the Commission does not believe that this approach is consistent with Section 11A(c)(1)(B) of the Act. The Commission continues to encourage the exchanges to develop mitigation strategies, including the development of a request-for-quote system.

[41] *See* Amex Letter; CBOE Letter; ISE Letter; Susquehanna Letter; PCX Letter; and Phlx Letter.

[42] *See* Amex Letter; CBOE Letter; PCX Letter; and ISE Letter.

[43] *See* CBOE Letter.

[44] *See* ISE Letter. This commenter noted that any allocation formula should promote competition and not in any way ''lock in'' or preserve the market share of any options exchange. Instead of basing an allocation formula on an exchange's volume or market share, which would prevent smaller or newer markets from effectively competing against exchanges with greater volume, this commenter advocated an allocation formula based solely on the products that an exchange trades. In addition, this commenter emphasized the need to adopt an allocation formula that would not perpetuate the problem of the inefficient use of OPRA bandwidth.

[45] *See Phlx Letter.* This commenter did not, however, recommend a more appropriate measure of quoting efficiency.

[46] *See* Susquehanna Letter.

do this by giving credit to an exchange based on the average quoting frequency of all exchanges, not just its own.

Moreover, in response to commenters' concerns regarding the Commission's proposal to calculate the average quoting frequency based on activity occurring during the first half-hour of the trading day, the Commission has modified the proposal to consider the last full hour of the trading day, 3 p.m. to 4 p.m. eastern time, when calculating average quoting frequency. The Commission believes that this modification should address perceived problems relating to the overlapping opening rotations of the various markets.

2. Comments on Capacity Allocation Only for Classes in Which an Exchange Has a Minimum Level of Trading Volume

Under Proposed Alternative A, the Commission proposed to allocate capacity to an exchange, only for those options classes that had a minimum trading volume on that exchange, which the Commission proposed to be 15 trades per day for multiply-listed options classes and 30 trades per day for exclusively-listed options classes.

Despite commenters' concerns that the proposed requirement that exchanges receive capacity credit under this scheme only for those classes for which there was a minimum level of trading may create disincentives to adding new listings,[47] the Commission has retained this requirement in the formula adopted today. The Commission has chosen to retain this requirement because of its concern that the absence of such a requirement may create incentives for exchanges to list certain options products without a sound business rationale and solely for the purpose of increasing their capacity allocation.

Commenters, however, generally opposed using the number of trades as the measure of activity in a particular options class on an exchange. Specifically, five commenters recommended that contract volume, rather than the number of trades, be used to measure activity in an options class to more accurately capture customer interest in a particular options class.[48] Two of these commenters believed that only customer contract volume should be counted for purposes of determining which options classes were Included Classes.[49]

The Commission agrees with the commenters' suggestion that the number of customer contracts, rather than the total number of trades, be used to determine which options classes are Included Classes on an exchange. The number of customer contracts traded is a meaningful measure of the importance of a particular exchange to investors. In addition, to avoid encouraging market makers to trade among themselves solely for the purpose of achieving sufficient volume in an options class, the Commission is adopting commenters' recommendation that only transactions involving customer accounts be counted for purposes of determining whether an options class is an Included Class.

Several commenters addressed the Commission's proposed trading thresholds for determining whether an options class should be considered an Included Class.[50] One commenter stated that multiply-listed and exclusively-listed classes should be treated the same because otherwise decisions to list new classes could be inappropriately influenced by capacity concerns.[51] One commenter recommended that an options class be considered an Included Class if the average daily contract volume over three months is 50 contracts and the class is multiply-listed, and if the average daily contract volume over three months is 100 contracts and the class is exclusively-listed.[52] This commenter believed that these ''more realistic thresholds'' would ''encourage all OPRA participants to consider delisting inactively traded products.'' Another commenter contended that an options class should be considered an Included Class if the exchange traded a minimum average of 40 contracts per day for both multiply-listed and exclusively-listed classes.[53]

Two commenters argued that determining which options classes are Included Classes should be based on industry-wide volume, rather than the volume on a particular exchange.[54] One of these commenters contended that using exchange-specific volume criteria to determine an Included Class would inappropriately reward exchanges that have an established market share in an options class and would discourage exchanges from listing new products to compete in actively-traded issues.[55] One of these commenters recommended that to eliminate this result an Included Class be any class with an average daily volume of greater than 25 customer contracts on an industry-wide basis for the last three months.[56]

With respect to the number of customer contracts required to be traded for an options class to be an Included Class, the Commission is adopting a requirement of 15 customer contracts for multiply-listed, and 25 contracts for exclusively-listed, options classes. These numbers are supported by the analysis conducted by Commission staff that indicates that approximately 93% of all multiply-listed options classes trade, on average, more than 15 customer contracts per day. In addition, approximately 60% of all exclusively-listed options classes that traded at least one contract over the period, on average, trade more than 25 customer contracts per day.[57] The Commission continues to believe that it is important to determine whether an options class is an Included Class on an exchange-by-exchange basis, rather than on an industry-wide basis, as suggested by commenters, to avoid encouraging the listing of new products solely to obtain additional capacity. The Commission believes that the approach it is adopting today ameliorates concerns about discouraging exchanges from listing new products by allocating an equal portion of one-third of available capacity to each options exchange.[58]

[47] *See* ISE Letter; Phlx Letter; and Susquehanna Letter. The Phlx argued that because proposed Alternative A would provide no capacity allocation to an exchange if activity in an option class on that exchange failed to meet the volume thresholds to be considered an Included Class, the proposal would likely reduce competition by creating a disincentive for exchanges to list options that are already traded on other exchanges. This commenter expressed concern that an exchange may decide not to list an option class due to concerns that it will not attract enough volume to get an adequate capacity allocation.

[48] *See* Amex Letter; CBOE Letter; ISE Letter; Phlx Letter; and Susquehanna Letter.

[49] *See* Amex Letter and ISE Letter.

[50] *See* Amex Letter; CBOE Letter; ISE Letter; PCX Letter; Phlx Letter; and Susquehanna Letter.

[51] *See* Susquehanna Letter.

[52] *See* Amex Letter.

[53] *See* CBOE Letter. As an alternative to the Commission's proposal, the CBOE proposed that capacity be allocated for Included Classes based on the average number of quotes-to-cleared transactions. Each exchange's allocation would be adjusted by an exchange's efficiency, which would be determined by measuring an exchange's quote-to-trade ratio. The CBOE proposed to include a temporary minimum guarantee to all exchanges of 8% of the total OPRA capacity.

[54] *See* ISE Letter and Phlx Letter.

[55] *See* ISE Letter.

[56] Alternatively, the ISE suggested that ''Included Classes'' be defined as options classes with 15, or with 50, average daily customer contracts. *See* ISE Letter.

[57] Commission staff's analysis relies on Options Clearing Corporation data on average daily trading volume for the period January 1, 2000 through September 11, 2000 for options classes that traded, on average, more than zero customer contracts per day during this period.

[58] As an additional protection for new exchanges that may not have had enough time to attract, on average, 15 customer contracts each day in multiply-traded options classes, the formula being adopted today allows such exchanges to elect to receive a slightly greater than equal portion of one-

Continued

Finally, one commenter argued that active trading in options classes generates a larger number of quotes, which must be reflected in an exchange's capacity allocation.[59] In response to the commenter's assertion that higher volume exchanges require more capacity than lower volume exchanges, Commission staff conducted analysis that indicated that in a given option, the exchange that executed the most trades was no more likely to generate the most quotes than any of the other exchanges that traded the option. Therefore, there is not necessarily a direct relationship between the volume of trading and the number of quotations generated by a given market in a particular options class. Instead, other factors, such as the volatility of the price of the underlying security, more directly affect the number of quotations generated for a particular options class. Nonetheless, the Commission believes that the approach adopted today allocates greater capacity to the exchanges that list more options classes that exceed the minimum volume threshold, which partly achieves the commenter's objectives.

3. Comments on Allocating Capacity Equally Among the Options Exchanges

Proposed Alternative B was premised on an equal allocation of capacity among the options exchanges, with adjustments based on a measure of quoting efficiency. One commenter stated its general support for equal allocation of capacity among the exchanges, but objected to the formulae proposed by the Commission, arguing that it would reward markets for achieving trading volumes that were not necessarily related to aggressive or efficient quoting, but may be attributable, instead, to factors such as payment for order flow, internalization, and other arrangements between market participants and order flow providers.[60] Another commenter suggested allocating capacity based on three different factors, each of which would be used to allocate one-third of the total OPRA system capacity. The first one-third of OPRA capacity would be allocated equally among the exchanges under the plan proposed by this commenter.[61]

The amendment to the OPRA Plan adopted by the Commission allocates to each options exchange an equal portion of one-third of OPRA capacity.[62] The Commission agrees that each exchange that is operating an options market requires a minimum amount of OPRA capacity to launch new products, regardless of the number of customer contracts that it executes. Moreover, the Commission recognizes that there is not necessarily a direct correlation between the competitiveness of a market's quotes and its trading volume.[63] Nonetheless, the Commission believes that to balance several competing goals, it is appropriate at this time to limit the amount of capacity allocated based on no other factor than the operation of an options exchange. In particular, the Commission must balance the interests of fair competition with the need to assure the availability to market participants of timely and reliable market data. Balancing these goals requires the Commission to recognize that the options exchanges have decided, for competitive reasons, not to trade exactly the same products, and consequently, the capacity needs of the various markets are not precisely the same.[64]

4. Comments on Rewarding Quality of Quotes

In the Proposing Release, the Commission specifically sought comment on whether there may be another, more appropriate, performance criteria on which to base capacity allocation. One commenter argued that neither allocation formula proposed by the Commission created incentives to market makers to disseminate quotes that contribute value to the marketplace. As an alternative, this commenter recommended that the Commission adopt an allocation formula that would identify quotes that participate in the national best bid and offer (''NBBO'') and reward market makers that generate those quotes.[65]

The Commission agrees that allocating OPRA capacity to those markets that disseminate quotes that ''contribute value to the marketplace'' would be the preferable way to allocate OPRA capacity until a long-term solution is available. In response to the commenter's recommendation, Commission staff carefully considered how this objective might be integrated into a capacity allocation formula. The Commission concluded, however, that this objective could not be accomplished at this time because of the anticipated difficulty in implementing an NBBO-based formula in the absence of a consolidated NBBO in the options market.

5. Comments on Anticompetitive Aspects of Allocation Formula

As discussed above, several commenters argued that the allocation formulae proposed by the Commission are anticompetitive because the options exchanges would be discouraged from listing new products and capacity would be allocated to higher volume exchanges to the detriment of newer and smaller volume exchanges.[66] The Commission agrees with the commenters that the existence of an allocation formula may influence the behavior of certain market participants. Specifically, individual markets may determine not to list certain new products because of a concern that insufficient order flow would be attracted initially and would prevent the exchange from earning capacity credit for those products.

The Commission supports the efforts of the options exchanges to actively compete for order flow, and encourages the markets to consider listing new products to satisfy investor demand. In response to the commenters' concerns that a capacity allocation formula is antithetical to competition, however, the Commission believes that it is not the existence of an allocation formula, *per se,* that limits the exchanges' ability to generate and disseminate quotation message traffic at will. Instead, the source of the restrictions on ''free'' competition is the anticipated limitations on the availability of OPRA systems capacity, in that the demand on capacity is expected to exceed the supply. The Commission has encouraged the exchanges to develop their own allocation methodology.[67] An allocation formula, such as the one adopted by the Commission today, is

third available capacity. *See* OPRA Plan, Section V(d)(i).

[59] *See* CBOE Letter.

[60] *See* Phlx Letter.

[61] This commenter proposed that the second one-third of capacity be allocated based on the number of active options series in those Included Classes traded at each exchange and that the remaining one-third of capacity be allocated based on an exchange's quoting efficiency. *See* Amex Letter.

[62] As discussed in Section V.B.6 below, an exchange that has been operating for fewer than nine months may elect, in lieu of an equal portion of one-third of capacity and capacity based on the number of Included Classes that it trades, to receive 40% of the available capacity divided by the number of options exchanges.

[63] *See* ISE Letter; Phlx Letter; and Susquehanna Letter.

[64] For this reason, the Commission did not adopt the Phlx's proposal that a portion of the total OPRA capacity be divided equally among all the exchanges, with the remaining portion allocated based on the average daily trading volume across all markets during a calendar quarter. Every quarter, the portion of capacity to be divided equally would increase by 10% until all OPRA capacity would be divided equally. *See* Phlx Letter.

[65] *See* Susquehanna Letter.

[66] *See* ISE Letter; PCX Letter; and Phlx Letter.

[67] *See* Securities Exchange Act Release No. 41843 (September 8, 1999), 64 FR 50126 (September 15, 1999).

necessary because the exchanges have not sufficiently planned for the amount of capacity their business would need, been able to agree on allocation of the limited amount of capacity available, or developed strategies to mitigate the amount of market data generated. The allocation methodology adopted today is critical to ensure that the exchanges, in the aggregate, transmit no more market data to OPRA than the available capacity allows OPRA to disseminate in a timely manner to information vendors. In the absence of such limits, fair and orderly markets and the protection that investors receive from timely and accurate market data would be jeopardized.

6. Comments About New Exchanges

Proposed Alternative A would have treated all options classes listed on an exchange that has been operating for fewer than nine months as Included Classes for purposes of determining capacity allocation. Proposed Alternative B would have provided all exchanges, including new exchanges, with a minimum level of OPRA capacity, which the Commission proposed to be 15%.

Commenters recommended alternatives to the Commission's proposal to consider options classes listed by new options exchanges to be Included Classes for the first nine months of operation.[68] One commenter argued that the proposed nine-month period was both excessive and arbitrary.[69] Two commenters contended that existing exchanges would be placed at a competitive disadvantage if the Commission were to allow new exchanges a nine-month window to list options classes.[70]

Several commenters offered alternative accommodations for new exchanges.[71] Specifically, one commenter proposed allocating new exchanges a minimum amount of capacity for the first four months of its operation. After the first four months, a new exchange would be allocated capacity using the same formula as the existing exchanges.[72] Another commenter proposed, as an alternative, that new exchanges be allowed a one-year phase-in period. Under this approach, a new exchange, during its first year of operation, would provide the names of the options classes that it intended to list for an upcoming quarter and capacity would be allocated for each class based on an industry-wide volume threshold. Alternatively, this commenter suggested that the Commission extend its proposal to permit a new exchange to count all the option classes it lists from nine months to a year and a quarter.[73]

The capacity allocation formula adopted by the Commission provides that, during a new exchange's first quarter of operation, or any portion thereof, it will receive an allocation equal to 40% of available capacity divided by the total number of options exchanges.[74] For each quarter thereafter, a new exchange may decide whether to receive a capacity allocation (1) equal to 40% of available OPRA systems capacity divided by the total number of options exchanges; or (2) based on the same formula used to determine the capacity allocated to all other exchanges. An exchange that has been operating for fewer than 270 calendar days will make an election five business days following the end of a calendar quarter regarding which method under which it wishes to receive a capacity allocation. New markets will be treated the same as existing exchanges after the end of their first year of operation.[75]

The Commission believes that this approach, which provides an emerging market one year to establish its business and flexibility in determining its capacity allocation, adequately balances the Commission's interest in providing new markets with the capacity that they need to compete with existing exchanges, with its interest in not unfairly disadvantaging existing exchanges. In addition, the Commission believes this approach is responsive to concerns that by allowing new exchanges to treat all options listed as Included Classes, as proposed in Alternative A, new exchanges might be encouraged to list all or a substantial number of options classes currently traded.

VI. Costs and Benefits of the OPRA Plan Amendment

The Commission is adopting amendments to the OPRA Plan to allocate, among the options exchanges, OPRA's peak period message handling capacity. The Commission believes that these amendments are necessary because of the OPRA participants' inability to agree on how to allocate capacity among themselves and the inability to increase OPRA systems capacity within the short-term to a level sufficient to permit the exchanges to generate message traffic without restraint.

Although the Commission's adoption of a capacity allocation formula inhibits the exchanges' ability to generate and send to OPRA unlimited quotations, this is a direct consequence not of the formula, but of the fact that OPRA has limited capacity. The Commission is adopting these amendments as a short-term solution and only after the OPRA participants themselves have been unable to reach agreement on an objective capacity allocation formula. As a more permanent solution, the Amex, CBOE, PCX, and Phlx have consented, as part of their settlement of an enforcement action with the Commission, to, among other things, modify the organizational structure and operation of OPRA so that each exchange will independently determine the amount of capacity that it will obtain.[76]

The capacity allocation formula adopted today, which will be calculated quarterly and applied only when the exchanges' demand for OPRA capacity exceeds its supply, combines a number of elements found in the two alternative formulae proposed by the Commission, and incorporates several modifications recommended by commenters.

The formula adopted by the Commission allocates to each options exchange an equal portion of one-third of available OPRA systems capacity. This means that each exchange would have available at least 533 messages per second with the current 8,000 message per second capacity of OPRA. When OPRA capacity is expanded to 12,000 messages per second, as it is expected to be by year-end, each exchange would have available at least 800 messages per second.

The capacity remaining after the allocation described above and any allocation to new exchanges as

[68] *See* CBOE Letter; ISE Letter; Phlx Letter; PCX Letter; and Susquehanna Letter.

[69] *See* Phlx Letter.

[70] *See* Susquehanna Letter and PCX Letter.

[71] *See* CBOE Letter and ISE Letter.

[72] Under the CBOE proposal, a new exchange would receive approximately 2% of total available capacity during the first month, and 1% each month. After four months, the new exchange would be allocated 5% of total capacity. *See* CBOE Letter.

[73] The ISE states that the nine-month grace period proposed by the Commission for new exchanges would be insufficient to accommodate ISE's planned phase-in of 600 options classes during its first year of operation. *See* ISE Letter.

[74] If an options exchange begins to trade other than on the first of February, May, August, or November, each other options exchange's capacity will be recalculated pursuant to Section V (d)(ii)(B) of the OPRA Plan, using data from the most recent capacity allocation, except that any options exchange that was qualified for, and election to receive, the fixed new exchange allocation in the most recent quarterly allocation, will receive a new exchange allocation.

[75] Because a new exchange that has been operating for fewer than 270 days on the fifth business day following the end of a calendar quarter will make its election for the next allocation period, capacity will be allocated to new exchanges under this scheme for their first year of operation.

[76] *See* SEC Order, *supra* note 4.

described below, will be allocated among the exchanges based upon a variation of Proposed Alternative A, as set forth in the Proposing Release.[77] Specifically, this remaining OPRA systems capacity will be allocated to the exchanges based on the average quotation message traffic generated during the last full hour of the trading day, 3 p.m. to 4 p.m. eastern time. An exchange will receive an allocation only for those options classes for which at least a minimum number of customer contracts[78] are traded on that exchange. The formula does not allocate capacity to an exchange for a particular options class in which the exchange's average daily contract volume over a calendar quarter does not exceed 15 customer contracts for multiply-listed options classes and 25 customer contracts for exclusively-listed options classes.[79] Exchanges will not be given additional capacity for new listings that do not trade the minimum number of customer contracts set forth above.

Because new exchanges may not have had time to develop their business to attract a sufficient number of customer contracts to meet the minimums set forth above, such exchanges may instead elect to receive an allocation of OPRA systems capacity slightly greater than an equal portion of one-third of available capacity. Specifically, during its first nine months of operation, a new exchange will be permitted to elect whether to accept a capacity allocation equal to 40% of available capacity divided by the total number of options exchanges, or to be treated the same as all other exchanges under the formula. New markets will be treated the same as existing exchanges after the end of their first nine months of operation.

A. Response to Comments

In the Proposing Release, the Commission requested comment on the anticipated costs and benefits associated with the proposed allocation alternatives to the OPRA Plan, as well as any possible anticompetitive impact of the Proposed Alternatives.[80] Specifically, the Commission requested commenters to address whether either of the Proposed Alternatives would generate anticipated benefits or impose any costs on U.S. investors or others.

Several commenters shared the Commission's concern about OPRA capacity.[81] Currently, OPRA has the capacity to handle 8,000 messages per second. While the options exchanges currently have a slight capacity cushion,[82] the Commission continues to be concerned that the full implementation of decimal pricing, ISE's complete roll-out of new listings, and OPRA's planned dissemination of quotes with size may cause peak quoting rates to soon exceed OPRA systems capacity.[83] The Commission, therefore, believes that the allocation formula that it is adopting today is necessary to avoid delayed quotes that may result if the full implementation of decimal pricing, complete roll-out of ISE, and the dissemination of quotes with size causes the demand for OPRA systems capacity to exceed the supply.

Commenters also raised concerns regarding the Proposed Alternatives, which are addressed in detail above, that implicitly raise issues as to the costs associated with allocating capacity. Generally, commenters believed, in part, that the proposed alternatives could impact an exchange's decision to list certain types of products,[84] create disincentives to list new options,[85] fail to provide an incentive to quote economically,[86] lock-in market share,[87] or lead to anticompetitive results because the options exchanges would be discouraged from listing new products and capacity would be allocated to higher volume exchanges to the detriment of newer and smaller volume exchanges.[88] In addition, six commenters opposed determining the average quoting frequency of multiply-traded and exclusively-traded options classes based on the quoting activity occurring during the first half-hour after the opening rotation citing the difficulty in obtaining such information for the proposed time period.[89] Specifically, commenters complained that it would be difficult to process the required raw data due to the lack of clarity as to when a particular market has completed its opening rotation.

B. Benefits

Absent a mechanism to fairly allocate OPRA systems capacity among the markets, investors may be forced to rely on stale or delayed quote and trade information in making their investment decisions. Thus, the principal benefit of the amendments being adopted is to avoid the potential harm to market participants and investors associated with delayed quotes and trade information, while contributing to efficient price discovery and the best execution of customers' orders by their brokers. If peak quoting rates exceed OPRA systems capacity, queuing may occur and stale or incomplete market data may be transmitted to market participants and investors, thereby reducing market transparency and hampering efficient price discovery. Specifically, if the options market data sent by the exchanges to OPRA exceeds OPRA system capacity to publicly disseminate it on a real-time basis, only those market participants located on the floor of an exchange receive real-time market information. Therefore, the Commission believes that the allocation formula should help ensure that timely and reliable real time market information is available to investors to rely on in making trading and investment decisions.

In addition, the Commission notes that the adoption of an allocation formula will eliminate the need for the options exchanges to continuously negotiate the allocation of OPRA system capacity as any allocation that is needed can be accomplished in an objective and transparent manner. The allocation formula adopted today will allow the options exchanges to focus their resources on other things, such as developing an amendment to the OPRA Plan that will allow each exchange to independently determine the amount of capacity that it will obtain.[90] Therefore, the Commission believes that the

[77] *See, infra* Section II.

[78] For purposes of the formula, the term ''customer contract'' is defined as an options contract executed on an options exchange and cleared in a customer account at a registered clearing agency. *See* OPRA Plan, Section III (m).

[79] The term ''options class'' is defined in OPRA Plan, Section III (n), and includes options on groups or indexes of securities.

[80] *See* Proposing Release, *Supra* note 18.

[81] *See* CBOE Letter; Phlx Letter; Susquehanna Letter; SIAC Letter; PCX Letter; ISE Letter; and Amex Letter.

[82] On August 1, 2000, OPRA reported a one-minute peak of 3,581 messages per second. While this peak does not exceed OPRA's current capacity, in the recent past, the options exchanges have come dangerously close to exceeding OPRA's capacity. *See* Proposing Release, *supra* note.

[83] On August 28, 2000, decimal pricing on 13 exchange-listed stocks, three of which were optionable, began trading in decimals. *See* letter from Joe Corrigan, Executive Director, OPRA, to OPRA Market Data Recipients, dated August 17, 2000. On September 25, 2000, however, 106 additional exchange-listed stocks, 33 of which are optionable, began decimal pricing. On November 1, 2000, all of the exchanges and the Commission will determine whether to convert all listed stocks and all options to decimal pricing on December 4, 2000. In addition, as of October 5, 2000, ISE had begun trading options on 141 of its planned 600 classes.

[84] *See* Susquehanna Letter.

[85] *See* Phlx Letter.

[86] *See* Phlx Letter.

[87] *See* ISE Letter.

[88] *See* ISE Letter; PCX Letter; and Phlx Letter.

[89] *See* Amex Letter; CBOE Letter; ISE Letter; Susquehanna Letter; PCX Letter; and Phlx Letter.

[90] As noted above, this year the options markets have had to agree, on six separate occasions, to allocate OPRA systems capacity. *See* Section II, Background, *supra*.

adoption of the allocation formula will reduce the work of the exchanges and thereby, allow the exchanges to allocate their resources to other priorities.

The Commission also believes that, until sufficient capacity is available to the options markets to handle projected message traffic growth, the capacity allocation formula adopted by the Commission today should help to ensure that scarce OPRA systems capacity is allocated in an objective and transparent manner. The Commission continues to believe that the adoption of objective criteria should bring additional transparency and consistency to the allocation process. By using an objective capacity allocation formula to determine each exchange's message traffic limitations during peak usage periods, the options markets should be able to disseminate options market data on a real-time basis, which should foster competition. Further, allocating capacity should help maintain efficient and orderly markets for options by ensuring that current market data is continuously available and reliable. Finally, allocating capacity in an objective and transparent manner will enable the exchanges to better manage their demand for OPRA system capacity and should encourage each exchange to establish and utilize efficient quote reduction methods based on the amount of message capacity it has been allocated, thereby promoting efficiency.

C. Costs

The Commission has carefully considered the concerns raised by the commenters. First, the Commission recognizes that the options exchanges will incur certain costs in determining their average quotation message traffic for purposes of the calculation of Included Classes. These costs may include a one-time systems cost to establish a program to calculate which options classes traded by each exchange satisfy the definition of Included Classes. In addition, there may be ongoing costs associated with assigning staff to perform the calculation on a quarterly basis. Nonetheless, the Commission notes that the options exchanges routinely compile much of this information, although the data may have to be slightly reconfigured for the calculation of Included Classes.

Second, the Commission recognizes the validity of commenters' concerns that the existence of an allocation formula may discourage options exchanges from listing new products and capacity may be allocated to higher volume exchanges to the possible detriment of new and smaller volume exchanges. To address these concerns, the allocation formula adopted by the Commission provides each exchange with a minimum capacity allocation, regardless of the volume or activity on other exchanges. This certain allocation should allow exchanges to launch new products in order to compete with larger, more established exchanges. In addition, the Commission, by adopting the allocation formula, is not dictating how each exchange allocates its capacity within its own market. Instead, each options exchange will be able to determine whether to use its capacity for new or existing products.

Finally, in response to commenters' concerns about the costs associated with the perceived anticompetitive impact of an allocation formula, the Commission notes that it is not the existence of an allocation formula, *per se,* that limits the exchanges' ability to generate and disseminate quotation message traffic at will. Instead, the source of the restriction on ''free'' competition is the anticipated limitation on the availability of OPRA systems capacity, in that the demands on capacity are expected to exceed supply. An allocation formula, such as the one adopted by the Commission today, is necessary because the exchanges have not sufficiently planned for the amount of capacity their business would need, been able to agree on allocation of the limited amount of capacity available, or developed strategies to mitigate the amount of market data generated. The allocation methodology adopted today is critical to ensure that the exchanges, in the aggregate, transmit no more market data to OPRA than the available capacity allows OPRA to disseminate in a timely manner to information vendors. In the absence of such limits, fair and orderly markets and the protection that investors receive from timely and accurate market data would be jeopardized.

D. Conclusion

It is important to emphasize that the allocation formula adopted by the Commission today is merely a short-term solution while the options exchanges look for a more permanent solution to the capacity issue pursuant to their settlement agreement with the Commission.[91] Based on the comments and its own analysis, the Commission believes that the OPRA plan amendments adopted today provide a reasonable allocation of capacity among the options exchanges. First, by ensuring that each options exchange receives a minimum capacity allocation, the formula ensures that each exchange retains a basic amount of capacity at all times, regardless of the activity or actions of the other exchanges. Second, by measuring average quotation message traffic, the formula takes into account the individual needs of each exchange, while relying on a minimum volume threshold to avoid creating incentives for markets to list products solely for the purpose of increasing their capacity allocation. Third, the formula provides a new exchange with capacity to operate without encouraging it to irresponsibly list options classes solely to obtain capacity. Finally, each exchange will retain the flexibility to determine how best to allocate its capacity allocation within its own market.

In addition, the Commission recognizes that there are always costs associated with allocating a finite resource among users.[92] In fact, there are costs associated with the way the markets have been allocating capacity among themselves;[93] namely, the failure to provide incentives for the exchanges to reduce excessive quoting of existing listings and to add new listings only with a sound business rationale. The allocation formula adopted by the Commission today, which combines several elements of the alternative formulae proposed by the Commission in its Proposing Release and incorporates specific recommendations of commenters, is intended to minimize the impact on any one options exchange and to take into account the differences between the options exchanges. Therefore, while the Commission recognizes that the capacity allocation formula being adopted today may, on a short-term basis, limit the ability of the exchanges' to generate and send to OPRA unlimited quotations during peak quotation periods, the Commission believes that the allocation formula balances this concern with the needs of investors and other market participants in having timely and reliable market information to use to make informed investment and trading decisions.

[91] *See* SEC Order, *supra* note 4.

[92] The Commission notes, however, that the options exchanges are already allocating existing OPRA capacity during peak periods on six occasions, while continuing to work on other short-term mitigation strategies. *See supra* note 4.

[93] As discussed above, the options markets have reluctantly agreed on separate occasions to allocate existing OPRA capacity among themselves during peak periods through temporary amendments to the OPRA Plan. The capacity allocation used by the exchanges has been based loosely on the historical peaks experienced by each options market, and determined through negotiations among the markets.

VII. Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Act[94] requires that the Commission, when promulgating rules under the Act, to consider the impact any rule would have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in the public interest. In the Proposing Release, the Commission solicited comment on the effects on competition, efficiency, and capital formation of the proposed amendments. Specifically, the Commission requested commenters to address how the proposed amendments would affect competition between and among the options exchanges, market participants, and investors and how the proposed amendments would affect efficiency and capital formation. The Commission received four comment letters that specifically addressed these issues.[95]

The commenters expressed general concerns about the competitive implications of the proposed rules.[96] For example, one commenter stressed that allocating OPRA systems capacity should not come at the expense of competition among the exchanges.[97] Another commenter argued that any objective allocation formula proposed by the Commission should account for each exchange's individual performance to encourage competition and provide incentives for each exchange to improve its efficiency and increase its volume and order flow.[98] Two commenters emphasized that fundamental to any allocation formula should be that it promote competition and not preserve the market share of any options exchange.[99] Finally, one commenter supported the Commission's efforts to create an equitable methodology to allocate OPRA systems capacity, but cautioned that competition between the options markets should not be artificially restricted.[100]

The Commission has considered the comments and the amendments in light of the standards cited in Section 23(a)(2) of the Act[101] and believes that the amendments to the OPRA Plan adopted today likely would not impose any significant burden on competition that is not necessary or appropriate in furtherance of the Act. The Commission recognizes that allocating OPRA systems capacity among the OPRA participants does raise competitive concerns because capacity allocation inherently limits an exchange's ability to freely generate an unlimited number of quotes, which may restrict an exchange's ability to compete with other markets on the basis of price. However, the Commission believes that it is not the existence of an allocation formula that could limit competition between the options exchanges. Instead, any restriction on competition is caused by the limitations, both previously experienced and further anticipated, on the availability of OPRA systems capacity, in that the demands on capacity are expected to exceed the supply.

As described above, OPRA systems capacity is limited. Thus, in times of high market volume or market volatility, there may not be sufficient systems capacity to accommodate the message traffic generated by the options exchanges, which could lead to queuing of all or a substantial portion of options market data that is sent by each options exchange to OPRA for dissemination to the public. Further, the demand for OPRA systems capacity is expected to increase upon the full implementation of decimal pricing. Therefore, the Commission has determined that a fair and objective formula to allocate the limited systems capacity during times when the systems capacity is not sufficient to handle excess message traffic is necessary to help ensure that allocation is completed in an objective and transparent manner. The amendments to the OPRA Plan, therefore, provide a means to distribute capacity equitably among the exchanges during those times when OPRA systems capacity is insufficient.

By using an objective allocation formula to determine each exchange's message traffic limits during peak usage periods, the Commission believes that each options exchange will be able to continue to disseminate on a real-time basis its options market data, which should maintain price competition, and preserve liquidity and transparency for all market participants, including retail investors. If capacity constraints are not addressed and capacity is not objectively allocated, the dissemination of all options market data could be compromised, which could halt all price competition among the exchanges and result in investors receiving executions at prices that do not reflect the current market. Further, investors would be unable to make informed order-routing decisions because, if the system is overloaded by excessive message traffic, the systems could queue, leading to the dissemination of stale or incomplete market data. The allocation of capacity in an objective and transparent manner will enable each exchange to continue to disseminate its options market data on a real-time basis, thus enabling competition, albeit limited, to continue during high volume or high volatility times and enabling investors to make informed market decisions.

In adopting these amendments, the Commission has determined that the action is necessary and appropriate in the public interest for the protection of investors, and has considered the amendments' impact on efficiency, competition, and capital formation.[102] The Commission believes that the allocation formula should enhance the ability of the options exchanges to operate in an efficient and orderly manner by ensuring that current market data is constantly available. By having an objective allocation formula, each market will be able to determine and plan how to best operate during times when allocation of OPRA systems capacity is necessary. Further, the allocation formula should encourage each individual exchange to establish and utilize quote reduction methods based on the amount of message capacity it has been allocated, thereby promoting efficiency of the market data dissemination process. As discussed in greater detail above, the Commission has considered the amendments' impact on competition and believes that any restriction on competition is caused not by the Commission's adoption of an allocation formula, but by the limited supply of OPRA systems capacity. Finally, the Commission believes that the proposed amendments to the OPRA Plan, which should help to ensure the availability of timely and reliable real-time market data should enhance public confidence in the integrity of the options markets and consequently, facilitate capital formation.

VIII. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the provisions of the Regulatory Flexibility Act (''Reg. Flex.

[94] 15 U.S.C. 78w(a)(2).

[95] *See* CBOE Letter; ISE Letter; Phlx Letter; and PCX Letter, *supra* note 66.

[96] The commenters generally directed their specific concerns to the two alternative formulae proposed by the Commission in the Proposing Release. As discussed above, the Commission has determined to adopt a modification of the two alternative proposals. Therefore, this discussion is limited to the general comments raised concerning the competitive aspects of allocating OPRA capacity.

[97] *See* Phlx Letter.

[98] *See* CBOE Letter.

[99] *See* ISE Letter and Phlx Letter.

[100] *See* PCX Letter.

[101] 15 U.S.C. 78w(a)(2).

[102] 15 U.S.C. 78c(f).

Act''),[103] regarding the Commission's adoption of amendments to the OPRA Plan establishing a formula to allocate the message capacity of the OPRA system among the participant exchanges.[104] An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with 5 U.S.C. 603 and was made available to the public.[105] The Commission received one comment directly relating to the IRFA prepared in connection with the Proposing Release.[106] In addition, the Commission notes that amendments to the OPRA Plan are being adopted in substantially the same format as proposed, incorporating certain recommendations from commenters. As a result, the FRFA is in substantially the same format as the IRFA.

As discussed more fully in the FRFA, the amendments to the OPRA Plan would directly affect the five OPRA participant exchanges, none of which is a small entity as defined in Rule 0–10 under the Act.[107] One commenter, an OPRA participant exchange, stated that all its members would be affected if quotation capabilities were reduced and, as a result, small businesses would be impacted by the amendments because many of this commenter's members are small entities.[108] The Commission, however, does not believe entities other than the OPRA participant exchanges will be directly affected by the amendments.[109]

The amendments to the OPRA Plan adopted by the Commission provide an equitable method of allocating OPRA capacity among the participant exchanges during peak usage periods based on objective criteria. Further, the amendments are intended to implement an equitable allocation of capacity, which should ensure that all broker-dealers and investors have available to them accurate and timely information with respect to quotations for and transactions in options and should help to avoid delays and queues in the dissemination of options market information. The Commission believes that the amendments only apply directly to the participant exchanges. Thus, there would be no direct impact on small businesses for the purposes of the Reg. Flex. Act. In addition, the Commission believes that the OPRA Plan amendments being adopted do not establish any new reporting, recordkeeping, or compliance requirements for small entities. A copy of the FRFA may be obtained by contacting John Roeser, Attorney, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

IX. Conclusion

The Commission finds that the amendments to the OPRA Plan are consistent with the Act, particularly Section 11A. Therefore, the Commission hereby amends the OPRA Plan to provide for a specific formula to allocate capacity among the options exchanges during peak usage periods pursuant to Rule 11Aa3–2(b)(2) and (c)(1)[110] and the Commission's authority under Section 11A(a)(3)(B) of the Act.[111]

X. Description of Amendments to the OPRA Plan

Additions are *italicized*; deletions are [bracketed].

* * * * *

III. Definitions

(a)–(k) No change.

(l) Relevant Calendar Quarter.

(i) For the capacity allocation commencing on May 1 of each year, the Relevant Calendar Quarter shall mean the months of January, February, and March.

(ii) For the capacity allocation commencing on August 1 of each year, the Relevant Calendar Quarter shall mean the months of April, May, and June.

(iii) For the capacity allocation commencing on November 1 of each year, the Relevant Calendar Quarter shall mean the months of July, August, and September.

(iv) *For the capacity allocation commencing on February 1 of each year, the Relevant Calendar Quarter shall mean the months of October, November, and December.*

(m) ''Customer Contracts'' means options contracts executed on an options exchange and cleared in a customer account at a registered clearing agency.

(n) ''Options Class'' means all of the put option or call option series overlying a security, as defined in Section 3(a)(10) of the Act, including a group or index of securities.

(o) ''Included Class'' means any options class listed by an OPRA participant:

(i) For which such participant executes during the Relevant Calendar Quarter an average of at least 15 customer contracts per day if the options class is multiply-listed; or

(ii) For which such participant executes during the Relevant Calendar Quarter an average of at least 25 customer contracts per day if the options class is exclusively-listed.

(p) Unless qualified for, and electing to receive a New Exchange Share, pursuant to paragraph (d)(i) of Section V, an OPRA participant that is operating an options market receives a ''Capacity Credit'' for each options class that is an Included Class for that participant equal to:

(i) For a multiply-traded options class, the average quote messages received by OPRA between 3:00 p.m. and 4:00 p.m. eastern time during the Relevant Calendar Quarter by all OPRA participants for which such class is an Included Class, divided by the number of such OPRA participants; or

(ii) For an exclusively-listed options class, the average quote messages received by OPRA during the Relevant Calendar Quarter by the OPRA participant between 3:00 p.m. and 4:00 p.m. eastern time.

(q) ''Allocation Percentage'' for an OPRA participant means the total of all such participant's Capacity Credits divided by the total of all Capacity Credits for all OPRA participants.

(r) ''New Exchange Share'' means 40 percent of OPRA systems capacity divided by the number of OPRA participants that are operating an options market.

IV. No Change

V. (a)–(c) No change.

(d) *Quarterly Calculation of Capacity Allocation*

(i) On the fifth business day following the end of the Relevant Calendar Quarter, each options exchange that has been operating for fewer than 270 calendar days will elect whether to accept a capacity allocation equal to: (A) the New Exchange Share; or (B) the capacity allocation that it would receive under paragraph (d)(ii)(B).

(ii) On the first of February, May, August, and November of each year, each OPRA participant that operates an options exchange will receive an allocation of OPRA systems capacity in an amount equal to:

(A) Its New Exchange Share, if so elected pursuant to paragraph (d)(i) of this Section; or

(B) The aggregate of:

[103] 5 U.S.C. 603(a).

[104] Securities Exchange Act 11Aa3–2, 17 CFR 240.11Aa3–2.

[105] *See* Proposing Release, *supra* note 18.

[106] *See* PCX Letter.

[107] 17 CFR 240.0–10.

[108] *See* PCX letter.

[109] The amendments to the OPRA Plan would directly affect only the OPRA participants that operate options markets; namely, Amex, CBOE, ISE, PCX, and Phlx, none of which are small entities. *See* 17 CFR 240.0–10.

[110] 17 CFR 240.11Aa3–2(b)(2) and (c)(1).

[111] 15 U.S.C. 78k–1(a)(3)(B).

(1) One-third of OPRA systems capacity divided by the number of OPRA participants that are operating an options market; and

(2) The total OPRA systems capacity, less the allocation of any New Exchange Share and the total allocation of capacity pursuant to paragraph (d)(ii)(B)(1), multiplied by its Allocation Percentage.

(iii) OPRA will calculate the capacity allocation specified in paragraph (d)(ii) as soon as possible after the end of the Relevant Calendar Quarter. OPRA will use data to make this calculation that is provided to it by the OPRA participants. Alternatively, OPRA can contract with its processor or with another third party to perform this calculation. OPRA will notify the OPRA participants and the Commission of the capacity allocation promptly after such calculation is made.

(e) Notwithstanding paragraph (d) of this Section, for the first quarter, or any portion thereof, that an exchange commences trading of options, it will be allocated capacity equal to the New Exchange Share. If an exchange commences trading of options other than on the first of February, May, August, or November, each other options exchange's capacity shall be recalculated pursuant to paragraph (d)(ii)(B) of this Section, using the Allocation Percentage figures from the most recent Relevant Calendar Quarter, except that any options exchange that was qualified for, and elected to receive, the New Exchange Share in the most recent quarterly allocation, will receive a New Exchange Share.

(f) [d] Indemnification

(i)–(ii) No change.

* * * * *

Dated: November 27, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30661 Filed 11–30–00; 8:45 am]

BILLING CODE 8010–01–U

Federal Register

Friday,
December 1, 2000

Part IX

Department of Labor

Pension and Welfare Benefits Administration

2001 National Summit on Retirement Savings; Request for Information; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

2001 National Summit on Retirement Savings; Request for Information

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of request for information.

SUMMARY: This document requests comments from the public for the purpose of developing a comprehensive agenda for the second National Summit on Retirement Savings (2001 National Summit), scheduled to be convened on or after September 1, 2001. The 2001 National Summit is called for by the Savings Are Vital To Everyone's Retirement (SAVER) Act of 1997 (Pub. L. 105–92). The first National Summit was held on June 4–5, 1998, in Washington, DC.

DATES: Written comments on suggestions for the agenda for the 2001 National Summit on Retirement Savings must be received by January 31, 2001.

ADDRESSES: Written comments (preferably three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5669, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: ''2001 National Summit on Retirement Savings.'' All submissions will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ellen Goodwin, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

The Savings Are Vital to Everyone's Retirement (SAVER) Act of 1997 (Pub. L. 105–92) amended the Employee Retirement Income Security Act of 1974 (ERISA) by adding a new section 517,[1] which calls for the convening of National Summits on Retirement Savings (National Summits). Section 517 of ERISA provides standards for the purposes, scope, participation, and administration of each National Summit.

As outlined in the Act, the purposes of the National Summits are (1) to increase the public awareness of the value of personal savings for retirement, (2) to advance the public's knowledge and understanding of retirement savings and its critical importance to the future well-being of American workers and their families, (3) to facilitate the development of a broad-based, public education program to encourage individual commitment to a personal retirement savings strategy, (4) to identify the problems workers have in setting aside adequate savings for retirement, (5) to identify the barriers that employers, especially small employers, face in assisting their workers in saving for retirement, (6) to examine the impact and effectiveness of individual employers in promoting personal savings for retirement among their workers and workers' participation in company savings options, (7) to examine the impact and effectiveness of government programs at the Federal, State, and local levels in educating the public about and encouraging retirement savings, (8) to develop comprehensive recommendations for government and private sector actions to promote pensions and individual retirement savings, and (9) to develop recommendations for the coordination of retirement savings initiatives among the Federal, State, and local governments.

The Act called for the convening of three National Summits. The first was held on June 4–5, 1998, in Washington, DC. The two remaining Summits are to be convened, respectively, on or after September 1, 2001 and September 1, 2005. The SAVER Act requires the Secretary of Labor (Secretary) to prepare a report describing each Summit's activities and to submit it to the President and Congressional leaders following the Summit's adjournment.

The SAVER Act provides that the National Summits are to be planned and conducted under the direction of the Secretary of Labor, in consultation with heads of other Federal agencies as designated by the President. The Act further provides that, in planning a National Summit, the Secretary shall consult with bipartisan Congressional leaders and with at least one organization composed of private sector representatives that partners with Governmental entities to promote retirement savings.

B. First National Summit

The first National Summit was convened by the President and co-hosted by members of the Congressional leadership on June 4–5, 1998. Following the Summit, a report entitled ''Report on the National Summit on Retirement Savings'' was prepared and submitted in accordance with the SAVER Act. This report is publically available through the Department of Labor's website at www.dol.gov/dol/pwba. The report describes the information exchanged at the Summit and the recommendations made by Summit participants to achieve the goal of a financially secure retirement for all Americans.

C. Information Requested

The Department is now in the process of developing an agenda for the 2001 National Summit. The Department wishes to develop an agenda that builds on the primary recommendations for national retirement savings education programs presented at the first National Summit and that reflects, to the greatest extent possible, the purposes of the National Summit as set forth in ERISA section 517. To ensure that the Summit comprehensively serves its statutory purposes, the Department hereby solicits comments from organizations, both private and public, that have a mission to educate American workers about the importance of saving for retirement and ways to achieve retirement security. All information received will be used to develop the National Summit agenda and to help shape the information presented at the Summit. The Department intends to publish a proposed agenda in the **Federal Register** prior to the 2001 National Summit in accordance with the SAVER Act.

The Department requests comments on the issues related to retirement savings education described above. The Department is particularly interested in comments concerning the following:

1. Suggested topics for discussing the current state of retirement savings education in America and its effect on the national retirement savings rate;

2. Ideas about programs and activities that would effectively reach the general public and, more specifically, low-income workers, women, small business owners, minorities, youth, and older workers;

3. Success stories and model programs that have used effective communication techniques to educate low-income workers, women, small business owners, minority groups, youth, and older workers about the need to save and steps that should be taken to save for retirement;

4. Measurement techniques used to assess the effectiveness of public

[1] 29 U.S.C. 1147.

outreach and media efforts regarding retirement savings; and

5. Ideas for creating new partnerships among public and private sector organizations to enhance existing programs for encouraging retirement savings.

Submitted comments may address any or all of the aforementioned categories of information and need not be limited to those categories. In submitting comments, please refer to the pertinent topic addressed by the comment by number. Comments must be received by January 31, 2001, to be considered in conjunction with developing the agenda for the 2001 National Summit.

Authority: 29 U.S.C. 1143; Secretary of Labor's Order No. 1–87, 52 FR 13139.

Signed at Washington, DC, this 27th day of November, 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–30628 Filed 11–30–00; 8:45 am]

BILLING CODE 4510–29–P

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2346/P.L. 106–521

To authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment. (Nov. 22, 2000; 114 Stat. 2438)

H.R. 5633/P.L. 106–522

District of Columbia Appropriations Act, 2001 (Nov. 22, 2000; 114 Stat. 2440)

S. 768/P.L. 106–523

Military Extraterritorial Jurisdiction Act of 2000 (Nov. 22, 2000; 114 Stat. 2488)

S. 1670/P.L. 106–524

To revise the boundary of Fort Matanzas National Monument, and for other purposes. (Nov. 22, 2000; 114 Stat. 2493)

S. 1880/P.L. 106–525

Minority Health and Health Disparities Research and Education Act of 2000 (Nov. 22, 2000; 114 Stat. 2495)

S. 1936/P.L. 106–526

Bend Pine Nursery Land Conveyance Act (Nov. 22, 2000; 114 Stat. 2512)

S. 2020/P.L. 106–527

To adjust the boundary of the Natchez Trace Parkway, Mississippi, and for other purposes. (Nov. 22, 2000; 114 Stat. 2515)

S. 2440/P.L. 106–528

Airport Security Improvement Act of 2000 (Nov. 22, 2000; 114 Stat. 2517)

S. 2485/P.L. 106–529

Saint Croix Island Heritage Act (Nov. 22, 2000; 114 Stat. 2524)

S. 2547/P.L. 106–530

Great Sand Dunes National Park and Preserve Act of 2000 (Nov. 22, 2000; 114 Stat. 2527)

S. 2712/P.L. 106–531

Reports Consolidation Act of 2000 (Nov. 22, 2000; 114 Stat. 2537)

S. 2773/P.L. 106–532

Dairy Market Enhancement Act of 2000 (Nov. 22, 2000; 114 Stat. 2541)

S. 2789/P.L. 106–533

To amend the Congressional Award Act to establish a Congressional Recognition for Excellence in Arts Education Board. (Nov. 22, 2000; 114 Stat. 2545)

S. 3164/P.L. 106–534

Protecting Seniors From Fraud Act (Nov. 22, 2000; 114 Stat. 2555)

S. 3194/P.L. 106–535

To designate the facility of the United States Postal Service located at 431 North George Street in Millersville, Pennsylvania, as the ''Robert S. Walker Post Office''. (Nov. 22, 2000; 114 Stat. 2559)

S. 3239/P.L. 106–536

To amend the Immigration and Nationality Act to provide special immigrant status for certain United States international broadcasting employees. (Nov. 22, 2000; 114 Stat. 2560)

Last List November 24, 2000

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 2000

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Dec 1	Dec 18	Jan 2	Jan 16	Jan 30	March 1
Dec 4	Dec 19	Jan 3	Jan 18	February 2	March 5
Dec 5	Dec 20	Jan 4	Jan 19	February 5	March 5
Dec 6	Dec 21	Jan 5	Jan 22	February 5	March 6
Dec 7	Dec 22	Jan 8	Jan 22	February 5	March 7
Dec 8	Dec 26	Jan 8	Jan 22	February 6	March 8
Dec 11	Dec 26	Jan 10	Jan 25	February 9	March 12
Dec 12	Dec 27	Jan 11	Jan 26	February 10	March 12
Dec 13	Dec 28	Jan 12	Jan 29	February 12	March 13
Dec 14	Dec 29	Jan 16	Jan 29	February 12	March 14
Dec 15	Jan 2	Jan 16	Jan 29	February 13	March 15
Dec 18	Jan 2	Jan 17	February 1	February 16	March 19
Dec 19	Jan 3	Jan 18	February 2	February 20	March 19
Dec 20	Jan 4	Jan 19	February 5	February 20	March 20
Dec 21	Jan 5	Jan 22	February 5	February 20	March 21
Dec 22	Jan 8	Jan 22	February 5	February 20	March 22
Dec 26	Jan 10	Jan 25	February 9	February 26	March 26
Dec 27	Jan 11	Jan 26	February 12	February 26	March 27
Dec 28	Jan 12	Jan 29	February 12	February 26	March 28
Dec 29	Jan 16	Jan 29	February 12	February 27	March 29